OCTOBER 2009

New State False Claims Act

On October 5, 2009, Governor Rell signed a bill creating the Connecticut False Claims Act (the "Act"). The Act applies to medical assistance programs administered by the Connecticut Department of Social Services ("DSS") and allows the State of Connecticut ("State") to reward people who provide information that leads to the detection and prosecution of fraud against DSS. A summary of the key provisions of the Act is provided below.

Prohibited Acts

With respect to medical assistance programs administered by DSS (Medicaid, HUSKY, SAGA, etc.), the Act prohibits (1) presenting to an officer or employee of the State a false or fraudulent claim for payment or approval; (2) making or using a false record or statement to secure the payment or approval by the State of a false or fraudulent claim; (3) conspiring to defraud the State by securing the payment of a false or fraudulent claim; or (4) making or using a false record or statement to conceal, avoid, or decrease an obligation to pay the State.

Penalties

Penalties for violation of the Act include (1) a civil penalty of not less than $5,000 or more than $10,000; (2) three times the amount of damages that the State sustains because of the act of that person (subject to reduction if the party that submitted the false claim self-discloses the existence of such a claim and fully cooperates with the State's investigation); and (3) the costs of investigation and prosecution of such violation.

Procedure for Bringing a Civil Action

The State Attorney General ("AG") may investigate any violation of the Act. If the AG determines that a person has violated the Act, the AG may bring a civil action in the name of the State against such person.

In addition to the AG, any person may bring a civil action in the name of the State against any person who violates the Act. Such person must provide the AG with a copy of the complaint and written disclosure of the material evidence that this person possesses. If the AG elects to proceed with the action, the AG is responsible for prosecuting the action. The person bringing the action can continue as a party to the action, subject to specific limitations. If the AG declines to proceed with the action, the person who brought the action still has the right to conduct the action.

Rewards

If the court awards penalties to the State or if the AG settles with the defendant and receives penalties, the person bringing the action will receive not less than 15 percent but not more than 25 percent of such proceeds, depending on the extent to which the person contributed to the prosecution of the action. If the AG declines to proceed with the action and the person who

brought the action proceeds with the action and/or settles the action, such person receives not less than 25 percent or more than 30 percent of the proceeds of the action or settlement. In either case, the person who brought the action can also be reimbursed for reasonable expenses that the court determines were necessarily incurred, plus reasonable attorneys' fees and costs. If a defendant prevails and the court determines that the claim of the person bringing the action was clearly frivolous or vexatious or brought primarily for purposes of harassment, the court may award reasonable attorneys' fees and expenses to the defendant.

Whistleblower Actions

Any person discriminated against by such person's employer because of acting in furtherance of an action under the Act is entitled to the relief necessary to make the person whole. Such relief includes being reinstated with the same seniority status that such employee would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

Statute of Limitations

A civil action under the Act may not be brought more than (1) six years after the date on which the violation of the Act was committed or (2) three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the State charged with responsibility to act in the circumstances, but in no event more than ten years after the date on which the violation was committed, whichever occurs last.

Governor Signs Public Health Implementer Bill

On October 6, 2009, Governor Rell signed Public Act 09-3, resulting in changes to various Connecticut health law statutes. This article summarizes some of the material changes implemented by the Public Act. The provisions of this Act became effective on October 6, 2009.

Health Care Provider Peer Review Confidentiality

Part of Public Act 09-3 is in response to the recent Connecticut Supreme Court decision in *Director of Health A*
Director of Health Affairs Policy Planning, University of Connecticut Health Center v. Freedom of Information Commission . In that case, the Connecticut Supreme Court determined that peer review documents were not exempt from disclosure under the Freedom of Information Act when the hospital involved was a public agency. The Public Act, in overriding the Supreme Court decision, clarifies that peer review information may not be disclosed under FOIA. Specifically, the Public Act states that peer review materials are not subject to disclosure under the Freedom of Information Act ("FOIA") in any circumstances but clarifies that the Department of Public Health ("DPH") is not precluded from accessing peer review materials in connection with its investigation or review of the licensure of any health care provider. The Public Act states that, although DPH may access peer review materials, DPH is prevented from further disclosing the information to any person outside the agency, except as necessary for an investigation against a health care provider.

Merger of the Office of Health Care Access and the Department of Public Health

The Public Act also provides that the Office of Health Care Access ("OHCA") ceases to be a separate agency and operates as a division of DPH. This reorganization does not change OHCA's responsibilities. Further, all formerly established decisions, settlements, and regulations will be enforced. The current OHCA Commissioner serves as the new Deputy Commissioner of Public Health and continues to exercise independent decision-making authority over the OHCA division. The Deputy Commissioner must report to the Governor and Public Health Committee on recommendations for certificate of need reform by January 1, 2010.

Sexual Assault Forensic Examiners

Public Act 09-3 authorizes the Office of Victim Services under the Connecticut Judicial Branch ("OVS") to establish a program to train sexual assault forensic examiners ("SAFEs" or individually, a "SAFE") for the benefit of adolescent and adult victims of sexual assault. Each SAFE must be either a physician, registered nurse or advanced practice registered nurse and may provide immediate care and treatment to a sexual assault victim at a participating hospital.

SAFEs may collect evidence of sexual assault, provided they follow (1) existing state sexual assault evidence collection guidelines, (2) the hospital's policies and accreditation standards, and (3) a written agreement between the hospital, DPH and OVS regarding the hospital's participation in the SAFE program.

If you have any questions regarding this new legislation, please feel free to contact any member of Robinson & Cole's Health Law Group.

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The information in this update should not be considered legal advice. Consult your attorney before acting on anything contained n.

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