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UPDATE
Health Law Pulse

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2010 Legislative Update

The following is a general summary of significant Connecticut health care legislation enacted during the 2010 legislative session.

The following acts are effective July 1, 2010, or earlier:

SPECIAL ACT 10-7: PILOT PROGRAM TO TRANSFER HOSPITAL PATIENTS WHO RECEIVE MEDICAID BENEFITS TO NURSING HOMES IN A TIMELY MANNER

Effective as of May 5, 2010

This public act establishes a task force to study the timeliness of transferring Medicaid recipients from hospitals to nursing homes. The task force includes, among others, state agency representatives, three hospital representatives, a representative from the Connecticut Hospital Association, a representative of a chronic disease hospital and a representative of a nursing facility specializing in complex medical conditions. Its mission is to study (1) the reasons Medicaid recipients remain in the hospital for an extended time; (2) the barriers preventing transfer; (3) federal agency approvals and policy and procedure changes required to facilitate such transfers; and (4) clinical standards and state licensure requirements that prevent or facilitate such transfers. The task force will report on the results of its findings no later than October 1, 2010 and the report will include recommendations to decrease the time that Medicaid recipients remain in the hospital prior to being transferred to a long-term facility.

PUBLIC ACT 10-116: AUDITS BY THE DEPARTMENT OF SOCIAL SERVICES

Effective as of July 1, 2010

The audit process of the Department of Social Services (DSS) existing prior to this legislation only allowed providers who were aggrieved by an audit decision to request a review by an "impartial" individual designated by DSS. The new law establishes a right for a provider to appeal the DSS final decision to a superior court.

PUBLIC ACT 10-117: REVISIONS TO THE PUBLIC HEALTH-RELATED STATUTES

The following provisions of Public Act 10-117 are effective as of June 8, 2010:

- Foreign physicians and surgeons are now allowed to practice medicine or surgery in Connecticut as long as they participate in clinical training under the supervision of a physician or surgeon licensed in Connecticut, perform professional activities only in a licensed hospital that has an accredited residency program, and hold a current valid

license in another country, as verified by such hospital.

- The requirements for placing an individual with active suicidal or homicidal intent at a hospital under an emergency certificate are more stringent. The law now provides that no person who has been determined by a physician to have active suicidal or homicidal intent may be admitted to or detained at a chronic disease hospital under an emergency certificate unless such hospital is Medicare certified as an acute care hospital with a psychiatric unit that is excluded from the inpatient prospective payment system.

- The Health Information Technology Exchange of Connecticut (HITEC), a quasi-public agency, has been created to promote, plan and design, develop, assist, acquire, construct, maintain and equip, reconstruct, and improve health care information technology in the State of Connecticut. HITEC is invested with broad authority and power to accomplish the foregoing purposes. It will be managed by a board of directors that includes among others, the lieutenant governor or designee, the commissioners of the Department of Public Health (DPH), DSS, and the Department of Consumer Protection (DCP) or their designees, the chief information officer of the Department of Information Technology or designee, and other appointed persons. Board members shall be initially appointed on or before October 1, 2010, for a term of four years. HITEC will implement and revise as necessary the health information technology plan that includes an integrated statewide electronic health information infrastructure for the sharing of electronic health information among health care facilities and professionals, payors, state and federal agencies and patients. HITEC will become the lead health information exchange organization for the state on or after January 1, 2011, taking over control from DPH.

The following provisions of Public Act 10-117 are effective as of July 1, 2010:

- Chronic and convalescent nursing homes and rest homes with nursing supervision are now required to preserve patient records, whether in electronic or paper form, for a period of seven years following the discharge of patients from the facility or their death. The nursing home administrator of such facility shall ensure that all staff receive in-service training specific to the patient population.

PUBLIC ACT 10-122: ADVERSE EVENTS AT HOSPITALS AND OUTPATIENT SURGICAL FACILITIES

Effective as of July 1, 2010, except as noted below

Commencing on July 1, 2011, DPH will include, in its annual reports to the General Assembly, specific aggregate adverse event data regarding hospitals and outpatient surgical facilities, the proposed corrective action, and whether implementation of the corrective action has occurred. The report will include specific contextual information regarding the adverse event. The hospital or outpatient surgical facility will be allowed to submit commentary regarding the adverse event and such commentary will be included in the report.

This public act also creates a review process in matters w a complaint has been filed with DPH against a health care professional. Effective for complaints filed on or after October 1, 2010, the person filing the complaint will be provided status information, be allowed to review the compiled records relating to the complaint and, prior to DPH resolving the complaint with a consent order, be allowed to object to such resolution. Any disclosure pursuant to this process does not make the underlying records "public records." Such records are not subject to the Freedom of Information Act.

Additionally, effective July 1, 2010, mandatory mediation will be required in civil actions for personal injury or wrongful death resulting from negligence of the health care provider.

PUBLIC ACT 10-127: BILLING FOR SERVICES COVERED BY LONG-TERM CARE INSURANCE BY MANAGED RESIDENTIAL COMMUNITIES

Effective as of July 1, 2010

This Public Act requires Managed Residential Communities (MRCs) operating in Connecticut to assist residents with long-term care insurance in preparing and submitting claims for benefits when the resident has authorized such assistance in writing. Upon receipt of a written authorization from the resident, the insurer must disclose eligibility information to the MRC and provide the MRC with a copy of the benefits statement. The insurer is prohibited from denying a claim solely because the claim was prepared by an MRC.

PUBLIC ACT 10-179: ADJUSTMENTS TO STATE EXPENDITURES FOR THE FISCAL YEAR ENDING JUNE 30, 2011

The following provisions of Public Act 10-179 are effective as of May 7, 2010:

Under this public act, a pharmacy can only bill DSS, for Medicaid patients, the lowest amount accepted from the public under the pharmacy's savings or discount program. The act does not require the DSS beneficiary to pay the pharmacy's access fee for any such savings or discount program.

The following Acts are effective as of October 1, 2010:

PUBLIC ACT 10-38: AN ACT CONCERNING LICENSURE OF MASTER AND CLINICAL SOCIAL WORKERS

Under current law, an applicant for licensure as a clinical social worker must hold a master's degree from an accredited social work program, pass a clinical level examination, and perform 3,000 hours of social work experience, including 100 hours under the supervision of a licensed clinical social worker. Employers increasingly require licensure for employment in social work to limit liability and obtain reimbursement for services. As a result, new social workers have had difficulty performing the requisite clinical experience to obtain a license.

This public act creates a new category of licensure, called "master social worker." An applicant for licensure as a master social worker must hold a master's degree from an accredited social work program and pass a master's level examination. A licensed master social worker may practice under professional supervision and provide mental health diagnoses in consultation with certain licensed professionals, including a clinical social worker. However, a licensed clinical social worker may engage in independent practice.

PUBLIC ACT 10-39: PRESCRIPTION DRUG BENEFITS FOR VETERANS IN NURSING HOME FACILITIES

Under this public act, nursing homes may not restrict any patient from obtaining prescription drugs from a program or plan offered by the U.S. Department of Veterans Affairs (VA). If the patient requests, the nursing home must dispense prescription drugs obtained by the patient from the VA. The new law does not restrict the nursing home from dispensing or administering prescription drugs from sources other than the VA to veterans.

PUBLIC ACT 10-82: ADMINISTRATION OF VACCINES BY LICENSED PHARMACISTS

The current law allows licensed pharmacists to administer influenza vaccines to adults pursuant to the order of a licensed health care provider in accordance with established regulations. Effective October 1, 2010, pharmacists will also be allowed to administer pneumococcal and herpes zoster vaccines to adults.

PUBLIC ACT 10-117: REVISIONS TO THE PUBLIC HEALTH-RELATED STATUTES

The following provisions of Public Act 10-117 are effective as of October 1, 2010:

- The current law provides that the license of certain health care institutions is renewable every two years. Such health care institutions include, without limitation, hospitals, nursing homes, rest homes, home health care agencies, mental health facilities, assisted living services agencies, substance abuse treatment facilities, and outpatient surgical facilities.

The new law provides that the license of a home health care agency certified as a provider under the Medicare program is renewable every three years in order to run concurrent with its Medicare certification period.

- The financial records of any person or entity certified by the DPH to provide nursing facility management services, identified under the new law as a nursing facility management services certificate holder, may now be audited by the commissioner of DSS. Such certificate holders are also now subject to investigation by the DPH. Any applicant that is an entity and that seeks a certificate as a nursing facility management services certificate holder must supply to DPH the names of officers, directors, trustees, managing and general partners, as well as the names of persons with a 10 percent or greater interest in the entity, and a description of the person's relationship to the entity. If such entity is an out-of-state corporation, a certificate of good standing will also be required. Any person or entity providing nursing facility management services without the required certificate will be subject to civil penalties of up to $1,000 per day for each day of service provided without certification.

- In the event that DPH finds that a health care institution is in violation of the Public Health Code, DPH may currently require the owner of the real property upon which such health care institution resides to sign a consent order providing assurances that repairs or improvements necessary for compliance with the Public Health Code will be completed within a specified period of time. The new law will provide DPH with the option of assessing a civil penalty of up to $1,000 per day for each day that such owner is in violation of the Public Health Code or a consent order.

- Hospitals may now designate any licensed health care provider and any certified ultrasound or nuclear medicine technician to perform the following oxygen-related patient care activities in a hospital in accordance with such hospital's bylaws, rules, and regulations: (1) connecting or disconnecting oxygen supply; (2) transporting a portable oxygen source; (3) connecting, disconnecting, or adjusting the mask, tubes, and other patient oxygen delivery apparatus; and (4) adjusting the rate or flow of oxygen consistent with a medical order. This does not apply to any type of ventilator, continuous positive airway pressure, or bi-level positive airway pressure units, or any other noninvasive positive pressure ventilation. A hospital must document that each person designated to perform oxygen-related patient care activities has been properly trained, either through such person's professional education or through training provided by the hospital. Additionally, a hospital must require that such individual satisfy annual competency testing.

- The state may grant a license to a chiropractor who holds an out-of-state license without requiring such chiropractor to take the state licensure examination if the individual holds a current valid license from another state that has standards commensurate to Connecticut's licensing standards, except for the examination standards, and if such chiropractor has practiced as a licensed chiropractor for the immediate five years in an academic or clinical setting. The state may also issue a license to a chiropractor who holds a current, inactive license in good standing that was initially issued by another state prior to August 1, 1995, as long the individual passed a three-part clinical competency examination, a two-part x-ray examination, and a jurisprudence examination that were each administered by the licensing authority of such state.

- The requirements for individuals who are licensed in another state as a nursing home administrator to become licensed as a nursing home administrator in Connecticut will be greater. Such individuals must now hold a current nursing home administrator license in another state that requires such person to hold at least a baccalaureate degree, pass such state's licensure examination, and practice as a nursing home administrator for at least 12 of the 24 months preceding the application for licensure.

- A licensed practical nurse holding an out-of-state license who is seeking licensure in Connecticut without taking the necessary licensure examination must be from a state with equivalent or higher licensure requirements. If such other state issues a licensed practical

nursing license based on the completion of a nursing program shorter in length than the minimum length for Connecticut's licensed practical nursing programs or based on the partial completion of such nursing program, such nurse's clinical work experience may be substituted for the difference in length of the nursing programs if such work experience is performed under the supervision of a licensed registered nurse and occurs following the completion of a nursing education program and, when combined with the applicant's educational program, such experience equals or exceeds the minimum program length for licensed practical nursing education programs approved in Connecticut. Prior to December 31, 2010, individuals applying for license as practical nurse are required to complete 1500 hours of training in an approved registered nurse program and to pass the licensure examination. Additionally, prior to December 31, 2010, the commissioner of DPH may reinstate the license of a licensed practical nurse whose license became void solely due to nonpayment of supplemental professional licensure fees if such nurse applies for reinstatement.

- A registered nurse is now allowed to execute the orders of a licensed physician assistant, podiatrist, or optometrist that do not exceed the scope of practice of such registered nurse or ordering practitioner.

- DPH will not issue a license to any applicant who has a pending disciplinary action or unresolved complaint with the licensing division of another state.

- When determining the qualifications of a marriage and family therapist who is licensed or certified in another state that does not maintain licensure or certification standards equivalent to or higher than the standards provided under Connecticut law, DPH may substitute the requirement to complete a supervised practicum or internship and to possess relevant postgraduate experience if such therapist has a minimum of five years' experience of licensed or certified work experience in the practice of marital and family therapy.

- A paramedic who is currently licensed as a paramedic by a state that has equal or greater licensing requirements than those required in Connecticut is eligible for licensure as a paramedic in Connecticut.

- For purposes of registration requirements, pharmacies located in hospitals that contain another hospital wholly within its physical structure (contained hospital) may supply the contained hospital with certain noncontrolled and controlled substances, normally stocked by such hospitals for patients of the contained hospital, without being considered wholesalers of drugs.

- The definition and requirements for a "circulating nurse" have been established. A circulating nurse who is a registered nurse trained or experienced in perioperative services, is responsible for coordinating the nursing care and safety needs of a patient in an operating room. Hospitals and outpatient surgical facilities must now assign a circulating nurse to each surgical procedure and such nurse must be present for the entire procedure, unless the individual must leave as part of the procedure or is relieved by another circulating nurse. A circulating nurse cannot be assigned to another procedure that is scheduled to occur concurrently or that may overlap in time with the originally assigned surgical procedure.

PUBLIC ACT 10-123: ANATOMICAL GIFTS

This public act adopts the Revised Uniform Anatomical Gift Act (the Act), which replaces the Uniform Anatomical Gift Act. The Act contains some new provisions concerning anatomical gifts and organ and tissue procurement. Minors can now donate organs if they are emancipated or old enough to apply for a driver's license or identification card. The donor's parent, guardian, or agent may also make an anatomical gift on the donor's behalf when conditions to do so are met. The Act defines an "agent" as an individual: (1) authorized to make health care decisions on the

person's behalf by a power of attorney for health care or (2) expressly authorized to make an anatomic gift on the person's behalf by any other "record" signed by the person. Donors are no longer allowed to designate a particular provider to harvest their anatomical gift. The Act allows other people to make anatomical gifts upon a person's death as long as the person had not previously refused to donate and reorders the decision-making priority in such case to, among other changes, make the donor's agent the top decision maker. The Act also allows a person to make an anatomical gift during a terminal illness by communicating this intention to at least two adults, at lease one of whom must be a disinterested witness. The Act makes it more difficult for a donor's gift to be overridden. Each hospital must have an agreement in place with a procurement organization.

The Act establishes the Department of Motor Vehicles as a donor registry and requires each registry to be accessible to the procurement organization 24 hours per day. The Act expands the definition of procurement organization to include tissue and eye banks and requires the chief medical examiner to cooperate with the procurement organizations to maximize recovery of anatomical gifts.

PUBLIC ACT 10-179: ADJUSTMENTS TO STATE EXPENDITURES FOR THE FISCAL YEAR ENDING JUNE 30, 2011

The following provisions of Public Act 10-179 are effective as of October 1, 2010:

This public act makes substantial revisions to the Certificate of Need (CON) process that sets forth (1) when CON authorization is or is not required; (2) updated guidelines and criteria that the Office of Health Care Access (OHCA) must consider; (3) simplified processes for CON application; and (4) requirements for an inventory of health care facilities and services.

Affected Facilities

Under the new law, the definition of a "health care facility" includes only hospitals, specialty hospitals, freestanding emergency departments, outpatient surgical facilities, facilities eligible for reimbursement under Medicare or Medicaid, central service facilities, mental health facilities, substance abuse treatment facilities, and other facilities mentioned elsew in the public act that specifically require a CON.

Activities Requiring a CON

The new law revises the activities that require CON authorization to include (1) the establishment of a new health care facility; (2) a transfer of ownership of a health care facility; (3) the establishment of a free-standing emergency department; (4) the termination by a short-term acute care general hospital or children's hospital of inpatient and outpatient mental health and substance abuse services; (5) the establishment of an outpatient surgical facility, as defined in section 19a-493b, as amended by this act, or as established by a short-term acute care general hospital; (6) the termination of an emergency department by a short-term acute care general hospital; (7) the establishment of cardiac services, including inpatient and outpatient cardiac catheterization, interventional cardiology, and cardiovascular surgery; (8) the acquisition of computed tomography scanners, magnetic resonance imaging scanners, positron emission tomography scanners, or positron emission tomography-computed tomography scanners by any person, physician, provider, short-term acute care general hospital, or children's hospital; (9) the acquisition of nonhospital-based linear accelerators; (10) an increase in the licensed bed capacity of a health care facility; (11) the acquisition of equipment utilizing technology that has not previously been utilized in the state; and (12) an increase of two or more operating rooms within any three-year period, commencing on and after October 1, 2010, by an outpatient surgical facility or by a short-term acute care general hospital.

Guidelines and Criteria

The bill requires OHCA to consider (1) whether the proposed project is consistent with the OHCA policies and standards; (2) the relationship of the proposal to the statewide health care facilities and services plan; (3) whether t is a clear community need; (4) the applicant's past and proposed provision of health care services relevant to the population to be served; (5) the utilization of existing health care facilities and services in the applicant's service area; and (6) whether the applicant has satisfactorily demonstrated (a) how the proposal will affect the financial strength of

the state's health care system, (b) how the proposal will improve the quality, accessibility, and cost-effectiveness of health care delivery in the region, (c) what population will be served and whether such population needs the proposed services, and (d) whether the proposal will result in unnecessary duplication of existing or approved health care services or facilities.

CON Exemptions

The bill revises the list of entities that will be exempt from CON authorization to include (1) health care facilities owned and operated by the federal government; (2) offices by a licensed private practitioner, whether for individual or group practice, except when a CON is required for imaging equipment in accordance with the requirements of section 19a-493b, as amended by this act, or a nonhospital-based linear accelerator; (3) health care facilities operated by religious groups that exclusively rely upon spiritual means through prayer for healing; (4) residential care homes, nursing homes, and rest homes; (5) assisted living services agencies; (6) home health agencies; (7) hospice services; (8) outpatient rehabilitation facilities; (9) outpatient chronic dialysis services; (10) transplant services; (11) free clinics; (12) school-based health centers, community health centers, licensed not-for-profit outpatient clinics, and federally qualified health centers; (13) programs licensed or funded by the Department of Children and Families, provided such programs are not psychiatric residential treatment facilities; (14) nonprofit facilities, institutions, or providers that have a contract with, or are certified or licensed to provide a service for, a state agency or department for a service that would otherwise require a CON (not applicable to short-term acute care general hospitals or children's hospitals); (15) health care facilities operated by a nonprofit educational institution exclusively for students, faculty, and staff of such institution and their dependents; (16) outpatient clinics or programs operated exclusively by or contracted to be operated exclusively by a municipality, municipal agency, municipal board of education, or a health district; (17) licensed residential facilities for the mentally retarded and certified to participate in the Title XIX Medicaid program as intermediate care facilities for the mentally retarded; (18) replacement of existing imaging equipment if such equipment was acquired through CON approval or a CON determination, provided a health care facility, provider, physician, or person notifies the office of the date on which the equipment is replaced and the disposition of the replaced equipment; (19) acquisition of cone-beam dental imaging equipment that is to be used exclusively by a licensed dentist; (20) termination of inpatient or outpatient services offered by a hospital, with exceptions as provided in the act; (21) partial or total elimination of services provided by an outpatient surgical facility, as amended by this act, except as provided in section 19a-639e, as amended by this act; or (22) termination of services for which DPH has requested the facility to relinquish its license.

Process

Applicants will no longer be required to file a Letter of Intent prior to filing a CON application. The ten day completeness review period is eliminated. Applicants must post notice that a CON application will be submitted in a local newspaper at least 20 days prior to submitting the CON application. The 90 day review period will begin when OHCA determines the application is complete, and OHCA must notify the applicant of such, in addition to posting the date on its Web site. Public hearings will be held on any CON application if three or more people make a request for such hearing within 30 days of the date the application is deemed complete.

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