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UPDATE
Health Law Pulse

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Connecticut Health Law Special Legislative Session Update

The following is a general summary of the health care-related provisions of Public Act 12-1 (An Act Implementing Provisions of the State Budget for the Fiscal Year Beginning July 1, 2012), which was enacted during the 2012 Connecticut special legislative session held on Tuesday, June 12, 2012.

EFFECTIVE AS OF PASSAGE

This legislation increases the membership of the Connecticut Health Insurance Exchange's (Exchange) board of directors from 11 to 12 members and makes the Healthcare Advocate a voting member. It also expands restrictions on outside employment, membership, and affiliations of Exchange board members and employees.

This legislation eliminates the prescribed rate-setting formula that the Department of Social Services (DSS) currently uses to determine inpatient hospital rates. As currently used, the formula includes a hospital-specific target amount per discharge. In certain instances, DSS has been permitted to apply an annual adjustment factor to such target amounts. It is not clear what the new formula will be for determining Medicaid inpatient hospital rates.

EFFECTIVE JULY 1, 2012

This legislation revises several provisions relating to hospital Medicaid disproportionate share payments (DSH) and the hospital tax. The legislation extends, from October 1, 2012, to October 1, 2013, the period in which DSS must use 2009 fiscal year data, adjusted for accuracy, to make interim DSH payments to qualified short-term general hospitals. Effective October 1, 2013, such payments must be based on the most recent independent, certified DSH hospital audit of federal fiscal year data. This legislation also clarifies that, beginning July 1, 2012, through October 1, 2012, hospital patient revenue tax rates, the base year on which the tax is assessed, and the hospitals exempt from the outpatient portion of the tax, based on financial hardship, are the same as those in effect as of January 1, 2012.

This legislation allows a registered nurse (RN) to delegate to homemaker-home health aides

who are certified to administer medications the administration of certain noninjectable medications to patients. Administration may not be delegated when the prescribing practitioner specifies that it may only be performed by a licensed nurse. This legislation requires the Department of Public Health (DPH) to adopt regulations to carry out these provisions. Prior to January 1, 2013, home health care agencies must adopt policies to employ homemaker-home health aides so that nurses can delegate medication administration tasks. Such agencies must also ensure that delegation of nursing care tasks in a home care setting is permitted by the agency. This legislation also provides limited immunity for RNs who delegate the administration of noninjectable medications.

This new legislation allows a personal care assistant employed by a registered homemaker-companion agency to administer medications to a competent adult who directs his or her own care and makes his or her own decisions pertaining to assessment, planning and evaluation.

Under current law, DSS must establish prior authorization procedures for Medicaid home health services. This legislation eliminates the current requirement that prior authorization be obtained for (1) any skilled nursing visits in excess of two per week and (2) home health aide visits in excess of fourteen hours per week. It also eliminates a provision that allows a provider to submit no more than one prior authorization request for home health services for the same client in any given month.

Current law prohibits a health care facility from charging a victim of sexual assault, directly or indirectly, for the examination performed of such victim, to gather evidence of sexual assault. This legislation expands upon these no-charge provisions by providing that a victim of sexual assault cannot be charged for the cost of a medical forensic assessment interview conducted by a health care facility, provider, or an examiner working in conjunction with a child abuse and neglect multidisciplinary team or a child advocacy center.

EFFECTIVE OCTOBER 1, 2012

Subject to federal approval, beginning October 1, 2012, DSS is required to reimburse independent pharmacies at a higher rate than it reimburses chain pharmacies for dispensing legend drugs to Medicaid recipients. For purposes of this legislation, a legend drug is a drug that under state or federal law can only be dispensed pursuant to a prescription or is restricted to use by prescribing practitioners, or under federal law is required to bear the legend "RX ONLY." Under current law, DSS must reimburse pharmacies for legend drugs at the lower of the Centers for Medicare and Medicaid Services federal acquisition cost rate, the average wholesale price minus 16 percent, or a separate rate established by DSS. In practice, DSS reimburses for legend drugs at the average wholesale price minus 16 percent. This new legislation changes the average wholesale price rate for independent pharmacies from average wholesale price minus 16 percent to average wholesale price minus 14 percent. An "independent pharmacy" is a privately owned community pharmacy with five or fewer locations in Connecticut. Community pharmacies are licensed pharmacies that store and dispense legend drugs and primarily provide services to patients living in a community setting. Because pharmacies are, in practice, reimbursed by DSS under the average wholesale price rate, this legislation effectively raises the rates paid to independent pharmacies for legend drugs.

Beginning January 1, 2013, all health care providers who administer vaccines to children under the federal Vaccines for Children program must obtain such vaccines from DPH; however, health care providers are not required to use vaccines obtained through DPH if they determine that it is not medically appropriate to administer such vaccine or that it is more medically appropriate to administer a vaccine that DPH does not supply. The health care

provider is also not required to obtain vaccines through DPH if DPH instructs such provider to procure the vaccine from another source (e.g., when there is a vaccine shortage).

Beginning October 1, 2012, DSS is permitted to cover chiropractic services for Medicaid recipients as long as it does not expend more than $250,000 annually for such coverage. DSS may coordinate this coverage with other Medicaid initiatives.

Under current law, any person conducting business in Connecticut who owns, licenses, or maintains computerized data that includes personal information must notify an individual of any security breach in which such individual's personal information is believed to have been accessed by an unauthorized person. This new legislation also requires such person to notify the Attorney General of such breach. The term "personal information" means an individual's first name or first initial and last name in combination with one or more of the following: social security number, driver's license number, state identification card number, account number, or credit or debit card number in combination with any required security code, access code, or password.

This legislation requires DSS to seek a Medicaid waiver from the federal government to modify eligibility and coverage for Medicaid low-income adults (LIA). If the waiver is approved, DSS eligibility and coverage rules for the LIA program will be revised to reflect that (1) an individual is not eligible for the program if he or she has assets in excess of $10,000; (2) when determining the eligibility of an individual under 26 years of age, if such individual lives with a parent or is declared as a dependent by a parent for income tax purposes, then the income of his or her parents will be counted when making the eligibility determination; and (3) an eligible individual will be limited to 90 days of care in a nursing facility.

If you have questions about any of these new laws, please contact a member of Robinson & Cole's Health Law Group.

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