RM Vital Signs

Your resource for all things healthcare, disability, special needs and elder law-related.

VOL. 1-1, JUNE 1, 2014

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Welcome to the first issue of RM Vital Signs, Rome McGuigan, P.C.'s quarterly newsletter. Our goal is to provide you with insight into an array of legal topics encountered in the healthcare, special needs and elder law arenas and to keep you as informed as possible on important changes in the legal world affecting your rights as a practitioner, patient, family member or other client.

Rome McGuigan welcomes its Healthcare, Special Needs and Elder Law Practice Group

The rapidly changing healthcare environment requires creative, yet sensible, solutions to the pressures facing the industry and anyone involved in it. Rome McGuigan, P.C. is acutely aware of this and has added a practice group headed by nurse attorney Mary Alice Moore Leonhardt to meet these needs. Its attorneys are highly equipped to counsel a diverse clientele on strategies for the ever-changing healthcare landscape. Not only do we understand healthcare law and the industry, but we also know the healthcare market and what drives that market, which allows us to give our clients both quality legal and business advice. Aging clients and those with special long term care planning needs gain from the group's integrated holistic lawyering approach focused on assisting clients to find more healthy and sustainable solutions to their legal problems.

Connecticut's 2014 Legislative Session

This year's Connecticut legislative session ran from February 5 to May 7, 2014 and encompassed a number of issues that affect healthcare practitioners, practice groups, hospitals, medical transportation providers and even schools. A handful of changes in legislation that affect these various individuals and entities will take effect as early as July 1, and it is integral that attorneys understand how their clients may be affected. These summaries are intended to briefly describe the most significant and far-reaching acts passed this legislative session, which deal with health law and its many, complex facets.

Did you know…?

Connecticut's legislature has existed since 1636. It is one of the oldest in the country, not that far behind the Virginia, which began making law in 1619.

Concussion Prevention and Sudden Cardiac Arrest Awareness

The legislature passed two laws aimed at increasing awareness and prevention of injuries and illnesses among student athletes. The laws deal with concussions and sudden cardiac arrest. Both laws require students' parents or guardians to give their written consent before schools can allow the student to take part in an athletic activity.

The law on concussions requires coaches or other qualified school employees to notify a parent or guardian when a student is removed from play for a concussion or suspected concussion.

It also requires the state Board of Education (SBE) to do the following: (1) develop a concussion education plan that athletes and their parents must complete before the athlete can participate in school sports, and (2) annually collect and report to the Department of Public Health (DPH) information from all school districts on concussion occurrences. Additionally, the act establishes a 20-member task force to study concussion occurrences in youth athletics and recommend possible legislative initiatives to address such concussions.

Prior law required intramural and interscholastic athletics coaches who hold or are issued a coaching permit by the SBE to complete an initial training course on concussion and head injuries before beginning a coaching assignment, and then annual refresher courses. Under the direction of the Commissioner of the DPH, both types of courses are to be revamped.

The sudden cardiac arrest law requires the SBE to develop a sudden cardiac arrest awareness program and, starting with the July 1, 2015 school year, coaches to annually review the program before beginning their coaching assignments. The law goes further by requiring coaches to immediately remove from athletic activities a student who shows the warning signs of immediate cardiac arrest, and to bar such a student from resuming participation in such athletic activities unless the student receives written clearance rom a Connecticut-licensed doctor.

The law immunizes coaches from personal and professional civil liability for their actions or omissions concerning the above requirements, except for grossly negligent, reckless, or wilful misconduct. Existing law already requires school boards to indemnify school employees and volunteers, including coaches, against financial loss and expense resulting from alleged negligence or other acts arising from their duties, subject to similar exceptions (Conn. Gen. Stat. § 10-235).

(Concussions, **PA 14-66**, effective July 1, 2014; Sudden Cardiac Arrest, **sSB 229**, effective

Pharmacies

A new law makes several changes to the state's pharmacy laws. Generally, it gives the Department of Consumer Protection (DCP) more oversight over sterile compounding pharmacies (SCP) and requires these pharmacies to comply with the latest relevant pharmacopeia standards. Specifically the pharmacy application for SCPs has been changed to require an addendum to their application, there is a new patient-specific mandate, a requirement that SCPs obtain a DCP manufacturing license, a new notice requirement for SCPs intending to remodel or relocate, and several other additions including a ban on the sale and delivery of certain counterfeit substances not already covered by existing law and grants DCP additional investigatory and enforcement authority.

The law also broadens the categories of nonresident pharmacies that must register in Connecticut and comply with pharmacy reporting requirements, requires registered nonresident pharmacies to annually file a more comprehensive report, and expands the grounds for which the DCP's Pharmacy Commission may penalize a nonresident pharmacy.

Finally, the new law establishes procedures for prescribing practitioners and pharmacists when dispensing drugs that cannot be substituted with a generic version. This aspect of the law imposes new requirements on the ways in which these individuals order written, telephonic, electronic and Medicaid prescriptions.

(**sHB 5262**, effective July 1, 2014)

EpiPen Storage and Administration

A new law requires schools to designate and train nonmedical staff to administer emergency epinephrine in cartridge injectors ("EpiPens") to students having allergic reactions who were not previously known to have serious allergies. It authorizes the emergency use of EpiPens by nonmedical staff only if (1) the school nurse is not present or available and (2) certain conditions are met. As far as the conditions that must be met, the law requires qualified school employees, selected by the school nurse or principal, to be trained and authorized in EpiPen administration, and further requires that the nurse and medical advisor attest in writing that the employee has completed the training. The law also requires schools to (1) have at least one qualified professional on school grounds during regular school hours and (2) maintain a stock of EpiPens.

Current law only allows (1) nonmedical staff to give emergency glucagon injections to diabetic students requiring prompt treatment to avoid serious harm or death and (2) a specifically designated paraprofessional to administer an epipen to a student with a known allergy. In both scenarios, nonmedical staff can administer injections if there is written authorization from the student's parents and a written order from a physician.

Furthermore, the law also extends the existing immunity from liability for employees and local boards provided under the existing glycogen and epipen law to the epinephrine provisions. Specifically, it bars anyone from making a claim against a town, board of education, or school employee for damages resulting from administration of medication under the law. The immunity covers the qualified school personnel. It does not apply to acts or omissions that constitute gross, wilful, or wanton negligence.

(**sHB 5521**, effective July 1, 2014)

APRN Independent Practice

A new law allows advanced practice registered nurses (APRNs) to practice independently if they have been licensed and practicing in collaboration with a physician for at least three years and 2,000 hours. Under prior law, APRNs had to work in collaboration with a physician, including having a written agreement regarding the APRN's prescriptive authority.

Among other changes affecting APRNs, the legislature also passed laws requiring (1) APRNs to meet certain continuing education requirements and (2) disclosures by certain medical manufacturers who provide payments or other transfers of value to APRNs. With regard to the former, APRNs applying for licensure renewal must include at least one contact hour of training or education in each of the following topics: (a) Infectious diseases, including, but not limited to, acquired immune deficiency syndrome and human immunodeficiency virus, (b) risk management, (c) sexual assault, (d) domestic violence, (e) cultural competency, and (f) substance abuse. With regard to the latter, the law requires manufacturers of covered drugs, devices, biologicals, and medical supplies to report on payments or other transfers of value they make to advanced practice registered APRNs practicing in Connecticut. Specifically, the manufacturers must report the information to DCP, not DPH, quarterly in the form and manner the commissioner prescribes.

(PA 14-12, as amended by sHB 5537 and HB 5597, §§ 75 and 158; the independent practice provisions are effective July 1, 2014)

Emergency Medical Services

A new law makes several changes concerning emergency medical services (EMS) and primary service area responders (PSARs).

It requires municipalities to update their local EMS plans as they determine necessary and consult with their PSAR when doing so. It requires DPH, at least every five years, to review local EMS plans and PSARs' provision of services under them, and to then rate the responders' performance. A "failing" rating has various consequences, including possible removal as PSAR if the responder fails to improve.

The new law makes changes to the process for municipalities to petition for a PSAR's removal, including defining what constitutes a "performance crisis" or "unsatisfactory performance" for this purpose. It requires municipalities seeking a change in their PSARs for specified reasons to submit to DPH alternative local EMS plans and the names of recommended replacements.
It also requires a PSAR to notify DPH before selling its ownership interest or assets, and requires the buyer to obtain DPH's approval.

(**HB 5597,** §§ 19-22, effective October 1, 2014, except the provisions on PSAR sales and buyer approval are effective upon passage)

Hospitals, Healthcare Institutions and Physician Group Practices

A new law makes various changes affecting transactions involving hospitals and certain medical practices. It allows for-profit hospitals and health systems to organize and become members of medical foundations; existing law already allowed such nonprofit entities to do so. Notwithstanding a for-profit entity's new ability to organize and become a member of a medical foundation, the law places a number of restrictions on for-profit employees' and representatives' abilities to serve on the board of directors for any such medical association.

It makes certain changes affecting the approval process for sales of nonprofit hospitals to for-profit entities. For example, it (1) requires an additional public hearing earlier in the process and (2) specifically allows the attorney general and DPH commissioner to place conditions on their approval of the transaction. Any such conditions must relate to the purposes underlying Conn. Gen. Stat. §§ 19a-486a to 19a-486h.

It requires parties to transactions that materially change the business or corporate structure of a physician group practice to notify the attorney general. It also requires notice by parties to transactions involving a hospital, hospital group, or healthcare provider that are subject to federal antitrust review pursuant to the Hart-Scott-Rodino Antitrust Improvements Act (HSR Act), 15 U.S.C. § 18a.

Among other changes affecting the certificate of need (CON) process, it requires a CON for a transfer of ownership of a group practice of eight or more physicians to a hospital or certain other health care entities.

(**sSB 35**, various effective dates)

DSS Administrative Hearings

A new law makes several changes to the procedures DSS must follow when conducting an administrative hearing for an appeal of a department decision, including (1) allowing more people to request a hearing and making it easier for them to do so, (2) making it easier to request a hearing by allowing such requests to be made by mail, telephone, or any electronic means DSS determines acceptable, rather than just in writing, (3) lengthening the number of days within which DSS must hold a hearing after receiving a request and within which DSS must issue a final decision after the hearing request, (4) capping the number of allowable continuances of the hearing at three, and (5) broadening the circumstances in which the

aggrieved person may be excused from appearing personally at the hearing,

Under the new law, if DSS hears a contested case and has an adverse interest to any party in the proceeding, the hearing officer cannot communicate directly or indirectly with any other DSS employee, including counsel, about any issue of fact or law in the hearing without advance notice and opportunity for all parties to participate on the record.

(**sSB 410**, effective October 1, 2014).

Medicaid Estate Recovery

The state has a claim against the estates of former public assistance recipients, including Medicaid recipients, to recover the cost of assistance provided. A new law exempts from this provision, to the extent federal law allows, Medicaid recipients in the Medicaid Coverage for the Lowest Income Populations (MCLIP) program established pursuant to Section 1902(a)(10)(A)(i)(VIII) of the Social Security Act. The exemption applies to services provided on or after January 1, 2014.

For this population, federal law requires states to recover costs from the estates of Medicaid recipients who, at age 55 or older, received (1) nursing facility services, (2) home- and community-based services, or (3) related hospital and prescription drug services. Federal law allows states to recover any other services under the state Medicaid plan, except for services related to Medicare cost-sharing.

MCLIP was established pursuant to the federal Affordable Care Act's expansion of the Medicaid program to cover childless adults with income up to 138% of the federal poverty limit (FPL) (133% of FPL with a 5% income disregard). In Connecticut, MCLIP participants are covered under HUSKY D.
(**HB 5597** § 76, effective upon passage)

Medicaid Provider Audits

A new law makes several changes to DSS processes for auditing Medicaid providers and facilities that receive Medicaid or other state payments. Principally, it (1) limits the circumstances in which DSS may extrapolate audited claims by increasing the minimum aggregate value of claims on which such method may be used to $200,000 on an annual basis and (2) allows an audited provider or facility to present evidence to the commissioner or an auditor during a mandated exist conference to refute the audit's findings. For auditing purposes, it also requires DSS and DSS-contracted auditors to have on staff or consult with, as needed, healthcare providers experienced in relevant treatment, billing, and coding procedures.

The law requires the DSS commissioner to adopt facility audit regulations to ensure fairness in the audit process, including associated sampling methodologies. The law already requires the commissioner to adopt such regulations for provider audits.

The commissioner must also establish and publish on the department website audit protocols to help providers and facilities comply with state and federal Medicaid laws and regulations. The audit protocols may not be relied upon to create a substantive or procedural right or benefit enforceable at law or in equity by anyone, including a corporation.

The law also (1) requires DSS to provide free training to providers and facilities to help them avoid clerical errors and (2) imposes reporting requirements on DSS pertaining to the revised audit protocols and procedures.

(**sHB 5500**, effective July 1, 2014)

Nursing Home Transparency

Pursuant to Conn. Gen. Stat. § 17b-430, every for-profit chronic and convalescent nursing home that receives state funding must submit a cost report to DSS annually. A new law requires them to include with the new report the most recent finalized annual profit and loss statement from any related party that receives $50,000 or more for providing goods, fees, and services to the nursing home. By law, DSS pays nursing homes per diem rates for caring for their Medicaid-eligible residents. Rates are set prospectively based on cost reports the homes submit annually.

The new law defines "related party" to include companies related to the nursing home through a family association (i.e., a relationship by birth, marriage, or domestic partnership) or through common ownership, control, or business association with any of the owners, operators, or officials of the nursing home.

It also (1) prohibits anyone from bringing legal action against the state, DSS, or state employees or agents for not taking action as a result of information obtained by DSS in cost reports and (2) requires the Nursing Home Financial Advisory Committee to convene by August 1, 2014.

Lastly, the law also requires the Nursing Home Financial Advisory Committee (NHFAC) to convene by August 1, 2014. It changes its membership, broadens the scope of its duties, and updates meeting deadlines. The committee must recommend to DSS and DPH appropriate action consistent with the goals, strategies, and long-term care needs of DSS' strategic plan to rebalance Medicaid long-term care supports and services.

(**PA 14-55**, effective July 1, 2014, except for the advisory committee provisions, which are effective upon passage)

This newsletter provides a general reference to the law relative to the subject areas presented. The subject matter and commentary contained herein is for educational purposes only. They are not intended to provide legal advice in any particular situation. Questions on particular matters involving the application of the law should be presented to an attorney at Rome McGuigan for a legal opinion.

Want to learn more about us or any of the things you have read about in this newsletter? Feel free to contact us at the Hartford office listed below.

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