



JUNE 2012

## Connecticut Health Law Legislative Update

The following is a general summary of certain significant legislation enacted during the 2012 Connecticut legislative session.

### EFFECTIVE AS OF PASSAGE

#### **Public Act 12-140: An Act Concerning Regulations Relating to Hospice Care**

Under current law, a hospice licensed by the Department of Public Health (DPH) or certified by Medicare may operate a residence to provide hospice home care and supplemental services to terminally ill persons. This new legislation stipulates that only DPH-licensed hospices are authorized to operate a "hospice facility" that provides inpatient hospice services, including a hospice residence, or provide hospice home care services for terminally ill persons.

#### **Public Act 12-130: An Act Waiving Advance Payment Restrictions for Certain Nursing Facilities**

The Department of Social Services (DSS) may advance Medicaid payments to a nursing facility prior to normal bill payment processing when such nursing facility requests advance payment. A "nursing facility" is defined as any facility that primarily provides skilled nursing care and related services for residents, rehabilitation services for injured, disabled, or sick persons, or health-related care and services on a regular basis to individuals who require the use of institutional facilities for such care and services. Under current law, any such advance payment must not exceed the estimated amount due to such nursing facility for services provided to Medicaid recipients over the most recent two-month period and DSS must recover any advance payments within 90 days. Payment may be recovered either through reductions in payments due to such nursing facility or cash receipt. This legislation provides that DSS may waive the not-to-exceed amount or the 90-day advance payment recovery deadline for any nursing facility in receivership.

#### **Public Act 12-118: An Act Extending a Moratorium on Certain Long-Term Care Beds**

By law, DSS has certificate of need (CON) authority for nursing homes. Under this legislation, the current moratorium on DSS approval of certain new nursing home beds is extended from

June 30, 2012, to June 30, 2016. This moratorium is subject to certain exceptions, including beds used only for AIDS or traumatic brain injury patients, beds associated with certain continuing care facilities, and certain Medicaid-certified beds that will be relocated from one nursing facility to another.

This legislation also imposes a moratorium restricting DPH from issuing or renewing a license for certain long-term care hospitals. Hospitals that are certified to participate in the Medicare program as long-term care hospitals as of January 1, 2012, are exempt from this particular restriction. This moratorium remains in effect until June 30, 2017.

### **Public Act 12-62: An Act Concerning the Licensing, Investigation, and Disciplinary Processes for Physicians and Nurses**

Under current law, with few exceptions, a physician seeking to renew his or her license must have completed 50 hours of continuing medical education (CME) during the previous 24 months. This legislation allows DPH to waive up to 10 CME hours for a physician who engages in activities related to membership on the Connecticut Medical Examining Board or a medical hearing panel, or assists DPH with its duties on certain boards and commissions.

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### **EFFECTIVE JULY 1, 2012**

### **Public Act 12-28: An Act Concerning the Use of Telepharmacy by Hospitals**

Under a pilot program established in 2011, pharmacists at a Connecticut hospital were permitted to use audio and video communication to supervise pharmacy technicians who prepared IV admixtures at the hospital's satellite or remote locations. Under this new legislation, all hospitals that operate a licensed pharmacy may use electronic technology or telepharmacy at such hospital and at the hospital's satellite or remote locations to allow the pharmacist to supervise pharmacy technicians at a remote location in dispensing sterile products through audio and video communication. Hospitals must ensure that only appropriately licensed personnel administer medications dispensed through the use of telepharmacy.

"Electronic technology" or "telepharmacy" is defined as the process by which each step involved in the dispensing of a sterile product is verified through use of a bar code tracking system and documented using digital photographs that are electronically recorded and preserved, and which is monitored and verified through video and audio communication between a licensed supervising pharmacist and a pharmacy technician. A "sterile product" is any drug that is compounded, manipulated, or otherwise prepared under sterile conditions during the dispensing process, is not intended for self-administration by a patient and is intended to be used in a hospital or a hospital's satellite, remote, or affiliated office-based locations.

A licensed pharmacist must verify each order for a sterile product before delegating the dispensing of such product to a pharmacy technician. A hospital that uses telepharmacy must perform quality assurance evaluations at least once per quarter and promptly review any telepharmacy medication administration error that is discovered during the evaluation process. The hospital must make these evaluations available for review and inspection by the

Department of Consumer Protection (DCP) and DPH.

### **Public Act 12-12: An Act Authorizing Flavoring Agents for Prescription Products**

This new law allows pharmacists to add a flavoring agent to a prescription product if the prescribing practitioner, patient, or patient's agent requests such flavoring agent, or the pharmacist is acting on behalf of a hospital. A "flavoring agent" is an additive that has the following characteristics:

1. Is used in accordance with good manufacturing practice principles and in the minimum quantity required to produce its intended effect
2. Consists of one or more ingredients generally recognized as safe in food or drugs, has been previously sanctioned for use in food and drugs by the state or the federal government, meets United States Pharmacopeia standards or is an additive permitted for direct addition to food for human consumption in accordance with specified federal regulations
3. Is inert and produces no effect other than the instillation or modification of flavor
4. Is not greater than five percent of the total weight of the prescription product

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**EFFECTIVE OCTOBER 1, 2012**

### **Public Act Public Act 12-6: An Act Concerning Notification of Financial Stability of Nursing Home Facilities and Managed Residential Communities to Patients and Residents**

This new law requires any nursing home facility that is placed in receivership or files for bankruptcy to notify prospective and current patients of such actions. Similar notice is required for prospective and current residents of any managed residential community that files for bankruptcy. The term "nursing home facility" is defined to mean any nursing home, residential care home, rest home with 24-hour nursing supervision under a medical director, or chronic and convalescent nursing home providing certain medically-supervised skilled nursing care. The term "managed residential community" is defined to mean any facility providing housing and services primarily for persons aged 55 years-old and older in a managed group living environment, other than a state-run facility.

### **Public Act 12-14: An Act Concerning Letters of Protection**

Under this new law, licensed physicians and physical therapists must make various disclosures during the initial consultation session to any patient who has suffered a personal injury. First, physicians and therapists must disclose whether they will treat the patient based on a letter of protection from the patient's personal injury attorney. A letter of protection is a letter from the patient's personal injury attorney that promises to pay the provider's bill from the lawsuit proceeds or, if there are no lawsuit proceeds, the patient will personally pay any outstanding fees. Second, physicians and physical therapists must disclose to the patient the estimated cost of providing an opinion letter. This opinion letter contains the physician's or physical therapist's professional opinion regarding the cause of the personal injury and an opinion on the diagnosis, treatment, and prognosis of the patient. This new law requires the physician or physical therapist to provide these disclosures to the patient in writing before

treatment commences.

### **Public Act 12-13: An Act Concerning Critical Congenital Heart Disease Screening for Newborn Infants**

Under current law, all newborns delivered in Connecticut must be screened for certain health conditions such as cystic fibrosis and severe combined immunodeficiency disease, unless the parents object on religious grounds. Beginning on January 1, 2013, such screening will include testing for critical congenital heart disease.

### **Public Act 12-37: An Act Concerning Physician Assistants**

Under current law, a physician assistant (PA) must be supervised by a physician who maintains final responsibility for the care of patients and the performance of the PA (supervising physician). The supervising physician may delegate certain functions to the PA. Under current law, such functions must be implemented in accordance with written protocols established by the supervising physician. This legislation revises the supervision requirements for PAs and requires functions to be delegated pursuant to a "written delegation agreement." The supervising physician must establish the terms of the written delegation agreement, which must describe the following:

1. The professional relationship between the supervising physician and the PA
2. The medical services that the PA may perform
3. The manner in which the PA's prescribing of controlled substances will be documented in the patient's medical record
4. The process for the supervising physician to evaluate the PA's performance

In a hospital setting, the written delegation agreement must either refer to or include applicable hospital policies, protocols, and procedures. At least annually, the supervising physician must review and, if necessary, update the written delegation agreement to account for any change in the supervising physician/PA professional relationship, the functions that the PA is authorized to perform, or the performance evaluation process for the PA.

Under this legislation, supervising physicians are no longer required to personally review the PA's practice at least weekly or more frequently as needed to ensure quality patient care. This legislation also eliminates the current requirement that the personal review of a PA's services in nonhospital settings occur through face-to-face meetings. Instead, personal review of the PA in both hospital and nonhospital settings must now be conducted in accordance with the written delegation agreement. In hospital settings, this legislation requires the personal review to be conducted "on a regular basis."

Finally, under current law, a PA may perform delegated functions when, among other requirements, the supervising physician is satisfied as to the ability and competency of the PA. This legislation requires that the supervising physician be satisfied as to the ability and "demonstrated" competency of the PA.

### **Public Act 12-159: An Act Concerning Treatment for a Drug Overdose**

Current law provides immunity from civil and criminal penalties to licensed health care providers who, as permitted by law, prescribe, dispense, or administer an opioid antagonist to a drug user in need of intervention. "Opioid antagonist" is defined to mean naloxone

hydrochloride or any other similarly acting and equally safe drug approved by the federal Food and Drug Administration for the treatment of a drug overdose.

This public act expands the scope of the current law to allow licensed health care providers to prescribe, dispense, or administer opioid antagonists to any person in order to treat or prevent a drug overdose. As such, a health care provider cannot be held liable for engaging in such conduct or for any subsequent use of the opioid antagonist. Thus, for example, a health care provider could prescribe naloxone to a family member of a drug user to administer in the event of a drug overdose under this legislation, provided the health care provider is permitted by law to prescribe such opioid antagonist and is acting with reasonable care.

#### **Public Act 12-170: An Act Concerning the Office of Health Care Access**

Under current law, when evaluating a CON application, the Office of Health Care Access (OHCA) must consider, among other factors, a proposal's impact on the financial strength of the state's health care system. This legislation expands the scope of OHCA's inquiry to allow OHCA to consider a proposal's impact on the health care system in the state or whether the proposal is financially feasible for the CON applicant.

Currently, if OHCA holds a public hearing concerning a completed CON application, it must issue a decision within 60 days after the public hearing date. This new legislation requires OHCA to issue a decision within 60 days after closing the public hearing record.

This new legislation extends, from February 28 to March 31, the date by which each hospital must verify its net revenue for the most recently completed fiscal year.

OHCA must now conduct biennial state-wide health care facility utilization studies, rather than annual studies as is required by current law. The new legislation also requires OHCA to update the state-wide health care facility and services plan biennially rather than once every five years.

OHCA no longer has the authority to require a hospital's independent auditor to review discounted rates and charges the hospital negotiated with payers.

This new legislation allows OHCA to release patient-identifiable data to certain government entities. Specifically, OHCA may release such information to a state agency for the purpose of improving health care delivery; a federal agency or the Office of the Attorney General for the purpose of investigating hospital mergers and acquisitions; or another state's health data collection agency with which OHCA has entered into a reciprocal data-sharing agreement for the purpose of CON review or evaluation of health care services, under certain conditions.

#### **Public Act 12-207: An Act Concerning the Administration of Injectable Vaccines to Adults in Pharmacies**

Under current law, pharmacists may administer vaccines to adults to prevent influenza, invasive pneumococcal disease, or herpes zoster. This legislation allows pharmacists to administer to adults any vaccine that is listed on the Adult Immunization Schedule published by the Centers for Disease Control and Prevention. This legislation does not change the requirement that pharmacists must administer vaccines in compliance with DCP regulations.

#### **Public Act 12-142: An Act Concerning Financial Liability for Ambulance Services,**

### **Evidence of Collateral Source Payments and Evidence of Bills from Treating Healthcare Providers**

Any person who receives emergency medical treatment or transportation from a licensed or certified ambulance service is required to pay the ambulance service for the reasonable and necessary costs of providing these services, even if the person did not agree or consent to liability. This new law does not apply to individuals who receive such emergency treatment or transportation due to injuries arising out of, and in the course of, their employment.

Under current law, in personal injury or wrongful death lawsuits, including lawsuits relating to health care providers, a court must reduce the entire amount of the economic damage award by the collateral sources. Under this legislation, evidence that a specified health care provider accepted an amount less than the total amount of the bill it generated, or that an insurer paid less than the total amount of such bill, will be admissible as evidence of collateral sources. Bills generated by physicians, physician assistants, dentists, chiropractors, natureopaths, physical therapists, podiatrists, psychologists, emergency medical technicians, optometrists, or advanced practice registered nurses, are covered by this legislation. This particular provision applies to all actions pending on or filed on or after October 1, 2012.

In actions for the recovery of damages for personal injury or death, in which a bill of certain treating health care providers is admitted into evidence as a business entry, the total amount of such bill is admissible evidence regarding the cost of reasonable and necessary medical care. A health care provider's acceptance of less than the total amount of the bill, or an insurer's payment of less than the total amount of the bill, will not reduce the calculation of the total amount of the bill. This provision covers bills by physicians, physician assistants, dentists, chiropractors, natureopaths, physical therapists, podiatrists, psychologists, emergency medical technicians, optometrists, or advanced practice registered nurses. This particular provision applies to all actions pending on or filed on or after October 1, 2012.

### **Public Act 12-30: An Act Concerning Prescription Drug Administration in Nursing Home Facilities**

This new law allows the medical director of a nursing home facility to establish protocols for a prescription drug formulary system. These protocols must comply with guidelines established by the American Society of Health-System Pharmacists and any applicable collaborative drug therapy management agreement. The medical director may substitute a drug prescribed to a patient of the nursing home facility provided that the medical director notifies the prescribing practitioner prior to making any substitution. The medical director is prohibited from making the proposed substitution if the prescribing practitioner objects to such proposal. Any nursing home, residential care home, rest home with 24-hour nursing supervision under a medical director, or chronic and convalescent nursing home providing certain medically-supervised skilled nursing care, is considered a "nursing home facility" under this new law.

A nursing home facility that administers prescription drugs to a patient receiving benefits under a DSS medical assistance program must consider and administer prescription drugs to such patient in accordance with DSS' preferred drug lists, Medicare Part D prescription drug formularies, or the patient's health insurance policy, as deemed appropriate by the medical director.

### **Public Act 12-91: An Act Expanding Consumer Choice for Life Support Care at Home**

This new law requires DSS to establish and operate a two-year, state-funded pilot program to permit 10 ventilator-dependent Medicaid recipients who reside in Fairfield County and receive medical care at home, to directly hire licensed registered nurses and respiratory therapists to assist with such at-home care.

Pilot program participants must be able to manage their own care and must certify, in writing, that they, or their authorized representatives, assume responsibility for their plan of care. These care plans must be directed by a physician, approved by DSS, and include a protocol for ensuring the provision of care when the registered nurse or respiratory therapist is unavailable.

DSS will establish the maximum allowable rate to be paid to registered nurses and respiratory therapists under the pilot program. The rate for registered nurses must be set at not less than 80 percent of the prevailing rate paid by DSS to home health care agencies that provide comparable care.

As a condition of providing care to participants of the pilot program, each registered nurse and respiratory therapist must undergo a criminal background check, and certify, in writing, that he or she will not terminate care of the participant without at least two weeks written notice, except in cases of emergency.

#### **Public Act 12-25: An Act Concerning the Appointment of a Guardian Ad Litem for a Person Who is Subject to a Conservatorship Proceeding or a Proceeding Concerning Administration of Treatment for a Psychiatric Disability**

This new legislation limits the instances in which a judge or family support magistrate may appoint a guardian ad litem (GAL). In proceedings where a court must decide whether an individual should be given medication or treatment without his or her consent, a judge or magistrate may not appoint a GAL unless the probate court first determines that the patient is incapable of giving informed consent.

Additionally, in certain conservatorship cases, no appointment of a GAL is permitted unless there is an initial determination by the probate court that the individual is incapable of caring for himself or herself, or incapable of managing his or her affairs. A conservator is a person that is appointed by the probate court to supervise the personal affairs of a person that is incapable of caring for himself or herself (conserved person). A judge or family support magistrate may not appoint a GAL for a conserved person in these cases unless the judge or magistrate finds a specific purpose for the GAL, or because the conserved person's attorney is unable to ascertain his or her client's preferences. Prior to appointing a GAL, the judge or magistrate may question the conserved person to determine his or her preferences or inability to express those preferences. In these cases, if a judge or magistrate appoints a GAL, such order must limit the appointment in scope and duration, and direct the GAL to take only the specific action required by the judge or magistrate. Any appointment of a GAL will terminate when the GAL reports to the judge or magistrate.

#### **Public Act 12-55: An Act Concerning the Palliative Use of Marijuana**

This new law allows a licensed physician to certify an adult patient's palliative use of marijuana, provided that the physician determines that the patient has a debilitating medical condition and the potential benefits of using marijuana would likely outweigh the health risks of such use to the patient. Any written certification for the use of marijuana will be valid for not

more than one year from the date such certification is signed by the physician.

For purposes of the new law, "palliative use of marijuana" means the acquisition, distribution, transfer, possession, use, or transportation of marijuana or paraphernalia relating to marijuana. A "debilitating medical condition" includes various conditions such as cancer, glaucoma, AIDS, Parkinson's disease, and multiple sclerosis. This list of debilitating medical conditions will be reviewed by a board to be established by DCP and is subject to change.

A physician may certify the palliative use of marijuana for a patient, and is immune from civil and criminal liability stemming from the written certification for the use of marijuana, provided the following:

1. The physician has diagnosed the patient as having a debilitating medical condition
2. The physician has explained the potential risks and benefits of the use of marijuana to the patient and, if applicable, to the patient's parent, guardian, or a person having legal custody of the patient
3. The written certification issued by the physician is based upon the physician's professional opinion after completing a medically reasonable assessment of the patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship
4. The physician has no financial interest in either a dispensary or a producer licensed under this new legislation

Additionally, a physician will not be subject to any disciplinary action by the Connecticut Medical Examining Board or other professional licensing board for providing a written certification as long as he or she complies with these requirements.

This new law sets forth detailed requirements regarding a patient's primary caregiver. An individual cannot serve as a primary caregiver if such caregiver has been convicted of a crime pertaining to the illegal manufacture, sale, or distribution of a controlled substance. Additionally, a primary caregiver may not be responsible for more than one adult who has been issued a written certification by a physician.

Adult patients and their primary caregivers are required to register with DCP and obtain a registration certificate prior to the patient's palliative use of marijuana. Such registration will be effective from the date DCP issues the registration certificate until the expiration of the written certification issued by the physician. DCP may charge a reasonable fee for such registration certificates.

Information obtained by the DCP pertaining to registration certificates will be confidential and generally not subject to disclosure under the Freedom of Information Act. However, reasonable access to registration information will be provided in certain instances.

A dispensary license may be issued to pharmacists licensed within the state. No palliative marijuana may be dispensed from, obtained from, or transferred outside of the state.

Any individual who makes a fraudulent representation to a law enforcement official relating to the palliative use of marijuana, in order to avoid arrest or prosecution, is guilty of a misdemeanor.



## **Public Act 12-197: An Act Concerning Various Revisions to the Public Health Statutes**

Under current law governing fetal death certificates, information about the marital status of the mother must be recorded on a confidential portion of the certificate. In addition, acknowledgement of paternity must be filed in the DPH paternity registry, and, if the mother is not married, the father's name must be entered on the certificate. This legislation eliminates the requirement that fetal death certificates comply with these requirements.

Under current law, hospitals, clinical laboratories, and health care providers (reporting entities) must report certain tumors that they diagnose or treat to the Connecticut Tumor Registry (Registry). Tumors that must be reported to the Registry are found on a reportable list maintained by the DPH. This legislation requires reporting entities to also provide the Registry with pathology reports with respect to such tumors.

This legislation permits the DPH to enter into reciprocal agreements with other states to allow the interstate transportation of persons that have tuberculosis and the medical treatment of such persons.

Under current law, applicants seeking Advanced Practice Registered Nurse (APRN) licensure are required to have a graduate degree in nursing or a related field recognized for certification as a nurse practitioner, clinical nurse specialist, or nurse anesthetist if first certified by one of certain certifying bodies after December 31, 1994. This legislation generally requires all applicants to hold such a graduate degree, regardless of the date on which the applicant first became certified, unless an applicant has completed an APRN program that a specified national certifying body recognized for certification as a nurse practitioner, clinical nurse specialist, or nurse anesthetist on or before December 31, 2004, and the applicant holds a current APRN license in another state that requires a master's degree in nursing or a related field in order to obtain such licensure.

This legislation also allows an APRN to certify, sign, or otherwise document medical information in certain situations where previously a physician's certification, signature, or documentation was generally required.

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## **EFFECTIVE JANUARY 1, 2013**

### **Public Act 12-109: An Act Concerning Coverage of Telemedicine Services Under Medicaid**

This new law authorizes DSS to establish a demonstration project under which Medicaid-eligible health services, rendered via telemedicine and performed at federally qualified health centers, will be reimbursed by Medicaid. To the extent permitted by law, and where clinically appropriate, in-person contact between a health care provider and a patient will not be required for Medicaid-covered health care services delivered by telemedicine. "Telemedicine" is defined as the use of interactive audio, video, or data communication in the delivery of medical advice, diagnosis, care, or treatment.

DSS will establish reimbursement rates for telemedicine services provided through the project. This new law provides that data and records related to telemedicine services provided as part

of this project are subject to all applicable federal and state confidentiality laws.

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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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