

GSRM: Healthcare from the Hill

by Matthew Scanlan

On June 10, 2010, the legislature finally adjourned for the year. This year was notable for the number of campaign issues that legislators took great pains in discussing including directives for Tennessee to opt out of the federal healthcare act and directives for the Attorney General to sue the federal government over the legislation. In the closing days of session, these ideas failed to pass. There are, however, several pieces of legislation that will affect healthcare entities.

I hope that you find the following information helpful. Please do not hesitate to contact me with any questions or comments.

Public Chapter 1084 – Effective October 1, 2010, a licensed health care professional or entity, before employing or contracting with any person who would be providing direct patient care for whom a background check has not been completed, must initiate and perform a registry check. A registry check on an employee must include a check of the national sex offender registry of each state the individual has lived in for the previous 7 years, the adult abuse registry maintained in any state in which the person has lived in for the previous 7 years, and the Tennessee Department of Health's elder abuse registry. The law gives immunity to a health care professional or facility that relies on registry checks performed by third parties hired for that purpose.

As a practical matter, hiring materials must be revised to ask applicants to provide the names of every state they have lived in over the past 7 years. The statute requires that the Department of Health provide a link to all applicable databases on its website by October 1, 2010. Alternatively, professionals or entities should have a third party contracted to provide these registry checks prior to hiring any individual providing direct patient care.

Public Chapter 663 – Effective March 30, 2010, any health care professional with prescribing authority who has actual knowledge that a person has obtained or attempted to obtain controlled substances by visiting multiple physicians within 30 days must report that information to law enforcement or a local drug task force. The penalty for failing to report such a person may include civil penalties from the professional's licensing board.

Public Chapter 862 – Effective April 30, 2010, health care providers and facilities must develop a policy that limits the use and disclosure of de-identified patient information that is used for educational purposes. The policy must include when and to whom it is appropriate to use and disclose patient information and when written authorization from the patient or the patient's next of kin is required. Any authorization must meet the federal requirements.

Public Chapter 865 – This law prohibits a provider from charging any fee for medical records that are requested by the Department of Health in response to a complaint, inspection, or survey. The law also caps the amount that may be charged to the Department of Human Services to the current existing statutory rate.

Public Chapter 909 – This law is the Annual Coverage Assessment Act that establishes the annual assessment on hospitals of 3.52 percent of a covered hospital's annual coverage assessment base. A "covered hospital" means any hospital licensed under present law regarding health



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or mental health and developmental disabilities, except for the following: (1) a hospital that has been designated by the federal centers for Medicare and Medicaid services (CMS) as a critical access hospital; (2) a mental health hospital owned by the state of Tennessee; (3) a hospital providing primarily rehabilitative or long term acute care services; (4) a children's research hospital that does not charge patient for services beyond that reimbursed by third-party payors; and (5) a hospital that is determined by TennCare as eligible to certify public expenditures for the purpose of securing federal medical assistance percentage payments. A hospital's "annual coverage assessment base" is a covered hospital's net patient revenue as shown in its Medicare cost report for its fiscal year that ended during calendar year 2008 on file with CMS, subject to certain qualifications. The assessment is to be paid in equal quarterly installments as billed by TennCare.

This law also establishes the maintenance of coverage trust fund. The fund would consist of all annual coverage assessments received by the bureau and of investment earnings credited to the assets of the maintenance of coverage trust fund. Monies in the fund, together with all federal matching funds, would be used by the bureau for expenditures in the TennCare program, including: (1) expenditures for benefits and services under the TennCare program that otherwise would have been subject to reduction or elimination from TennCare funding for FY 2010/2011, as detailed in the bill; (2) solely from the coverage assessment payments received by the bureau, payments to hospitals FY 2010/2011 of a portion of its unreimbursed cost of providing services to TennCare enrollees. "Unreimbursed TennCare costs" means the excess of cost over TennCare net revenue as reported on the hospital's 2008 joint annual report filed with the Department of Health. The amount of the payment to each covered hospital would be at least 83.155 percent of unreimbursed TennCare cost for that covered hospital; and (3) refunds to covered hospitals on the basis of payment of annual coverage assessments or penalties to the bureau through error, mistake, or a determination that the annual coverage assessment was validly imposed.

Public Chapter 790 – Effective October 1, 2010, all medical facilities that perform abortions will be required to post a sign stating that it is against the law for anyone to coerce a pregnant woman into an abortion or perform an abortion against her will. If the facility is a private physician office or an ambulatory surgical treatment center, the sign must be posted in each patient waiting room and patient consultation room used by patients on whom abortions are performed. If the facility is a hospital or other facility, the sign must be placed in the admissions or registration department used by patients on whom abortions are performed. The sign must be clearly visible and include the following verbiage:

Notice: It is against the law for anyone, regardless of the person's relationship to you, to coerce you into having or to force you to have an abortion. By law, we cannot perform an abortion on you unless we have your freely given and voluntary consent. It is against the law to perform an abortion on you against your will. You have the right to contact any local or state law enforcement agency to receive protection from any actual or threatened criminal offense to coerce an abortion.

Public Chapter 890 – The Commissioner of the Department of Health currently has the authority to direct insurers to make payments for off label uses of drugs if the drug is recognized for treatment of the indication in one of the standard reference compendia. This law adds the National Comprehensive Cancer Network Drugs and Biologics Compendium, the Thomson Micromedex DrugDex, and the Gold Standard/Elsevier Clinical Pharmacology to the approved compendia.

Public Chapter 926 – This law clarifies that a registered nurse or licensed practical nurse can work with medication aides.

Public Chapter 1122 – This law requires the Board of Medical Examiners to enter into an agreement with the federal government to enforce immigration laws as applied to foreign physicians. The affect of the bill will be to require the Department to use the federal systematic alien verification of entitlements program to verify that an illegal alien is in the county legally before issuance of a license.

Public Chapter 976 – This law requires the Board of Medical Examiners to license a physician who has taken over seven years to complete the USMLE but who is licensed in three other jurisdictions. The law also allows a hospital chief of staff to voice concern to the Board of Medical Examiners regarding the failure of on-call physicians to take action on a call within the hospital established timeframes.

If you need additional information or have questions about the legislation discussed in this edition of **GSRM: Healthcare from the Hill**, please contact Matthew Scanlan at 615.244.4994 or mscanlan@gsm.com. More information can be found at gsm.com.

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