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2019 New Mexico Legislative Update: What All Healthcare Providers Should Know

Insight — 06/28/2019

In 2019, the Legislature enacted several bills affecting healthcare practitioners in New Mexico. Although some bills have a general applicability to health care providers, others address more specific medical practices. Following is a summary of several bills impacting health facilities and providers.

Bills Affecting Health Care Providers

- **Safe Harbor for Nurses Act (SB 82)**, effective June 14, 2019, protects nurses from adverse action by a health care facility when, in the nurse's good faith judgment, the nurse lacks the knowledge, skills, or ability necessary to safely deliver nursing care, or the nurse questions the medical reasonableness of another health care provider's order that the nurse is required to execute. Now, by law, there are certain conditions under which a nurse may invoke safe harbor. The Act also requires a health care facility to develop procedures for a nurse to invoke safe harbor, establishes certain minimum requirements for the safe harbor process, and includes anti-retaliation and anti-discrimination provisions protecting nurses who make a good faith request for safe harbor.
- **Surprise Billing Protection Act (SB 337)**, effective January 1, 2020, generally prohibits providers from submitting a surprise bill to an insured person or a collection agency and provides for rights for insureds to appeal a health insurance carrier's decision regarding a surprise bill. Among other things, the Act aims to prevent the insured's receipt of "surprise bills" by: (1) requiring a health insurance carrier to pay nonparticipating providers for emergency care necessary to evaluate and stabilize a covered person if a prudent layperson would believe such treatment is necessary, without requiring a prior authorization for such services; (2) requiring health insurance carriers to pay, and relieving an insured from liability for payment for, non-emergency care by an out-of-network provider when (i) the insured received care at an in-network facility, but did not have the ability or opportunity to choose an in-network provider who is available to provide covered services, or (ii) medically necessary care is unavailable within the health benefit plan's network; and (3) in non-emergency circumstances, requiring an out-of-network provider, with advance knowledge that the out-of-network provider is out of network, to inform the insured of that fact and to advise the insured person to contact their health insurance carrier to discuss the insured's

options. Balance billing is permitted by out-of-network providers to an individual who knowingly chooses to receive services from an out-of-network provider. By July 1, 2020, the Act will require licensed health care facilities to post information about consumers' rights.

- **Prior Authorization** requirements (SB 188/SB 309). SB 188, effective June 14, 2019, imposes numerous requirements intended to streamline and simplify the prior authorization process, including provisions requiring health insurers to use uniform prior authorization forms, to establish an electronic portal system for securely transmitting prior authorization requests on a 24-7 basis, and to accept requests for care and benefits which are not electronically transmitted. The provisions also permit insurers to auto-reject a prior authorization request for drugs not covered by a plan, and to include notification of appeal rights and procedures. SB 188 also provides that prior authorizations shall be deemed granted if a determination is not made within seven days, or within 24 hours of a patient's health care professional requesting an expedited prior authorization. Such requests for expedition include a statement of the health care professional's opinion, based on reasonable medical probability, that delay in the treatment for which prior authorization is requested could seriously jeopardize the patient's life or overall health, affect the covered person's ability to regain maximum function, or subject the person to severe and intolerable pain. SB 309, effective April 3, 2019, includes numerous revisions to statutes toward the end of prohibiting requirements for prior authorization for gynecological or obstetrical ultrasounds. SB 309, effective April 3, 2019, includes numerous revisions to statutes toward the end of prohibiting requirements for prior authorization for gynecological or obstetrical ultrasounds.
- **Compassionate Use Act** amendments (SB 406), effective June 14, 2019, expand the conditions for which medical marijuana may be prescribed. While a CEO of a cannabis producer has said that the amendments allow persons who are not New Mexico residents to obtain a New Mexico medical cannabis card, the New Mexico Department of Health has taken the position that the amendments do not allow non-residents to participate in the New Mexico medical cannabis card program.
- **Pain Relief Act** (SB 221), requires a health care provider who prescribes, distributes, or dispenses an opioid analgesic to a patient to advise the patient of the risks of overdose and the availability of opioid antagonists, and to also provide an opioid antagonist if the provider prescribes at least a five-day supply of the analgesic, along with written information regarding the temporary effects of the opioid antagonist and a warning that a person administering the opioid antagonist should call 911 immediately after administering the opioid antagonist.
- **Medical Practice Act** amendments (SB 349), effective June 14, 2019, create a temporary exemption for physicians and surgeons licensed in other states to practice medicine without a New Mexico license to treat members and staff of out-of-state sports teams in

certain situations.

- **Nurse Practitioner/Nurse Midwife Parity** requirements (HB 280), effective July 1, 2020, provide that, unless required by federal law, a health facility must apply the same criteria to certified nurse practitioners, certified nurse midwives, and clinical nurse specialist as are applied to physicians with regards to granting patient admission/discharge privileges and authorizing continuing care. HB 280 also requires facilities to ensure that certified nurse practitioners, certified nurse midwives, and clinical nurse specialists are acting in accordance with the professional's scope of practice and are eligible to serve on the facility's medical staff, credentialed under the same procedures as the facility has established for physicians, and authorized to conduct peer review of their professional colleagues.

Bills Affecting Specific Medical Practices

- **Dental Therapy** statute (HB 308), effective June 14, 2019, amends the Dental Health Act, providing for "dental therapy" practice, defining the scope of practice, establishing requirements for dental therapy practice and licensing, and requiring a study and report.
- **Naturopathic Doctors Act** (SB 135), effective June 14, 2019, defines the scope of practice for naturopathic medicine, establishes requirements governing the practice, exempts certain persons from the operation of the Act, and creates a licensing process for naturopathic doctors.
- **Massage Therapy Practices Act** amendments (SB 200), effective February 4, 2019, define the scope of practice for massage therapy and exemptions of certain persons from the operation of the Act, and amend statutes governing massage licenses.
- **Pharmacy Act** amendments (SB 271/SB 395/SB 415), effective June 14, 2019/July 1, 2019, make changes regarding licensure of pharmacists, pharmacist interns, and pharmacist benefits managers as well as changes to the law governing pharmacy audits and pharmacy benefits administration.
- **Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act** amendments (HB 48), effective June 14, 2019, requires the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board to issue ethics rules and educate purchasers about assistive listening technology.
- **Occupational Therapy Act** amendments (HB 72), effective June 14, 2019, include definitional changes in the Occupational Therapy Act, which redefines "occupational therapy" and the scope of practice of an occupational therapist, and requires supervision for occupational therapy when performed by occupational therapy assistants and persons practicing on a provisional permit.
- **Health Care Quality Surcharge Act** (SB 246), effective July 1, 2019, imposes a surcharge on a skilled nursing facility, an intermediate care facility, or an intermediate care facility for individuals with intellectual disabilities, with certain exemptions, and

also creates a health care facility fund and disability health care facility fund, which are to be used to increase per diem rates, to annually increase each facility's Medicaid rates, and to provide financial incentives to improve the quality of skilled nursing facilities and immediate care facilities.

- **Mammogram Reports** requirements (HB 66), effective June 14, 2019, require a health care facility performing a mammogram examination to include in the report already required by federal law additional information identifying the patient's individual breast density classification and, if the facility determines that a patient has heterogeneously dense or extremely dense breast tissue, the statute requires a specific written disclosure provided for by statute.
- **Drug, Device and Cosmetic Act** amendments (HB 226), effective June 14, 2019, change the definitions section of the Act, including an amendment to add registered lay midwives as "practitioners" within the purview of the Act.
- **Contact Lenses and Glasses Examination and Prescriptions** requirements (HB 242), effective June 14, 2019, prohibit persons who are not licensed under the Optometry Act, the Medical Practice Act, or the Osteopathic Medicine Act from performing eye examinations on persons who are located in New Mexico at the time of the eye exam or writing a prescription for contact lenses or spectacles. HB 242 also prohibits a person from writing a prescription for contact lenses or spectacles unless an eye exam is performed before writing the prescription, taking into consideration any medical findings and any refractive errors found during the eye exam. HB 242 does not disturb health care providers from using telehealth in accordance with the provisions of the New Mexico Telehealth Act for ocular diseases, opticians from completing a prescription for spectacles or contact lenses in accordance with the Optometry Act, or other specified vision screenings permitted by law.
- **STEMI Certification** (SB 145), effective June 14, 2019, provides for acute care hospitals to earn agency certification as STEMI receiving centers or STEMI referring centers.

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