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Wisconsin Health Care Legislative Changes Including Physician Licensing Compact, Change in Abortion Reporting, Prescription Drug Restrictions and Criminal Penalties for False Licensing Applications

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Wisconsin Becomes 12th State to Join Physician Licensing Compact

In December 2015, Wisconsin became the 12th state to join the Interstate Medical Licensure Compact (the "Compact"). The Compact creates an expedited licensing process that allows physicians to become licensed in multiple participating states. Since participation in the Compact will allow physicians to easily practice across state lines, the legislation has been viewed as a significant step forward in the adoption of more telemedicine programs across the state.

In addition to an expedited licensing process, the Compact allows, and in some cases requires, participating medical boards to report public actions, complaints and disciplinary information regarding participating physicians to the Compact. All current licensing laws that are not inconsistent with the Compact will continue to be enforced; however, laws in conflict with the Compact will be superseded to the extent of the conflict.

Current participating states include: Alabama, Idaho, Illinois, Iowa, Minnesota, Montana, Nevada, South Dakota, Utah, West Virginia, Wisconsin and Wyoming. Similar legislation has been introduced in 12 additional states.

Abortion Prohibition and Reporting Law Takes Effect February 1, 2016

In July 2015, Wisconsin enacted a prohibition on the performance of abortions when the unborn child is considered capable of experiencing pain. The law concluded that an unborn child is considered to be capable of experiencing pain if the probable post fertilization age of the unborn child is 20 weeks or more. The

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law includes an exception for women undergoing a medical emergency that will result in the woman's death, or for which a 24-hour delay in the performance of an abortion will create serious risk of substantial and irreversible physical impairment of one or more of the woman's major bodily functions. In the event that a woman is undergoing a medical emergency and an abortion is required, the physician is required to terminate the pregnancy in the manner that, in reasonable medical judgment, provides the best opportunity for the unborn child to survive (unless such method increases the risk to the woman). Any person who violates the prohibition (except the women upon whom the abortion is performed) is guilty of a Class I felony.

In addition to the new restrictions, the law also added additional corresponding reporting requirements. Under existing law, every hospital, clinic or other facility where an induced abortion is performed must file an annual report with the Department of Health Services accounting for each procedure. Currently, reports must contain general demographic information of the patient, the type of abortion, any resulting complications and, if the patient was a minor, whether consent was provided. Beginning February 1, 2016, facilities will also be required to report:

- the probable post fertilization age of the unborn child and whether an ultrasound was used to assist in making the determination of post fertilization age of the unborn child, or, if the probable post fertilization age of the unborn child was not determined, the nature of the medical emergency;
- if the unborn child is considered to be capable of experiencing pain and the nature of the woman's medical emergency; and
- if the unborn child is considered to be capable of experiencing pain, a statement whether the method of abortion used was one that, in reasonable medical judgment, provided the best opportunity for the unborn child to survive or, if such a method was not used, the basis of the determination that termination of the pregnancy in that manner posed a greater risk of either the death of the woman or the substantial and irreversible physical impairment of a major bodily function of the woman than other available methods.

The Department of Health Services will continue to collect this information in a manner which ensures the anonymity of the patient, the health care provider who provided the induced abortion and the hospital, clinic or other facility in which an induced abortion was performed.

Beginning February 1, 2016, affected facilities will need to ensure this change in

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policy is clearly communicated to its providers, as well as establish a practical method for documenting accurate post fertilization age, medical emergencies as defined by the law and the physician's determination of the appropriate abortion method.

Wisconsin Assembly Passes Second Part of HOPE Agenda

On January 12, 2016, the Wisconsin Assembly passed a series of bills aimed at addressing growing opiate abuse in the state. The new bills build on a package of bills signed into law in 2014, which focused on curbing heroin abuse and are part of a larger Heroin Opiate Prevention and Education ("HOPE") agenda led by Representative John Nygren. The most recent set of bills focuses on prescription painkiller abuse, which is often viewed as a gateway to heroin use. Among other measures, the new bills propose the following requirements:

- A pharmacy or practitioner dispensing a monitored prescription drug under the Prescription Drug Monitoring Program ("PDMP") must submit the record to the Controlled Substance Board within 24 hours of dispensing the drug. There are currently no timing requirements for reporting. (2015 Assembly Bill 364.)
- Law enforcement agencies must report certain prescription drug related incidents including, for example, drug overdoses and reports of stolen prescriptions, to the PDMP. The PDMP will then disclose information submitted to the program by a law enforcement agency to the relevant practitioners and pharmacists. (2015 Assembly Bill 365.)
- All pain clinics will be required to hold a certificate to operate from the Department of Health Services ("DHS"), which will require application to and satisfaction of requirements set by DHS. Each pain clinic will also be required to have a Wisconsin physician serve as its medical director and will be required to annually report certain information, including staff to patient ratio and medication tapering plans, to DHS. The bill will not apply to hospitals, hospices or nursing homes. (2015 Assembly Bill 366.)
- Methadone treatment programs must annually report a list of treatment information to DHS including, but not limited to, the ratio of staff to patients; the number of individuals receiving treatment who are also receiving behavioral health services; the program's plan for tapering individuals off of methadone; and the average mileage patients are traveling to receive treatment. A physician or other health care provider must also review a patient's records on the prescription drug monitoring database for other methadone or pain medication

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use before prescribing methadone. (2015 Assembly Bill 367.)

Representative Nygren has described the most recent set of bills as a set of tools for physicians and the medical community to help combat prescription drug abuse. The set of bills now await approval by the Senate.

Wisconsin Considers Criminal Penalties for False Licensing Applications

Following the embarrassing revelation that the state licensed a serial rapist and bank robber to be a social worker, legislation has been introduced to make it a crime to provide false information on any of the credential applications or renewals received by the Department of Safety and Professional Services (the "Department"). Although it is currently against the law to provide false information on the application, the Department's only available punishment is to revoke the license. The bill would make this a Class A misdemeanor.

If your health facility has any questions regarding any of these issues, or any other regulatory compliance questions, the professionals at Reinhart Boerner Van Deuren s.c. are available to assist you. Please feel free to contact Larri Broomfield or your Reinhart attorney, to discuss any questions or concerns related to your health care organization.

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