The Department of Health Takes Action to Tighten Regulations of Urgent Care Centers and Other Ambulatory Care Facilities

The New York State Department of Health’s Public Health and Health Planning Council (“PHHPC”) has issued new recommendations addressing legal and regulatory changes for a variety of ambulatory care facilities, including urgent care centers, office-based surgery providers, freestanding emergency departments, and a new category of facility to be known as a limited services clinic. While these proposals are not yet law, healthcare providers should be mindful of the potential changes to existing ambulatory care models.

While ambulatory care is not a new concept, there has been an increase in the past decade in the scope of ambulatory care services being provided, as well as a more recent evolution in how ambulatory care services are provided to patients, especially in New York State. The PHHPC is now taking steps to further regulate the growing number of ambulatory care facilities in New York and their operations. In addition to heightened reporting and accreditation requirements, the proposals, according to the PHHPC, are aimed at encouraging primary care, while also restricting the universe of services that may be offered by ambulatory care providers. Below is a brief summary of some of the new proposals.

**Urgent Care Centers**

Under the new proposals, urgent care centers would be required to alter their names to include the term “Urgent Care,” and the use of the term “Urgent Care” would be restricted to practices and facilities providing urgent care services specifically defined and approved by the Department of Health. The recommendations, however, do not identify the specific scope of services that the Department of Health will ultimately consider to be “urgent care services.”

New health care facilities (other than physician practices) proposing to provide urgent care services would be required to first obtain Certificate of Need approval from the Department of Health for such services.

Physician practices operating urgent care centers would be required to obtain accreditation from an organization approved by the Department of Health. This is similar to the manner in which the Department of Health, several years ago, began regulating physician practices providing office-based surgery procedures.

**Office-Based Surgery Providers**

The new proposals would further regulate the provision of office-based surgery services in New York State. Specifically, the PHHPC is proposing to require the registration of all new and existing office-based surgery and office-based anesthesia practices with the Department of Health. Practices would be required to submit procedure and quality data as required by the Department of Health. The proposals would also create a definition for office-based anesthesia, and broaden the scope of procedures covered by the office-based surgery requirements (such as, for example, procedures involving neuraxial and major upper and lower extremity regional nerve blocks). Expected procedural
time through discharge would be limited to six hours.

The proposals would broaden the scope of physician practices covered by the office-based surgery accreditation requirements, as well as the scope of reportable adverse events.

The proposals would also impose new assessment, reporting, survey and investigation obligations on the accrediting organizations approved by the Department of Health.

**Freestanding Emergency Departments**

The PHHPC’s recommendations for freestanding emergency departments (“FED”) seem geared towards moving closer to the Centers for Medicare & Medicaid Services (“CMS”) model. In addition to complying with the CMS Hospital Conditions of Participation, ownership of off-campus FEDs would be restricted to hospitals (which, according to the PHHPC, is the model preferred by CMS). There would also be revisions to the permissible scope of services provided, training requirements and staffing requirements. The PHHPC is also looking to include specific need criteria that must be met in order to operate a hospital-sponsored off-campus FED.

**Limited Services Clinics/Retail Clinics**

The PHHPC proposes to create a new type of licensed health care facility under Article 28 of the New York Public Health Law, to be known as a “Limited Services Clinic,” which the PHHPC also refers to as a “Retail Clinic.” Limited Services Clinics would be authorized to provide a limited set of basic health services, on an episodic basis, including immunizations and the treatment of minor ailments, but would be prohibited from providing any services to patients under 24 months of age, and immunizations to minors would be limited to influenza vaccinations.

Significantly, under the new proposals, Limited Services Clinics could be owned by non-physicians, unlike most medical practices and urgent care centers which, under the New York State corporate practice doctrine, typically must be owned by licensed physicians.

A full overview of the PHHPC’s recommendations can be found [here](#).

Should these new proposals become effective, it will likely have a considerable impact on ambulatory care providers, facilities, health care professionals, and consumers. Therefore, ambulatory care providers should be aware of how these new recommendations might affect their practices, and consider preparations for their possible implementation. Providers operating ambulatory care practices or facilities, or considering opening an ambulatory care practice or facility, should consider consulting with health care counsel to assess the possible impact of the new proposals.

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