2017 LEGISLATIVE UPDATE

BUSINESS OF HEALTH CARE

PC 163 - Direct Primary Care Agreements for Chiropractors
PC 163 amends the physician direct primary care agreement law from 2016, TCA § 63-1-502, to allow chiropractors to enter into direct primary care agreements with individual patients. It prohibits chiropractors from expanding their title beyond that allowed by TCA § 63-1-109(a)(1), meaning they cannot refer to themselves as primary care physicians. The law was effective on April 24, 2017.

PC 91 – Breach Notification
Effective April 4, 2017, TCA § 47-18-2107 is amended to require information holders, following discovery or notification of a breach of system security, which entails encrypted and unencrypted data, to disclose the breach to any resident of Tennessee whose personal information was, or is reasonably believed to have been, acquired by an unauthorized person. "Breach of security" is defined as the access of personal information by an unauthorized person when such person has obtained either unencrypted computerized data or encrypted computerized data and the encryption key. The disclosure must be made within forty-five days from the discovery or notification of the breach, unless a longer period of time is required due to the legitimate needs of law enforcement. It requires an information holder to deliver the notice to those affected by the breach, either by written or electronic notice. If an information holder discovers circumstances requiring notification of more than one thousand persons at one time, the information holder must also notify all consumer reporting agencies, and national credit bureaus of the timing, distribution, and content of the notices.

PC 362- Freedom to Prosper Act
PC 362 amends TCA § 50-2-103. It addresses when wages paid once per month and more frequently are due. Effective May 11, 2017, all compensation of employees in private employment shall be payable not less frequently than once per month. Once monthly payment employers who owe wages earned unpaid prior to the first day of the month shall be payable not later than the fifth day of the succeeding month.

For wages paid twice or more frequently per month, employers must pay all compensation earned prior to the first day of the month no later than the twentieth day of the month following the one in which the wages were earned. All compensation earned prior to the sixteenth day of the month shall be paid no later than the fifth day of the succeeding month.

FACILITIES

PC 242 - Independent Living Facilities
Effective May 2, 2017, independent living facilities are excluded from regulation by the board for licensing health care facilities. Inspection schedules are set for licensed healthcare facilities as being 15 months for emergency or assisted living care and 30 months for all other facilities. Residential homes for

the aged employees are prohibited from administering medications to residents without an employed physician, nurse, or physician assistant on staff.

PC 276 - Adult Day Care Center
The new law changes the definition of an "adult day care center" from ten adult recipients to five adult recipients. TCA § 71-2-401 is amended as of July 1, 2017.

HEALTH CARE DELIVERY

PC 138 - Physician Authorization to Treat Pregnant Minors Without Parental Consent
Effective July 1, 2017, a physician is authorized to provide peripartum analgesia and peripartum care to a minor who is at least 14 years of age without the knowledge or consent of the patient's parent or guardian.

PC 353 - Abortion: Tennessee Infants Protection Act
PC 353, effective on July 1, 2017, enacts the "Tennessee Infants Protection Act," one of the most restrictive abortion laws in the country with questionable constitutionality. It prohibits an abortion of a viable fetus except in a medical emergency and places requirements on the physician performing the abortion prior to the procedure.

It requires a physician to test viability of the fetus before performing an abortion when the pregnant woman is at least 20 weeks past the gestational age except in a medical emergency that prevents compliance with a viability determination. The law provides a health exception to the viability determination in cases for abortions to be performed after the 20-week time frame, including those in which the mother is in imminent danger of death or if there is a serious risk of substantial and irreversible impairment of a major bodily function.

There is a rebuttable presumption that an unborn child of at least 24 weeks is viable. A physician who is not associated in practice with the physician who intends to perform or induce the abortion is required certify that the abortion is necessary. The requirement that a hospital at which the abortion is to be performed be equipped with appropriate neonatal services for premature infants does not apply if there is no hospital within 30 miles and the physician who intends to perform or induce the abortion has admitting privileges at that hospital.

A physician can raise an affirmative defense that the physician makes a viability determination and determines that the fetus was not viable or the abortion was necessary to prevent serious risk of substantial and irreversible impairment of a major bodily function of the woman, in any proceeding brought by the board of medical examiners or the board of osteopathic examination to revoke the license of a physician for purposely performing or inducing an abortion when the unborn child is viable.

The law deletes TCA § 39-15-201(c)(3) and adds new sections to Title 39, Chapter 12, Part 2. This is an essential read for any physician who performs, or contemplates performing, an abortion because violation carries a Class A misdemeanor and not less than a six month licensure suspension.

PC 342 - Judgement of Not Guilty by Reason of Insanity
This law requires a trial court to order any person found not guilty of first degree murder by reason of insanity to be immediately diagnosed and evaluated on an outpatient basis. The evaluation must be performed by the community mental health agency or licensed private practitioner designated by the commissioner of the department of mental health and substance abuse disorders to serve the trial court to determine if in-patient commitment is necessary. The person must only be discharged from inpatient hospitalization if ordered by the court to participate in outpatient treatment. Persons currently committed may only be released by court order. Any person ordered by the trial court to participate in outpatient treatment must do so for an initial period of six months. The court is allowed to order the continuation of outpatient treatment beyond sixth months. The factors to be considered by the court for treatment beyond six months are set forth in the law. Effective on July 1, 2017 and it amends TCA § 33-7-303.

HEALTH CARE LIABILITY

PC 4 – Peer Review Organizations for Osteopathic Physicians
PC 4 amends several provisions of the Code relating to osteopathic physician peer review. It clarifies that quality improvement committees apply to osteopathic physicians. It was effective on March 15, 2017.

PC 484 - Immunity from Arrest for Drug Overdose
Title 63, Chapter 1, Part 1 is amended to remove the provision that a person seeking medical assistance for a drug overdose can only receive immunity from arrest, charge, or prosecution for their first overdose. Now it applies to any number of arrests. Any person treated for a drug-related overdose with an opioid antagonist by a first responder shall be taken to a medical facility by emergency medical services for evaluation, unless the person is competent to refuse medical treatment and chooses to refuse. The new law took effect on July 1, 2017.

INSURANCE

PC 88 - Provider Stability Act
Effective on January 1, 2019, the bill amends TCA 56-7-3302 and 56-7-1013 to address provider agreement fee schedule changes and payment policy changes made by health insurance entities. The Act requires a health insurance entity to give 90-days' notice to a health care provider if it will change the provider's fee schedule. Health insurance entities can make up to one fee schedule change to a provider's fee schedule during a 12-month period. After a fee schedule change, the health care entity cannot make another fee schedule change to the provider's fee schedule for a consecutive 12-month period.

The Act also requires health insurance entities to give health care providers 60-days' notice if the insurer makes a change in its provider manual or a reimbursement rule or policy. Changes shall be reflected in the provider manual using bold print and by disclosing the change and effective date through a separate communication to the provider. This can be on the health insurance entity's provider access website or written communication to a dedicated email address designated by the provider.

Health insurance entities must provide a copy of a health care provider's fee schedule within 10 days of written request by the provider in an exportable format.

The Act does not apply to any government programs such as TennCare or Medicare or the state employee health plan.

PC 130 - Health Insurance Coverage of Telehealth Services at a School
The new law amends TCA § 56-7-1002 regarding health insurance entity coverage of telehealth. It requires health insurance entities to reimburse healthcare service providers for telehealth services to a patient located at a school clinic, public elementary, or public secondary school in a manner that is consistent with reimbursement for in-person encounters. The public elementary or secondary school at which telehealth is provided must be staffed by a healthcare services provider and equipped to engage in telehealth. Effective on April 17, 2017.

PC 82 – Pharmacists as Covered Providers
Effective July 1, 2017, TCA § 56-32-129 is amended. It adds pharmacists to the scope of services covered under the Health Maintenance Organization Act of 1986, which discusses discrimination by managed health insurance issuers. It formally adds "pharmacists" as providers of care in the insurance code and establishes a pathway for pharmacists who are acting within the scope of their license or certification to be credentialed with managed health insurance entities. Managed health insurance issuers are prohibited from discriminating against pharmacists with respect to participation, receiving referrals, and being reimbursed for covered services which are within their scope of practice. It paves the way for pharmacists to be able to be reimbursed for services provided under pharmacy collaborative practice agreements.

PC 232 - Coverage of Prescriptive Eye Drops
PC 232 adds a new section to Title 56, Chapter 7, Part 23. It prohibits a health benefit plan which provides coverage for prescriptive eye drops from denying coverage for a refill of prescription eye drops. The available renewal supply depends on how long the request was made from the original date of the prescription or when the most recent refill was dispensed. It does not require coverage of eye drops and would only apply to plans that cover that type of prescription. Effective on April 28, 2017.

PC 7 – Unfair Trade Practices
TCA § 56-6-125 is amended, effective on March 22, 2017. The changes allow an insurance producer to charge fees for services relating to the purchase of an individual major medical policy, where the insurer is not paying commission to the insurance producer, or if the fees are based upon a qualified written agreement signed by the party to be charged in advance of performance of the services. It also creates a new subsection prohibiting insurance producers to charge an additional fee for services that are associated with the sale, solicitation, negotiation, or servicing of insurance policies.

PHARMACY, PRESCRIBING, AND PAIN CLINICS

Pharmacy

PC 392 - Voluntary Prescription Drug Donation Repository Program
This act, amending TCA § 63-10-501 et seq., sets up a voluntary repository program to help indigent or uninsured individuals who cannot afford their prescribed medications. It authorizes the department of health, in cooperation with the board of pharmacy, to operate a voluntary prescription drug donation repository program under which any individual, medical facility, or company may donate prescription drugs and supplies to help eligible persons.

For the donation to be accepted, the drugs must be in the original sealed or tamper-evident packaging and within the given expiration date. The donated prescription drugs include cancer and anti-rejection medications but do not include any controlled substances. Controlled substance disposition is governed only by federal law. The donation must be inspected by a licensed pharmacist before being distributed to ensure it is not contaminated or misbranded. If a donor receives notice of a drug recall of a donated drug, the donor must make every effort to notify the repository program. A prescription drug dispensed through the program is not reimbursable.

The program calls for the donations of these specified prescription drugs and supplies to be made on the premises of a medical facility or pharmacy that has elected to participate in the drug repository program and meets certain standards enumerated in the act. A facility that receives donations may, in turn, distribute them to another eligible facility for distribution. Because it is a donation program, the legislation provides civil and criminal immunity to donors or participants, except in the case of gross negligence, willful misconduct or bad faith.

Experts believe most of the donations will likely come from long-term care facilities who currently throw them away to dispose of them.

The board of pharmacy will be responsible for setting up rules for the program, including eligibility requirements for participants and recipients, as well as the list of prescription drugs the repository program will accept. Organizations administering the program are required to report the total number of prescription drugs and supplies each year so that the success of the program can be tracked. The law is effective on January 1, 2018 and is a must read for anyone donating drugs or participating in a repository program.

PC 268 - Pharmacy Wholesaler Licenses
This amends TCA § 63-10-216 in the pharmacy act. It authorizes persons licensed by the board of pharmacy and holding a valid wholesaler license to be considered as a licensed drug distributor until such a time as the board promulgates rules to implement the third-party logistic provider licensing process. Effective on May 4, 2017.

PC 89 – Oversight of Dialysate Drugs and Devices
Effective July 1, 2017, the board of pharmacy's oversight is removed over facilities that distribute dialysate drugs necessary to perform peritoneal kidney dialysis to patients with end stage renal disease if the facility meets certain criteria. The new law adds a new section to the Pharmacy Act, Title 63, Chapter 10, Part 2.

Prescribing

PC 112 - Buprenorphine Prescribing Guidelines
This law amends Title 63, Chapter 1, and was effective on April 7, 2017. It requires all buprenorphine prescribers in the state (prescribers with DEA-X numbers) to adhere to guidelines to be created by the department of health and the department of mental health and substance abuse services commissioners by January 1, 2018. The reasoning behind the legislation is to address individual nonresidential prescribers of buprenorphine. Currently in Tennessee, there are over 600 individual physicians who have taken an 8-hour online course in order to receive their DEA-X number to prescribe these medications to treat addiction. New federal regulations allowed individual physicians to go from treating 100 patients to treating 275 patients. Current guidelines established by the American Society of Addiction Medicine, Substance Abuse and Mental Health Services Administration and the American Board of Preventative Medicine must serve as resources during the development of the blanket guidelines. Physicians, alcohol and substance abuse counselors, and other experts will be consulted during the development of the guidelines. The guidelines will also be submitted for review by appropriate health licensing boards, which will decide how the guidelines will be used by their licensees. The guidelines must be posted on appropriate licensing boards' websites. This law aims to ensure that patients do not simply have access to a medication, but rather access to referrals to comprehensive services such as counseling, case management, and other wrap-around support services.

PC 120 - Exclusion of Marijuana
The new law creates a new subdivision in TCA § 39-17-402. It excluded from the definition of marijuana, a cannabidiol product approved as a prescription medication by the United States Food and Drug Administration. It was effective on April 12, 2017.

PC 483 High Volume Opioid Prescribers
Effective on June 6, 2017, TCA § 68-1-128 is amended to require the Department of Health to identify high-risk prescribers. A prescriber identified as high risk may request review of that decision. If so identified, the prescriber is subject to chart review and investigation. The prescriber's licensing board will make notification and may further require the prescriber to participate in targeted continuing education, make opioid addiction literature available to patients, and obtain consent forms from patients receiving more than 60 morphine equivalents a day for more than three weeks. Such restrictions shall last for one year.

PC 483 requires the Commissioner of Health to report certain data to the General Assembly regarding neonatal abstinence syndrome.

TennCare MCOs are required to report their medical loss ratios with respect t their expenditures on neonatal abstinence syndrome.

Pain Management

PC 210 - Pain Management or Pain Medicine Certification by Osteopathic Physicians
Effective on July 1, 2017, this new law makes corrective housekeeping changes to references in TCA § 63-1-301 to osteopathic physicians who practice pain medicine or pain management. It also amends the definition of "pain management clinic" in the statute to get the name of the osteopathic certifying body correct.

PUBLIC HEALTH

PC 161 - Smoking on college campuses
PC 161 amends various provisions of the Code regarding smoking. It makes most state-owned/operated buildings, public and private educational facilities smoke free. There are exceptions. It also gives state university boards of regents authority to develop smoking policies provided, that such policies do not permit smoking in any location where smoking is otherwise prohibited by law. Effective on April 24, 2017.

PC 84 – Administration of adrenal insufficiency medication in schools
The law adds a new section to Title 49, Chapter 50, Part 16 and addresses adrenal insufficiency. Effective on July 1, 2017, the state board of education, in consultation with the department of health, the board of nursing, the department of children's services, and the board of pharmacy, must adopt rules for the administration by trained school personnel of medication that treats adrenal insufficiency. The rules shall include guidelines on the designation and training of school personnel who will be responsible for administering medication and that an LEA is only required to train school personnel when it has been notified by a parent or guardian that a student has been diagnosed with adrenal insufficiency. Each local education agency board is required to adopt policies and procedures that provide for these administration of these medications. The LEA, local boards, and anyone who administers the medication receives limited immunity.

PC 86 – Autism Spectrum Disorder
A new Tennessee council on autism spectrum disorder is created, effective July 1, 2017, and an old council is repealed. The law adds a new section to Title 4, Chapter 3, Part 27.

PC 5 – Stroke Awareness
The act replaces TCA § 68-1-1903(b). It requires comprehensive stroke centers and primary stroke centers to report data quarterly, consistent with nationally recognized stroke consensus measures on the treatment of individuals with confirmed stroke, to the East Tennessee State University College of Public Health. It encourages reporting by other types of hospitals. Effective March 15, 2017.

PC 274 - State Health Rankings
A new amendment to TCA § 63-12-133 requires the commissioner of health to report the factors affecting Tennessee's health status in rankings of health status among the several states to the health committee of the house and the health and welfare committee of the senate by February 15, 2018. The report must include discussions of the role of individual behaviors in obesity, diabetes, and other health conditions in developing those rankings. Effective on May 4, 2017.

PC 493 - Reconsideration of Suicide as Manner of Death
Effective on June 13, 2017, county medical examiners are encouraged to consult the decedent's treating mental health professional prior to determination of manner of death, if there exists a suspicion that suicide may be a potential manner of death. The new law amends TCA § 68-3-502 and allows for the

decedent's next of kin to seek reconsideration of the manner of death if it is listed as suicide on the death certificate. This is done by filing a written request to the county medical examiner, the deputy state medical examiner, and the commissioner of health, stating the nature and reasons for reconsideration. The reconsideration request must be submitted within one year of the date the death certificate was filed with the office of vital records. The first stage of reconsideration is for the county medical examiner to meet with the next of kin within 30 days of receiving the request. The second stage is an appeal to the regional forensic medical examiner. The third stage is mediation funded by the next of kin. The state medical examiner must file an affidavit directing the office of vital records to issue an amended death certificate within 30 days if a change in death from suicide is determined following the next of kin's reconsideration.

PC 420 - Palliative Care and Quality of Life Task Force
A new chapter to Title 63 is added, effective on May 18, 2017, which creates a state palliative care and quality of life task force. The task force will be comprised of 11 members who are to study palliative care and develop recommendations to address problems associated with the availability of palliative care. Members serve without compensation or reimbursement for any expenses. It also establishes a statewide palliative care consumer and professional information and education program and requires information about palliative care and available resources relating to such care to be published on a website. The task force terminates on June 30, 2018.

PC 413 – Needle Exchange Programs
This adds a new section to Title 68, Chapter 1, Part 1and addresses needle exchanges. Effective May 18, 2017, Department of Health approved nongovernmental organizations are authorized to establish needle and hypodermic syringe exchange programs. The law prescribes what a program is required to offer, which includes specified educational material availability and access to naloxone for treatment of overdose. It decriminalizes possession of certain drug paraphernalia by employees of needle exchange programs. The law places other restrictions on programs so a thorough reading of the law is required for any entity contemplating such a program.

SCOPE OF PRACTICE AND LICENSURE

Scope of Practice

PC 266 - APRN and PA Treatment of STDs
The new law amends TCA § 68-10-104 to authorize state and local health officers, physicians, nurse practitioners with a certificate of fitness to prescribe, nurse midwives, or physician assistants to examine, diagnose, and treat a minor patient who has a sexually transmitted disease (STD) without the knowledge or consent of the minor's parent or guardian. Effective on July 1, 2017.

PC 178 - Central Service Technicians
Amends TCA § 68-11-239 regarding the qualification and record-keeping requirements related to central service technicians at health care institutions. Effective April 24, 2017.

PC 334 - Physician Oversight of APRNs
PC 334 amends several provisions of the Code. It merely substitutes the word "collaboration" for "supervision" in some of the nursing statutes. It leaves "supervision" in for medical spas, interventional pain management, hormone replacement clinics, and STD treatment. It leaves "supervision" in for physician assistants. Effective on July 1, 2017.

PC 349 – Paid Personal Aides for Disabled Adult Health Care Tasks
A new section is added to Title 68, Chapter 1, Part 1 to allow competent disabled adults living in their own homes to have paid personal aides perform health maintenance tasks after a licensed health care provider evaluates the individual's ability to perform the tasks. The licensed evaluator is not liable for the acts of the aide. Self-direction of healthcare tasks by an individual receiving Medicaid-reimbursed home and community based long-term care services are to be provided pursuant to Title 71, Chapter 5, Part 14. Several entities are to be consulted for the promulgation of rules by the Tennessee Commission on Aging and Disabilities: the Department of Mental Health and Substance Abuse Services, AARP Tennessee, the Tennessee Disability Coalition, and the Tennessee Association of Home Care. Effective January 1, 2018, although rules may be promulgated.

PC 455 - Chiropractic Scope of Practice Rewrite
This amends the chiropractic practice act in various places and was effective on July 1, 2017. It does not change the scope of practice of chiropractic but rewords the statute to make scope of practice clearer. It adds a definition of "differential diagnosis" and re-writes the definition of "diagnosis." It clarifies what tests a chiropractor can order (advanced imaging; venipuncture by phlebotomist; DME for certain conditions) vis-à-vis what tests can actually be performed in a chiropractic office (x-rays; non-invasive diagnostic procedures, minimally invasive procedures approved by the chiropractic board after consultation with the board of medical examiners for which adequate training has been received; blood, urine, saliva, hair samples; acupuncture, if certified). Treatment is still neuromuscular, musculoskeletal, and related conditions. It gives the board the authority to establish criteria for assistants.

Licensure

PC 259 - Medical Licensure Exemption
The law amends TCA § 63-6-204 addressing exemptions from medical doctor licensure. It requires the board of medical examiners to list the types of practitioners that are exempt from the practice of medicine requirements on its website. It exempts surgeons of the United States army, navy, air force or marine hospital service regardless of the hospital or practice site; provided, that the surgeon's practice is part of the surgeon's authorized military service or training. It was effective on July 1, 2017.

PC 175 - Per Diem for Board of Osteopathic Examination
Effective on April 24, 2017, members of the board of osteopathic examination are entitled to receive a one hundred dollar per diem when engaged in the discharge of their board duties. Members formerly received a fifty dollar per diem.

PC 240 - Health Professional Licensure Omnibus Changes

PC 240, effective on May 2, 2017, does many things regarding professional health licensure. First, it adds a new subsection to TCA § 10-7-504. This makes exam answer sheets, scoring keys, and other exam data confidential and not accessible to the public, except the examinee, and makes exam scores open to the public.

It also amends TCA § 63-1-104 to allow government entities regulating health care professionals to issue limited licenses to persons who have been out of clinical practice for an extended period of time, provided the applicant meets all criteria other than recent clinical practice. It allows these entities to restrict the scope and duration of these licenses, and grant conditions by which they may be converted into full licenses.

TCA § 63-1-117 is amended to requires that materials compiled in relation to an investigation by the department of health are confidential.

It amends Title 63, Chapter 1, Part 1 to allow board members to rely on their own expertise as to a determination of standard of care in disciplinary actions. The standard of care for such actions is a statewide standard of minimal competency and practice; provided, however, that to sustain actions based upon a violation of this standard of care, the board, committee, council, or other agency must, absent admissions or other testimony to the effect that the standard of care was violated, articulate the standard of care in its deliberations.

TCA 68-11-218 is amended to require the chief administrative officer of each healthcare facility to report disciplinary action taken against a person with any kind of health care license within 60 days of the action and allows the applicable board access to the records pertaining to the disciplinary action. One who turns over this information is immune from liability.

PC 230 - Restraint of Trade

This law addresses the U.S. Supreme Court ruling in *North Carolina Board of Dental Examiners v. FTC.* A new section is added to Title 4, Chapter 4, Part 1. Each regulatory board supervising officials must ensure that the actions of regulatory boards that displace competition are consistent with a clearly articulated state policy. The supervising official must evaluate whether the action may constitute a potentially unreasonable restraint of trade that requires further review; and if it is determined that an action requires further review, the supervising official must provide notice to the regulatory board within ten (10) business days of the date the action was taken that the action is subject to further review. The supervising official must also review the full evidentiary record regarding the action and, if necessary, supplement the evidentiary record or direct the regulatory board or other involved persons or entities to supplement the evidentiary record.

A new section is added to Title 4, Chapter 5, Part 2. Prior to a rule being filed by a regulatory board with the secretary of state, the commissioner or chief executive officer of the administrative department under which a regulatory board operates or to which a regulatory board is administratively attached, or a designee to the extent a conflict of interest may exist with respect to the commissioner or chief executive officer, will remand a rule that may constitute a potentially unreasonable restraint of trade to the regulatory board for additional information, further proceedings, or modification, if the rule is not

consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board. Effective on April 24, 2017.

PC 211 - Board Appointments for PTs, OTs, and LSWs
Amends several statutes within the occupational therapy, physical therapy, and social worker acts, Title 63, Chapters 13 and 23, authorizing the governor to appoint occupational therapists and an occupational therapy assistant to the board of occupational therapy. It authorizes the governor to appoint physical therapists and a physical therapist assistant to the board of physical therapy. It also authorizes the governor to appoint social workers to the board of social worker licensure. The law was effective on April 28, 2017.

PC 215 - Licensing Board Adoption of Codes of Ethics
PC 215 adds a new section to Title 4, Chapter 5, Part 2 addressing conduct by some regulatory boards to adopt practice guidelines via policy, rather than rule. Effective on April 28, 2017, the new law requires rules to be promulgated by many professional regulatory boards adopting guides to practice. Any changes to guides to practice must also be adopted by rule. The rules promulgated shall supersede any existing guides to practice developed or approved by a private organization or association that conflict with, or are otherwise not included, in such rules. No board may adopt guides to practice that a private organization or association developed or approved without going through the rulemaking process.

PC 370 - Community Paramedics
This law, effective May 11, 2017, amends TCA § 68-140-302. It creates a category of emergency service personnel called a “community paramedic.” They must be licensed by the emergency medical services board, which must promulgate rules regarding the standards for evaluation, advice, and treatment within the scope of practice of the provider when specifically requested or directed by a physician as a means of delivering “mobile integrated health care.” It is defined as, “the practice by emergency medical services personnel, primarily in an out-of-hospital setting, that may include the provisions of such services as patient evaluation, advice, treatment directed at preventing or improving a particular medical condition, or referrals to other community resources, which may be provided occasionally or at irregular intervals.” "Mobile integrated health care" means the provision of health care using patient-centered, mobile resources in the out-of-hospital environment under local medical control as part of a community-based team of health and social services providers to include, but not be limited to, home health organizations and community paramedics.”

PC 365 - Medical Licensure Compact
This new law adds Tennessee to the list of states which have adopted the Interstate Medical Licensure Compact which gives eligible medical doctors and osteopathic physicians an expedited avenue through which to become licensed in Tennessee and multiple other states that are members of the Compact. Effective on January 1, 2019.

PC 396 - Suicide Prevention Training
This enacts the “Kenneth and Madge Tullis, MD Suicide Prevention Training Act,” by adding a new section to Title 63, Chapter 1, Part 1. It requires certain mental health professionals (social workers, marriage and family therapists, professional counselors, pastoral counselors, alcohol and drug abuse counselors, and occupational therapists) to undergo a prescribed suicide prevention education program

every five years, beginning January 1, 2020. Their licensing boards may exempt elements of the program if deemed inappropriate for the licensees and continuing education hours are awarded for the course.

PC 269 – Wholesale Drug Distributor
Effective May 4, 2017, TCA § 63-10-306 is amended to provide that any person licensed by the board of pharmacy under this section and holding a valid wholesaler license is considered to be licensed as a drug distributor until such a time when the board can promulgate rules to implement the third-party logistic provider (3PL) licensing process.

PC 350 - Continuing Education Credit for Voluntary Health Care Services
The amendment authorizes a healthcare provider to satisfy one hour of continuing education requirements for maintaining a license issued through the performance of one hour of voluntary provision of healthcare services, not to exceed the lesser of eight (8) hours or 20 percent of the total annual requirement for the applicable license. It requires the healthcare provider, upon providing evidence of completion of the voluntary provision of healthcare services, to identify in any documentation required to be submitted to the applicable licensing board, the name and contact information of the sponsoring organization. The Division of Health Related Boards may charge a fee to the healthcare provider for satisfying continuing education requirements. It was effective on May 11, 2017.

PC 438 - Physician Maintenance of Certification/Licensure
PC 438 prohibits the boards of medical examiners and osteopathic medical examination from denying a physician medical licensure or renewal to a physician who refuses to participate in any form of maintenance of licensure, including requiring any form of maintenance of licensure tied to maintenance of certification. It sets up a task force of legislators to study maintenance of certification as it applies to requirements for hospital staff privileges and network participation and reimbursement by health insurance entities.

PC 410 - Surgical Assistant Practice Act
The new law adds a new Part to Title 63, Chapter 6, Part 2, effective on January 1, 2018, which authorizes only persons registered with the Board of Medical Examiners as a “registered surgical assistant” to use such title in practice. It prescribes the credentials of persons who may register and gives the board the authority to discipline the registration. Facilities should be especially cognizant of this law. It may require the changing of titles of individuals who serve as surgical assistants if they do not have national certification, military, or the requisite practice experience to call themselves “registered surgical assistants.”

PC 481 - Drug Screening of Health Professionals
This adds a new section to Title 63, Chapter1, Part 1. It creates a new process to identify drug-addicted health care professionals and either suspends their license to protect their patients or compels them to undergo drug-addiction treatment. The bill was brought because of news reports about an addicted nurse who traveled from one Tennessee healthcare facility to the next gaining employment, despite the fact that he diverted pain medication from patients.

Under the former law, healthcare systems, like any other Tennessee company, could test for drug abuse

randomly or when there is a suspicion of a problem; however, there was not a requirement to notify the Department of Health and the appropriate licensing board if a health care professional failed or refused the test. PC 481 requires the Department of Health to be notified when a professional tests positive for drugs and does not have a lawful prescription.

Upon being reported, the Department of Health's Chief Medical Officer (CMO) will review the information to determine whether aggravating circumstances warrant an emergency suspension of that provider's license. Aggravating circumstances include the sale or diversion of controlled substances, practicing while impaired, or other conduct that presents a danger to patients or the public.

If it is determined that there are no aggravating factors, the professional will be referred to a peer substance abuse treatment organization for which the professional is licensed. The licensing boards will determine the protocols as to what determines compliance to ensure that the professional is ready to go back to work. Once the peer organization has determined that the provider has completed the program successfully, the licensing board will be notified so the professional can once again treat patients.

The bill also clarifies that quality improvement and peer substance abuse committees can share information regarding drug abuse by a health care practitioner. This would help prevent a drug-addicted provider from moving from one healthcare facility to the next due the failure in communicating abuse when one employer calls to question another regarding the work record of the practitioner.

PC 329 - Visiting Sports Team Act
The need for this law arose out of a Chattanooga iron man competition. New sections are added to Title 63, Chapter 6, Part 2, and Title 63, Chapter 9, Part 1, referred to as the "Visiting Sports Team Act." It provides a medical doctor or osteopathic physician from out of state an exemption from Tennessee medical licensure laws for the purpose of treating members and coaching staff of out of state sports teams competing under the authority of a national sports governing body within Tennessee. The law places restrictions as to how long the exemption can last and on dispensing or administering controlled substances. It does not provide any specific immunity protection but allows the medical boards to enter into agreements with other states to implement the Act. Effective on January 1, 2018 but rules may be promulgated.

TENNCARE

PC 221 - Report on Coverage for Mental Health Treatment
The act amends Title 71, Chapter 5, Part 1. It requires managed care organizations participating in the TennCare program to annually report to the bureau of TennCare certain information regarding treatment of claims for mental health and alcoholism or drug dependence benefits in relation to the requirements of the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008. This is a must read for lawyers who represent TennCare managed care organizations. Effective on July 1, 2017.

PC 244 - TennCare Criminal Fraud
TCA § 71-5-2507 is amended to authorize any law enforcement officer who has been specifically designated by the Inspector General to enforce TennCare fraud and abuse laws, to make arrests for offenses involving criminal fraud and abuse of the TennCare program and any other violations of state criminal law related to the operation of TennCare. Effective on May 5, 2017.

PC 258 - Ambulance Service Assessment
The new law adds a new part to Title 71, Chapter 5. Effective July 1, 2017. It sets up a ground ambulance service assessment system administered by the Bureau of TennCare. The assessment is capped at $75,000 to offset Medicaid administration expenses. The assessment terminates on June 30, 2018. An ambulance service may not increase its charges or add a surcharge to ground transports based on, or as a result of, the assessment. Effective on July 1, 2017.

PC 26 – Third Party Coverage of TennCare Recipient
Effective on July 1, 2017, TCA § 71-5-117 was amended to require disclosure by third parties such as health plans ERISA administrators, Medicare, workers' compensation, etc. that an enrollee or his/her spouse or dependent may be, or may have been, covered by a third party for medical coverage. The term is defined in the law.

PC 243 - Sign and Language Interpreter Services
Effective July 1, 2017, TCA § 71-5-107 was amended to require language interpreter services, which may include sign language, to help hearing impaired recipients, and spoken language interpreter services to all recipients with limited English proficiency, to be included as medical assistance for the TennCare program.

PC 191 – Program Integrity Act of 2017
The law adds a new section to Title 4 Chapter 51 Part 1requiring the Tennessee lottery corporation on a monthly basis to provide the department of human services the name, prize amount, and other available identifying information of any individual collecting a prize of more than five thousand dollars.

It also adds language to Title 71 that requires the department of human services on a quarterly basis to conduct data matches against information databases as required by federal law (the guideline for the specific data being collected can be found in section 3 (A) of the bill).

PC 191 allows the department of human services to join any multi-state cooperative for identifying individuals who currently receive benefits in other states.

The Tenncare Bureau is required to implement an automated, electronic eligibility system for the purpose of verifying identity information for each respective applicant and enrollee prior to awarding SNAP assistance.

PC 363 - Medication Management Therapy Pilot Program
Effective on July 1, 2017, this legislation establishes a medication therapy management (MTM) pilot program to provide high quality, cost-effective services for TennCare enrollees. It is modeled after similar successful programs in 17 other states.

MTM is a group of services provided by pharmacists whose aim is to optimize drug therapy and improve therapeutic outcomes for patients. The program is particularly beneficial to patients who do not take their medication according to the prescribed timing, dosage, frequency and directions. Any situation when the patient does not take their medication according to one of these factors is referred to as medication non-adherence.

Medication non-adherence is highest among patients with chronic illnesses and results in an increased risk of side effects, adverse events, hospitalizations, disease state complications, drug-related problems or even death. Direct costs of medication non-adherence to our healthcare system are estimated at up to $290 billion annually and are considered the largest fixable problem in health care today.

Other persons benefiting from the program include those who use several medications, have multiple health conditions, are taking medications that require close monitoring, have been hospitalized, or who utilize more than one pharmacy.

The MTM services will be delivered by Tennessee-licensed pharmacists practicing under a collaborative pharmacy practice agreement with prescribers within their routine scope of practice. They would work in consultation with patients, caregivers, prescribers, and other healthcare providers. Any cost savings realized by TennCare through this pilot program will be prioritized for use in expanding the administration of the MTM pilot program.

According to a U.S. Public Health Service report, pharmacist-provided services such as MTM have demonstrated an average return on investment of $3 to $5 in savings for every $1 spent.

PC 377 - Nursing Home Assessment Trust Fund
PC 377 extends the Nursing Home Assessment Trust Fund by one year, until June 30, 2018. It amends various provisions of Title 71, Chapter 5, Part 10.

Under present law, one of the authorized uses of the nursing home assessment trust fund is to make expenditures for nursing facility services under the TennCare program for fiscal year 2016-2017 at the full rates for the specified fiscal year as set in present law, that would have been subject to reduction by the bureau of TennCare for fiscal year 2016-2017, except for the availability of one-time funding for that year only. Payment of full rates to restore a rate reduction from the bureau of TennCare must be satisfied only by the money available in the fund and before making any other payments from the fund. This amendment instead states that it is an authorized use of the fund to make expenditures for nursing facility services under the TennCare program for fiscal year 2017-2018 at the full rates for the specified fiscal year as set in accordance with present law. This amendment maintains the present law aggregate amount of assessments of 4.75. The amendment also maintains provisions specific to payments based on size and other operational circumstances. It adds that the total aggregated amount of assessment for all nursing facilities, and the annual assessment determined for each nursing facility, must be established on July 1st of each year. Once established, neither amount may vary during each fiscal year. This amendment further adds that any excess collections of per facility annual assessments above the targeted 4.75 percent of the net patient service revenue must be retained in the nursing home assessment trust fund account. Should actual collections of per facility annual assessments not equal the

targeted 4.75 percent of the net patient service revenue, any shortfall may be made up from funds in the nursing home assessment trust fund account, or from other appropriations to the TennCare program.

Present law authorizes the bureau of TennCare to adopt rules and regulations necessary to implement the Nursing Home Assessment Trust Fund or obtain approval of the state plan amendments. This amendment specifies that the special rulemaking provisions related to the acuity-based reimbursement methodology for nursing facility services based on an individualized assessment of need constitute the exclusive authority for rulemaking by the bureau of TennCare regarding the transition to an acuity-based nursing home reimbursement system when acuity and quality supplemental transition payments are transitioned into the Medicaid per diem rates of that nursing home reimbursement system.

Under present law, when acuity and quality supplemental transition payments are transitioned into the Medicaid per diem rates of the nursing home reimbursement system, the bureau of TennCare, in consultation with the comptroller of the treasury and the Tennessee Health Care Association, may use emergency rulemaking to implement an acuity-based reimbursement methodology for nursing facility services, based on an individualized assessment of need, as an alternative to cost-based nursing facility reimbursement system. Under this amendment, when acuity and quality supplemental transition payments are transitioned into the Medicaid per diem rates of the nursing home reimbursement system, the bureau of TennCare may adopt rules necessary to implement a new nursing home reimbursement system, subject to the following limitations: (1) The rules must be developed in consultation with the comptroller of the Treasury and with the Tennessee Health Care Association; and (2) The rules may not be promulgated as emergency rules.

Present law allocates the supplemental transitional payments as follows: (1) 35 percent allocated in the same manner as the FY 2014-2015 acuity payment; (2) 35 percent allocated strictly based on Medicaid day-weighted CMI score; and (3) 30 percent allocated based on quality measures adopted by the bureau of TennCare and the Tennessee Health Care Association. This amendment changes the allocation for (1)-(3) to 33 and one-third percent each.

PC 354 - Annual Hospital Coverage Assessment

The Annual Coverage Assessment Act of 2017 (the Act) is enacted which establishes an annual coverage assessment on hospitals of 4.52 percent of a covered hospital's annual coverage assessment base and is required to be paid in equal quarterly installments. The Bureau of TennCare will send a notice of payment and a return form to each covered hospital 30 days prior to the payment date. A penalty of $500 a day is imposed on a hospital that does not pay the assessment by the due date. The covered hospital is also subject to disciplinary action under the licensing laws applicable to the hospital. Prorated payments are authorized for a covered hospital that ceases operation after the effective date of the Act.

A TennCare managed care organization is prohibited from implementing across the board reductions in rates that are in existence on July 1, 2017, for hospitals and physicians by category or type of provider, unless mandated by the Centers for Medicare and Medicaid Services (CMS). A Maintenance of Coverage Trust Fund (the Fund) consisting of all annual coverage assessment collections and investment earnings credited to the assets of the Fund is established. Assessment payments, investment earnings, and federal matching funds are required to be available to the Bureau and only expended for benefits and

services that would have been subject to reductions or eliminations from the FY17-18 TennCare budget; for refunds to hospitals for payments of assessments or penalties to the Bureau through error, mistake, or a determination that the payment was invalidly imposed; for reimbursements to hospitals to offset losses for services provided to TennCare enrollees (assessment payments only); and payments and expenditures in the TennCare program from funds remaining in the Fund as of June 30, 2017 to replace reductions included in the FY17-18 proposed budget and to increase the reimbursement for services provided to enrollees covered by CoverKids.

The implementation of the annual coverage assessment is dependent upon approval of additional hospital payments by CMS; a determination by CMS that the payments will not reduce federal participation in the TennCare program; and full implementation of hospital payment rate variation corridors established by the state's actuary and approved by the Bureau of TennCare for payments by managed care organizations to hospitals for services provided to TennCare enrollees. Critical access hospitals, state mental health hospitals, rehabilitation and long-term care acute hospitals, St. Jude Children's Research Hospital, and the state and local government hospitals are exempt from the annual coverage assessment. Beginning September 1, 2017, and on a quarterly basis thereafter, TennCare is required to report the status of the determination and approval by CMS, the balance of the Fund, and the extent to which the funds have been used, to both of the Finance, Ways and Means Committees, the Senate Health and Welfare Committee, and the House Health Committee. This legislation takes effect July 1, 2017, and terminates on June 30, 2018.

WORKERS' COMPENSATION

PC 380 - Workers' Comp Utilization Review

The law amends TCA § 50-6-124 regarding exceptions to required utilization review of medical procedures pursuant to the workers' compensation program. Excepted services include diagnostic procedures ordered in accordance with the treatment guidelines by the authorized treating physician or chiropractor in the first thirty (30) days after the date of injury or diagnostic studies recommended by the treating physician in the event the initial treatment regimen is nonsurgical, without diagnostic testing, and is not successful in returning the injured employee to work. All recommended invasive procedures are subject to utilization review at any time.

TCA § 50-6-204 is amended to require that only 2 of the 3physicians, surgeons, chiropractors or specialty practice groups included on the employer's medical review panel cannot be associated in practice together.

It increases, from $7,500 to $10,000, the maximum amount to be paid by an employer for burial expenses in a case where death results from injury or occupational disease. Effective May 18, 2017.

PC 344- Workers' Comp Omnibus Amendments

The new law addressing workers' compensation law does several things. First, it changes the name of the second injury fund to subsequent injury and vocational recovery fund. It amends the definition of employee in TCA § 50-6-102 when it includes a sole proprietor, a partner, or a member of a limited

liability company who devotes full time to the proprietorship, partnership, or limited liability company. It amends TCA § 50-6-104 to allow an officer of a corporation, except one in the construction industry, to opt out of workers' compensation participation and TCA § 50-6-106 for participation by employers with fewer than five employees.

TCA § 50-6-207 is amended to give certain workers the right to request vocational recovery assistance from the Fund, specifies eligibility requirements, and specifies what assistance may be provided. It sets out the lifetime maximum payout per employee and an aggregate payout per calendar year from the Fund.

TCA § 50-6-217 is amended to establish a workers' compensation appeals board wholly separate from the court of workers' compensation claims, to review interlocutory and final orders entered by workers' compensation judges upon application of any party to a workers' compensation claim and describes the procedure.

TCA § 405 is amended to specify that an employer of a construction services provider shall provide proof of valid workers' compensation insurance coverage at the employer's place of business and at job sites within one business day of a request.

There are other amendments. Lawyers representing health care employers subject to the workers' compensation laws should be familiar with all changes. Effective May 9, 2017 but rules may be promulgated.

EXPECTED ISSUES FOR 2018

- Doctor of Medical Science licensure
- Physician maintenance of certification
- Coverage of proton therapy
- Medical marijuana
- No fault health care liability system
- Cancer medication therapy coverage parity
- Alternative payment system and episodes of care