



July 2017

Public Act 17-241 — An Act Concerning Fairness in Pharmacy and Pharmacy Benefits Manager Contracts

Connecticut Governor Dannel P. Malloy recently signed into law Public Act 17-241 (PA 17-241), which contains provisions concerning facility fees, the sending and receiving of electronic health records between hospitals and health care providers, and restrictions on contractual provisions between health care providers and insurance companies. Highlights of PA 17-241 are described below.

FACILITY FEES — EFFECTIVE OCTOBER 1, 2017

Existing Connecticut law requires hospitals and health systems that charge a facility fee for certain outpatient services provided at a hospital-based facility to notify patients that they may be charged a facility fee when receiving services at that facility. With respect to outpatient services that use a current procedural terminology evaluation and management code, the current law requires the notice to include the amount of the patient's potential financial liability, taking into account the facility fee to be charged. PA 17-241 states that the notice provided by hospital-based facilities must now include a phone number for a patient to call to receive additional information about the estimated facility fee and overall potential financial liability with respect to the scheduled services.

Current law states that each hospital-based facility must prominently display a written notice stating that (1) the facility is part of a hospital or health system and (2) if the facility charges a facility fee, the patient may be charged a greater amount than if the patient sought treatment at a facility that is not hospital based. PA 17-241 states that this written notice must also include the name of the hospital or health system of which the hospital-based facility is a part.

In addition, the legislation additionally creates a new notice requirement for hospital-based facilities. PA 17-241 obligates hospital-based facilities, at the time of scheduling services for which a facility fee may be charged, to inform patients of the following: (1) the facility is part of a hospital or health system and the name of such hospital or health system; (2) the facility may charge a facility fee in addition to, and separate from, the provider's professional fee; and (3) a telephone number for patients to call for additional information about their potential financial liability.

EHR EXCHANGES BETWEEN HOSPITALS AND PROVIDERS — EFFECTIVE OCTOBER 1, 2017

PA 17-241 makes changes to existing Connecticut law governing hospitals' exchange of electronic health records (EHR) with health care providers (Providers). Current law requires each licensed hospital in Connecticut, to the fullest extent practicable, to use its EHR system to enable bidirectional connectivity and the secure exchange of patient EHRs with Providers that provide health care services to patients whose EHRs are the subject of the exchange. PA 17-241 further states that

hospitals are to exchange EHRs upon requests by patients or their Providers, with the patients' consent and authorization, as long as the exchange is secure, does not violate any state or federal law or regulation, or create an identifiable and legitimate security or privacy risk. The new legislation also provides that a hospital shall notify the requesting patient or Provider if the requested exchange violates a state or federal law or regulation or creates an identifiable and legitimate security or privacy risk.

Furthermore, PA 17-241 clarifies that a hospital's EHR exchange obligations apply to records that include, but are not limited to, laboratory and diagnostic tests, radiological and other diagnostic imaging, continuity of care documents, and admission, discharge, or transfer documents. Existing law states that the hospital EHR exchange obligations are not to be construed to require a hospital to pay for new or additional technology or products if necessary to enable an EHR exchange. PA 17-241 adds to the current law by stating that hospitals are not required to install, construct, or build new or additional technology if necessary for the exchange of EHRs.

CONTRACTS BETWEEN PROVIDERS AND HEALTH CARRIERS — EFFECTIVE OCTOBER 1, 2017

Under existing law, contracts between health care Providers and health carriers cannot include language that prohibits the disclosure of (1) billed or allowed amounts, reimbursement rates, or out-of-pocket costs or (2) any data to the Connecticut all-payer claims database. PA 17-241 expands this prohibition to also apply to contracts between a health carrier and a health care Provider's agent or vendor that the provider retains to provide data analysis related to evaluating or managing health care services provided to the health carrier's plan participants.

CONTRACTS FOR PHARMACY SERVICES — EFFECTIVE OCTOBER 1, 2017

Beginning January 1, 2018, PA 17-241 prohibits pharmacy services contracts between a health carrier or pharmacy benefits manager and a pharmacy or pharmacists from containing a provision that penalizes the pharmacy or pharmacist from disclosing to an individual information concerning (1) prescription medication costs or (2) less expensive alternatives to the medicine prescribed to the individual. The legislation states that prohibited contractual penalties include, but are not limited to, increased utilization review, reduced payments, and other financial disincentives. This legislation also states that a general business practice that violates the foregoing prohibitions constitutes an unfair trade practice under the Connecticut Unfair Trade Practices Act.

DISCLAIMER: The above-described Public Act has not been reviewed by any state or federal court, and if a state or federal court reviews such Public Act, the court's interpretation may differ from what is described herein. The above does not constitute legal advice, and legal counsel should be consulted regarding specific rights and duties.

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