

NORTH CAROLINA ASHRM
LEGISLATIVE COMMITTEE REPORT

Healthcare Legislation Summary/Update

Spring Meeting- May 2016

The General Assembly is scheduled to reconvene April 25th, 2016 for the legislature's short session.

An update on the status of various healthcare-related bills pending in the General Assembly is as follows:

2015 Pending Legislation of interest to Healthcare

Senate Bill 695 – Modernize Nursing Practice Act Senate Bill 695 would impact all levels of nursing, but includes a particularly important update for the ways Advanced Practice Nurses (APRNs) are regulated. APRNs would no longer be subject to costly and unnecessary physician supervision requirements. It is an improvement that has been touted by healthcare experts across the country for a long time, with many states already moving to make these changes. APRNs could be providing healthcare to right now to many areas of our state that have limited access to care. The positive impact of this bill would go a long way in helping solve the access to care problem here in NC, while helping keep rising healthcare costs in check by also reducing regulatory burdens. *Update: 02/09/16 - Dr. Chris Conover presented a report to the Joint Legislative Oversight Committee on Health and Human Services. His presentation, "Economic Benefits of Less Restrictive Regulation of Advanced Practice Registered Nurses in North Carolina." His report summarizes the evidence regarding the impact of APRNs on the safety and quality of medical care, as well as their impact on health costs and resource use. 03/08/16 - Committee held a follow-up point/counterpoint session with APRN leaders and opponents of the bill from the North Carolina Medical Society. Senator Ralph Hise (R-Mitchell) has requested the Joint Committee recommend the Modernize Nursing Practice Act to the full legislature.*

➤ **Senate Bill 157 -- Enhance Patient Safety in Operating Room Requires** at least one circulating nurse to be present in each operating room for the duration of each surgical procedure. *Update: Filed 3/3/1 and Passed First Reading 3/4/15. Was sent to Committee on Rules and Operations of the state but was withdrawn and Re-referred to Committee on Health Care 4/16/15.*

➤ **House Bill 119: PED RECS/Publicly Funded Substance Abuse Services.**

This language, redirecting funding for the state's Alcohol and Drug Abuse Treatment Centers (ADATCs) to the LME/MCOs over a three-year period beginning in 2016, was also transferred to the budget.

➤ **House Bill 286 - Dental Hygienists/Intraoral Local Anesthetics.**

This bill would authorize the Dental Board to certify dental hygienists who have been properly trained to administer local anesthetics under the direct supervision of a licensed dentist.

➤ **House Bill 306 – NC Cancer Treatment Fairness Act**

This is an oral chemotherapy parity bill that seeks to prohibit insurance companies from requiring prior authorizations for oral chemotherapy drugs and would require that they reimburse for these drugs no differently than the intravenous counterpart.

➤ **House Bill 429 - Amend Med. Mal. Health Care Provider Defin.**

This bill seeks to add emergency response personnel to the definition of providers protected under the medical malpractice laws.

➤ **House Bill 683 – Occup. Therapy/Choice of Provider.**

Another insurance mandate, this bill would require health benefits plans to give patients a choice in occupational therapists.

➤ **House Bill 746 – LME/MCO Board Amendments.**

Authorizes large, multi-county LME/MCOs to develop an alternative board appointment process if two-thirds of the counties in the catchment area and the Secretary of DHHS approve.

➤ **Senate Bill 371 – LME/MCO Claims Reporting/Mental Health Amends.**

This bill would extend a pilot program permitting residential treatment facilities for children with mental illness to use electronic supervision during sleeping hours. The language in this bill was added to SB 371, which is also eligible in the short session.

➤ **House Bill 809 – Third Party Premium Payments.**

Under this bill, insurance companies would have to accept premium payments paid from or pursuant to a grant from the Ryan White HIV/AIDs program, any native American tribe, the state or federal governments, or the American Kidney Funds. Insurance companies would NOT have to accept third party premium payments from any healthcare provider.

➤ **House Bill 847 – Parental Rights and Med. Treatment of Minors.**

If a parent or guardian follows the advice of a licensed provider on a course of medical or mental health treatment, it shall not give rise to an obligation to report it as abuse or neglect, and providers shall not make such a report.

➤ **House Bill 880 - Detain Respondents for First Examinations.**

Would authorize hospital company police to use necessary force to keep an individual temporarily detained for a behavioral health examination at the facility and to enter into immediate and continuous pursuit, should the person elope. These provisions are currently in effect in Cumberland and Wilkes counties.

➤ **House Bill 923 - Behavioral Health Partnership Pilot Program.**

This language regarding subsidized development of rural psychiatric inpatient capacity was transferred to the budget.

➤ **House Bill 925 – Require Hospitals to Offer Influenza Vaccination.**

Unless medically contraindicated, this bill would require hospitals to offer the influenza vaccine to all patients over the age of 65 prior to their being discharged from an inpatient unit.

➤ **Senate Bill 598 – Substance-Exposed Newborns Protection Plans.**

This bill would direct DHHS to develop rules pertaining to the involvement of County Departments of Social Services regarding protection plans and family services agreements in the case of a substance-exposed newborn.

IS YOUR MEDICAL REVIEW COMMITTEE LEGIT?

*A recent decision from the North Carolina Court of Appeals reinforced the statutory protection against disclosure during litigation of the proceedings of, records and material produced by, and information considered by a hospital's credentials committee. But to evoke that protection successfully, the hospital has the burden of showing that (1) the credentials committee was established by the medical staff or hospital's governing board (2) "for the purpose of evaluating the quality, cost of, or necessity for hospitalization or health care, including medical staff credentialing" and (3) that the information for which protection is sought were, in fact, records of the committee's proceedings or records considered or produced by the credentials committee. The defendants in **Estate of Ray v. Forgy and Grace Health Care System, Inc. et al, COA15-236**, Filed 16 February 2016, were able to do just that. It was not an easy task. In fact, the trial court, sitting in Burke County, found that the defendants had not carried that burden completely and ordered the production of 161 of the 330 items the hospital had listed in a privilege log and provided for **in camera** inspection by the court. The Court of Appeals reversed, finding that the affidavit submitted by the hospital's director of medical staff services was sufficient to establish (1) that the credentials committee qualified as a "medical review committee," i.e., a committee established by the medical staff or hospital's governing board "for the purpose of evaluating the quality, cost of, or necessity for hospitalization or health care, including medical staff credentialing"; (2) that the subject documents contained the 'records and materials produced by and/or considered by the committee; and (3) that the privilege log -- which included a description of each document, the author or source of each document, the date of the document, and the recipient of the document -- established that the subject documents were, indeed, records and materials either produced or considered by the committee.*

Lessons from this case: Careful attention to the formalities by which hospitals create medical review committees, including credentials committees, and the procedures by which those committees conduct their investigations or proceedings continues to be required. This attention includes the creation and maintenance of an accurate record of the materials considered or produced by an appropriately established medical review committee. Experienced plaintiffs' attorneys will persist in seeking disclosure of information hospitals believe are subject to protection but which may be vulnerable to disclosure if the statutory formulary is not followed. Attorneys representing hospitals learned that lesson last year in the Supreme Court's decision in **Hammond v. Saini**. At issue in **Hammond** was whether a root cause analysis report and other materials reviewed or produced by the hospital's Root Cause Analysis Team investigating an operating room fire were discoverable. The critical language **Hammond** opinion was:

The party asserting the privilege has the burden to demonstrate each of its essential elements and cannot meet this burden by mere conclusory assertions.... [T]o establish the applicability of the definition in subdivision (c), the evidence must set forth either how the committee was "created" or how the "written procedures" it "operat[es] under" were "adopted."

The Supreme Court in **Hammond**, as had the Court of Appeals and the trial court in Cumberland County, found that the hospital had not carried that burden and confirmed the trial court's order for the hospital to produce all of the information it obviously believed would not be disclosed. The Court of Appeals in **Ray v. Forgy and Grace Hospital** found **Hammond** distinguishable. We are continuing to assist hospital clients and carriers in a proactive examination of the formalities by which hospitals create medical review committees and the procedures by which those committees conduct their investigations. It's better to conduct that examination before getting served with discovery requests in an active lawsuit.

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Court Bolsters Strength of Medical Review Privilege – Liz Hendrick <http://www.ncapb.com/2016/02/17court-bolsters-strength-of-medical-review-privilege/>

This article highlights the difficulty plaintiff's face when asserting claims against hospitals or other medical providers alleging the facility was negligent in allowing the provider the privilege of practicing at the hospital. In **Estate of Ray vs. Forgy (Ray IV)**, the Court of Appeals reversed a trial court's order for the hospital to produce documents related to the defendant doctor and its credentialing process, on the ground that the documents are protected by medical review privilege.

Note: The observations set out in this report are meant for general educational purposes and not intended as legal advice. We recommend ASHRM members and their providers work with their attorneys to properly establish and maintain their medical review and quality assurance committees.

Respectfully submitted,

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