NH LEGAL UPDATE

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September 8, 2021



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Tenacity, Creativity and Results are the three words that best describe Shaheen & Gordon's approach to addressing complex legal issues. Our health care team closely monitors the rapidly changing legal environment so that our clients are prepared to meet the challenges of today as well as tomorrow. Relying on a wealth of experience, we offer practical advice and assist in implementing recommendations tailored specifically to meet the needs of both large and small health care clients.

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## FEDERAL DEVELOPMENTS

### *U.S. Supreme Court Finds Plaintiffs in Latest ACA Challenge Lacked Standing*

On June 17, the U.S. Supreme Court issued an opinion in the latest challenge to the Affordable Care Act ("ACA") from Republican-led states and individual plaintiffs. The Court held that the plaintiffs—thirteen states and two individuals—lacked standing to challenge the ACA's minimum essential coverage provision because "they have not shown a past or future injury fairly traceable to defendants' conduct enforcing the specific statutory provision they attack as unconstitutional." The plaintiffs had initially challenged the individual mandate as unconstitutional following action by Congress during the Trump presidency to reduce the penalty for failing to maintain minimum essential coverage to $0. Because the individual mandate had previously been upheld as a valid use of Congress's taxing authority, the plaintiffs argued that the reduction of the penalty to $0 removed this justification and rendered the individual mandate unconstitutional as exceeding Congress's authority.

The District Court determined that the individual plaintiffs had standing. It also found the individual mandate both unconstitutional and not severable from the rest of the Act. The Fifth Circuit agreed as to the existence of standing and the unconstitutionality of the individual mandate, but concluded that the District Court's severability analysis provided insufficient justification to strike down the entire Act.

In this latest decision, the Supreme Court, in a 7-2 decision with Justices Alito and Gorsuch dissenting, disagreed with both the District Court and the Fifth Circuit that the plaintiffs had standing

to challenge the individual mandate. The plaintiffs had alleged several forms of harm: the individual plaintiffs alleged increased financial costs of having to carry minimum essential coverage as a result of the individual mandate; the states alleged increased costs as a result of an increase of beneficiaries enrolling in state Medicaid programs, as well as increased administrative costs related to the individual mandate. The Court found that the plaintiffs "failed to show how that alleged harm is traceable to the Government's actual or possible action in enforcing [the individual mandate]." Because the enforcement mechanism available to the government was the penalty which has been reduced to $0, the individual mandate is unenforceable and plaintiffs cannot show that any alleged damages are a result of the government's real or potential enforcement of the individual mandate.

The full opinion in *California v. Texas*, No. 19–840 (U.S. June 17, 2021) is available at: https://www.supremecourt.gov/opinions/20pdf/19-840_6jfm.pdf.

***U.S. Supreme Court Declines to Review Ruling Upholding Expansion of Site-Neutral Payment Policy to Grandfathered Off-Campus PBDs***

On June 28, the U.S. Supreme Court declined to accept a challenge from the American Hospital Association and other hospital groups to the Centers for Medicare & Medicaid Services' ("CMS") reduction of payment rates for certain services provided at off-campus provider-based departments ("PBDs") to the same rate that is paid for services provided in physician offices. The Court's decision essentially ends a years-long battle concerning these payment reductions.

Section 603 of the Balanced Budget Act of 2015 ("BBA") established a site-neutral payment policy for newly acquired, off-campus PBDs after November 2, 2015, but allowed hospital PBDs that were already billing under the Outpatient Prospective Payment System ("OPPS") at the time of the BBA's enactment to continue to do so. However, in November 2018 CMS issued a final rule that applied the site-neutral payment policy to grandfathered, off-campus PBDs for evaluation and management services, notwithstanding the fact that these facilities were exempted from the payment reduction in the BBA.

The U.S. District Court for the District of Columbia sided with the plaintiffs, holding that "CMS was not authorized to ignore the statutory process for setting payment rates in the OPPS and to lower payments only for certain services performed by certain providers." The D.C. Circuit reversed, finding that the BBA did not "unambiguously forbid" the agency from reducing OPPS reimbursement for a specific service in a non-budget neutral manner as a "method for controlling unnecessary increases in the volume of" the service.

The District Court's decision in *American Hosp. Ass'n v. Azar*, No. 18-2841 (RMC) (D.D.C. Sept. 17, 2019). is available at: https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2018cv2841-31.

The D.C. Circuit's decision in *American Hosp. Ass'n v. Azar*, No. 19-5352 (D.C. Cir. July 17, 2020) is available at: https://www.cadc.uscourts.gov/internet/opinions.nsf/E27BC5B064ED8035852585A80052C843/$file/19-5352-1852218.pdf.

***Supreme Court Agrees to Review Medicare Reimbursement Cuts for 340B Drugs***

On July 2, the U.S. Supreme Court granted a petition to review a lower court's decision upholding cuts to Medicare reimbursement for 340B drugs under the Outpatient Prospective Payment System ("OPPS"). Prior to 2018, Medicare reimbursed Part B drugs purchased at a discount through the 340B Program at a rate equal to the average sales price ("ASP") plus 6%. As a result of OPPS final rules in 2018 and 2019, the Centers for Medicare & Medicaid Services ("CMS") reduced the reimbursement rate to ASP minus 22.5%.

The American Hospital Association and other plaintiffs challenged the cut in reimbursement, resulting in two District Court decisions holding that the cuts were unlawful because they exceeded CMS' authority to reduce reimbursement rates. On July 31, 2020, the Court of Appeals for the D.C. Circuit reversed the lower court's rulings and held that CMS does have authority to adjust the 340B reimbursement in the way that it did.

In granting the petition for review to determine whether CMS has authority to reduce the reimbursement rate, the Supreme Court also asked the parties to brief a secondary issue of whether the challenge to, and judicial review of, the rate cuts is precluded by a section of the Medicare statute that prohibits judicial review of certain CMS decisions.

The D.C. Circuit's decision in *American Hosp. Ass'n v. Azar*, No. 19-5048 (D.C. Cir. July 31, 2020) is available at: https://www.cadc.uscourts.gov/internet/opinions.nsf/B8E3F76510742B95852585B600531146/$file/19-5048-1854504.pdf.

The plaintiffs' petition to the U.S. Supreme Court is available at: https://www.aha.org/system/files/media/file/2021/02/No__PetitionForAWritOfCertiorari.pdf.

***CMS Issues 2022 Physician Fee Schedule Proposed Rule***

On July 13, the Centers for Medicare & Medicaid Services ("CMS") issued the Physician Fee Schedule Proposed Rule which includes certain proposed changes and updates to the Physician Fee Schedule. The Proposed Rule includes proposed a CY 2022 Physician Conversion Factor of $33.5848, which is a 3.75% reduction from the 2021 Physician Conversion Factor of $34.8931. The reduction results from the expiration of the 3.75% increase for services furnished in CY 2021, as provided in the Consolidated Appropriations Act of 2021 ("CAA") to provide relief for physicians during the COVID-19 public health emergency ("PHE").

The Proposed Rule includes a new proposed regulation to replace CMS' recently-withdrawn guidance on split/shared billing for evaluation and management ("E/M") visits. If finalized, the new regulations would specify the requirements that must be met in order for a physician or non-physician practitioner ("NPP") to bill a split/shared visit in a hospital, skilled nursing facility ("SNF") or other facility setting. The Proposed Rule would expand the clinical scenarios under which a healthcare professional can bill for services performed in part by another practitioner but would also impose restrictions on which performing practitioners can bill for the split/shared visit. The proposed regulations would also permit physicians and NPPs to bill for split/shared visits for both new and established patients, critical care services and certain E/M visits in a SNF, whereas the prior guidance

limited such billing to only established patients. The regulations would also define "split (or shared) visit" as E/M visits performed in part by a physician and NPP in institutional settings for which "incident to" payment is not available. This is intended to distinguish between the policy applicable to services furnished "incident to" the professional services of a physician in a physician office setting and the policy applicable to services furnished in a facility setting, i.e., split/shared billing is appropriate for institutional visits, whereas incident to is appropriate for non-institutional visits. Additionally, CMS is proposing to establish which of the physician or NPP performing a split/shared visit can bill Medicare for the visit. Historically, in determining whether a physician or an NPP may bill for a split/shared visit, either the physician or NPP could bill for the service so long as the billing practitioner performed a "substantive portion" of the visit. In the Proposed Rule, CMS proposed to codify this policy by utilizing time—as opposed to medical decision-making or a key component of the E/M visit—as the key factor in determining whether the physician or the NPP performed the substantive portion of the visit. CMS would further limit the billing practitioner to the individual who performed more than 50% of the visit. CMS is also proposing a list of activities that may count toward the total time of the E/M visit for purposes of determining the provider who performed the substantive portion of the visit. Under the Proposed Rule, documentation in the medical record would need to identify both professionals who performed the visit and the individual who performed the substantive portion (and bills for the visit) would need to sign and date the medical record.

Another significant change in the Proposed Rule concerns reimbursement for telehealth services. The Proposed Rule would allow certain services that have been added to the Medicare telehealth list during the COVID-19 PHE to remain on the list to the end of December 31, 2023, so that there is a glide path to evaluate whether the services should be permanently added to the telehealth list following the PHE. The Proposed Rule includes the following additional proposed changes to telehealth reimbursement:

- Requiring an in-person, non-telehealth service be provided by the physician or practitioner furnishing mental health telehealth services within six months prior to the initial telehealth service, and at least once every six months thereafter.

- Amending the current regulatory requirement for interactive telecommunications systems to include audio-only communication technology when used for telehealth services for the diagnosis, evaluation, or treatment of mental health disorders furnished to established patients in their homes.

- Limiting the use of an audio-only interactive telecommunications system to mental health services furnished by practitioners who have the capability to furnish two-way, audio/video communications, but where the beneficiary is not capable of using, or does not consent to, the use of two-way, audio/video technology.

- Requiring use of a new modifier for services furnished using audio-only communications, which would serve to certify that the practitioner had the capability to provide two-way, audio/video technology, but instead, used audio-only technology due to beneficiary choice or limitations.

Comments on the Proposed Rule must be received by CMS on or before October 5.

The Proposed Rule is available at: https://www.govinfo.gov/content/pkg/FR-2020-08-17/pdf/2020-17127.pdf.

***HHS and DOJ Issue Joint Guidance on "Long COVID" and Disability Rights Under the ADA, Section 504, and Section 1557***

On July 26, the U.S. Department of Health and Human Services ("HHS") and the U.S. Department of Justice ("DOJ") issued "Guidance on 'Long COVID' as a Disability Under the ADA, Section 504, and Section 1557" ("Joint Guidance"). The Joint Guidance confirms that "long COVID"—defined as experiencing a range of new or ongoing symptoms that can last weeks or months after infection with the virus that causes COVID-19—can be a disability under Titles II (state and local government) and III (public accommodations) of the Americans with Disabilities Act ("ADA"), Section 504 of the Rehabilitation Act of 1973 ("Section 504"), and Section 1557 of the Patient Protection and Affordable Care Act ("Section 1557"), if it substantially limits one or more major life activities. According to the Joint Guidance, long Covid can be a physical or mental impairment, although it is not necessarily always a disability, and an individualized assessment is necessary to determine whether a person's long COVID condition or any of its symptoms substantially limits a major life activity. The Joint Guidance confirms that people whose long COVID qualifies as a disability are entitled to the same protections from discrimination as any other person with a disability under the ADA, Section 504, and Section 1557, including full and equal opportunities to participate in and enjoy all aspects of civic and commercial life.

The Joint Guidance is available at: https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/guidance-long-covid-disability/index.html.

***CMS Plans to Rescind Rule Tying Medicare Drug Prices to International Benchmarks***

On August 10, the Centers for Medicare & Medicaid Services ("CMS") published a proposed rule that would rescind the Most Favored Nation ("MFN") Model interim final rule with comment period that was published on November 27, 2020. The November 2020 interim final rule established a 7-year nationwide, mandatory MFN Model, with the model performance period beginning on January 1, 2021. The MFN Model was intended to test an alternative way for Medicare to pay for certain Medicare Part B single source drugs and biologicals (including biosimilar biologicals) that was based on the lowest price that drug manufacturers receive in other similar countries. In December 2020, while the comment period was open, four lawsuits were filed related to CMS's waivers of proposed rulemaking and delay in effective date as well as other aspects of the MFN Model and the November 2020 interim final rule; the lawsuits resulted in a nationwide preliminary injunction of the start date of the MFN Model. In the meantime, CMS received 1,166 comments on the interim final rule, nearly all of which expressed concern with the idea of starting the MFN Model with so little notice. In light of the fact that the nationwide preliminary injunction precluded implementation of the MFN Model on January 1, 2021, that multiple courts found procedural issues with the November 2020 interim final rule, and that stakeholders expressed concern about the model start date, CMS is proposing to rescind regulations added by the November 2020 interim final rule and remove the associated regulatory text at 42 CFR part 513.

Comments on the Proposed Rule must be received on or before October 12.

The Proposed Rule is available at: https://www.govinfo.gov/content/pkg/FR-2021-08-10/pdf/2021-16886.pdf

## STATE DEVELOPMENTS

### *N.H. Home Care Company Owner Pleads Guilty to Medicaid Fraud, Agrees to Pay $1,000,000 Restitution*

On July 13, the N.H. Department of Justice ("NHDOJ") announced that Richard Wennerberg, age 72, of Grantham, pleaded guilty and was sentenced to two counts of class B felony Medicaid fraud.

Wennerberg is the owner of Alternative Care @ Home, LLC ("Alternative Care"), a company licensed to provide in-home personal care services to Medicaid beneficiaries. Between January 2015 and December 2018, Wennerberg submitted claims for reimbursement for in-home, personal care services that were never actually provided, and which included periods when Alternative Care's clients were not at home, but instead were in hospitals or nursing homes. Additionally, from as early as December 2015, Wennerberg billed Medicaid up to the maximum hours allowed under certain clients' service authorizations, knowing that his employees did not actually provide care for all of those hours, and would use the difference to reimburse some caregivers for mileage.

The Merrimack County Superior Court sentenced Wennerberg to serve twelve months in the House of Corrections with a recommendation for administrative home confinement and ordered Wennerberg to pay $1,000,000 in restitution. Wennerberg also entered a plea of guilty to a third charge of Medicaid fraud against his company, which excludes Alternative Care @ Home, LLC from future participation in federal health care programs.

NHDOJ's press release on the guilty plea is available at: https://www.doj.nh.gov/news/2021/20210713-formella-pleads-guilty.htm

### *Governor Sununu Signs Medical Freedom Act Into Law*

On July 23, Governor Sununu signed House Bill 220—known as the Medical Freedom Act—into law. The legislation affirms that "[e]very person has the natural essential, and inherent right to bodily integrity, free from any threat or compulsion by government to accept an immunization," and prohibits the state from requiring that individuals receive the COVID-19 vaccination "in order to secure, receive, or access any public facility, any public benefit, or any public service from the state of New Hampshire, or any political subdivision thereof." The new law prevents the state from imposing a COVID-19 vaccine mandate in order to access state facilities and programs.

The statutory language confirms that the prohibition does not: limit the ability for DHHS to order other measures to address communicable disease; supersede current vaccination requirements for admission to public schools or day cares; supersede the involuntary emergency admission process; limit treatment authorized by guardians and other surrogate decisionmakers; or apply to county nursing homes, New Hampshire Hospital, or any other medical facility or provider operated by

the state or any political subdivision. The law also allows for mandatory vaccination in prisons and jails when required to address a "direct threat" to health and safety.

In addition to prohibiting a state COVID-19 mandate, the law also established a committee to examine the policy of medical intervention including immunizations. The committee shall be made up of two senators and four representatives, with members split evenly between the two parties. The committee is tasked with reporting its findings and any recommendations for proposed legislation on or before December 1, 2021. As of publication, there have been no meetings scheduled.

The bill passed in both legislative houses on party lines, with all Republicans voting in favor and all Democrats opposed.

Additional information about this law can be found at: http://gencourt.state.nh.us/bill_status/Results.aspx?q=1&txtbillnumber=hb%20220&txtsessionyear=2021.

***NH Legislature Limits DHHS Emergency Powers***

On August 11, House Bill 187 relative to the emergency powers of the Commissioner of Health and Human Services became law without the Governor's signature. The law makes several changes to the authority of the Department of Health and Human Services ("DHHS") during a public health emergency, including: confirming that DHHS does not have the power to restrict the ability of a licensed practitioner to prescribe; requiring the Commissioner of DHHS to develop a plan for the distribution of any vaccine or treatment that becomes available; requiring DHHS to notify various legislative personnel of the impending issuance of emergency orders; and providing that the legislature may terminate an emergency order issued by DHHS through majority vote.

In addition to the above changes, the law also adds authority to the Ethics Oversight Advisory Committee to oversee and review emergency orders issued by DHHS during a public health emergency.

House Bill 187 passed both legislative chambers with significant support from both parties, including a 333-6 vote in favor of passage in the House of Representatives.

Additional information about this law can be found at: http://gencourt.state.nh.us/bill_status/Results.aspx?q=1&txtbillnumber=hb%20187&txtsessionyear=2021

**State Legislative Update**

As in years past, the General Court is expected to hold a session day, or days, sometime in September to take up votes to override Governor Sununu's vetoes. No date has yet been announced for such voting.

**HB89 Title: adding qualifying medical conditions to the therapeutic use of cannabis law.**

This bill adds moderate to severe insomnia to the definition of "qualifying medical condition" for the purposes of the use of cannabis for therapeutic purposes law. House voted Ought to Pass with Amendment 4/7. Senate voted Out to Pass 4/29. **Governed signed bill into law 5/25.**

**HB94 Title: relative to licensure renewal dates for certain governing boards under the office of professional licensure and certification**

This bill revises the procedure and timeframe for license renewals of allied health professionals, body art practitioners, podiatrists, chiropractors, acupuncturists, and veterinarians. Passed the House 2/24. Passed the Senate 3/25. **Governor signed bill into law 4/23.**

**HB120 Title: relative to administration of psychotropic medications to children in foster care.**

This bill requires DHHS to provide medication monitoring for children in foster care and to ensure that the use of medication restraint conforms with the limitations of RSA 126-U. House voted Ought to Pass with Amendment 4/7. Senate voted Ought to Pass with Amendment 4/29. House concurred with Senate Amendment 6/10. **Governor signed bill into law 8/10.**

**HB131 Title: relative to reporting of health care associated infections.**

This bill clarifies the information that hospitals must report regarding infections. House voted Ought to Pass 4/8. Senate voted Ought to Pass 5/20. **Governor signed bill into law 6/18.**

**HB143 Title: relative to an electronic prescription drug program.**

This bill requires electronic prescribing for controlled drugs under certain circumstances. House voted Ought to Pass with Amendment 4/8. Amendment adds additional exceptions to the electronic prescribing requirement. Senate voted Ought to Pass with Amendment. Senate amendment establishes under the board of mental health practice licenses and requirements for licensure and conditional licensure for licensed social workers and licensed social work associates. House concurred with Senate Amendment 6/10. **Governor signed bill into law 8/10.**

**HB146 Title: requiring health care providers to furnish upon request a list of ingredients contained in an injectable medication that is recommended or administered.**

This bill requires health care providers to furnish upon request a list of ingredients contained in any injectable medication that is recommended or administered. House voted Ought to Pass with Amendment 4/7. Amendment adds definitions. Introduced in Senate and referred to HHS Committee 4/7. Public hearing 4/28. Rereferred to committee 5/20.

**HB163 Title: relative to cannabis use during pregnancy.**

This bill requires alternative treatment centers to prepare information regarding the risk of cannabis use during pregnancy. The bill also requires the commissioner of the department of health and human services to prepare a brochure relative to the risk of cannabis use during pregnancy and while breastfeeding. House voted Ought to Pass with Amendment 4/8. Amendment makes minor changes, including adding references to Therapeutic Cannabis Medical Oversight Board. Senate voted Ought to Pass 4/29. **Governor signed bill into law 5/25.**

**HB187 Title: relative to the emergency powers of the commissioner of health and human services and relative to the membership of the oversight committee on health and human services.**

This bill makes various changes to the powers of the commissioner of the department of health and human services during a public health emergency; authorizes the joint legislative oversight committee on health and human services to review, and rescind by a 2/3 vote, emergency orders issued by the commissioner; gives a person subject to a treatment order for a communicable disease a right to a hearing on the order; and amends the membership and duties of the ethics oversight advisory committee. The bill also amends the house membership on the health and human services oversight committee. House voted Ought to Pass with Amendment 4/7. Senate voted Ought to Pass with Amendment 5/20. House non-concurs with Senate amendment and requests Committee of Conference 6/4. **Bill codified into law without Governor's signature 8/11.**

**HB220 Title: establishing the medical freedom act.**

This bill establishes the policy for medical freedom in immunizations for communicable diseases. Introduced in the House. House voted Ought to Pass with Amendment 4/7. Amendment adds exceptions for certain existing statutory authorities and mandates. Senate voted Ought to Pass with Amendment 5/27. Senate amendment adds additional exceptions and creates a study commission. House concurred with Senate amendment 6/10. **Governor signed bill into law 7/23.**

**HB349 Title: relative to certification requirements for school nurses.**

This bill removes the requirement for school nurses to be certified by the state board of education. House voted Ought to Pass 2/25. Introduced in the Senate and referred to Education Committee 3/4. Public hearing 3/23. Rereferred to Committee 5/20.

**HB350 Title: permitting qualifying patients and designated caregivers to cultivate cannabis for therapeutic use.**

This bill permits qualifying patients and designated caregivers to cultivate cannabis for therapeutic use. House voted Ought to Pass 2/24. Introduced in the Senate and referred to HHS Committee 3/4. Public hearing 3/17. Laid on table 5/13.

**HB369 Title: relative to the use of physical agent modalities by occupational therapists.**

This bill limits the use of ultrasound and electrical physical agent modalities by occupational therapists and occupational therapy assistants. This bill is a request of the Office of Professional Licensure and Certification. House voted Ought to Pass with Amendment 4/7. Amendment removes restrictions on the part of the body where occupational therapists and occupational therapy assistants may use ultrasound or electrical agent modality devices. Senate voted Ought to Pass 5/6. **Governor signed bill into law 5/17.**

**HB572 Title: relative to pharmacist administration of vaccines and allowing a licensed advanced pharmacy technician to administer vaccines.**

This bill extends authority for pharmacist administration of vaccines to include vaccines approved by the Centers for Disease Control (CDC) and allows licensed advanced pharmacy technicians to administer vaccines. House voted Ought to Pass with Amendment 4/7. Amended bill allows licensed advanced pharmacy technicians to administer vaccines, combines the pharmacist administration of vaccines authority into one section, provides for recording vaccinations in the state vaccine registry with consent, and requires the report of any adverse reactions. Senate voted Ought to Pass with Amendment 5/20. House concurred with Senate amendment 6/10. **Governor signed bill into law 8/10.**

**HB582 Title: relative to prescriptions for the treatment of attention deficit disorder or attention deficit disorder with hyperactivity.**

This bill allows for certain prescriptions for treatment of attention deficit disorder or attention deficit disorder with hyperactivity to be for 90 days. House voted Ought to Pass with Amendment 3/2. Amendment removes 60-day supply limitation when prescribed for narcolepsy, confirming availability of the same 90-day supply. Senate voted Ought to Pass 4/29. **Governor signed bill into law 5/25.**

**HB600 Title: relative to funding for newborn screening.**

This bill instructs the Commissioner of Health and Human Services on the setting of fees for newborn screening tests. House voted Ought to Pass with Amendment 4/7. Amendment changes effective date from 60 to 120 days after passage. Senate voted Ought to Pass with Amendment 5/20. House

concurred with Senate amendment 6/10. **Governor signed bill into law 7/23.**

**HB605 Title: relative to the therapeutic cannabis program.**

This bill:
I. Adds opioid use disorder as a qualifying medical condition for the purpose of the therapeutic use of cannabis.
II. Amends the definitions of "alternative treatment center" and "therapeutic use" and "visiting qualifying patient" in the therapeutic cannabis statute.
III. Permits out-of-state residents qualified in other jurisdictions to purchase therapeutic cannabis at New Hampshire therapeutic dispensaries.
IV. Requires the department of health and human services to adopt rules regarding an alternative treatment center's verification of a visiting qualifying patient's identification.
House voted Ought to Pass with Amendment 4/8. Senate Voted Ought to Pass with Amendment 5/27. House concurred with Senate amendment 6/10. **Governor signed bill into law 8/10.**

**SB38 Title: relative to the organization of alternative treatment centers.**

This bill permits alternative treatment centers to organize as business corporations and limited liability companies, and provides the procedure for alternative treatment centers organized as voluntary corporations to convert to business corporations or limited liability companies. Senate voted Ought to Pass with Amendment 2/18. Amendment adds a statement of intent to the bill. House voted Ought to Pass 6/3. **Governor vetoed bill 7/15.**

**SB45 Title: relative to the controlled drug prescription health and safety program.**

This bill modifies the administration of the controlled drug prescription health and safety program administered by the office of professional licensure and certification. Senate voted Ought to Pass with Amendment 2/11. House voted Ought to Pass with Amendment 6/3. Senate concurred with House amendment 6/10. **Governor signed bill into law 7/23.**

**SB57 Title: relative to allowing pharmacy technicians and interns to remotely perform non-dispensing tasks**

This bill allows pharmacy technicians and interns to remotely perform non-dispensing tasks. Senate voted Ought to Pass with Amendment 3/4. Amendment simplifies the changes to existing statutory provisions. House voted Ought to Pass 6/3. **Governor signed bill into law 6/11.**

**SB58 Title: relative to the administration of occupational regulation by the office of professional licensure and certification.**

This bill makes changes to the statutory provisions governing the regulatory boards and commissions for technical professions and health professions in order to conform to oversight and administration by the office of professional licensure and regulation. Senate voted Ought to Pass with Amendment 3/11. Amendment makes several changes to the bill, including adding a criminal background check for electrician license applicants. House voted Ought to Pass with Amendment 6/3. Senate concurred with House amendment 6/10. **Governor signed bill into law 8/10.**

**SB70 Title: relative to insurance coverage for emergency behavioral health services for children and young adults.**

This bill requires commercial insurance carriers to cover the initial assessment and intervention without prior authorization for children in psychiatric distress. This bill also delays any prior authorization requirements on longer term treatment for children in psychiatric distress for 72 hours. Introduced in the Senate and referred to Commerce Committee 1/19. Public Hearing 2/8. Rereferred to Committee 3/11.

**SB74 Title: relative to advance directives for health care decisions.**

This bill:
I. Defines "attending practitioner" and "POLST."
II. Redefines "near death" as "actively dying."
III. Further defines the role of a surrogate.
IV. Repeals the applicability of certain advanced directives.
Senate voted Ought to Pass with Amendment 4/1. House voted Ought to Pass with Amendment 6/3. Senate concurred with House amendment 6/10. **Governor signed bill into law 7/30.**

**SB97 Title: Relative to in-network retail pharmacies.**

This bill prohibits certain acts relative to pharmacy benefits managers. This bill also prohibits certain acts relative to health carriers and in-network retail pharmacies.
Senate voted Ought to Pass with Amendment 2/18. House voted Ought to Pass with Amendment 6/3. Senate concurred with House amendment 6/10. **Governor signed bill into law 7/23.**

**SB121 Title: relative to a state-based health exchange.**

This bill requires the insurance department to examine the implementation of a state health exchange and implement such an exchange upon approval of the joint health care reform oversight committee. Introduced in the Senate and referred to HHS Committee 1/29. Rereferred to Committee 4/1.

**SB123 Title: relative to copayments for COVID-19 testing.**

This bill waives cost-sharing for COVID-19 testing under accident and health insurance policies. Senate voted Ought to Pass with Amendment 3/4. Amendment replaced the entirety of the bill language with a simple prohibition against an employer requiring employees or applicants for employment to pay the cost of a COVID-19 test as a condition of employment. Introduced in House and referred to Labor Committee 3/17. Committee voted Ought to Pass 5/27. Bill laid on table 6/4.

**SB133 Title: adopting omnibus legislation relative to occupational licensure.**

This bill adopts legislation relative to:
I. Licensing places of assembly.
II. Establishing a limited plumbing specialist license.
III. Repealing the emergency medical services personnel licensure interstate compact.
IV. Hearings at the board of nursing.
V. Membership of the professional standards board.
VI. Adopting the Audiology and Speech-Language Pathology Compact and the Occupational Therapy Licensure Compact.
VII. Licensure and regulation of music therapists.
VIII. The authority of the office of professional licensure and certification for administration, rulemaking, and enforcement of investigations, hearings, and appeals.
IX. Skilled professional medical personnel.
X. Temporary licensure of certain licensed nursing assistants.
XI. The revocation of licensure for licensed emergency medical service units and emergency medical service vehicles.
XII. Schools for barbering, cosmetology, and esthetics.
XIII. Telemedicine provided by out of state psychologists.
XIV. Sanitary production and distribution of food.
Senate voted Ought to Pass 4/1. House voted Ought to Pass with Amendment 6/3. Senate voted nonconcurrence with House Amendment 6/10. Bill sent to committee of conference 6/11. Conference Committee Report adopted 6/24. **Governor signed bill into law 8/10.**

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Kara J. Dowal and Alexander W. Campbell contributed to this month's Legal Update.

## BIOS

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Kara Dowal, Chair of our Health Care Practice Group, practices health care law and corporate business law at Shaheen & Gordon, P.A. Kara works with health care providers on a variety of legal issues, including corporate governance, contracting, employment, regulatory compliance, and provider transition matters.

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