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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.*

**FEDERAL DEVELOPMENTS*****DOJ Files Lawsuit Against Tennessee Pharmacies for Unlawfully Dispensing Opioids***

On February 8, the Department of Justice ("DOJ") announced their previously-sealed lawsuit in Tennessee seeking to stop two pharmacies, their owner, and three pharmacists from dispensing controlled substance medications. The complaint alleges that the pharmacies and pharmacists filled numerous prescriptions for controlled substances outside the usual course of professional practice, and in violation of the pharmacists' corresponding responsibility to ensure that prescriptions were written for a legitimate medical purpose, by routinely dispensing controlled substances while ignoring numerous "red flags" or warning signs of diversion and abuse, such as unusually high dosages of oxycodone and other opioids, prescriptions for opioids and other controlled substances in dangerous combinations, and patients travelling extremely long distances to get and fill prescriptions. The complaint further asserts that the pharmacies falsely billed Medicare for illegally-dispensed prescriptions. According to the DOJ's announcement, the court has already granted a temporary restraining order against the pharmacies.

The DOJ's press release announcing the lawsuit is available at: <https://www.justice.gov/opa/pr/justice-department-files-first-its-kind-action-stop-tennessee-pharmacies-unlawful-dispensing>.

***HHS Issues Two Proposed Rules to Encourage Exchange of and Access to Electronic Health Information***

On February 11, the U.S. Department of Health and Human Services issued two proposed rules intended to increase the seamless and secure access, exchange, and use of electronic health information. The two proposed rules were issued by the Centers for Medicare & Medicaid Services ("CMS") and the Office of the National Coordinator for Health Information Technology ("ONC"). CMS' proposed rule includes a number of changes and new initiatives, including: requiring certain payors to implement application programming interfaces ("APIs") to allow patients to access claims and other health information; requiring these same payors to support electronic exchange of data for transitions of patients' care between payors; requiring payors to make their provider networks available to patients through APIs; and amending the Conditions of Participation for hospitals and critical access hospitals to require electronic notifications when a patient is admitted, discharged or transferred. CMS' proposed rule also includes requests for information about how CMS can improve patient identification and safety to encourage better coordination of care and promote wide adoption of interoperable health IT systems for use across health care settings. Comments to this proposed rule are due by May 3.

ONC's proposed rule encourages the adoption of APIs and implements the information blocking provisions of the 21<sup>st</sup> Century Cures Act,

including identifying reasonable and necessary activities that do not constitute information blocking.

HHS' Press Release announcing the two proposed rules is available at:

<https://www.hhs.gov/about/news/2019/02/11/hhs-proposes-new-rules-improve-interopability-electronic-health-information.html>.

CMS' proposed rule is available at: <https://www.govinfo.gov/content/pkg/FR-2019-03-04/pdf/2019-02200.pdf>.

ONC's proposed rule is available at: <https://www.govinfo.gov/content/pkg/FR-2019-03-04/pdf/2019-02224.pdf>.

### ***CMS Announces New Payment Model for Emergency Transportation Services***

On February 14, the Centers for Medicare & Medicaid Services ("CMS") announced a new voluntary payment model for emergency transport services which is intended to better align payment incentives with beneficiaries' care needs by allowing payment for transportation to lower-acuity destinations. Currently, Medicare only pays for emergency ground ambulance services when individuals are transported to hospitals, critical access hospitals, skilled nursing facilities, and dialysis centers. CMS' new Emergency Triage, Treat, and Transport ("ET3") Model will provide payment to participating ambulance suppliers and providers who provide transportation to an alternative destination (such as a primary care provider's office or an urgent care clinic), or who provide treatment in place. The ET3 Model will therefore require ambulance suppliers to incorporate a triage process into their emergency response protocol to determine the most suitable response and transportation destination. The ET3 Model's anticipated start date is January 2020, and it will have a five-year performance period.

Information on the ET3 Model is available at CMS' website: <https://innovation.cms.gov/initiatives/et3/>.

CMS' request for comments on the proposed changes is available at:

<https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/MMS/PC-Currently-Accepting-Comments.html>.

### ***CMS Proposes NCD to Cover Gene Therapy for Cancer Treatment***

On February 15, the Centers for Medicare & Medicaid Services ("CMS") proposed to cover a cancer treatment known as Chimeric Antigen Receptor ("CAR") T-cell Therapy. According to a CMS press release, CAR T-cell Therapy uses a patient's own immune system to fight cancer and is approved by the Food and Drug Administration ("FDA"). The proposed National Coverage Determination ("NCD") would require Medicare to cover the therapy nationwide when offered in a CMS-approved registry or clinical study where patients are monitored at least two years following the treatment. CMS is accepting public comments for 30 days and will issue a final decision no later than 60 days following the conclusion of the 30-day comment period.

The CMS press release may be found here: <https://www.cms.gov/newsroom/press-releases/cms-proposes-coverage-evidence-development-chimeric-antigen-receptor-car-t-cell-therapy>

The proposed NCD may be read here: <https://www.cms.gov/medicare-coverage-database/details/nca-tracking-sheet.aspx?NCAId=291>

***OIG Reports \$84 Million Improperly Paid for SNF Claims***

On February 20, the Department of Health and Human Services Office of Inspector General (“OIG”) released a report on the millions of dollars of improper payments by Medicare to skilled nursing facilities (“SNFs”) for claims that did not satisfy the three-day inpatient hospital stay requirement. The three-day rule requires a three-day consecutive inpatient hospital stay in order for post-hospital extended care services, such as SNF services, to be eligible for Medicare reimbursement. The time period subject to the OIG’s audit covered 2013 through 2015, and the OIG sampled 99 SNF claims in total. Of the 99 claims, 65 did not meet the three-day rule, amounting to \$481,034. Extrapolating from the sample, OIG estimates that \$84 million was improperly paid over the covered time period.

The OIG cited a lack of a coordinated notification mechanism among hospitals, beneficiaries, and SNFs, stating that hospitals did not always provide correct inpatient stay information to SNFs and that SNFs used a combination of inpatient and non-inpatient days when determining whether the rule was met. The OIG also explained that because the Centers for Medicare & Medicaid Services (“CMS”) allowed SNF claims to bypass the Common Working File (“CWF”) qualifying stay edit during the audit period, the SNF claims were not matched with the associated inpatient hospital stays that were less than three days. OIG recommended that CMS should ensure that the CWF qualifying inpatient hospital stay edit for SNF claims be enabled when processing SNF claims; that CMS should require hospitals to provide beneficiaries with a written notification regarding whether their subsequent SNF care qualifies for reimbursement; that CMS require SNFs to obtain written notification from the hospital and retain it as a condition of payment for claims; and that CMS should educate hospitals and SNFs to verify and document the three-day inpatient hospital stay to support a Medicare claim for SNF reimbursement. Although CMS agreed with OIG’s recommendation concerning the CWF qualifying inpatient stay edit and educating hospitals, it did not concur with OIG’s other recommendations.

The OIG’s full report may be read here: <https://oig.hhs.gov/oas/reports/region5/51600043.pdf>

***Urology Group Agrees to \$1.85 Million Settlement of Medicare Overbilling Allegations***

On February 25, the Department of Justice announced a settlement of a whistleblower lawsuit alleging that a urology group violated the False Claims Act by improperly billing Medicare for evaluation and management (“E&M”) services that were not billable separate from other medical procedures performed on the same day. Specifically, the lawsuit alleged that the group improperly used the Modifier 25 billing code to unbundle the E&M services from the other procedures being billed. To resolve the lawsuit, the urology group has agreed to pay \$1.85 million and to enter into a three-year integrity agreement with the Department of Health and Human Services Office of Inspector General.

DOJ’s press release announcing the settlement is available at:

<https://www.justice.gov/opa/pr/skyline-urology-pay-185-million-settle-false-claims-act-allegations-medicare-overbilling>.

***CMS Updates Hospital Quality Data, Requests Comments on Changes to Quality Comparison Methodology***

On February 28, the Centers for Medicare & Medicaid Services (“CMS”) updated hospital performance data available online and announced a solicitation for comments on proposed changes to the Hospital Star Ratings. The updated data includes specific measures of hospitals’ quality of care and the Overall Hospital Star Ratings. The proposed changes to the Hospital Star Ratings include making hospital comparisons more precise and consistent and allowing more direct “like-to-like” comparisons, including by placing hospitals with similar characteristics into “peer groups” for comparison.

Comments on the proposed changes are due March 29.

CMS' press release regarding the updated data and proposed changes is available at:

<https://www.cms.gov/newsroom/press-releases/cms-updates-consumer-resources-comparing-hospital-quality>.

### ***CMS Issues Request for Information on Health Insurance Sales Across State Lines***

On March 6, the Centers for Medicare & Medicaid Services sought input through a Request for Information ("RFI") on eliminating barriers to health insurance issuer's ability to sell individual health insurance across state lines, primarily pursuant to Health Care Choice Compacts. The RFI was issued in connection with Executive Order 13813, "Promoting Healthcare Choice and Competition Across the United States," which directs the Administration, including the Department of Health and Human Services, to facilitate the purchase of health insurance across state lines. In addition to seeking responses to questions regarding the financial impact of selling health insurance across state lines, the RFI requests recommendations on how to operationalize and structure the sale across state lines and input on the advantages and disadvantages of doing so.

The RFI may be read in full here: <https://s3.amazonaws.com/public-inspection.federalregister.gov/2019-04270.pdf>

### ***Verma Remarks on Proposed Changes to Stark Regulations***

On March 4, Centers for Medicare & Medicaid Services ("CMS") Administrator Seema Verma spoke at the Federation of American Hospitals Public Policy Conference and included comments regarding CMS' work on regulatory updates to the Stark regulations. Verma stated that the proposal includes "clarifying the regulatory definitions of volume or value, commercial reasonableness and fair market value; addressing issues such as lack of signature, incorrect dates or other areas of technical noncompliance; and updating the regulation to address a world in which there are cybersecurity and electronic health records requirements."

Administrator Verma's written remarks may be read in full here:

<https://www.cms.gov/newsroom/press-releases/speech-remarks-administrator-seema-verma-federation-american-hospitals-2019-public-policy-conference>

### ***Nursing Home Compare to Receive Updates***

On March 5, the Centers for Medicare & Medicaid Services ("CMS") announced updates to the *Nursing Home Compare* and the *Five Star Quality Rating System*, set to be effective in April 2019. The updates to Nursing Home Compare include revisions to the inspection process, enhancement of new staffing information, and implementation of new quality measures. Nursing Home Compare uses a five-star rating system based on three factors: health inspections; staffing levels; and quality measures. One of the changes effective in April is that if a nursing home reports "no registered nurse onsite" for four or more days in a quarter, the nursing home will be automatically downgraded to one star. CMS is also lifting a "freeze" on health inspection ratings implemented in February 2018 and establishing different quality measures for short-stay and long-stay residents.

The CMS press release on the updates is found here: <https://www.cms.gov/newsroom/press-releases/cms-improving-nursing-home-compare-april-2019>



**STATE DEVELOPMENTS**

**REMINDER:**

- **Annual Reports for New Hampshire business entities are due to the Secretary of State by April 1, 2019.**

***Executive Council Considering Proposals for Medicaid Managed Care Coverage***

On February 20, the Executive Council tabled 3 contracts totaling nearly \$1B for the provision of Medicaid managed care services. Currently two companies, Well Sense Health Plan and NH Healthy Families provide services to the 180,000 people who receive services through the traditional and expanded Medicaid programs. DHHS intends to add a third company, AmeriHealth Caritas New Hampshire of Philadelphia. The Executive Council expressed concerns about AmeriHealth based on the company's prior history of problems managing the program in Iowa. The Executive Council will hold a public hearing on March 11 at 1pm. DHHS had hoped the contracts would be approved on March 13, however that now appears unlikely. Jeffrey Meyers, Commissioner of HHS has indicated that a delay past March 30<sup>th</sup> would jeopardize the ability to implement the program by the July 1, 2019 statutory deadline.

***DHHS Publishes Rules for Health Professionals Survey***

DHHS has published a proposed rule establishing the requirements for the collection of health care provider data regarding the NH primary care workforce that will be used to determine current and future needs. Data will be collected during the license renewal process and will apply to APRNs, physician assistants, physicians, mental health practitioners, and alcohol and drug counselors, who will be required to participate in or opt out of the survey process. A public hearing will be held on March 14, 2019.

A copy of the proposed rule and the details of the hearing may be found at:

<https://www.dhhs.nh.gov/oos/aru/documents/hec801ip.pdf>

**LEGISLATIVE UPDATES (as of March 9, 2019)**

**House Bills**

**HB 113:** An Act relative to qualifications for and exceptions from licensure for mental health practice. This bill allows experience as a master licensed alcohol and drug counselor to qualify as experience for licensure as a clinical social worker or clinical mental health counselor. The bill also clarifies the mental health license exemption for psychotherapy activities and services of psychologists and master licensed alcohol and drug counselors. Introduced and referred to House HHS Committee. Voted Ought to Pass with Amendment by Committee. Amendment adds additional requirements related to the substitution of training hours. House voted Ought to Pass with Amendment. **Referred to Executive Departments and Administration.**

**HB 118:** AN ACT requiring a child's primary health care provider to be notified of a report of suspected abuse or neglect and relative to access to the department of health and human services case record. This bill requires the department of health and human services to notify a child's primary health care provider of a report of suspected abuse or neglect regarding the child. The bill also permits a child's primary health care provider to access the child's case record if such access is necessary to provide treatment or services or to determine the status of a report under investigation by the department. Introduced and referred to House Children and Family Law Committee. **Voted Ought to Pass with Amendment by Committee (15-2). The**

**amended bill directs DHHS to develop a methodology for notifying the child's primary health care providers of a report of abuse and neglect and clarifies immunity and confidentiality requirements in such cases.**

**HB 127:** AN ACT relative to the board of medicine and the medical review subcommittee. This bill clarifies the service of the medical director on the board of medicine and the employment of the medical review subcommittee investigator. **Introduced and referred to House HHS Committee. Voted Ought to Pass with Amendment by Committee. Amendment provides that physician to serve as medical review subcommittee investigator shall be contracted. Voted Ought to Pass with Amendment by the House.**

**HB 179-FN-A:** AN ACT establishing a New Hampshire health access corporation. This bill establishes a New Hampshire health access corporation and health access fund. Introduced and referred to House Commerce Committee. **Voted Inexpedient to Legislate by Committee and House.**

**HB 180:** AN ACT establishing a commission to examine the feasibility of the New England states entering into a compact for a single payer health care program. This bill establishes a commission to examine the feasibility of the New England states entering into a compact for a single payer health care program. Introduced and referred to House Commerce Committee. **Voted Inexpedient to Legislate by Committee and House.**

**HB 200:** AN ACT relative to serologic testing including Lyme disease. This bill requires the commissioner of the department of health and human services to adopt rules clarifying serologic testing for communicable diseases and for Lyme disease. Introduced and referred to House HHS Committee. **Voted Inexpedient to Legislate by Committee and House.**

**HB 227:** AN ACT relative to the length of time an employer may lease an employee through an employee leasing company. This bill limits the length of time that a person may work for an employee leasing company. Introduced and referred to House Labor Committee. **Voted Inexpedient to Legislate by Committee and House.**

**HB 233:** AN ACT relative to the group and individual health insurance market. This bill establishes the provisions of the Patient Protection and Affordable Care Act of 2009, Public Law 111-148, as amended in statute. **Introduced and referred to House Commerce Committee.**

**HB 239:** AN ACT relative to license requirements for certain mental health and drug counselors. This bill reduces the number of hours or work experience required for licensure as a master licensed alcohol and drug counselor, a licensed alcohol and drug counselor, a licensed clinical supervisor, a clinical social worker, and a clinical mental health counselor. **Introduced and referred to House HHS Committee.**

**HB 250:** AN ACT relative to oral prophylaxis for dental patients. This bill allows a dental patient to have an oral prophylaxis performed even if the supervising dentist determines that a dental procedure or surgery is required. Introduced and referred to House HHS Committee. **Bill retained in Committee.**

**HB 277:** AN ACT establishing a commission to study a public option for health insurance. This bill establishes a commission to study a public option program for health insurance in New Hampshire. **Introduced and referred to House Commerce Committee.**

**HB 278:** AN ACT relative to the New Hampshire insurance department's annual hearing requirement. This bill updates the insurance commissioner's annual public hearing requirement relative to premium rates. This bill is a request of the insurance department. Introduced and referred to House Commerce Committee. **Voted Ought to Pass with Amendment by Committee and House. The Amendment changes the report to look at variations in premium rates, rather than only increases.**

**HB 284:** AN ACT relative to biennial controlled substance inventories conducted under the Controlled Drug Act. This bill requires persons required by federal law to conduct biennial controlled substance inventories to conduct them every odd-numbered year. Current law provides specific dates for such inventories. Introduced and referred to House HHS Committee. Voted Ought to Pass with Amendment by Committee. Amendment permits the pharmacy board to enact rules to ensure compliance. **Voted Ought to Pass with Amendment by House.**

**HB 335:** AN ACT relative to therapeutic cannabis dispensary locations. This bill clarifies where a second dispensary may be geographically located for the purposes of the use of cannabis for therapeutic purposes law. Introduced and referred to House HHS Committee. **Voted Ought to Pass by Committee and House.**

**HB 350:** AN ACT relative to licensed prescribers of medical marijuana. This bill adds physician assistants as prescribing providers for purposes of the use of cannabis for therapeutic purposes law. Introduced and referred to House HHS Committee. **Voted Ought to Pass with Amendment by Committee and House. The Amendment requires the physician assistant to have express consent of the supervising physician to prescribe cannabis for therapeutic purposes.**

**HB 359:** AN ACT relative to warning labels on prescription drugs containing opiates. This bill requires any drug which contains an opiate dispensed by a health care provider or pharmacy to have a red cap and a warning label regarding the risks of the drug. Introduced and referred to House Commerce Committee. **Voted Ought to Pass with Amendment by the Committee and House. The Amendment changes the bill to require a red sticker with the word "opioid" on the cap or dispenser rather than requiring a red cap.**

**HB 366:** AN ACT adding opioid addiction, misuse, and abuse to qualifying medical conditions under therapeutic use of cannabis. This bill adds opioid addiction, misuse, and abuse to the qualifying medical conditions under therapeutic use of cannabis. Introduced and referred to House HHS Committee. **Retained in Committee.**

**HB 369-FN:** AN ACT relative to the controlled drug prescription health and safety program. This bill clarifies the rule regarding querying the controlled drug prescription health and safety program when writing an initial opioid prescription for a patient's pain or substance use disorder. Introduced and referred to House HHS Committee. **Voted Ought to Pass by Committee and House.**

**HB 422:** AN ACT relative to certain procedures performed in teaching hospitals. This bill prohibits a physician or surgeon or a student undertaking a course of professional instruction from performing a pelvic examination on an anesthetized or unconscious female patient unless such examination is within the scope of care for the surgical procedure. Introduced and referred to House HHS Committee. **Voted Inexpedient to Legislate by Committee and House.**

**HB 461-FN:** AN ACT adding qualifying medical conditions to the therapeutic use of cannabis law. This bill adds certain medical conditions to the definition of "qualifying medical condition" for the purposes of the use of cannabis for therapeutic purposes law. **Introduced and referred to House HHS Committee. Retained in Committee.**

**HB 463-FN:** AN ACT relative to voluntary licensure of pharmacist assistants. This bill establishes voluntary licensure of pharmacist assistants to allow persons working as pharmacist assistants for supervising pharmacists to be licensed to perform certain pharmacist tasks. Introduced and referred to House Executive Departments and Administration Committee. **Voted Ought to Pass with Amendment by Committee and House. The Amended bill establishes the duties of and requirements for the licensure of pharmacist assistants working in a pharmacy under a supervising pharmacist.**

**HB 483-FN:** AN ACT adopting the psychology interjurisdictional compact (PSYPACT). This bill enacts the adoption of the psychology interjurisdictional compact (PSYPACT). **Introduced and referred to House HHS Committee. Retained in Committee.**

**HB 490:** AN ACT relative to testing for Lyme disease. This bill requires health care providers to provide certain information to persons being tested for Lyme disease. Introduced and referred to House HHS Committee. **Voted Ought to Pass by Committee and House. The amended bill establishes a commission to study the use of limitations of serological diagnostic tests to determine the presence or absence of Lyme and other tick-borne diseases and the development of appropriate methods to education physicians and the public with respect to the inconclusive nature of prevailing test methods.**

**HB 508:** AN ACT relative to direct primary care. This bill declares that primary care providers providing direct primary care pursuant to a primary care agreement are not subject to the insurance laws, provided that certain conditions are met. Introduced and referred to House HHS Committee. Voted Ought to Pass with Amendment by Committee. Amendment makes minor to conditions. **Voted Ought to Pass with Committee Amendment by House. Re-referred to Commerce Committee.**

**HB 509:** AN ACT relative to a graduate physician pilot program. This bill establishes a pilot program for the regulation and licensure of graduate physicians each year by the board of medicine. Practice of a graduate physician is limited to medically underserved areas and rural health clinics. Introduced and referred to House HHS Committee. Voted Inexpedient to Legislate by Committee. **Voted Inexpedient to Legislate by House.**

**HB 528-FN:** AN ACT relative to insurance reimbursement for emergency medical services. This bill requires insurers to consider the presenting symptoms rather than the final diagnosis when determining whether to cover and pay for emergency services. Introduced and referred to House Commerce Committee. **Voted Ought to Pass with Amendment by Committee and House. The Amendment is a significant change to the bill as introduced and requires that the insurer's respective review of a claim for emergency services include consideration of the presenting symptoms along with the final diagnosis. It eliminates the proposed prudent layperson standard for defining emergency medical conditions.**

**HB 546-FN:** AN ACT relative to the regulation of art therapists. This bill establishes the regulation and licensure of persons engaged in the practice of professional art therapy by the office of professional licensure and certification and includes licensed professional art therapists in certain insurance coverage



provisions. Introduced and referred to House Executive Departments and Administration Committee. **Bill was retained in committee.**

**HB 547-FN:** AN ACT relative to licensure of polysomnographers. This bill requires persons practicing polysomnography to be licensed and establishes the governing board of polysomnographers under allied health professionals. Introduced and referred to House Executive Departments and Administration Committee. **Voted Inexpedient to Legislate by Committee (11-9) and by the House.**

**HB 552-FN:** AN ACT relative to transparency and standards for acquisition transactions in health care. This bill clarifies the standards for acquisition transactions involving health care charitable trusts and the review required by the director of charitable trusts. Introduced and referred to House Judiciary Committee. **Voted Ought to Pass with Amendment by Committee and House. The amendment allows the Charitable Trusts Unit to obtain certain confidential information from other state agencies when reviewing the acquisition transactions of health care charitable trusts and amended the applicability to make it clear it would apply only to health care transactions filed on or after the effective date.**

**HB 604:** AN ACT establishing a commission to assess benefits and costs of a "health care for all" program for New Hampshire. This bill establishes a commission to study the benefits and cost of a "health care for all" program for New Hampshire. Introduced and referred to House Commerce Committee. **Voted Ought to Pass with Amendment by Committee and House. The amendment added additional factors to be considered by the study commission including to study the creation of a health access corporation and fund, and the feasibility of New England states entering into a compact for a single payer health care program.**

**HB 610-FN:** AN ACT relative to treatment alternatives to opioids. This bill requires the department of health and human services to create a voluntary non-opioid directive form which may be used for nonopioid treatment options for pain. This bill also establishes insurance coverage for such treatment options. **Introduced and referred to House HHS Committee. Voted Inexpedient to Legislate by Committee (22-0) and House.**

**HB 615:** AN ACT relative to the regulation of pharmacies and pharmacists. This bill makes various changes to the regulation of pharmacies and pharmacists by the board of pharmacy, including procedures of the board, exceptions to possessing prescription drugs, license expirations and renewals, and establishing the licensure of drug distribution agents. Introduced and referred to House Executive Departments and Administration Committee. **Voted Ought to Pass with Amendment by Committee (20-0). The amendment makes technical changes to the bill.**

**HB 638:** AN ACT requiring health care providers to provide an opioid disclosure form to patients for whom an opioid is prescribed. This bill requires health care providers to require patients to sign a form upon dispensing controlled drugs explaining the addictive nature of such drugs. Introduced and referred to House HHS Committee. **Voted Inexpedient to Legislate by Committee (12-6) and House.**

**HB 656:** AN ACT establishing a commission to study the impact of financial initiatives for commercially insured members by drug manufacturers on prescription drug prices and health insurance premiums. This bill establishes a commission to study the impact of financial initiatives for commercially insured members by drug manufacturers on prescription drug prices and health insurance premiums. **Introduced and referred to House Commerce Committee.**

**HB 658-FN:** AN ACT relative to price increases of drugs under the managed care law. This bill clarifies the content of provider contract standards under the managed care law. This bill is a result of the commission to study greater transparency in pharmaceutical costs and rebate programs established in 2018, 350.

**Introduced and referred to House Commerce Committee.**

**HB 659:** AN ACT relative to reporting of internal pharmaceutical costs. This bill requires the insurance commissioner to request data from health carriers regarding prescription drug benefits which are outsourced to a pharmacy benefit manager or similar entity as part of the preparation for the department's annual hearing requirement. This bill is a result of the commission to study greater transparency in pharmaceutical costs and rebate programs established in 2018, 350. **Introduced and referred to House Commerce Committee.**

**HB 670-FN:** AN ACT relative to the cost of prescription drugs. This bill requires health insurance carriers to maintain certain information relative to prescription drug costs within their data systems for purposes of the managed care law. **Introduced and referred to House Commerce Committee.**

**HB 671-FN:** AN ACT relative to pharmacy benefit manager business practices, licensure, and transparency. This bill establishes an RSA chapter governing pharmacy benefit managers. Introduced and referred to House Commerce Committee. **Retained in Committee.**

**HB 685-FN:** AN ACT relative to ambulance billing, payment for reasonable value of services, and prohibition on balance billing. This bill clarifies ambulance billing under the law governing emergency and medical trauma services. Introduced and referred to House Commerce Committee. **Retained in Committee.**

**HB 690-FN:** AN ACT removing the work requirement of the New Hampshire granite advantage health care program. This bill removes the work and community engagement requirements of the New Hampshire granite advantage health care program. Introduced and referred to House HHS Committee. **Retained in Committee.**

**HB 693-FN:** AN ACT relative to aid to persons funded by Medicaid and for persons who are uninsured and establishing a special fund. This bill requires health care practitioners and health care facilities to accept persons who are funded by Medicaid and who are uninsured. A health care practitioner or facility may opt out of this requirement by paying an annual fee to the department of health and human services which shall be deposited into a fund to aid such persons. Introduced and referred to House HHS Committee. **Voted Inexpedient to Legislate by Committee (18-2) and House.**

**HB 697-FN-A:** AN ACT relative to Medicare for all. This bill establishes a single payer health care system to provide health care for the citizens of New Hampshire. Introduced and referred to House Commerce Committee. **Voted Inexpedient to Legislate by Committee (18-0) and House.**

**HB 703-FN:** AN ACT relative to providing notice of the introduction of new high-cost prescription drugs. This bill requires prescription drug manufacturers to provide certain notice to the office of the attorney general if they are introducing a new prescription drug to market at a wholesale acquisition cost that exceeds the threshold set for a specialty drug under the Medicare Part D program. **Introduced and referred to House Commerce Committee.**

**HB 717-FN:** AN ACT prohibiting prescription drug manufacturers from offering coupons or discounts to cover insurance copayments or deductibles. This bill prohibits with limited exceptions, prescription drug manufacturers from offering coupons or discounts to cover insurance copayments, or deductibles. **Introduced and referred to House Commerce Committee.**

**HB 725-FN:** AN ACT including Medicaid managed care organizations under the managed contractor requirements for provider care law. This bill includes Medicaid managed care organizations for the purposes of the managed care law pursuant to RSA 420-J. Introduced and referred to House Commerce Committee. **Voted Ought to Pass with Amendment by Committee (19-1) and by the House. As amended, the bill does not include Medicaid managed care organizations under the Managed Care Law but does establish certain credentialing standards and quality assurance standards for Medicaid managed care organizations.**

### Senate Bills

**SB 4:** AN ACT relative to the group and individual health insurance market. This bill establishes the provisions of the Patient Protection and Affordable Care Act of 2009, Public Law 111-148, as amended in statute. **Introduced and referred to Senate HHS Committee.**

**SB 11-FN-A:** AN ACT relative to mental health services and making appropriations therefor. This bill:  
I. Authorizes the department of health and human services to use general surplus funds for designated receiving facilities and for voluntary inpatient psychiatric admissions. II. Makes an appropriation to the department of health and human services for the purpose of renovating certain existing facilities.  
III. Provides for rulemaking for involuntary admission hearing requirements. IV. Makes an appropriation to the affordable housing fund, established in RSA 204-C:5, for transitional housing for persons leaving mental health treatment facilities. V. Requires insurers to reimburse certain facilities for emergency room boarding. Introduced and referred to Senate HHS Committee. **Voted Ought to Pass with Amendment by Committee and Senate. Rereferred to the Senate Finance Committee. Voted Ought to Pass with Amendment by Committee and Senate. As amended, the bill removes the provision related to appropriations to the Affordable Housing Fund but increases amounts available to HHS to contract with programs to provide affordable, supported housing. It also directs HHS to solicit RFPs for a fourth mobile crisis team of second behavioral health crisis treatment center.**

**SB 26:** AN ACT relative to the New Hampshire health care quality assurance commission. This bill changes the name of the New Hampshire health care quality assurance commission to the New Hampshire health care quality and safety commission. This bill also removes the prospective repeal of the commission. Introduced and referred to Senate Executive Departments and Administration Committee. **Voted Ought to Pass with Amendment by Committee and Senate. Amendment changes composition of Commission to include one representative of each licensed hospital rather than each acute care and specialty care hospital and adds the CEO of NH Hospital or his designee to the Commission.**

**SB 32:** AN ACT reestablishing the commission to study greater transparency in pharmaceutical costs and drug rebate programs. This bill reestablishes the commission to study greater transparency in pharmaceutical costs and drug rebate programs. **Introduced and referred to Senate HHS Committee.**

**SB 33:** AN ACT relative to the therapeutic use of cannabis. This bill authorizes the department of health and human services to collect certain data regarding the therapeutic use of cannabis. This bill also requires the

commissioner of the department of health and human services to adopt rules regarding disclosure of information resulting from inspections and investigations under RSA 126-X. **Introduced and referred to Senate HHS Committee.**

**SB 58:** AN ACT relative to reimbursement rates for low-dose mammography coverage. This bill clarifies the reimbursement rates for low-dose mammography. Introduced and referred to Senate HHS Committee. **Voted Ought to Pass by Committee (5-0) and Senate.**

**SB 88-FN:** AN ACT relative to registry identification cards under the use of cannabis for therapeutic purposes law. This bill makes certain changes in the use of cannabis for therapeutic purposes law, including: I. Eliminating the time frame for a provider-patient relationship. II. Repealing the requirement for a photograph of an applicant's face for purposes of the registry identification card. **Introduced and referred to Senate HHS Committee.**

**SB 90-FN:** AN ACT relative to certain disclosures by health care provider facilities. This bill extends immunity to staff licensed by the division of health professions, office of professional licensure and certification, to disclose certain employment information. Introduced and referred to Senate Judiciary Committee. **Re-referred to Committee.**

**SB 97:** AN ACT relative to licensure of health facilities near a critical access hospital. This bill requires an applicant seeking to construct certain health care facilities for licensure under RSA 151 to submit a report showing how the proposed project will affect certain health care services. This bill is a request of the department of health and human services. **Introduced and referred to Senate Executive Departments and Administration Committee.**

**SB 111:** AN ACT relative to the collection of health care data. This bill clarifies the collection of health care data. This bill is a request of the department of health and human services. **Introduced and referred to Executive Departments and Administration Committee.**

**SB 119:** AN ACT directing hospitals to develop an operational plan for the care of patients with dementia. This bill requires hospitals licensed under RSA 151 to complete and implement an operational plan for the recognition and management of patients with dementia or delirium in acute-care settings. Under this bill, each hospital shall keep the plan on file and make it available to the bureau of health facilities administration, department of health and human services, upon request. Introduced and referred to Senate HHS Committee. **Voted Ought to Pass with Amendment by Committee and Senate. Amendment provides hospitals with two additional years, until January 1, 2023 to comply.**

**SB 145:** AN ACT 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. **Introduced and referred to Senate Commerce Committee.**

**SB 175:** AN ACT relative to qualifying medical conditions for therapeutic cannabis. This bill changes the definition of qualifying medical condition for the purposes of the law governing the use of cannabis for therapeutic purposes. **Introduced and referred to Senate HHS Committee.**



**SB 177:** AN ACT relative to the use of physical restraints on persons who are involuntarily committed. This bill clarifies when physical restraints may be used to transport a person being admitted to New Hampshire hospital or a designated receiving facility. **Introduced and referred to Senate HHS Committee.**

**SB 178:** AN ACT relative to telemedicine for spectacle and contact lenses. This bill clarifies the procedure for health care providers who prescribe spectacle lenses and contact lenses by telemedicine. Introduced and referred to Senate HHS Committee. **Voted Ought to Pass by Committee and Senate.**

**SB 179:** AN ACT relative to pharmacist administration of vaccines. This bill modifies the authority for pharmacists and pharmacy interns to administer vaccinations by including vaccines listed in the recommended adult immunization schedule by the Centers for Disease Control and Prevention. **Introduced and referred to Senate HHS Committee.**

**SB 182:** AN ACT relative to a duty to report when another person has suffered grave physical harm. This bill establishes a duty to report when another person has suffered grave physical harm. **Introduced and referred to Senate Judiciary Committee.**

**SB 184:** AN ACT relative to limitation of liability for prescribing an approved drug or device. This bill establishes limited immunity from civil liability for health care professionals who prescribe an approved drug or device to a patient resulting in injury or death. **Introduced and referred to Senate Judiciary Committee.**

**SB 210:** AN ACT relative to emergency medical and trauma services. This bill makes certain reference changes and adds a definition of "telecommunicators" to the law governing emergency medical and trauma services. Introduced and referred to Senate Executive Departments and Administration Committee. **Voted Ought to Pass with Amendment by the Committee and Senate. The Amendment changes the bill so that it is effective upon passage rather than 60 days after passage.**

**SB 222-FN:** AN ACT relative to licensure of pharmacy benefits managers. This bill establishes the licensure and regulation of pharmacy benefits managers by the insurance commissioner. Introduced and referred to Senate Executive Departments and Administration Committee. **Re-referred to Committee**

**SB 226-FN:** AN ACT relative to registration of pharmacy benefit managers and reestablishing the commission to study greater transparency in pharmaceutical costs and drug rebate programs. This bill establishes the registration and regulation of pharmacy benefits managers by the insurance commissioner. This bill also reestablishes the commission to study greater transparency in pharmaceutical costs and drug rebate programs. Introduced and referred to Senate Executive Departments and Administration Committee. **Voted Ought to Pass with Amendment by Committee. The Amendment changes the section of the RSA where the bill will be codified, adds contracting standards for PBMs, changes the effective date for certain sections of the bill from November 2019 to November 2020, and makes other technical changes.**

**SB 232:** AN ACT adopting the model psychology interjurisdictional compact. This bill enacts the adoption of the psychology interjurisdictional compact (PSYPACT). Introduced and referred to Senate Executive Departments and Administration Committee. **Voted Ought to Pass by Committee and Senate.**

**SB 233-FN:** AN ACT relative to the regulation of nursing assistants by the board of nursing. This bill changes the regulation of licensed nursing assistants to certified nursing assistants and makes

administrative changes for the board of nursing. Introduced and referred to Senate Executive Departments and Administration Committee. **Voted Ought to Pass by Committee and Senate.**

**SB 255-FN:** AN ACT relative to dementia training for direct care staff in residential facilities and community-based settings. This bill requires dementia training for direct care staff in residential facilities and community-based settings. The bill grants rulemaking authority to the commissioner for the purposes of the bill. Introduced and referred to Senate Executive Departments and Administration Committee. **Voted Ought to Pass by Committee.**

**SB 258:** AN ACT relative to telemedicine and telehealth services. This bill adds definitions to and clarifies the statute governing telemedicine and Medicaid coverage for telehealth services. **Introduced and referred to Senate HHS Committee.**

**SB 259-FN:** AN ACT expanding eligibility for the Medicaid for employed adults with disabilities (MEAD) program. This bill directs the department of health and human services to submit an amendment to the state Medicaid plan to expand coverage under the MEAD program, which provides Medicaid for employed adults, to individuals 65 years of age and older. **Introduced and referred to Senate HHS Committee.**

**SB 260-FN:** AN ACT relative to a program for prescription drug costs for certain seniors and making an appropriation therefor. This bill directs the department of health and human services to develop a prescription drug assistance program to pay out-of-pocket prescription drug costs for seniors who have reached the gap in standard Medicare Part D coverage. The bill also makes an appropriation to the department of health and human services to fund the program. Introduced and referred to Senate HHS Committee. **Voted Ought to Pass with Amendment by Committee. As amended the bill no longer directs HHS to develop a prescription drug assistance program but establishes a pharmaceutical assistance pilot program for seniors and makes an appropriation to HHS to fund the pilot program.**

**SB 272-FN:** AN ACT relative to mental health parity under the insurance laws. This bill authorizes the insurance commissioner to enforce the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 and requires the commissioner to examine and evaluate health insurers, health service corporations, and health maintenance organizations for compliance. Introduced and referred to Senate Commerce Committee. **Voted Ought to Pass with Amendment by Committee and Senate. The amendment requires the Insurance Commissioner to periodically examine and evaluate provider reimbursement practices rather than provider reimbursement rates.**

**SB 279-FN:** AN ACT relative to access to fertility care. This bill requires insurers to cover fertility treatment. Introduced and referred to Senate Commerce Committee. **Voted Ought to Pass with Amendment by Committee. The Amendment makes numerous changes to the specific requirements for the provision of fertility treatment and excludes certain plans/policies (SHOP and extended transition to ACA Compliant policies) plans from the requirements.**

**SB 289:** AN ACT relative to health and human services. This bill: I. Requires collection stations, not just those operated by laboratories, to be licensed under RSA 151 and revises the responsibilities of an individual home care service provider to include health support services. II. Authorizes reimbursement for a legally responsible relative who provides personal care services under RSA 161-I. III. Requires services provided to individuals with disabilities by area agencies and authorized agencies to comply with RSA 171-A and the federal requirements for the home and community-based care waiver. IV. Requires that home-

based long-term care services provided under RSA 151-E comply with the federal requirements for the home and community-based care waiver. V. Provides that the committee for the protection of human subjects shall defer to the institutional review board designated by the federal agency responsible for funding in certain cases. VI. Clarifies the authority of pharmacies to dispense prescription drugs and removes the requirement that the protocol and criteria for dispensing drugs be approved by the department of health and human services. VII. Revises the medical support obligation for purposes of determining parental rights and responsibilities and child support to mean the obligation to provide health care coverage for a dependent child whether in the form of private health insurance or public health care. The bill is a request of the department of health and human services. Introduced and referred to Senate HHS Committee. **Voted Ought to Pass with Amendment. The amendment adds physician assistants to the list of providers who may dispense certain noncontrolled prescription drugs and vaccines in certain settings and makes other technical changes.**

**SB 290-FN:** AN ACT relative to the New Hampshire granite advantage health care program. This bill makes various changes to the New Hampshire granite advantage health care program, some of which include: I. Allowing general funds to be used for the program. II. Clarifies which beneficiaries may be subject to the work and community engagement requirement. III. Reducing the number of hours for the work and community engagement requirement. IV. Adding exemptions for certain persons from the community engagement requirement. V. Adding circumstances for the elimination of the community engagement requirement. Introduced and referred to Senate HHS Committee. **Voted Ought to Pass with Amendment by Committee. The Amendment reverses the effort to lower the number of hours needed to meet the work and community engagement program, eliminates the proposed exemption for individuals over age 50, modifies the childcare exemption to apply to those caring for a child under the age of 13 rather than 15 years old, allows for the use of general funds for the program under certain specific circumstances, and imposes certain standards for the review and evaluation of the program.**

**SB 292-FN:** AN ACT relative to implementation of the new mental health 10-year plan. This bill requires the commissioner to submit a report containing the procedures for implementation of New Hampshire's 10-year mental health plan of 2018 within 6 months of finalization of the plan to the president of the senate, the speaker of the house of representatives, and the governor. Under this bill, the commissioner of the department of health and human services shall fully implement the plan within 2 years of the date when it was finalized. Introduced and referred to Senate HHS Committee. **Voted Ought to Pass with Amendment by the Committee. The amended bill requires the commissioner to submit a report containing the priorities for implementing the 10-year mental health plan and thereafter submit an annual report on the status of implementation.**

**SB 293-FN:** AN ACT relative to federally qualified health care centers and rural health centers reimbursement. This bill requires the department of health and human services to reimburse federally qualified health care centers and rural health centers for services provided to persons whose Medicaid eligibility has been suspended for failure to comply with the work and community engagement requirement established under the New Hampshire granite advantage health care program. Introduced and referred to Senate HHS Committee. **Voted Ought to Pass by Committee.**

**SB 308-FN-A:** AN ACT relative to the health care workforce and making appropriations therefor. This bill: I. Increases the Medicaid provider rates. II. Requires certain health care professionals to complete a survey collecting data on the primary care workforce. III. Requires the department of health and human

services to amend the income standard used for eligibility for the "in and out" medical assistance policy. IV. Permits the department of safety to contract with a private agency to process background check applications and requires the department to accept and process background check applications online. V. Amends the definitions and services covered through telemedicine. VI. Makes appropriations to the department of health and human services, rural health and primary care section to establish new positions and programs to develop and enhance the state's healthcare workforce. VII. Makes an appropriation to the governor's scholarship program for scholarships to students majoring in a health care field and to postsecondary educational institutions to develop and enhance programs of study offered in health care. Introduced and referred to Senate Executive Departments and Administration Committee. Voted Ought to Pass with Amendment by Committee. **The amendment delays the 5% increase in Medicaid provider rates for an additional year to June 30, 2020 and the additional 7% increase to June 30, 2021. It also eliminates some of the proposed changes to the telemedicine requirements.**

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

### **BIOS**

#### **CINDE WARMINGTON, ESQ.**

Cinde, a partner at Shaheen & Gordon, leads the Health Care Practice Group and focuses her practice entirely on representing health care clients. Her prior clinical and administrative experience makes her uniquely qualified to assist providers in facing a rapidly changing regulatory environment.

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Kara Dowal 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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