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WISCONSIN UPDATES LAWS REGULATING PAS: WHAT YOU NEED TO KNOW

On March 26, 2021, Governor Evers signed Assembly Bill 125 into law as Wisconsin Act 23 ("Act 23") and significantly updated laws related to the licensure, regulation and the practice of physician assistants ("PAs") in Wisconsin. The regulatory changes aim to improve access to quality medical services for Wisconsin patients by reducing barriers for PAs to provide services. The updated laws do not create an independent practice for PAs but, among other modifications, change the physician/PA relationship from supervision to collaboration and eliminate the one physician to four PAs ratio requirement. A new Subchapter VIII, Physician Assistant Affiliated Credentialing Board, found in chapter 448 of the Wisconsin Statutes is created by Act 23 for the regulations that govern the practice of PAs. Act 23 is set to take effect on April 1, 2022, with limited exceptions.

SUMMARY OF CHANGES UNDER ACT 23

The following is a brief summary highlighting some of the changes to the laws governing PAs:

New Physician Assistant Affiliated Credentialing Board. Act 23 creates a new Physician Assistant Affiliated Credentialing Board ("Board"), composed of eight PAs and one public member, that is attached to the Medical Examining Board. The Board's responsibilities include licensure and establishing rules for continuing education requirements and defining what constitutes unprofessional conduct for PAs.

PA Scope of Practice. A PA's practice is defined similarly to the practice of medicine and surgery for physicians. PAs are explicitly permitted under Act 23 to order, prescribe, procure, dispense and administer prescription drugs, medical devices, services and supplies. The new law permits PAs to practice in various health care settings as primary, specialty or surgical care providers. A PA must practice in collaboration with a physician, as described below, and limit his or her practice to the scope of his or her experience, education and training and comply with regulatory restrictions on the practice of PAs. A PA must also ensure that he or she is aware of alternatives to manage situations that exceed the PA's expertise.

PAs to Practice in Collaboration with Physicians. Under current law, a PA's entire practice is under the supervision of a physician. Act 23 modifies this to require PAs to practice in collaboration with a physician and specifies a PA is individually and independently responsible for the quality of the care he or she renders. A PA is required to maintain and provide to the Board, upon request, one of the following to demonstrate his or her relationship with a collaborating physician:

- Evidence, pursuant to the PA's employment, that a physician is primarily responsible for the overall direction and management of the PA's professional activities and for assuring that the services provided by the PA are medically appropriate; or
- A written collaborative agreement with a physician that must include:
  - A description of the PA's scope of practice;
  - A protocol for identifying an alternative collaborating physician for situations in which the collaborating physician is unavailable for consultation;
  - That the collaborating physician shall remain reasonably available to the PA through the use of telecommunications or other electronic means within a medically appropriate time frame and that the collaborating physician may designate an alternate collaborator during periods of unavailability;
  - An arrangement for physician consultation with the patient within a medically appropriate time frame, if requested by the patient or the PA;
  - The agreement may be terminated by either party by providing written notice at least thirty days prior to the date of termination, or as otherwise agreed to by the physician and PA;
  - Signatures of the collaborating physician and PA; and
  - Any other information required by the Board.

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Act 23 indicates that nothing prohibits an employer, hospital, health plan or other entity employing or with a relationship with a PA from establishing additional practice requirements for collaboration for the quality of patient care.

PA Delegation. PAs are currently prohibited from delegating a medical care task assigned to the PA by the supervising physician to another person. Act 23 expressly permits a PA to delegate a care task or order that the PA is competent to perform to another clinically trained health care worker if the PA has reasonable evidence that the clinically trained health care worker is competent to perform the task or issue the order under the circumstances.

Malpractice Insurance. With limited exceptions, a PA is required to have malpractice liability insurance coverage in the amounts required for personal liability coverage or coverage under a group liability policy providing individual coverage for the PA as specified under Wis. Stat. 655.23 (4). This requirement is met if a PA's employer has in effect malpractice liability insurance that is at least the minimum amount specified under Wis. Stat. 655.23 (4) and coverage applies to claims against the PA.

Act 23 changes also include:

- Removing the physician to PA ratio requirement of one physician to four PAs;
- Additional information for licensure is required under current law. Licensure applicants will be required to provide a listing with all employers, practice settings, internships, residencies, fellowships and other employment for the past seven years;
- Continuing education, which is not a current requirement;
- A mandatory duty to report a PA for unprofessional conduct, medical incompetence, engaging in an act that creates an immediate or continuing danger to one or more patients or to the public or if the PA is mentally or physically unable to safely practice as a PA;
- Grounds for professional discipline of a PA by the Board and allows the Board to impose professional discipline; and
- Repeals Chapter Med 8 of the Wisconsin Administrative Code.

Requirements for Practicing Under a Podiatrist. It is important to note that Act 23 maintains the current requirements for PAs practicing under podiatrists and the authority of the Podiatry Affiliated Credentialing Board to establish practice standards for PAs practicing under podiatrists.

PRACTICAL TAKEAWAYS

Health care providers should assess and consider organizational changes to comply with the updated law. This may include evaluating changes to credentialing processes (including the forms used during the process) and staffing models. Organizations may want to modify or terminate Supervisory Agreements between PAs and physicians. Medical Staff Bylaws and Rules & Regulations, as well as policy and procedure, may need to be revised.

Because it is unclear what evidence will satisfy the new Board's collaboration requirement in the PA's employment relationship, and given pre-existing collaborative practice agreements between Advanced Practice Nurse Prescribers and physicians, we recommend the use of collaborative practice agreements for PAs. While existing APNP/physician agreements contain different elements than those required for PAs, the forms and the procedure established for the forms, are an appropriate starting point.

And while the regulations governing the practice of PAs are changed with Act 23, there have not (yet) been similar changes to the Medicaid coverage or other third-party payor rules. Accordingly, certain services will continue to require performance by a physician for payment.

Hall Render will continue to provide timely updates on this matter. If you would like further guidance, please contact:

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