

WHAT'S NEW? A LEGISLATIVE UPDATE FROM RICHMOND

By Robert F. McDonnell

Effective July 1, 2003, significant legislation passed in this year's session. Chief among these was the revision of the Board of Medicine's procedures for the discipline of physicians. The legislation lowers the disciplinary standard for the finding of a violation of the Board of Medicine regulations from gross negligence to simple negligence. The bill also creates a separate proceeding for the execution of a confidential consent agreement that may be used in lieu of a formal disciplinary proceeding in those instances where there is generally a minor violation and little harm to the patient. The bill provides a minimum 3 years before a revoked license can be reinstated. Civil penalties for failure to report disciplinary actions and malpractice judgments and settlements are increased and the Department of Medicine is given increased authority to regulate the unlicensed practice of medicine (HB 1441).

In the General Assembly's ongoing efforts to revise the Certificate of Public Need (COPN) laws, revisions were made to the procedures for processing COPN applications for cancer care services, to permit streamlined processing and easier approval (HB 1621). The long term goal of the General Assembly is to eventually eliminate the COPN process in accordance with the plan advised by the Joint Commission on Healthcare, once sufficient funding is available for indigent care and related services. In order to clarify the legal landscape for the ban on physician self-referrals, a bill was passed to insure that the same "safe harbors" created for navigating the complexities of the federal Anti-kickback statute and implementing regulations, are also exceptions to Virginia's Medicaid Self Referral statute (HB 1869).

In its ongoing attempts to make children's health care more available to the Medicaid population, revisions were made to the Family Access to Medical Insurance Security (FAMIS) Plan to provide coordinated services to children in these programs. The complexities created by the Health Insurance Portability and Accountability Act (HIPAA) required the General Assembly to pass emergency legislation (effective February 2003) to provide consistency between Virginia law and Federal regulations. The changes to the Virginia law concern revisions for responses to various subpoenas for medical records, the courtroom procedures for answers to such subpoena and motions to quash such subpoenas (HB 2463). Legislation also broadened the Board of Medicine's responsibility for developing guidelines for invasive procedures by interns and residents to include various requirements for informed consent and the role of the attending physician (HB 1706).

Mr. McDonnell is a shareholder with Huff, Poole, & Mahoney, P.C. and handles administrative law matters including Board of Medicine and licensure hearings and has been a member of the Virginia House of Delegates since 1992. You can reach Mr. McDonnell at (757) 552-6084.