

## **2019 Legislative Update Board of Nursing**

The following bills were enacted by the General Assembly during the 2019 legislative session and may impact the Board of Nursing and/or the Board of Nursing licensees:

### **2019 Advanced Practice Registered Nurse Act, [H.3821/Act 87](#)**

The 2019 Advanced Practice Registered Nurse Act (APRN) Act amends S.C. Code Section 40-33-34 to authorize an APRN, unless otherwise provided in the practice agreement, to certify the manner and cause of death, execute a do not resuscitate order and prescribe Schedule II narcotic substances for patients in long-term care facilities. This APRN 2019 Act supplements the legislative changes enacted in 2018.

Effective Date: July 23, 2019

### **Physician Orders for Scope of Treatment Act, [H.4004/Act 89](#)**

The Physician Orders for Scope of Treatment (POST) Act adds Chapter 84 to Title 44. The POST Act allows an individual to execute a form for use as part of advance care planning, in situations where the patient has been diagnosed with a serious illness, or based on medical diagnosis, may be expected to lose capacity within twelve months, and consists of a set of medical orders signed by a patient's physician addressing key medical decisions consistent with patient goals of care concerning treatment at the end of life that is portable and valid across healthcare settings. DHEC oversees the POST form and its future iterations. DHEC must also create a statewide, uniform process for identifying a patient who has executed any advance directive, a POST form, or a combination of the two. The POST Act allows APRNs to create, execute and sign a POST form if authorized in his or practice agreement, and allows a Physician Assistant (PA) to create, execute and sign a POST form if authorized in his scope of practice guidelines.

Effective Date: May 24, 2019

### **Persons Authorized to Make Health Care Decisions for a Patient Unable to Consent, [H.3602/Act 85](#)**

The Act provides that where a patient is unable to consent, decisions concerning his healthcare may be made by a list of persons in the order of priority appearing in the law. Previously, the third person in the priority order was "a person given priority to make healthcare decisions for the patient by another statutory provision." That line was moved to ninth in priority, and the

word “priority” was replaced by “authority.” A tenth individual was added and provides that, after good faith efforts, the hospital or other health care facility determines that the persons listed in existing law are unavailable to consent on behalf of the patient, a person who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes but who is not a paid caregiver or a provider of health care services to the patient, may make healthcare decision for the patient who is unable to consent.

Effective Date: May 24, 2019

### **Opioid Antidote Included in Prescription Monitoring Program and Mandatory Electronic Prescribing of Controlled Substances, [H.3728/Act 65](#)**

The Act requires DHEC’s Bureau of Drug Control to include the administration of opioid antidotes within the Prescription Monitoring Program (PMP). A practitioner or the practitioner’s authorized delegate who must review a patient’s controlled substance prescription history, must also review the history of the administration of an opioid antidote to the patient. Pursuant to the Act, if a person is administered an opioid antidote in a hospital emergency department or other health care facility and the supervising physician diagnoses the patient as having experienced an opioid overdose, a health care facility must report the administration to the DHEC Bureau of Drug Control for inclusion in the PMP. Similarly, a first responder who administers an opioid antidote shall report to the DHEC Bureau of Emergency Medical Services information regarding the opioid antidote administration for inclusion in the PMP. The Act also requires a practitioner to electronically prescribe controlled substance prescriptions, with listed exceptions.

Effective date: January 1, 2021

### **Female Genital Mutilation, [H.3973/Act 71](#)**

The Act prohibits genital mutilation of a female who is under the age of eighteen years or who is unable to consent, with few listed exceptions. A physician, physician-in-training, nurse, certified nurse-midwife, or any other medical professional who performs, participates in or facilitates a genital mutilation procedure that does not fall under one of the listed exceptions is subject to criminal penalties and shall have his professional license or certification permanently revoked.

Effective Date: May 16, 2019

### **Neonatal testing, [H.3036/Act 55](#)**

The Act requires neonatal testing performed pursuant to S.C. Code Section 44-37-30 to include tests for Krabbe disease, Pompe disease and Hurler syndrome. The Act also requires DHEC to establish the Newborn Screening Advisory Committee to review the feasibility and advisability of including additional disorders in neonatal testing.

Effective Date: May 16, 2019, but the implementation of the Act is contingent upon available funding from public sources.

### **Pharmacists may dispense 90 day prescription refills, [S.463/Act 38](#)**

The Act provides that unless a prescriber has specified on a prescription that dispensing the prescription for a maintenance medication in an initial amount followed by periodic refills is medically necessary, “a pharmacist may exercise his professional judgment, in consultation with the patient, to dispense up to a ninety-day supply of medication per refill up to the total number of dosage units as authorized by the prescriber on the original prescription.”

This law does **not** apply to any scheduled medications, any psychotherapeutic drugs, or any medications requiring reporting to PMP.

In consulting with the patient, the pharmacist must use readily available, existing mechanisms such as online claim adjudication and inform the patient of any cost changes of the proposed dispensing change.

Additionally, if the pharmacist is presenting the patient with an option to not use an available benefit plan, then the pharmacist must inform the patient that any amounts paid would potentially not apply to the deductibles or other out-of-pocket calculations of his benefit plan.

The Act shall not be construed to supersede or invalidate any third party payor agreement, in whole or in part, between a third party payor and a retail pharmacy.

### **Medical Malpractice Liability Joint Underwriting Association, [H.3760/Act 67](#)**

Effective on January 1, 2020, the Patients’ Compensation Fund shall merge into the South Carolina Medical Malpractice Association. The surviving entity is the Joint Underwriting Association and referred to as the South Carolina Medical Malpractice Association. The board of directors for the South Carolina Medical Malpractice Association shall include four medical providers after consultation with the South Carolina Medical Association, South Carolina Hospital Association, the South Carolina Nurses Association and the South Carolina Dental Association.

Any licensed health care provider is entitled to apply to the association for coverage.

As of January 1, 2020, all insurers authorized to write on a direct basis bodily injury liability insurance, with exceptions, must pay an assessment equal to their proportional share of twenty percent of the accumulated deficit of the joint underwriting association. Beginning on January 1, 2020, a uniform assessment of not less than two percent and not more than six percent of the net-written premium must be assessed against each member of the association in order to eliminate the accumulated deficits of the association and the fund. Assessments must cease when both accumulated deficits have been fully eliminated or on December 31, 2035, or whichever occurs first. Also beginning on January 1, 2020, a surcharge on premiums shall be assessed on association policyholders equal to the assessment percentage amount on members. The Act provides additional details on these assessments and includes definitions.

Effective date: May 16, 2019, with some provisions taking effect at a later date.

**Disclaimer: This legislative update is not intended as legal advice. LLR is providing this legislative update to notify licensees of recently enacted legislation that may impact his or her practice area or license. This legislative update provides only a high level overview of enacted legislation and licensees are urged to review the entire enacted legislation, which is available in the hyperlinks above.**