FOSTER PEPPER PLLC

AWPHD & WSHA
13th Annual CEO Leadership Retreat

Legal Hot Topics for Public Hospital Districts

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Suncadia Resort

Cle Elum, Washington

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Litigation: Certificate of Need Regulation

- Existing statute requires CN for "sale, purchase or lease of part or all of an existing hospital …."
- DOH promulgated a new regulation in January 2014 defining "sale, purchase or lease" to mean:

  > any transaction in which the control, either directly or indirectly, of part or all of any existing hospital changes to a different person including, but not limited to, by contract, affiliation, corporate membership restructuring, or any other transaction.

- WSHA filed a petition for declaratory judgment and injunctive relief in Thurston County in February 2014
- Court ruled in favor of WSHA and declared the rule invalid on June 6, 2014
- State has filed an appeal

Other Certificate of Need Issues

- DOH will propose rule making with respect to the following over the next 12 to 24 months:
  - Kidney dialysis (in process)
  - Tertiary health services
  - Home Health
  - Ambulatory surgery facilities
  - Hospitals (acute)
  - Hospice
  - Percutaneous coronary intervention
- DOH has begun suspending CNs for failure to satisfy conditions

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Litigation: PHDs Operating Outside Boundaries

- Skagit PHD 1 acquired a physician practice that included a clinic located on the campus of Skagit PHD 304
- Skagit PHD 304 sought a writ in superior court ordering Skagit PHD 1 to stop providing services within PHD 304's boundaries
- Superior Court granted the writ but stayed the effective date pending an appeal
- Skagit PHD 1 appealed directly to the Supreme Court
- In a decision issued in July 2013, the Supreme Court (6-3 decision) ruled that one rural PHD may not provide services or operate facilities within the boundaries of another rural PHD without that PHD's permission
- Court decision did not address urban PHD operating within boundaries of another urban PHD or within a rural PHD (or vice versa)

Litigation: UW/King PHD 1 Affiliation

- King PHD 1 entered into a 15-year Strategic Alliance Agreement with UW in June 2011
- Under the agreement, a new 13-member board of trustees was created--- five of the 13 are the elected commissioners of King PHD 1
- No assets were transferred as part of the alliance
- A new CEO position was created to manage the day-to-day operations
- The agreement contains a list of 60 powers/decisions and allocates them among the trustees, the commissioners or both
- King PHD 1 sued to invalidate the agreement arguing that it unlawfully delegates the commissioners' "core" legislative responsibilities to an unelected board
- The case is pending before the Washington State Supreme Court

Litigation: Boarding Psychiatric Patients in ER

- Boarding of psychiatric patients occurs when a patient comes to an ER and is evaluated and detained by a designated mental health professional but no certified evaluation and treatment facility is available
- As a result, the patient is boarded in the hospital under a special regulation that permits DSHS' Mental Health Division to specially designate beds in community hospitals for 72-hour or 14-day commitments
- Patients in Pierce County challenged the practice in Pierce County Superior Court
- Washington Supreme Court ruled that boarding mental health patients in community hospitals violates the mental health statute, the state constitution and the federal constitution
- Supreme Court Decision has been stayed until December 26, 2014

Redistricting of Commissioner Districts

- State law permits PHD commissioners to be elected from individual commissioner districts
- If commissioner districts exist, state law requires that the boundaries be adjusted every 10 years after the completion of the U.S. Census at the beginning of each decade
- A survey conducted by AWPHD suggests that a number of PHDs may have failed to adjust the boundaries of their commissioner districts after the 2010 Census
- Failure to comply with state law may raise legal questions regarding whether the commissioners have been validly elected
- PHDs that have not adjusted their boundaries should do so prior to the next election or consider eliminating the commissioner districts

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Reproductive Privacy Act

"***If*** **the state provides, directly or by contract*, maternity care* benefits, services, or information to women through any *program* administered or funded in whole or in part by the state, the state shall also provide women otherwise eligible for any such program with *substantially equivalent benefits*, services, or information to permit them to voluntarily terminate their pregnancies."**

Tax-Exempt Bonds

- Securities and Exchange Commission's Municipal Continuing Disclosure Compliance ("MCDC") initiative
- Increased audit activity by IRS of outstanding bonds including private business use of bond-financed facilities
- Change in use of bond-financed facilities resulting from affiliations may require remedial actions:
  - Redemption or defeasance of bonds
  - Alternative use of disposition proceeds
  - Alternative use of facility

Medicare/Critical Access Hospitals

- Termination of hospitals not "primarily engaged" in the delivery of inpatient services
- Failure of Rural Health Clinics to meet "essential providers" requirements
- Critical access hospitals
  - One year moratorium on physician supervision rules
  - Elimination of requirement that non-CAH staff provide input on policies
  - Elimination of requirement that a physician be physically present every two weeks
  - Reclassification of swing-bed services as an optional service

Medicaid

- Last week the Health Care Authority (HCA) submitted to Governor Inslee a set of recommendations to meet the Governor's request that agencies submit proposals to achieve a 15 percent budget reduction for the 2015-2017 biennium

- Under the HCA proposal, payments to clinics licensed as hospital departments would be reduced to the level of freestanding clinics paid on regular Resource Based Relative Value Scale (RBRVS) fee schedule

QUESTIONS?

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