



Health Care Bulletin

NEW OHIO LAW REQUIRES EMPLOYERS TO NOTIFY PATIENTS OF TERMINATION OF PHYSICIAN'S EMPLOYMENT

Under new Ohio Revised Code § 4731.228, which becomes effective on March 22, 2013, hospitals, physician practices and other entities employing physicians in Ohio will be required to send patient notices when a physician's employment is terminated. This notice must go to all patients seen by the physician in the previous two years and must be sent by the later of the date the physician's employment is terminated or 30 days from when the employer has actual knowledge of the physician's termination or resignation. The notices may be sent by the employer, or the employer may require the physician to send the notices.

Notice Requirements

The notice must include the following information: (1) a statement that the physician is no longer an employee of the health care entity; (2) new contact information for the physician; (3) the date of termination of the physician's employment; (4) contact information for alternative physicians; and (5) contact information regarding the patient's medical records. Further rules regarding the content and delivery of the notice are expected to be issued by the State Medical Board of Ohio in the coming months.

Exceptions

The statute also contains several exceptions. No notice is required if (a) the physician's employment was terminated only because the physician has converted to independent contractor status and will continue to provide patient care for the health care entity; (b) the physician was a medical resident, intern or fellow; or (c) the physician was providing services as a medical director of a licensed hospice care program or as an employee of a certified community mental health agency, federally qualified health center or federally qualified health center look-alike.

In all other circumstances, the statute requires the employer to send the patient notice any time a

physician's employment is terminated, regardless of which party decides to terminate the employment relationship and even when a termination is for cause. Please note, however, that updated contact information for the physician is not required if the employer has a good faith concern that the physician's conduct or the medical care provided would jeopardize the health and safety of the patients. Employers should consider this exception carefully when a physician's employment is terminated because of patient safety concerns.

Practical Implications

In the time left before this new law goes into effect, entities employing physicians should review current physician employment agreements. Employers may want to amend agreements to expressly retain the right to send the patient notices. This will allow employers to control the message that is sent to patients and make sure that obligations with respect to alternative physicians and medical records are met to the employer's satisfaction.

In addition, nonsolicitation clauses in employment agreements should be carefully reviewed and revised if necessary. Employers will not be able to use a nonsolicitation clause to avoid sending the notices or prevent patients, through their own initiative, from contacting the physician at his or her new practice location. However, nothing in the new law gives physicians the right to initiate contact with or otherwise solicit former patients. So long as an employer retains control over the patient notice process, the employer can continue to seek enforcement of an otherwise valid nonsolicitation clause against a physician who takes such actions. On the other hand, if an employer allows the physician to send the patient notices, it will be hard for the employer to subsequently seek to enforce a nonsolicitation clause once it has allowed the physician to contact his or her former patients.

Further, nothing in the law limits or otherwise addresses

otherwise enforceable noncompetition provisions restricting a physician's practice in certain geographic areas following termination of employment. The employer has met its obligation if it provides updated contact information for the physician—nothing requires the physician's new practice location to be convenient to the physician's former patients.

Finally, employers should start preparing now and make sure that a process is in place to gather patient records and prepare and send out the notices, so that obligations will be timely met when the new law goes into effect on March 22, 2013.

**Benesch's Health Care
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Additional Information

For additional information on R.C. 4731.228, please contact **Frank Carsonie, Kelly Skeat** or any member of Benesch's Health Care Department.

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