



## Louisiana Legislative Update

The following are health care laws that were recently passed by the Louisiana State Legislature during its 2009 Regular Legislative Session. A summary of the most relevant Acts is below. Full versions of these new laws can be found on the State Legislature's website, [www.legis.state.la.us](http://www.legis.state.la.us).

### Act 35 (HB 432)

**Summary:** Expands criminal background checks for employers, including nursing homes, adult residential care homes, home health agencies, hospices, and pediatric day health care facilities, to all arrests and convictions for any crimes and the date or dates on which such crimes occurred. The Act eliminates an employer's right to waive convictions of certain crimes, including manslaughter, battery, assault, rape and sexual battery, and cruelty or exploitation of the infirm. Under this new law, providers are not permitted to hire or contract with licensed ambulance personnel or nonlicensed persons who have been convicted of such enumerated crimes.

*Effective Date: June 15, 2009.*

### Act 381 (HB 728)

**Summary:** Provides for the transfer of licensing and regulation of adult residential care homes from the Department of Social Services ("DSS") to the Department of Health and Hospitals ("DHH"). Each adult residential care home that has a valid license issued by DSS must apply to DHH to become an adult residential care provider sixty (60) days prior to the expiration of its current adult residential care home license. DHH will be promulgating rules and regulations for the four modules of adult residential care providers: (1) Level 1 personal care homes; (2) Level 2 shelter care homes; (3) Level 3 assisted living facilities; and (4) Level 4 adult residential care providers. DHH is permitted to monitor, survey and regulate adult residential care homes under the existing DSS regulations until it publishes minimum licensing standards for all modules of adult residential care providers.

*Effective Date: July 1, 2010.*

### Act 129 (HB 207)

**Summary:** Allows the Louisiana Board of Pharmacy to issue an exemption for the reporting of prescription monitoring information (for the Prescription Monitoring Program) to a dispenser whose "practice activities are inconsistent with the intent of the program." The Legislature does not expound on what such activities could entail. The Board may also now rescind any previously issued exemption without the need for an informal or formal hearing.

*Effective Date: August 15, 2009.*

### Act 14 (HB 671)

**Summary:** Adds nurse practitioners and nurse clinical specialists under the definition of a health care provider for the purposes of the medical malpractice acts for state and private services.

*Effective Date: August 15, 2009.*

### Act 367 (HB 347)

**Summary:** Provides that protected health information in the custody of the Department of Insurance will be confidential and privileged and not subject to subpoena. There are several exceptions when the information can be produced, including if requested by a federal or state prosecuting attorney; the office of state police, public safety services, Department of Public Safety and Corrections; the office of the state inspector general; the legislative auditor; attorney general; or if pursuant to a court order.

*Effective Date: July 6, 2009.*

### Act 372 (HB 517)

**Summary:** Protects public and private healthcare workers from civil or criminal liability for refusing to participate in any "healthcare service" that violates their conscience. The definition of "healthcare service" under the new law is limited to abortion, dispensation of abortifacient drugs, human embryonic stem cell research, human embryo cloning, euthanasia, or physician-assisted suicide. "Conscience" is defined as a sincerely held religious belief or moral conviction. All persons seeking employment at a health care facility are required to notify the prospective employer of the existence of any sincerely held religious belief or moral conviction that would cause them to refuse to provide a healthcare service. Current employees must also notify their employers in writing "as soon as practicable" of any health care service that violates their conscience.

*Effective Date: August 15, 2009.*

### Act 337 (HB 757)

**Summary:** Creates the crime of unauthorized participation in medical assistance programs. Unauthorized participation includes knowingly seeking, obtaining, or maintaining employment and retaining monies or payments derived from any state or federal medical assistance program while excluded from participation in any state or federal medical assistance program. Penalties are up to five (5) years imprisonment and \$20,000.

*Effective Date: July 1, 2009.*

### Act 419 (HB 406)

**Summary:** Prohibits health insurers from requiring or using genetic information in certain circumstances, including for underwriting and eligibility purposes, to impose any preexisting condition exclusions, or to adjust premium or contribution amounts. The new law also prohibits an insurer from requesting or requiring any individual or family members to undergo genetic testing.

*Effective Date: August 15, 2009.*

### Act 426 (HB 620)

**Summary:** Revises provisions applicable to the Medical Assistance Program Integrity Law (MAPIL). The new law changes existing law regarding false or fraudulent claims to prohibit persons from knowingly engaging in misrepresentation or making or using a false record or statement to obtain payment for a false claim from Medicaid funds. The new law also now allows a qui tam plaintiff to recover a civil monetary penalty, even if the secretary or attorney general intervenes or the court determines that the allegations are based on the information from sources other than the qui tam plaintiff. The time that qui tam actions can be instituted was also lengthened from one (1) year to no more than six (6) years after the violation was committed or more than three (3) years after the facts are known or should have been known, but never more than ten (10) years after the commission of the violation. Additional relief can also be obtained by an employee if certain actions are taken for acts committed in furtherance of a qui tam action, including reinstatement, two times back pay, interest on back pay, and special damages.

*Effective Date: August 15, 2009.*

### Act 434 (HB 806)

**Summary:** Authorizes the Board of Examiners of Nursing Facility Administrators to obtain criminal history information, such as a full set of fingerprints and state and national criminal history records, and to collect fees from applicants incurred in requesting such information.

*Effective Date: July 7, 2009.*

### Act 535 (HB 773)

**Summary:** Provides for the revision and restatement of the Physical Therapy Practice Act of Louisiana. The full text of the Act can be found at Louisiana Revised Statutes §§ 37:2401-2424.

*Effective Date: August 15, 2009.*

### Act 357 (SB 348)

**Summary:** Provides for the state registration of certified nurses aides in skilled nursing facility units. Beginning August 15, 2010, a certified nurse aide may not be employed by a nursing facility or contracted by a nursing facility unless the certified nurse aide has a valid and current registration with DHH. Any certified nurses aides employed or contracted by a nursing facility to provide nursing assistant services must be registered with DHH by that date.

*Effective Date: August 15, 2010.*

### Act 231 (SB 106)

**Summary:** Provides immunity for health care providers and health care personnel during a declared state of emergency. Immunity extends to anyone who renders or fails to render health care services, first aid, ambulatory assistance or transportation anywhere in the state for civil damages for any injury, death, or psychological trauma, unless the damages are caused by gross or willful and wanton misconduct.

*Effective Date: July 1, 2009.*

### Act 489 (SB 246)

**Summary:** Establishes the "Electronic Health Records Loan Program" ("Program"). The Program gives DHH authority to apply for and administer federal stimulus money in the form of loans to health care providers for the purchase and implementation of electronic health record ("EHR") systems. Under the federal American Recovery and Reinvestment Act of 2009, physicians and hospitals that become "meaningful users" of certified electronic health records will become eligible for over \$17 billion of enhanced Medicare and Medicaid reimbursements. The state will provide \$5 million, to be matched with \$25 million in federal funds if the application is approved.

The Program also builds on previous state efforts to establish and integrate electronic health records and telemedicine technology through the Louisiana Rural Health Information Exchange (LARHIX). The Program directs DHH and the Louisiana Rural Hospital Coalition to enter into a new cooperative endeavor agreement to facilitate loans to rural hospitals and other rural health care providers that partner with rural hospitals to acquire certified EHR technology.

*Effective Date: July 1, 2009.*

### Act 244 (SB 247)

**Summary:** Directs DHH to establish a case mix reimbursement methodology for nursing homes that requires rate rebasing biannually.

*Effective Date: July 1, 2009.*

### Act 354 (SB 282)

**Summary:** Provides for a consumer health care provider network system. The new law requires hospitals and ambulatory surgery centers to provide to insurers it contracts with the National Provider Identifier (NPI), name, business address, and business telephone number of each individual or group of anesthesiologists, pathologists, radiologists, emergency medical physicians, and neonatologists who provide services at that facility by March 31, 2010 or within thirty (30) days of the effective date of a new contract. Health care providers must also notify each health insurance issuer of any changes to this information not later than thirty (30) days following any change. Health insurance companies are required to report such information on their website as part of an online database by June 30, 2010. Health care providers can be fined up to \$500 for each violation of this law, not to exceed an aggregate fine of \$50,000.

*Effective Date: August 15, 2009.*

### Act 347 (SB 215)

**Summary:** Provides for the definition of major teaching hospital for the purposes of Medicaid hospital prospective reimbursement methodology and the temporary licensure of medical graduates. The criteria a major teaching hospital must meet are set forth in Louisiana Revised Statute § 1300.291(B).

If you have any questions or desire additional information, please contact a member of Phelps Dunbar's health care team listed below.

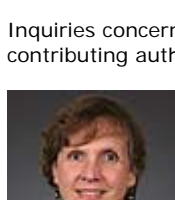
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