



The Ohio General Assembly has adopted a new statute, codified in Ohio Revised Code Section 4731.228, obligating healthcare entities to provide notice to patients if a physician who has treated them terminates employment with the healthcare entity. The statute defines a termination of employment as "the end of a physician's employment with the health care entity for any reason." Thus, the requirements of the new statute apply regardless of whether the termination is the result of the physician's decision or the employer's decision, and regardless of the circumstances of the termination (e.g., retirement, termination for cause, voluntary resignation, termination due to disability, etc.). This statute becomes effective on March 22, 2013.

A "healthcare entity" is broadly defined to include a hospital, a corporation, a limited liability company, a professional association, or a health insuring corporation.

A "physician" means an individual licensed to practice medicine and surgery, osteopathic medicine and surgery or podiatric medicine and surgery.

The notice must be provided no later than the date of termination or 30 days after the healthcare entity has actual knowledge of termination or resignation of the physician, whichever is later.

Notice is to be provided to each patient who received physician services from the physician in the two year period immediately preceding the date of employment termination. However, notice is not required to any patient who has received services from the physician "on an episodic basis or in an emergency department or urgent care center, when it should not be reasonably expected that related medical services would be rendered by the physician to the patient in the future. . . ." The terms "episodic basis" and "related medical services" are not defined.

There is obviously a great spectrum of relationships between physicians and patients in different specialties or situations. Each physician group should analyze the relationships its physicians have with patients with regard to its obligations to provide notice given this "episodic" exception.

A notice to patients through a hospice care program is not required with regard to the termination of employment of a medical director or other physician providing services in a similar capacity to a medical director. Medical residents, interns and fellows who work at hospitals, health systems, federally qualified health centers, and federally qualified health center lookalikes as part of their medical education are not covered. A physician providing services to a patient through a community mental health agency certified by the director of mental health or an alcohol or drug addiction program certified by the Department of Alcohol and Drug Addiction Services is not covered. Similarly, notice is not required with regard to the termination of a physician providing services to a patient through a federally qualified health center or a federally qualified health center lookalike.

Notice is also not required where the physician terminates employment with the healthcare entity but thereafter continues to provide services to the entity as an independent contractor. The statute does not specify what, if any, notice must be given when an "independent contractor" (particularly one who previously had been an "employee") later terminates the contractor relationship.

The obligation to provide the notice rests with the healthcare entity. However, the healthcare entity may obligate the physician to provide the notice if it provides him or her with a list of patients treated and patient contact information.

Significantly, the notice is required regardless of the circumstances under which the physician terminated employment, and regardless of whether the physician may have a non-solicitation or non-competition agreement with the healthcare entity.

The notice must include at least all of the following:

1. That the physician will no longer be practicing medicine as an employee of the healthcare entity
2. Except in situations in which the healthcare entity has a good faith concern that the physician's conduct or medical care provided by the physician would jeopardize the health and safety of the patient, the physician's name and, if known by the healthcare entity, information provided by the physician that the patient may use to contact the physician
3. The date on which the physician ceased or will cease to practice an employee of the healthcare entity
4. Contact information for an alternative physician or physicians employed by the healthcare entity or contact information for a group practice that can provide care for the patient
5. Contact information that enables the patient to obtain information on the patient's medical records

This is simply the minimum information. The healthcare entity could provide additional information if it desires to do so.

The statute provides that the notice is to be provided in accordance with rules adopted by the Ohio State Medical Board. To date, no such rules have been adopted, and representatives of the Ohio State Medical Board indicated that the board has until September to issue the rules.

To some extent, requirements of this new statute duplicate provisions already found in a regulation issued by the Ohio State Medical Board and found in Ohio Administrative Code ("OAC") Section 4731-27-01. The regulation addresses the patient notification requirements in any situation in which there is a termination of the physician-patient relationship.

If a physician is both terminating his or her employment with the healthcare entity and is also terminating his or her relationship with patients (for example, in a retirement situation), then the requirements of OAC Section 4731-27-01 must be complied with as well. Under OAC Section 4731-27-01, a physician who is terminating relationships with patients must provide (or the group must provide) notice by mail to the patients via regular or certified mail, return receipt requested, with the following information:

- A statement that the physician-patient relationship is terminated

healthcare alert new ohio statute effective march 22 2013 regarding notice to patients upon physician termination

- A statement that the physician will continue to provide emergency treatment and access to services for up to 30 days from the date the letter was mailed, to allow the patient to secure care from another licensee
- An offer to transfer records to that new physician upon the patient's signed authorization to do so

Copies of the letters and the original certified mail return receipt must be kept in the patient's records.

These requirements do not apply where the physician rendered medical service to the person on an episodic basis or in an emergency setting and the physician should not reasonably expect that related medical services would be rendered to the patient in the future. In addition, the requirements do not apply where the physician has formally transferred the patient's care to another health provider who is not in the same practice group.

The requirements under Ohio Administrative Code Section 4731-27-01 also do not apply where the physician (or the physician's group) has mailed the notice by regular mail to the address of all patients seen by the physician within the immediately preceding three years at least 30 days prior to the last day the physician will see patients, has published a notice in the newspaper of greatest circulation in the county in which the physician has practiced and in a local newspaper that serves the immediate area, and where there has been a sign posted in a conspicuous place in the physician's office notifying patients of their opportunity to transfer or receive their records, and advising them of contact information for obtaining the records.

Until the Ohio State Medical Board issues regulations concerning the notice required by the new Ohio statute, health care entities should comply with the notice requirements set forth in the new statute, Ohio Revised Code 4731.228, and where applicable the Ohio Administrative Code Section 4731-27-01 described above.

The new statute becomes effective March 22, 2013. In preparation for this deadline, each practice group should develop its own internal policies and procedures for dealing with physician termination and the notification requirements.

If we can provide any assistance to you in this regard or if you have any questions, please let us know.

For more information, please contact:

John T. Mulligan

216.348.5435

jmulligan@mcdonaldhopkins.com

Bridget K. Cougevan

216.348.5842

bcougevan@mcdonaldhopkins.com

HEALTHCARE PRACTICE

McDonald Hopkins has a large and diverse healthcare practice, which is national in scope. The firm represents a wide variety of healthcare providers, facilities, vendors, technology companies and associations. Our diverse experience enables us to give our clients a unique perspective on the issues that may confront them in the rapidly evolving healthcare environment.