CONNECTICUT HOSPITAL ASSOCIATION

TESTIMONY OF
CONNECTICUT HOSPITAL ASSOCIATION
SUBMITTED TO THE
PUBLIC HEALTH COMMITTEE
Wednesday, March 22, 2023

SB 9, An Act Concerning Health And Wellness For Connecticut Residents

The Connecticut Hospital Association (CHA) appreciates this opportunity to submit testimony concerning **SB 9, An Act Concerning Health And Wellness For Connecticut Residents.** CHA supports the goals of the bill and submits several recommendations regarding certain designated sections of the bill, and asks the Committee to include in the bill two additional provisions to improve the health and wellness of Connecticut residents.

Connecticut hospitals continue to meet the challenges posed by the COVID-19 pandemic and are now facing new challenges of treating sicker patients than they saw before the pandemic, with a dedicated but smaller workforce who are exemplary but exhausted. They are also experiencing significant financial hardships brought on by record inflation. Through it all, hospitals have been steadfast, providing high-quality care for everyone who walks through their doors, regardless of ability to pay.

Section 7 of the bill would require a prescribing practitioner to issue a prescription for an opioid antagonist to certain patients at the same time that said practitioner issues a prescription for an opioid drug when certain overdose risk factors are present. These factors include (1) the patient has a history of substance use disorder, (2) the prescribing practitioner issues a prescription for a high-dose opioid drug that results in 90 morphine milligram equivalents or higher per day, or (3) concurrent use by the patient of benzodiazepine or nonbenzodiazepine sedative hypnotic. CHA urges the Committee to require the Department of Public Health (DPH) and Department of Consumer Protection to develop, publish, and disseminate guidance to prescribing practitioners, and execute an information campaign in advance of the effective date of this requirement, with a sufficient number of training programs, webinars, and information sessions for prescribing practitioners. We also urge the Committee to establish a mechanism for reviewing and revising the risk factors delineated in this section on a regular basis as clinical knowledge evolves regarding the risk factors associated with an opioid overdose.

CHA supports **Section 10**, which proposes to establish a Health Care Career Advisory Council (Advisory Council) to include healthcare representatives from across the continuum of care, including hospitals, to advise the Commissioner of Education on how to promote careers in healthcare.

Healthcare workers in Connecticut have been exceptional in responding to the pandemic and all of its impacts over the last three years. But it has taken a toll on them – adding more stress, leading to exhaustion and burnout. Challenges that existed before the pandemic have been exacerbated. Through it all, they have maintained exceptional care for patients.

As we continue to respond to the effects of the pandemic and its impact over the last three years and look to build the future healthcare delivery system in our state, we know that we need to expand Connecticut's healthcare workforce. We believe the establishment of the Advisory Council will support the work of highlighting career opportunities in healthcare.

CHA supports **Section 11** of the bill, which would require the Commissioner of Public Health to convene a working group to develop recommendations for expanding the nursing workforce in the state. We ask the Committee to include an additional hospital representative on the working group. We appreciate this section's focus on growing the nursing workforce in the state. We know from the Governor's Workforce Council that Connecticut will need 3,000 new nurses every year, without factoring in nurses who decide to leave the profession for reasons other than retirement. However, the number of new nursing school graduates per year is only 1,900.

Hospitals are doing all they can to fill vacancies and retain nursing staff. Additionally, hospitals are partnering with colleges and technical schools to develop curriculum and training to support future healthcare needs and identifying the clinical placements that will be needed to support this enhanced training.

We have also built a strong partnership with the Office of Workforce Strategy (OWS), working together to support initiatives to rapidly retrain Connecticut workers for jobs in healthcare (CareerConneCT), create regional sector partnerships to enhance collaboration in communities across the state, develop healthcare career pathways for high school students, and influence the development of the CT Health Horizons program. We must maintain our progress in supporting and growing the healthcare workforce, and the establishment of a work force to examine how to expand the nursing workforce in the state is appropriate.

We support the inclusion of a representative from The University of Connecticut Health Center and request that an additional hospital representative be added to the work group.

CHA requests that the Committee delete **Section 16**, or modify it to align with federal law that makes evident board certification cannot be the sole criteria considered when assessing staff membership or professional privileges. Below is the existing federal regulation and corresponding interpretive guidance that sets the standard for how board certification is allowed to be used in privileging physicians.

42 CFR §482.12(a)(7)

Ensure that under no circumstances is the accordance of staff membership or professional privileges in the hospital dependent solely upon certification, fellowship or membership in a specialty body or society.

Interpretive Guidelines §482.12(a)(7)

In making a judgment on medical staff membership, a hospital may not rely solely on the fact that a MD/DO is, or is not, board-certified. This does not mean that a hospital is prohibited from requiring board certification when considering a MD/DO for medical staff membership, but only that such certification must not be the only factor that the hospital considers. In addition to matters of board certification, a hospital must also consider other criteria such as training, character, competence and judgment. After analysis of all of the criteria, if all criteria are met except for board certification, the hospital has the discretion to decide not to select that individual to the medical staff.

This is the federal rule that CMS requires of all hospitals. It is the accreditation standard enforced by The Joint Commission. It is the rule that should be used.

Section 16 implies that a hospital's medical staff is prohibited from performing a routine assessment of a candidate's clinical and training competencies when determining the scope of privileges to grant. This section is both unnecessary and runs counter to federal accreditation standards. We ask that the Committee delete Section 16 from the bill, or modify it to align with federal law that makes evident board certification cannot be the sole criteria considered when assessing staff membership or professional privileges.

CHA opposes **Section 17** regarding covenants not to compete in physician contracts. In 2016, the General Assembly adopted Public Act 16-95, codified at Section 20-14p of the General Statutes, which establishes statutory limitations on covenants not to compete in physician contracts.

The statute defines a covenant not to compete as "any provision of an employment or other contract or agreement that creates or establishes a professional relationship with a physician and restricts the right of a physician to practice medicine in any geographic area of the state for any period of time after the termination or cessation of such partnership, employment or other professional relationship."

The statute effectively limits covenants not to compete for physicians that are entered into, amended, extended, or renewed on or after July 1, 2016 to: a period of not more than one year, and in a geographic region of no more than fifteen miles from the primary site where such physician practices.

In addition, the statute includes provisions that:

- Require that each covenant not to compete entered into, amended, or renewed on or after July 1, 2016, be separately and individually signed by the physician
- Provide that the remaining provisions of any contract or agreement that includes a covenant not to compete that is rendered void and unenforceable, in whole or in part, under the provisions of this section shall remain in full force and effect, including provisions that require the payment of damages resulting from any injury suffered by reason of termination of such contract or agreement
- Require that if such a covenant is made, it will be enforceable only if the covenant was: (a) in anticipation of, or as part of, a partnership or ownership agreement and such contract or agreement expires and is not renewed, unless, prior to such expiration, the employer makes a bona fide offer to renew the contract on the same or similar terms and conditions; or (b) if the employment or contractual relationship is terminated by the employer for cause

General Statutes Section 20-14p represents an effort to balance the interests of the physician and the employer. It clearly constrains the duration, geographical scope, and application of covenants not to compete in physician employment contracts in the interests of maintaining access to care, continuity of care, and patient choice. It also recognizes the legitimate use of reasonable restrictions in certain circumstances, such as when a physician decides to leave a practice and open up their own practice in the same town.

Our existing statute allows an employer to use a non-compete clause (i) to discourage an employed physician from leaving to join a competing local healthcare provider, (ii) to protect the employer's disproportionate investment in a physician's training and development, and (iii) to mitigate the adverse financial impact on an employer's existing practice, which may result from a physician leaving a practice group to join another local practice group.

The General Assembly engaged in a long, arduous, and thorough examination of the use of covenants not to compete in physician contracts a few short years ago. The outcome was a statute that attempts to achieve a balance between the legitimate interests of both the employer and the physician.

We urge you to leave the current statute intact.

CHA supports the establishment in **Section 19** of a task force to study medical malpractice reform to incentivize physicians and other licensed healthcare practitioners to practice in the state, and seeks the addition of a hospital representative to participate as a member of the task force. We are grateful for the inclusion of a representative of a hospital association as a member of the task force. CHA supports reform of Connecticut's medical liability system, with the particular objective of addressing the increasing cost of medical liability insurance. Though not the sole cause of premium increases, expensive and lengthy litigation and unreasonably high jury awards and settlements have been critical factors leading to increases in medical liability insurance premiums.

While there was a marked decrease in the number of settled claims in 2020 and 2021, given the curtailment of court activity caused by the COVID-19 pandemic and the court's focus on criminal matters, average indemnity payments increased by 26.5%, from $703,875 in 2019 to $890,333 in 2021.[1] Average defense counsel payment increased steadily over this same period, from an average of $110,870 per claim in 2019 to $154,923 in 2021, a 40% increase. The Connecticut Insurance Department expects the number of settled claims to return to and possibly exceed prior levels in late 2022.[2]

Higher costs mean higher medical liability insurance premiums. There was a 6% increase in premiums in 2021 over 2020, and a 20% increase since 2017.[3] Premium increases have risen to the point of endangering the public's access to certain medical services, especially in specialty service areas, such as obstetrics, neurosurgery, and trauma.

Without relief from these soaring premiums, hospitals and physicians will face difficult decisions about what services they will and will not provide. Without affordable insurance, it is certain that physicians will relocate to places other than Connecticut or stop performing specialty services. It will also be more difficult to recruit physicians to practice in our state. Hospitals, without their own affordable insurance or access to doctors willing to perform specialty services, will need to consider shutting down certain services.

CHA favors a collaborative approach among all stakeholders to achieve appropriate medical liability system reforms. The need is an urgent one and requires aggressive action. A task force is an appropriate and necessary first step.

In addition to the measures set forth in **Section 23** intended to fortify Connecticut's workforce, CHA asks the Committee to consider additional assistance through the provision of direct funding to hospitals and health systems for recruitment, retention, and training for healthcare workers and for relief from the increased cost of contract labor and crucial staffing premium pay.

- Healthcare recruitment, retention, and training programming should include, but not be limited to, cash recruitment bonuses, student loan payment assistance, cash retention bonuses, tuition assistance, workplace violence prevention, and other forms of training programming
- Funds should be available to defray the increased costs of contract labor and crucial staffing premium pay

We also support the examination and update of existing state law to enhance protections for the healthcare workforce against violence in healthcare settings.

[1] Connecticut Medical Malpractice Report To Insurance and Real Estate Committee, Presented by the Connecticut Insurance Department, Andrew N. Mais, Commissioner, June 3, 2022, p. 6.

[2] Ibid, p. 6.
[3] Ibid, p. 11.

CHA respectfully requests the addition of the following new section to SB 9 that would update Public Health Regulations governing "short term hospitals, general and special" (19-13-D3) and "short-term hospitals, children's general" (19-13-D4a) to align with standards set by The Joint Commission and the CMS Medicare Conditions of Participation for Hospitals regarding the timing of the appointment and reappointment of the medical staff. We understand that DPH is not opposed to this alignment.

Specifically, we request the following statutory language to effect these changes:

> NEW. Beginning May 1, 2023, appointment of the medical staff or individual medical staff members of a short term hospital may be biennial or triennial, consistent with both CMS regulations and The Joint Commission standards. The department shall update sections 19-13-D3, 19-13-D4a, and any other nonconforming regulation of Connecticut state agencies to reflect the change.

For reference, this is the current language used in the relevant Public Health Code regulations, which reads as follows:

Section 19-13-D3(b)(1)(B): *The hospital shall be managed by a governing board whose duties shall include, as a minimum: […] (B) annual or biennial appointment of the medical staff.*

Section 19-13-D4a(b)(1)(B): *The hospital shall be managed by a governing board whose duties shall include, as a minimum: […] (B)* annual *appointment of the medical staff;*

CHA respectfully requests the addition of another new section to SB 9. To expeditiously address the ongoing shortages of nursing students and new nurses in the pipeline due directly to unfilled administration and faculty positions at nursing schools, we urge you to make the following revisions to section 20-90 subsection (b) of the General Statutes:

> Sec. 20-90. Duties of board. (a) The Connecticut State Board of Examiners for Nursing shall have the following duties: (1) Hear and decide matters concerning suspension or revocation of licensure; (2) adjudicate complaints filed against practitioners licensed under this chapter and impose sanctions where appropriate; (3) approve schools of nursing in the state that prepare persons for examination under the provisions of this chapter; and (4) consult, where possible, with national recognized accrediting agencies when approving schools pursuant to subdivision (3) of this subsection. The board may adopt a seal.
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> (b) All schools of nursing in the state that prepare persons for examination under the provisions of this chapter, shall be (1) visited periodically by a representative of the Department of Public Health who shall be a registered nurse or a person experienced in the field of nursing education, and (2) approved by the Connecticut State Board of Examiners for Nursing pursuant to subdivisions (3) and (4) of subsection (a) of this section.

(c) Each approved nursing program may appoint administrators, faculty and preceptors that the school determines meets meet the following minimum criteria: (1) A nursing administrator shall maintain an active registered nurse license pursuant to chapter 378 and shall have a masters or doctoral degree in nursing, teaching experience in a program in nursing, and administrative experience; (2) Nurse faculty members shall maintain an active registered nurse license pursuant to chapter 378, have earned an advanced degree in nursing or related field as determined relevant by the program, and shall have appropriate nursing education or experience in their teaching area or areas; (3) Nurse faculty members in programs preparing practical nurses shall have earned baccalaureate and master's degrees, one of which shall be in nursing, and shall have appropriate nursing education or experience in their teaching area or areas except, faculty members who do not have an earned master's degree shall complete a master's degree within four years, but shall hold a minimum of an earned baccalaureate degree in nursing upon hire and shall have three years of clinical experience in nursing; (4) Nurse preceptors shall maintain an active registered nursing license and shall have sufficient relevant education, training and experience as determined by the nursing program and institution where the precepting is occurring. The Department of Public Health shall revise the regulations pertaining to nursing and nurse training to conform to this section.

[(c)](d) The Department of Public Health shall post a list of all nursing programs and all programs for training licensed practical nurses that are approved by the Connecticut State Board of Examiners for Nursing and maintain the standard for the education of nurses and the training of licensed practical nurses as established by the Commissioner of Public Health on the department's Internet web site.

Thank you for your consideration of our position. For additional information, contact CHA Government Relations at (203) 294-7310.