

# ALERTS

## South Carolina Legislative Report - April 20, 2012

April 16 - April 20, 2012

### *On the Floor*

#### **Limited Liability Companies**

In response to a recent South Carolina Supreme Court opinion, *16 Jade Street v. R. Design Construction Co., LLC, et al.*, the members of the House and Senate recently introduced H. 5150 and S. 1416. The purpose of the legislation is to clarify the legislative intent regarding shielding members of a limited liability company from personal liability for actions taken in the ordinary course of business. H. 5150 went without reference this week in the House and is up for debate on the House floor next week. A Senate Judiciary subcommittee met earlier in the week on S. 1416, but carried the matter over for further consideration.

#### **Labor Licensing and Regulation - Fees**

S. 1395 was given second reading this week by the Senate. The bill requires LLR revenue funded boards' recommended fees be approved by the General Assembly through legislative enactment. Of note, an amendment was offered on the floor to eliminate Certificate of Need process by Senators Bright and Grooms, but ruled out of order.

#### **Pharmacy Rights - Audits**

S. 1279 was approved by the Senate this week and sent to the House. The bill provides a pharmacy rights during various audits, provides an appeal process, and the process for the recoupment of fees. In addition, the companion bill, H. 5103 was approved by the House Labor, Commerce and Industry Committee with an amendment to clarify the term "abuse."

#### **Newborn Educational Materials Requirement**

H. 4705, a companion of S. 1168, was approved by the House this week. The bill requires hospitals to provide parents of newborns with educational information regarding Pertussis disease and vaccination information. The Senate version was given third reading and sent to the House for consideration. The bill also notes that hospitals are not required to pay for or provide related vaccinations.

#### **Certificate of Need - Fees**

S. 1388 provides for the fees for the administration of the Certificate of Need program. The bill received second reading this week in the Senate (Roll Call - 35 to 5). As previously reported, the members of the Senate requested the department to withdraw and resubmit regulations for the streamlining of the CON process based on their objection to the department setting fees in regulations. S. 1394, which was approved

by the Senate, provided the streamlining and other provisions while S.1388 provides the fees for the program.

**Nursing Permits for Medicaid Facilities**

H. 5028, which is a one-year joint resolution dealing with the Medicaid nursing home permit law received second reading in the Senate this week. The resolution directs DHEC to temporarily suspend enforcement of certain provisions of the Medicaid nursing home permit law relating to penalties for providing fewer Medicaid bed days, allowing for the transfer of allotted bed days across county lines and to direct apportionment of bed days by the agency. The resolution is in response to a Horry County facility that currently participates in the Medicaid program but is transitioning from a Medicaid facility to assisted living.

**Unemployment Benefits - Drug Testing**

The House gave third reading to H. 4043 this week, which will terminate unemployment benefits for those who fail or refuse a drug test as a condition of employment. The bill was recently amended to prohibit employers from obtaining any other information from a urine sample, such as testing for diabetes or other health-related conditions.

**False statements relating to unemployment benefits**

H. 5063 was approved by the House this week and sent to the Senate. The bill deals with penalties for providing false statements in order to increase unemployment benefits. It also provides penalties for employers who give false statements in order to reduce benefits.

**Datacenter - Sales Tax Exemptions**

H. 3720 was given third reading by the Senate and returned to the House with amendments. The legislation provides for thresholds and sales tax exemptions for datacenters (equipment, electricity, etc.). The House can concur with the Senate amendments, amend the bill again and return to the Senate or non-concur and send the bill to conference committee.

**Tax Credits for Plug-in Hybrid Cars**

H. 3059, which extends an income tax credit to consumers who purchase plug-in hybrid vehicles, was given third reading this week by the Senate and returned to the House. The total amount authorized for all claims is \$200,000 and is determined on a first come, first served basis. In addition, several clarifications were made during the process to ensure the definition of the vehicle excluded golf carts and certain other recreational plug-in vehicles.

**Governor/Lieutenant Governor - Joint Ballot**

The Senate continues to debate the merits of a joint resolution (H. 3152) amending the Constitution of South Carolina to authorize the governor and lieutenant governor to run on the same ballot - several amendments have been withdrawn, after debate, to include adding the Secretary of Education to the ballot and the inclusion of the Commissioner of Insurance as a constitutional officer.

*In Committee***Tax Reform**

H. 4995 is one of the tax reform bills proposed by the House Republican Caucus. A subcommittee met earlier in the week and heard from several interests groups regarding the need to reinstate several exemptions proposed to be eliminated in the original bill. The subcommittee reinstated certain exemptions, including hearing aids, newsprint, and broadcast equipment. The full Ways and Means Committee took up the bill later in the week and approved a strike all and insert amendment which reinstates exemptions for motion pictures; hearing aids; memorials; tangible personal property primarily used for children's hospitals; the sales tax holiday in August; gold and silver; Second Amendment holiday; the one percent sales tax exemption for citizens 85 years of age or older; and building materials used in research districts. Furthermore, the amendment includes the elimination of exemptions of use tax on certain sales of certain tangible personal property and removed the reenactment of the Joint Committee on Taxation.

**Limited Liability - Hospitals**

H. 4008 was amended and given a favorable report this week by the Senate Medical Affairs Committee. The legislation establishes that there is no monetary liability or cause of action against hospitals or other related entities (boards, subsidiaries, staff, etc.) for any action taken without malice, made after reasonable efforts to obtain facts and performed in the belief that it was warranted by the known facts. The committee also inserted language to cover certain boards and committees appointed by DHEC.

**Adult Protection Coordinating Council**

The Senate Medical Affairs Committee also gave a favorable report with amendments to H. 4513, which revises the membership, makes technical corrections and establishes a reporting process for the Adult Protection Coordinating Council. In addition to adding new members to the council, it will be required to submit annual reports to the General Assembly regarding its activities and accomplishments.

**Telemedicine Insurance Reimbursement Act**

H. 4944, the Telemedicine Insurance Reimbursement Act, was given a favorable report, as amended, this week by the Labor, Commerce and Industry Committee. The legislation provides for a health care provider that provides telemedicine services to be reimbursed in the same manner as provided through in-person consultation. In addition, the legislation provides insurers and managed care organizations the ability to include or exclude telemedicine and authorizes the Board of Medical Examiners to regulate telemedicine.

*In the News***Medicaid Records Stolen**

## SOUTH CAROLINA LEGISLATIVE REPORT - APRIL 20, 2012

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It was revealed this week that an employee of the Department of Health and Human Services allegedly accessed over 200,000 medical records from the department and emailed them from his work computer to a personal email account. The records contained names, addresses, dates-of-birth and social security numbers for Medicaid recipients from around the Midlands of South Carolina. The employee has been fired and charged with five counts of violating medical confidentiality laws and one count of disclosure of confidential information. To read more about this story, [click here](#).