

New Disclosure Requirement for Connecticut Physicians Under Letter of Protection Law

Connecticut Health Law

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In an attempt to better protect the rights of personal injury plaintiffs, Connecticut Public Act 12-14 (An Act Concerning Letters of Protection) requires that any physician or physical therapist licensed in Connecticut make certain disclosures to patients who may be seeking a disability rating or similar professional opinion from the provider. Sponsors of the bill claim the new law will help prevent patients from being surprised by the fees charged for such services and assist in getting the fees paid once the patient's lawsuit is resolved. In order to comply with law that becomes effective October 1, 2012, the physician or physical therapist must disclose:

- whether the practitioner is willing provide services pursuant to a letter of protection (an "LOP") issued by an attorney representing the patient in a personal injury action, which LOP promises that any bill rendered for the practitioner's services will be paid from any recovery or settlement, or if there is no recovery or settlement or it is insufficient to pay the practitioner's bill, that the bill will be paid by the patient; and
- the estimated cost of providing to the patient or his/her attorney in a personal injury action an opinion letter concerning cause of injury, diagnosis, treatment and prognosis, including a disability rating.

These disclosures must be in writing and must be made prior to any treatment of such patient during the consultation period.

Challenges for Practitioners

As we see it, this new law creates challenges for physicians and physical therapists. Among them are the following:

- the term "personal injury" is not defined, so it is left to the practitioner to determine whether the patient must receive the required disclosures; and
- patients may react negatively to the estimated fee charged for opinion letters, not realizing the time and expense involved.

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The statute does not specifically provide for penalties for non-compliance, but it is likely that at the very least, a failure to make the required disclosures could be asserted as a defense in a collection action brought by a practitioner.

Should You Agree to Accept a Letter of Protection?

Practitioners must determine whether accepting an LOP from patients who have a personal injury claim is in the best interest of the practice and are advised to seek the advice of experienced counsel on this issue. LOPs can vary significantly and some can raise insurance reimbursement issues. Some are well written and offer substantial protection (provided there is sufficient recovery), while others are poorly drafted and offer little or no protection. A practitioner who decides not to accept LOPs may simply state in its disclosure that it does not provide services on the basis of a letter of protection issued by a patient's attorney in personal injury matter.

How Do You Satisfy the Estimated Fee Disclosure Requirement?

Since the time involved in preparing an opinion letter may vary greatly depending upon the type and severity of the injury and extent of treatment and disability, a practitioner who does not charge a uniform flat fee for an opinion letter may find it difficult to determine the estimated cost of providing one. An alternate approach may be to disclose the charge per page or per physician hour, with a stated total minimum and maximum fee.

Who Must Receive the Disclosures?

In light of the uncertainties created by the law, we recommend that those covered by the law consider the following approaches to complying with the disclosure requirements:

- Request that all new patients complete a form prior to treatment inquiring as to whether the patient is seeking evaluation or treatment for a personal injury which may give rise to claim against another person or entity. If the patient's written response is affirmative, then the patient would receive the disclosures mandated by the new law and sign or initial a form to acknowledge receipt; **or**
- Include the required disclosures in the forms distributed and completed by all new patients (or returning patients if new injury).

In either case, written confirmation that the patient was either appropriately screened or received the required disclosures should be maintained with the patient's record.

For further information on the topics discussed above, please contact Stephen Cowherd at scowherd@jeffers-law.com, Carolyn Linsey at clinsey@jeffers-law.com or Michelle Goglia at mgoglia@jeffers-law.com.

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