

Physician's Risk Advisory



Legislative Updates for 2010

As far as blockbuster legislation involving healthcare goes, 2010 was somewhat of a quiet year at the state level. At the federal level, the passage of the healthcare reform bill, the "Patient Protection and Affordable Care Act" (H.R. 3590), commonly referred to as the "Affordable Care Act," has made, and will continue to make, a significant impact on how healthcare is managed in the United States. Before a brief review of that new law, let's look at some that were generated during this past state legislative session.

AB 253: Disclosure of Professional Qualifications: This law amends previous legislation requiring licensed health care providers to include their name and license status on their name badges, or post this information "prominently" in their offices where it can be seen by patients. This amendment takes the disclosure requirement one step further by requiring, as of January 1st of 2011, all physicians to provide additional information about themselves to their patients in one of two different ways; 1) either by posting it in their waiting rooms, treatment areas, etc., or 2) by providing it to their first-time patients. The information now required to be disclosed must adhere to the following format:

HEALTHCARE PRACTITIONER INFORMATION

1. Name and license.....
2. Highest level of academic degree.....
3. Board certification (ABMS/MBC).....

Irrespective of which method you choose, this information must be presented in a minimum of 24-point typeface. There are a number of physicians who are exempt from this requirement, such as those who are hospital-based, e.g. ED physicians, hospitalists, clinical laboratory directors, etc., but all others must comply.

AB 2028: Confidentiality of Medical Information: Reporting Suspected Child, Elder or Dependent Adult Abuse: This new law amends the state *Confidentiality of Medical Information Act* by officially establishing that information released to law enforcement or other agencies relating to suspected child, elder or dependent adult abuse or neglect is "authorized by law" and, consequently, permitted

without the patient/patient's representative's consent. This is more of a technical fix than anything substantive. With respect to information relating to a patient's outpatient psychotherapy records, the current state requirement requiring written notification of the patient prior to release of such records is now waived with respect to reporting suspected child, adult, or dependent adult abuse or neglect. Finally, medical information is expressly permitted to be released pursuant to federal *Safe Medical Devices Act* reporting requirements.

AB 2339: Child Abuse Reporting: This bill represents another technical fix relating to the type of information disclosed by mandated reporters and the legal immunity that applies to them in these situations. Specifically, the amended law provides that disclosure of information to an individual from an agency investigating a report of a known or suspected case of child abuse or neglect may *also* include information relating to a report of a child suffering from, or at substantial risk for suffering from, serious emotional damage.

SB 1069: Physician Assistants: Although generally accepted under existing law, this new law specifically codifies that a physician assistant acts as the agent of the supervising physician. In addition, this new law authorizes physician assistants, pursuant to a delegation of services agreement, to order durable medical equipment and make arrangements for home health services or personal care services. This bill also authorized a physician assistant to perform and certify additional medical services under the Education Code, including physical exams for students participating in interscholastic athletic programs.

SB 1172: Health Regulatory Boards: Diversion Programs: If, while enrolled in a diversion program, a provider tests positive for any substance that is prohibited under the terms of his/her diversion program or probation, the board *must* order the licensee to cease practice. Further, boards may adopt regulations authorizing the board to order a practitioner to cease practice for 1) major violations of their diversion program, or 2) if the board orders the practitioner to undergo clinical diagnostic evaluation. Under both sets of conditions, licensee's have no right to a hearing if ordered to cease practicing.

Federal Health Care Reform

Federal H.R. 3590: Patient Protection and Affordable Care Act (P.L. 111-148):

The **Affordable Care Act** is complex legislation that covers a broad range of issues that will be enacted over a period of years. Certain elements have already been enacted including; permitting Medicare to contract with Accountable Care Organizations (regulations pending at this time); prohibitions against health insurance companies from 1) denying coverage to children under the age of 19 due to a pre-existing condition, 2) using a simple error, or other technical mistake, on an enrollee's application to deny payment for services; 3) imposing life time dollar limits on essential benefits (such as hospital stays), and 4) restricting annual dollar limits on certain benefits (such as hospital stays). Other notable new programs include establishing a process for enrollees to appeal adverse insurance coverage determinations; permitting young adults to stay on their parents' plan until they turn 26 years old; creating a stop-gap measure to preserve employer coverage for early retirees until more affordable coverage is available through the new Exchanges in 2014; creating incentives to expand the number of primary care doctors, nurses and physician assistants, including funding for scholarships and loan repayments for primary care doctors and nurses working in underserved areas.

A sampling of new elements of the law that will go into effect throughout 2011 include; establishing a 50 percent discount when enrollees in Medicare Part D buy covered brand-name prescription drugs; requiring the provision of certain free preventive services, such as annual wellness

visits and personalized prevention plans for seniors on Medicare; requiring that at least 85% of all premium dollars collected by insurance companies for large employer plans (and 80% for plans sold to individuals and small employers) are spent on health care services and health care quality improvement (plans that spend too much on overhead will be required to provide rebates to consumers); enacting a five-year pilot program called the *Community-Based Care Transitions Program* that targets hospitals with high readmission rates and is aimed at helping high risk Medicare beneficiaries who are hospitalized avoid unnecessary readmissions by coordinating care and connecting patients to services in their communities; establishing the *Community First Choice Option Program* that allows States to offer home and community based services to disabled individuals through Medicaid rather than institutional care in nursing homes; providing funding to support the construction of and expansion of services at community health centers; and scaling back payments to Medicare Advantage plans.

As the devil is in the details, you are encouraged to review all of the above-noted legislation yourself and/or rely on a credible, independent resource for guidance. With respect to federal healthcare reform, we strongly suggest that you mine the great resources available on the MySutter intranet. Just sign on to the page and enter "health care reform" on the "Advanced Search" line on the upper right of the page.

As always, we encourage you to submit ideas for articles for the upcoming year. Please contact Mark Cohen at www.cohenm1@sutterhealth.org with your suggestions.

"Many years ago, I saw a fundus oculi with patches of black pigment on it scattered all over the field, so I asked an ophthalmic consultant to give me his opinion. He wrote in the notes: "This is retinitis pigmentosa. It might be part of the Laurence Moon Biedly syndrome. Is there any evidence of polydactyly?" Surely, to refer a patient back to a physician to have the number of fingers counted argues a degree of specialization which has altogether obliterated common sense."

Richard Asher, M.D.



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