COPIC
Better Medicine • Better Lives

Legislative Update: July 2018

COPIC has long believed that taking an active role in advocating on legislative issues is an important way to keep medical liability rates stable. This approach allows the health care community to devote its resources to quality improvement and patient care.

It is for this reason that COPIC continuously monitors regulation and legislation to make sure that new burdens and duties are not placed on health care providers. COPIC works closely with our partners to ensure that no additional barriers to the delivery of care are created.

FEDERAL:

The Good Samaritan Health Professionals Act (H.R. 1876), a bill that grants immunity from liability for health care professionals when they are providing uncompensated care to victims of a federally declared disaster, passed out of the House Energy & Commerce Committee on February 14th. The Committee voted unanimously to support the bill. The bill's sponsor, Cong. Marsha Blackburn (R-TN), offered an amendment to limit the bill's protection to care provided in disaster areas. The bill is now poised either for the House floor or for addition to other pending health care legislation. Identical legislation in the U.S. Senate (S. 781) was introduced in March of 2017 without advancement.

The Protecting Access to Care Act (H.R. 1215), a bill attempting to cap non-economic damages, limit attorney contingency fees, implement periodic payment of future damages, and establish a statute of limitations for claims concerning the provision of goods or services for which coverage is provided in whole or in part via a Federal program, subsidy, or tax benefit, has not advanced since it was received in the Senate and assigned to the Judiciary Committee in late June of 2017.

COLORADO

The Colorado General Assembly has adjourned for 2018. Below are a few bills that passed and may impact your facility.

Senate Bill 22—Clinical Practice for Opioid Prescribing

The bill limits initial prescriptions of opioids, for acute pain circumstances, to seven days for patients that have not had an opioid prescription in twelve months from the prescribing physician; this physician would have the discretion to include a second fill for a 7-day supply. The limits on initial prescribing do not apply if, in the judgement of the physician, the patient:

- Has chronic pain that typically lasts longer than 90 days or past the time of normal healing as determined by the physician, or following transfer of care from another physician who prescribed an opioid to the patient;
- Has been diagnosed with cancer and is experiencing cancer-related pain;
- Is experiencing post-surgical pain that, because of the nature of the procedure, is expected to last longer than 14 days;
- Is undergoing palliative or hospice care focused on providing the patient with relief from symptoms, pain, and stress resulting from a serious illness to improve quality of life.

The bill also requires prescribers to check the Prescription Drug Monitoring Program (PDMP) prior to prescribing the first refill (certain exemptions apply).

Additionally, the bill requires that findings from grant funded studies conducted by the State Department of Health and Human Services (DHHS) are to be presented to the General Assembly on or before December 1, 2019. Health care provider scorecards will be included in the presented findings. The DHHS will forward the findings to the University of Colorado Health Sciences Center for research into substance use disorder prevention, treatment, and recovery support strategies and the Center will use the information to provide voluntary training for health care providers.

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Senate Bill 146—Freestanding Emergency Departments Required Consumer Notices

Senate Bill 146 requires Freestanding emergency departments (FSED), whether operated by a hospital at a separate, off-campus location or operating independently of a hospital system, to provide any individual that enters the FSED seeking treatment a written statement of patient information that an FSED staff member or health care provider must also explain orally. Additionally, each FSED must also post signage that is plainly visible within the facility with the following language:

For FSEDs without an Urgent Care Clinic the signage must include:

"This is an Emergency Medical Facility that treats emergency medical conditions. This is not an Urgent Care Center or Primary Care Provider."

For FSEDs with an Urgent Care Clinic the signage must include:

"This is an Emergency Medical Facility that treats emergency medical conditions.

This facility also contains an Urgent Care Center that operates from (insert time Urgent Care Center opens) to (insert time Urgent Care Center closes) and provides Primary Care services (and insert, if applicable, that the urgent care center offers primary care services by appointment)."

NEBRASKA

The Nebraska Unicameral adjourned for 2018. Below are a few bills that have been introduced and may be of interest to you.

Legislative Bill 931 and 788—Provide requirements for opiate and controlled substance prescriptions

Legislative Bill 931 prohibits medical practitioners from prescribing more than a seven-day supply for patients younger than 18 years of age for outpatient, acute conditions. Exceptions to the seven-day limitation can be made for chronic pain, cancer diagnosis or palliative care. A practitioner may exceed the seven-day cap so long as the practitioner documents the patient's condition and records his/her professional finding that a non-opiate alternative was inappropriate to address the medical condition. Additionally, if the practitioner has not previously prescribed an opiate for such a patient, the practitioner must discuss the risks associated with the use of opiates and the reasons why the prescription is necessary.

Additionally, a medical practitioner is required to discuss the risks associated with opiates with the patient's parent or guardian upon prescribing. Specifically, practitioners are required to notify patients of the risks of addiction and overdose when prescribing opioids or other controlled substances listed in Schedule II of the Uniform Controlled Substances Act. Practitioners are required to notify the patient when the substance is initially prescribed and again prior to the third prescription. Notation in the medical record that such discussion took place is not required. The bill also requires that individuals show photo identification when receiving dispensed opiates currently under Scheduled II, III, IV, or V of the Uniform Controlled Substances Act. Exceptions do exist if the pharmacist or dispensing practitioner personally know the patient. Another exemption exists for patients, residents, and employees of licensed health care facilities, so long as there are related ID procedures in place at such facility.

Legislative Bill 788 is another opiate-related bill that adds a requirement that physicians, physician assistants, nurse practitioners, nurse midwives, dentists, podiatrists, and veterinarians who prescribe controlled substances earn at least three hours of continuing education biennially regarding prescribing opiates. The continuing education may include, but is not limited to, education regarding prescribing and administering opiates, the risks and indicators regarding development of addiction to opiates, and emergency opiate situations. One-half hour of the three hours of continuing education must cover the Prescription Drug Monitoring Program (PDMP). The half-hour PDMP requirement can be satisfied by watching the PDMP video on the Nebraska Department of Health and Human Services' website.

Both laws become effective July 19, 2018, and sunset on January 1, 2029.

Legislative Bill 104—Provide for a Surrogate to Make Health Care Decisions

This bill established the Health Care Surrogacy Act which allows a surrogate to make a health care decision for a patient who is an adult or emancipated minor if the patient has been determined by the primary physician to lack capacity and no agent or guardian has been appointed. Under the act an adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider.

If an individual has not designated a surrogate and there is no power of attorney for health care of court-appointed guardian, any member of the following classes may act

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as surrogate for the individual if such person is reasonably available at the time the health care decision is to be made on behalf of the individual:

- The individual's spouse unless legally separated or pending divorce, annulment or legal separation
- A child of the individual who is an adult or emancipated minor.
- A brother or sister of the individual who is an adult or emancipated minor.

The primary health care provider may require a person claiming to act as surrogate to provide a written declaration under penalty of perjury to establish that person's authority to act as surrogate. If there are multiple parties claiming authority, the provider shall seek consensus on the decisions for care and may seek the assistance of other heal care providers to help facilitate meetings with the parties to come to a consensus.

If there is no one reasonably available to act as surrogate, the provider may take actions or decline to take actions determined to be appropriate and in the best interest of the patient.

As always, COPIC will continue to keep you updated on specific legislative priorities involving health care and alert you so you can be informed and get involved. You can always find the latest information by visiting COPIC's Legislative Action Center. When you're on the Legislative Action Center, scroll to the bottom of the page and make sure you are signed up for the Action E-List. By doing so, you will get emails when important issues arise and have an opportunity to help educate legislators.