



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:

We reported the status of the below bills in our previous newsletter. Neither bill advanced in the final months of the legislative session.

The Good Samaritan Health Professionals Act (H.R. 1876) is a bill that grants immunity from liability for health care professionals when they are providing uncompensated care to victims of a federally declared disaster.

The Protecting Access to Care Act (H.R. 1215) is a bill that attempts 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.

COLORADO

The Colorado 2019 Legislative Session convened on January 4, 2019. Below are upcoming deadlines to be aware of that were established from enacted laws:

Transparency

Effective January 1, 2018, a law passed in 2017 requires health care facilities to make available to the public the health care prices for the 50 most common inpatient services and the 25 most common outpatient services they provide. The top services must be identified by CPT code, or other coding system accepted as a national standard for billing, with a plain English description. Facilities that, in the normal course of practice, regularly provide fewer than 50 inpatient or 25 outpatient services must make available the health care prices for the services most commonly provide. *This list must be updated at least annually.*

The notice must be made available to the public in a single document either electronically or by posting it conspicuously on the provider's website, if one exists.

The facility must include a disclosure specifying that the price for any given health care service is an estimate and that the actual charges are dependent on the

circumstances at the time the service is rendered. The provider must also include the following statement:

If you are covered by health insurance, you are strongly encouraged to consult with your health insurer to determine accurate information about your financial responsibility for a particular health care service provided by a health care provider at this office. If you are not covered by health insurance, you are strongly encouraged to contact our billing office at (insert telephone number) to discuss payment options prior to receiving a health care service from a health care provider at this office since posted health care prices may not reflect the actual amount of your financial responsibility.

A hospital-based health care provider that is not an employee of the hospital where the services are being delivered is not required to provide health care prices for the services the provider renders in the hospital.

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Background Checks

A bill passed earlier this year created a new requirement to check the Colorado Adult Protective Services (CAPS) database for all prospective employees working directly with at-risk adults. *[This bill becomes effective as of January 1, 2019.](#)*

The Colorado Department of Human Services (CDHS) has created the CAPS Check Unit (CCU), which will be conducting the CAPS Checks. The results of the check will notify an employer whether there is a substantiated report of adult abuse or neglect for a prospective employee prior to hiring. New guidance for health care facilities can be found on the Department's website which has created a page dedicated to CCU. CDHS is updating the website over the coming months with information about the process for registering as an employer, how to request the checks, and more.

NEBRASKA

The Nebraska Unicameral convened on January 9, 2019. Below are upcoming deadlines to be aware of that were established from enacted laws:

HIV Testing Requirement

A law was passed in 2018 that eliminates the requirement for an opt-in for human immunodeficiency virus (HIV) tests and added a requirement for physicians to add an HIV test to the group of tests that are currently conducted on pregnant women.

Under the law, every physician, or other person authorized by law to practice obstetrics, who is attending to a pregnant woman is to administer, or cause to be administered, a test of the pregnant woman's blood for the presence of HIV, unless the pregnant woman has given written informed consent that she does not want to be tested. *The bill became effective July 18, 2018.*

Prescribing

A new opioid prescribing limit was established in 2018. Medical practitioners are prohibited 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

Professional Review

The Colorado Professional Review Act (CPRA) is up for its periodic review before the legislature this year.

As you may already know, the last review resulted in a new requirement that governing boards of entities conducting professional review need to register with the state within 30 days of establishing a professional review committee in order to receive the qualified immunity provided under CPRA. Colorado's Division of Professions and Occupations in the Department of Regulatory Agencies has a website available where governing boards can complete the one-time registration process. This registry is available to the public.

There is also an online reporting method where governing boards can send de-identified aggregate information about the number of professional review investigations the health care entity performs annually and the results of those investigations to the Division.

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.

Lastly, a new continuing education requirement was established for physicians, physician assistants, nurse practitioners, nurse midwives, dentists, podiatrists, and veterinarians who prescribe controlled substances. They must now 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. Thirty minutes of the three hours of continuing education must cover the Prescription Drug Monitoring Program (PDMP). The thirty-minute PDMP requirement can be satisfied by watching the PDMP video on the Nebraska Department of Health and Human Services' website. *All limits and requirements became effective July 18, 2018.*

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Surrogacy

A new Health Care Surrogacy Act 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 or court-appointed guardian, any member of the following classes may act 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 health 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.