



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. (Please note, changes to the information below may have occurred since publication. The latest information can be found on [COPIC's Legislative Action Center](#).)

FEDERAL:

The Good Samaritan Health Professionals Act of 2019 (S.1350) has been introduced by Senators Bill Cassidy, M.D. (R-LA) and Angus King, Jr. (I-ME). The legislation would provide limited medical liability protections for medical volunteers who respond to federally declared disasters. The bill is nearly identical to legislation that was approved by the House Energy and Commerce Committee last year following extensive negotiations with committee Democrats and the American Association of Justice. The bill has been referred to the Senate Committee on Health, Education, Labor, and Pensions.

COLORADO

The Colorado 2019 Legislative Session adjourned on May 3, 2019. Below are a few bills that passed and may be of interest to you.

Senate Bill 234: Colorado Professional Review Act Sunset

The Colorado Professional Review Act was reauthorized with all of its protections intact until 2030. The protections provided within the Act are critical in fostering an environment where physicians, physician assistants, and advanced practice nurses can critically review the care of their peers and self-report when there is an adverse health care incident in the interests of improving care for all patients.

The Colorado Hospital Association, Colorado Medical Society, and COPIC worked together to meet with legislators as well as representatives of the Colorado Trial Lawyers Association (CTLA) in an effort to address concerns with the current law. An amendment was offered and adopted which reached the balance of addressing CTLA's concerns without destroying the current protections under the law.

The amendment aims to ensure that documents not created for professional review purposes are not being

protected under the professional review privilege merely because they were considered by a professional review committee. The bill, with the amendment:

- Recognizes that original source documents containing factual information about a patient not created as part of professional review are not protected under the professional review privilege.
- Allows a mechanism where such documents, that are not otherwise privileged or confidential, are identified and can be obtained by subpoena or discovery from the professional review entity if those records are not otherwise available from the original source that created them.
- Additionally, it was made clear that the log of all original source documents will describe the nature and source of the original source documents.

Lastly, the amended bill encourages consumer member participation on professional review committees and will allow rulemaking by Colorado Department of Regulatory Agencies (DORA) to require more robust reporting by the

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governing boards of professional review entities about the outcomes of their professional review investigations. This would include, for example, where the entity takes no final adverse action on the individual's privileges but requires additional education or proctoring by the individual.

Senate Bill 193: Sunset of the Colorado Medical Practice Act

The Colorado Medical Practice Act (MPA) Sunset reauthorizes and extends the Act until 2026. The MPA established the Colorado Medical Board to regulate the practice of medicine and includes laws controlling the licensing and practice of physician assistants (PAs) and anesthesiology assistants (AAs) in addition to the licensing standards for medical doctors and doctors of osteopathy. In addition to extending the Act, the reauthorized MPA:

- Eliminates the restriction on the number of days that a physician may practice in a calendar year with a pro bono license,
- Repeals the requirement that the board send a letter of admonition to a licensee by certified mail, and
- Makes other technical amendments.

Senate Bill 201: Open Discussions About Adverse Health Care Incidents

The Colorado Candor Act establishes a voluntary framework for health care providers and facilities to offer compassionate, honest, timely, and thorough responses to patients who experience an adverse health care incident. This program is designed to benefit patients, their families, clinicians, and health care systems by formalizing a non-adversarial process where there can be open communication about what happened, why it happened, and what can be done to prevent this in the future. Under certain circumstances, the process may include an offer of compensation. Patients and their families can bring their invaluable perspectives in identifying both provider and systems issues that can then be included when educating students, residents in training, and practicing health professionals.

The Colorado Candor Act went into effect on July 1, 2019.

House Bill 1041: Require Surgical Smoke Detection Policies

The bill requires each hospital with surgical services and each ambulatory surgical center to adopt and implement on or before May 1, 2021, a policy that prevents human exposure to surgical smoke via the use of a surgical smoke evacuation system during any planned surgical procedure that is likely to generate surgical smoke.

House Bill 1174: Out-of-Network Billing

The bill sets billing parameters and requirements for out-of-network (OON) services provided at an in-network facility. Examples include an out-of-network anesthesiologist, pathologist, radiologist, hospitalist, trauma surgeon, or neonatologist. Physicians should become familiar with the new parameters and requirements and additional rules to be implemented before January 1, 2020. The law does not apply to patients who intentionally seek services from an out-of-network provider.

The bill establishes:

- A new benchmark for OON reimbursement rates. The benchmark reimbursement rate by carriers to out-of-network providers is the greater of either: (a) 110% of the carrier's in-network reimbursement rate; or (b) The 60th percentile of the in-network reimbursement rate for the same service in the same geographic area from the All Payer Claims Database for the prior year.
- The Division of Insurance, Division of Professions & Occupations (Medical Board) and Department of Health will develop the language and timing for facilities and physicians to notify patients and provide a disclosure to patients concerning the potential for receiving OON services and patient rights under Colorado law.
- The OON physician must provide a written estimate to the patient within three business days of a request.
- The OON physician must submit a claim for the total amount to the patient's insurance carrier within 180 days of the date of service. If the claim is submitted beyond 180 days, then the physician will only be reimbursed at 125% of the Medicare rate for that service.
- Physicians can only collect any in-network cost-sharing amount from the patient. The insurance carrier is to send payment directly to the OON physician and inform the physician of the patient's required coinsurance, deductible or copayment.
- Any questions concerning the accuracy of the amount paid for OON services can be referred to the Insurance Commissioner for verification.
- The OON physician may initiate arbitration through the Division of Insurance to contest the reimbursement amount given the complexity and circumstances of the services provided within 90 days after receipt of payment. Prior to arbitration, the carrier and the physician may conduct an informal settlement teleconference. If the issue is not resolved the Commissioner assigns an arbitrator. Each party submits their final "best" offer and the arbitrator will select one or the other (baseball arbitration). The loser pays the cost of the arbitration.

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- If the OON physician receives an overpayment from the patient, the physician must refund the overpayment amount within 60 days of receiving notice. If the OON physician does not refund the overpayment in time, then the physician must pay the patient interest at the rate of 10% per annum and include that amount with the refund.

Please note: Failure to comply with these provisions is a deceptive trade practice in violation of CRS 6-1-105.

Senate Bill 79: Electronic Prescribing Controlled Substances

The bill requires podiatrists, physicians, physician assistants, advanced practice nurses, and optometrists, starting July 1, 2021, and dentists and practitioners serving rural communities or in a solo practice, starting July 1, 2023, to prescribe schedule II, III, or IV controlled substances only via a prescription that is electronically transmitted to a pharmacy unless a specified exception applies. Prescribers are required to indicate on license renewal questionnaires whether they have complied with the electronic prescribing requirement. The bill allows for exceptions if orders are received for a controlled substance in writing, orally, or via facsimile transmission as long as they are valid under the law.

NEBRASKA

The Nebraska Unicameral has completed its 2019 legislative session. Many bills passed that will directly impact how care is delivered for the patients of Nebraska. Improving access to quality care is COPIC's top priority when reviewing bills. The following are updates on some of the bills that COPIC was involved in or monitored:

Legislative Bill 119

The bill extends the protections of peer review to physician practices. The Nebraska Health Care Quality Improvement Act currently allows for peer review in licensed health care facilities, including professional credentialing and quality review activities. LB 119 now provides for the same confidentiality of records and qualified immunity from liability for peer review participants of professional health care service entities involved in peer review, including physician practices. Importantly, this bill makes learning through confidential reviews available to all professional health care service entities. COPIC worked to support the bill proponents, the Nebraska Medical Society, and sponsor, Senator John Arch.

Legislative Bill 557

The bill makes needed changes after hiccups in implementation of a bill last year that required physicians to educate patients on the risks of opioids when prescribing them to patients. LB 557 eliminates the requirement to educate on the third prescription and provides that the education requirements do not apply to a prescription for a hospice patient or for a course of treatment for cancer or palliative care. The bill also transfers the education requirements from the state's criminal code and inserts them instead in the Uniform Credentialing Act.

Legislative Bill 556

The bill updates and modernizes the state's prescription drug monitoring program by allowing for easier integration with electronic health record systems and permits sharing data with other states' prescription drug monitoring programs to combat doctor shopping in border areas.

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.