

## LEGISLATIVE UPDATE 2007: NEW LAWS WORTH NOTING

### Sutter Health Risk Services – Healthcare Risk Office of the General Counsel

This Legislative Update is intended to familiarize the reader with an overview and key elements of a selection of important health care-related legislation and regulation enacted by both the state Legislature and Congress during 2007. The Update is not a substitute for careful review of the entire legislative mandate of each new law or regulation. Questions about the content of the bills should be directed to your Risk Manager, Sutter Health – Healthcare Risk or any other subject matter expert that you work with. To access the complete text of these or any other bills enacted by the state Legislature during 2007, go to [www.leginfo.ca.gov/bilinfo.html](http://www.leginfo.ca.gov/bilinfo.html) and follow the search instructions. Past editions of Legislative Updates can be accessed at the MySutter web site, under the “Publications” section of the Healthcare Risk Division page.

#### **SENATE BILLS**

**SB 22: Breast-feeding education:** In view of the virtually universal recognitions of the value of promoting breast-feeding, this new law was enacted and requires the state Department of Public Health (DPH) to develop training materials and *recommend* training for general acute care hospitals to improve breast-feeding rates. This recommended training is aimed at general acute care hospitals that provide maternity care *and* have patient breast-feeding rates in the lowest 25 percent, according to the data published yearly by the DPH. The DPH is also charged with developing a model eight-hour training course, including hospital policies and recommendations, that promote exclusive breast-feeding, and will specify hospital staff for whom this model training is appropriate. The Department is also required to notify hospital directors when the training course is available, and then make it available upon request. At the same time, the state Department of Health Care Services is charged with streamlining and simplifying Medi-Cal program procedures to improve access to lactation supports and breast pumps among Medi-Cal recipients. **NOTE:** The recommendations provided for in this section are *advisory* only. The law does *not* require a hospital to comply with the training recommended by this section nor shall meeting the recommendations of this section be a condition of licensure. However, the option to do so should be explored by each affiliate, irrespective of its breast-feeding rates.

**SB 102: Blood transfusion notification: Scope of practice:** Current law provides that whenever there is a reasonable possibility, as determined by a physician, that a blood transfusion may be necessary in conjunction with a medical or surgical procedure, the physician must inform the patient, using the standardized written summary as most recently developed or revised by the State Department of Public Health, of the positive

and negative aspects of receiving autologous blood and directed and nondirected homologous blood from volunteers. This long overdue amendment to the law now permits such disclosure to be performed by a *nurse practitioner, certified nurse midwife, or a physician assistant* who is authorized to order a blood transfusion. In addition, the law requires *that the person who provided the patient with the standardized written summary* must document within the patient's medical record that the standardized written summary was given to the patient.

**SB 183: Elder and dependent adult abuse civil actions:** This bill was sponsored by the Trusts and Estates Section of the State Bar in response to the findings of the court in the case of Estate of Laura Marie Lowrie, Deceased (2004) (118 Cal. App. 4th 220). This amendment to the law is intended to clarify Welfare and Institutions Code section 15657.3, which confers legal authority standing to specified persons to maintain elder or dependent adult abuse actions under the state Elder Abuse and Dependent Civil Protection Act (EADACPA) *after a patient dies*. Currently, the law provides that, by petition to the court after the death of the elder or dependent adult, the right to maintain an action alleging elder or dependent adult abuse must be transferred to the personal representative of the decedent, or if none, to the person or persons entitled to succeed to the decedent's estate.

This amendment to the law deletes the requirement for a court petition, changes the venue of the court that oversees these types of case and provides that, after the death of the elder or dependent adult, the right to commence or maintain an action will pass to the personal representative, and if none, to 1) an intestate heir whose interest may be affected by the action and 2) to the decedent's successor in interest as defined in section 377.11 of the Code of Civil Procedure (i.e., the beneficiary of the decedent's estate or other successor in interest who succeeds to a cause of action or to a particular item of the property that is the subject of a cause of action) or 3) an "interested person", as defined in section 48 of the Probate Code (i.e., including, but not limited to an heir, devisee, child, spouse, creditor, or beneficiary) subject to specified conditions. Consequently, as was the case in Lowrie noted above, if the personal representative may actually *be* the perpetrator of the abuse or neglect and, therefore, unlikely to file an action for abuse or neglect, any one or more members of an expanded class of interested people may do so.

**SB 350: Charity Care:** SB 350, sponsored by the California Association of Debt Collectors, is a clean-up bill of last year's AB 774 (2006), which mandated hospitals to develop and implement charity care and discount payment policies and limited hospitals' billing and collection practices involving financially qualified patients. The new amendments to the law include;

- 1) Limiting the requirement of hospitals to provide payment plans that are entirely interest free by allowing hospitals to declare such a plan no longer "operative" after the patient's fails to make all consecutive payments due during a 90-day period,
- 2) prescribe procedures for the extension or renegotiation of an extended payment plan,
- 3) prohibit the hospital, collection agency, or assignee from reporting adverse information to a consumer credit reporting agency *or* commencing a civil action against

the patient for nonpayment *prior* to the time the extended payment plan is declared to be no longer operative,

- 4) prescribe the amount of interest required to be paid *by the hospital* for those excess amounts actually paid by a patient or patients, as well as the interest accrual date,
- 5) provide that the notice of consumer rights that is required to be given to patients, prior to commencement of collection activities by a hospital or its assignee, can be either 1) in the form specified in existing law, *or* 2) in the form of the standard notice required under Civil Code Sec 1788 – The Rosenthal Fair Debt Collection Practices Act - to be given to consumers by third-party debt collectors, and
- 6) prohibit insurers and health plans from reducing their reimbursement of a claim for hospital services because a hospital has waived all or a portion of a patient's bill in accordance with the hospital's charity care and discount payment policy.

**SB 366: Cytotechnologists work load:** The bill simply repealed the January 1, 2008 “sunset” date of existing law that mandates cytotechnologists that examine gynecological slides using an automated or semi-automated screening device to adhere to workload standards established by the federal Clinical Laboratory Improvement Amendments (CLIA). In effect, the state elected to modify its own law to conform to CLIA’s existing regulations.

**SB 370: Medi-Cal coverage for transplants:** This bill was drafted in response to a number of high-profile problems that were uncovered in several transplant programs within the state. This bill has two distinct elements;

1. The new law authorizes the state Department of Health Care Services (DHCS) to establish specific new standards as to both the circumstances and criteria it will use for approving facilities and personnel for organ transplants eligible for Medi-Cal reimbursement.
2. The restrictions limiting Medi-Cal reimbursement for donor and recipient transplant surgeries to just heart, liver and bone marrow have been repealed. Instead, Medi-Cal will now cover *all* donor and recipient transplant surgeries provided to a Medi-Cal beneficiary eligible for full-scope benefits in a facility approved by, and meeting the standards of, the DHCS .

**SB 443: Sperm donation by HIV / HTLV-1 positive patients:** Existing law prohibits transferring or transplanting *any* tissues unless the donor has been screened and found *non-reactive* for HIV, viral hepatitis (HBV and HCV), HTLV-1 and syphilis. The law does, however, provide an exception to this prohibition in cases of therapeutic insemination of sperm or use of sperm in other advanced reproductive technologies (ART) *if* the sperm donor is found reactive for hepatitis B, hepatitis C, or syphilis, and *if* the sperm donor is the spouse of, partner, or designated donor for that recipient.

This new law expands the exception to that prohibition for therapeutic insemination of sperm or use of sperm in ART *if*, 1) the sperm donor is found reactive for HIV or HTLV-1, but only *after* the donor's sperm has been effectively processed to minimize infectiousness, *and* 2) the mutual informed consent has been obtained from both parties.

This new law requires the State Department of Public Health (DPH) to develop and adopt regulations by January 1, 2010 regulating facilities that perform sperm processing pursuant to these provisions.

In these particular cases, the new law also requires physicians to provide, if indicated, prophylactic treatments to the recipient (including, but not limited to, antiretroviral drugs) to reduce the risk of infection, and to perform appropriate follow-up testing of the recipient for HIV or HTLV-1.

**SB 472: Pharmacy – Labeling safety:** This bill enacted the *California Patient Medication Safety Act* in response to the increasing safety concerns related to the use of prescription medications. The Institutes of Medicine has reported that medication-related mistakes are among the most common of all medical errors, hurting at least 1.5 million people every year. It's estimated that up to one-half of all medications are taken incorrectly and, according to one study, slightly less than half of American adults can understand the label on their prescription medications. Consequently, this law requires that the state Board of Pharmacy publish regulations that require, on or before January 1, 2011, a *standardized, patient-centered, prescription drug label* on all prescription medicine dispensed in California. To ensure the maximum opportunity for public comment, the Board is required to hold public meetings statewide - separate from its normally scheduled hearings - in order to obtain insights and information from groups representing consumers, seniors, pharmacists and other health care professionals and other interested parties. The new law gives the Board a list of factors to consider when developing the label, including font size and type, improved instructions, the needs of senior citizens and accommodating individuals with limited English proficiency. On, or before, January 1, 2010, the Board must submit a report to the Legislature on its progress. **COMMENT:** This new law appears to be a positive step forward in patient safety. If the Board schedules a meeting in your vicinity - and even if it doesn't - try to attend one if you or your colleagues have anything at all to add to the discussion.

**SB 633: Long-term care resources:** Existing law, Health and Safety Code 1262.5, requires each hospital to have a *written discharge planning policy and process* (see the 2001 Legislative Update – “Discharge Planning Advisement). This amendment to that law further requires hospitals to provide *every* patient - whether insured or not – who is anticipated to be in need of long-term care at the time of discharge with contact information for *at least one* public or nonprofit agency or organization dedicated to providing information or referral services about community-based long-term care options in the patient's county of residence, and appropriate to the specific needs of the patient. At a minimum, this information must include contact information for the area agency on aging serving the patient's county of residence. **COMMENT:** Because the law requires such information to be specific to the *patient's* county of residence, not necessarily to where you are located, it may be of some value to coordinate the development and sharing of this information about long-term care services among county agencies, local Sutter Health affiliates, or through other channels in order to develop a current, up-to-date catalog of such information kept by a single source; the California State Association of Counties, Department of Public Health, the Hospital Council of Northern and Central

California, etc. Information about specific county programs and services could then be uniformly accessed, printed and distributed as required.

**SB 661: Anatomic pathology services billing:** This new law prohibits health care providers from charging, billing or otherwise soliciting payment for anatomic pathology services (i.e., histopathology, surgical pathology, cytopathology, hematology, sub-cellular and molecular pathology and blood banking services performed by a pathologist) *if* those services were *not* actually rendered by them or performed under their direct supervision, as specified. Instead, this new law requires clinical laboratories and any physician who performs anatomical pathology services to *directly* bill the patient, the responsible 3<sup>rd</sup>-party payer, the clinical laboratory or hospital that sent the sample for specialized testing, etc. The bill was drafted in response to an article published in the Wall Street Journal in 2005 that reported that some physicians were billing for laboratory services they did not actually perform. The article cited examples of physicians engaging in "referral deals" under which physicians sent specimens and samples to outside laboratories and once they had been tested, the physician billed that the patient or 3<sup>rd</sup>-party payer a substantially higher fee than what he or she was charged by the laboratory.

The bill's author, Abel Maldonado, contended that by prohibiting physicians from directly billing patients or 3<sup>rd</sup>-party payers for anatomical pathology testing services, the ability for a physician to mark up the cost of the lab service is eliminated, as are any financial incentives that may lead to unnecessary or excessive utilization of lab services which can drive up health care costs. Maldonado further noted that direct billing is already required for cytology services relating to the examination of gynecological slides, and this new law simply extends the same requirements to *all* anatomic pathology services. In addition, as Medicare and Medi-Cal rules also require clinical laboratories to directly bill patients for any testing services, this new bill conforms state requirements to those of the CMS.

**SB 767: Medication furnishing – opioid antagonists:** As this new law applies only to programs in Alameda, Fresno, Humboldt, Los Angeles, Mendocino, San Francisco, and Santa Cruz Counties, our Bay Area and Coastal colleagues are likely to find it of more immediate interest. However, as an effort to help reduce deaths from unintentional drug overdoses, this new law is worth reading. By way of background, according to the Los Angeles County Board of Supervisors, more than 2,700 people died in their county between 2002 and 2004 from *unintentional drug overdoses*. In each year between 1999 and 2004, heroin and other opiates caused more fatal accidental overdoses than any other drug, including cocaine and methamphetamines. In recent years, several successful overdose prevention programs have been established around the county to provide lay community members, including the drug users themselves, with a prescription for an opioid antagonist, such as naloxone hydrochloride – commonly known as Narcan - along with training on how to effectively intervene when witnessing a drug overdose. By providing people with access to naloxone, these programs have enabled them to promptly administer the drug, reverse the overdose, and save lives. However, physicians are often extremely reticent to prescribe naloxone due to fear of civil or criminal liability arising from either the unsuccessful use of the drug, or its unauthorized use or abuse. By

essentially eliminating any liability concerns a physician may have related to prescribing it, this new law authorizes, until January 1, 2011, a licensed health care provider, who is permitted by existing law to prescribe the drug, to prescribe and dispense or distribute naloxone in conjunction with an approved opioid overdose prevention and treatment training program, as defined within the law in the above-referenced counties, without fear of being subjected to civil liability or criminal prosecution for doing so. The law also requires local health jurisdictions that operate or register opioid overdose prevention and treatment training programs to collect prescribed data and report it to the designated Senate and Assembly Committees by January 1, 2010.

**SB 850: Fetal demise - Certificates of Still Birth:** This new law, the *Missing Angels Act*, authorizes the local registrar of births and deaths of the county in which a *fetal death* is registered, to issue, at the request of the mother *or* father of the fetus, a Certificate of Still Birth, on a form approved by the State Registrar of Vital Statistics, for a naturally occurring intrauterine fetal death *after* a gestational age of not less than 20 completed weeks.

By way of background, The Mothers In Sympathy and Support (MISS) Foundation and numerous supporters of this bill submitted that California law already requires issuing a fetal *death* certificate and requires the grieving parents be held responsible for the burial or cremation of their child. The MISS advocates contended that although the government recognizes that a death has occurred and that final disposition is required, it is unwilling to acknowledge the *birth* process. Supporters argued that this new law will offer bereaved parents some solace and comfort after their loss.

The new Certificate of Still Birth will comply with the format requirements governing a certificate for a *live* birth. The Certificate of Still Birth shall be in addition to, and *not* replace, the fetal death certificate. The request for a Certificate of Still Birth will be required to be made on a form developed by the State Registrar of Vital Statistics, who may charge a processing fee, not to exceed twenty dollars.

**SB 962: Umbilical Cord Blood: Research:** According to the bill's author, Carol Migden, the purpose of this new law, a companion to AB 34 (noted below), is to help create a state infrastructure to increase cord blood donations. Although the Institute of Medicine (IOM) estimates that umbilical cord blood could aid in the treatment of 11,700 Americans a year with leukemia and other devastating diseases, it is routinely discarded by the medical community.

This new law also authorizes a *primary prenatal care provider* to provide information required to be developed pursuant to the Umbilical Cord Blood Community Awareness Campaign to a woman who is known to be pregnant, during the *first* prenatal visit. The law also requires, as part of the Hereditary Disorders Act, the Department of Public Health (DPH) to provide any umbilical cord blood samples it receives pursuant to the Umbilical Cord Blood Community Awareness Campaign to the Birth Defects Monitoring Program, for storage and research, and would require the department to establish fees to be collected from researchers and health care providers, who have been approved by the department, to use the umbilical cord, pregnancy blood, and newborn blood samples for

research, to cover the costs of administering the program. The law defines bill the various responsibilities the DPH must undertake relating to collecting and storing the samples, and requires that information collected in connection with the samples be confidential and be used solely for the purposes of the program, as defined within the statute. Finally, the new law requires the DPH's Committee for the Protection of Human Subjects (CPHS) to determine if certain criteria relating to the security and confidentiality of a donor's personal information are met before umbilical cord blood samples that have been collected are released for research activities .

## **ASSEMBLY BILLS**

**AB 3: Physician Assistant scope of practice: furnishing controlled substances:** This bill, sponsored by the California Academy of Physician Assistants, has three distinct elements. The first establishes the *California Physicians Team Practice Improvement Act* and authorizes a physician assistant to administer, provide, or issue a drug order for Class II through V controlled substances without the currently required advance approval of a supervising physician *if* the physician assistant completes specified educational requirements. The new law requires a physician assistant and his or her supervising physician and surgeon to establish written supervisory guidelines and specify that this requirement may be satisfied by the adoption of specified protocols.

**COMMENT:** This element of the law is very prescriptive and requires a tightly controlled process in order to implement. A careful, detailed review of the requirements of the law with respect to developing the protocols and procedures necessary to support this expansion of the Physician Assistant scope of practice is absolutely critical. For further details about these requirements, access the bill through the state's legislative web page noted at the end of this document.

This bill also amends current law to increase to four, from the previous two, the number of physician assistants a physician may supervise. Finally, and belatedly, the new law specifies that services provided by a Physician Assistant are included as a covered benefit under the Medi-Cal program.

**AB 14: Discrimination - Civil Rights Act of 2007:** This bill amends a wide selection of existing state laws that outlaw discrimination by providing a level of uniformity among the statutes of the descriptions of prohibited conduct. Specifically, these prohibitions forbid discrimination by any licensed healthcare professional against, 1) the disabled, as already reflected in the federal Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. Sec 12132) and 2) anyone due to their sexual orientation or marital status. These same prohibitions have been specifically extended to physicians serving on-call to hospital emergency departments.

**AB 34: Umbilical Cord Blood Collection Program:** This new law, a companion to Senate Bill 962 (noted above), requires the Department of Public Health (DPH) to establish, by January 1, 2010, and until January 1, 2015, the *Umbilical Cord Blood Collection Program* to help increase the amount of umbilical cord blood that is donated in the state and that can be added to the national inventory. The new law authorizes the DPH, to the extent private or public funds are identified and available for this purpose, to contract with blood banks that are licensed or accredited to provide umbilical cord blood banking storage services, for the purpose of collecting and storing umbilical cord blood.

**AB 106: Influenza Immunizations:** Effective 2008, this new law requires each general acute care hospital to offer, prior to discharge, immunizations for influenza and pneumococcal disease to *all inpatients 65 years of age and older between October 1 and April 1 of each year*. This new requirement is based upon the adult immunization recommendations of the Advisory Committee on Immunization Practices (ACIP) of the federal Centers for Disease Control and Prevention (CDC) and recommendations of appropriate entities for the prevention, detection, and control of influenza outbreaks in California general acute care hospitals. **COMMENT:** The law allows immunizations to be provided pursuant to an *approved standardized procedure*. This new law must be brought to the attention of chief nursing officers, pharmacy directors, the medical staff, case management and the nursing staff. Hospitals are cautioned to develop and implement a policy and procedure to offer and, if the offer is accepted, provide such immunizations prior to October 1, 2008. The law also provides that this new requirement affects only those hospitals that have the vaccine at hand and there is no additional requirement for hospitals to maintain a stock of such vaccines.

**AB 329: Telemedicine:** This new law authorizes the Medical Board of California (MBC) to establish a pilot program to expand the practice of telemedicine, with specific focus on delivering telemedicine services to patients with chronic diseases. The workgroup established under the law is mandated to report its findings to the MBC within one year of the commencement of the pilot program. Stay tuned.

**AB 632: Medical Staff whistleblower protections:** Existing law prohibits a health facility from retaliating or discriminating against an employee that has presented or initiated a complaint or initiated, participated, or cooperated in an investigation or proceeding of a government entity relating to the care, services, or conditions of the facility. The law also makes the violation of these provisions a crime and subject to the assessment of a civil penalty.

This new law extends this prohibition against retaliation to members of the facility's medical staff, or any other health care worker of the facility, if that person 1) has presented a grievance, complaint, or report to an entity or agency responsible for accrediting or evaluating the facility or to any other governmental entity; or 2) has initiated, participated, or cooperated in an investigation or administrative proceeding related to the quality of care, services, or conditions at the facility.

The new law also provides that an employee who has been found to have been discriminated against in violation of those provisions will be entitled to reinstatement, reimbursement for lost wages and work benefits caused by the acts of the employer, or to any remedy deemed warranted by a court pursuant to those provisions, or to any applicable provisions of statutory or common law. The law would also entitle a health care worker who has been found to have been discriminated against and who prevails in court, to reimbursement for lost income and any legal costs associated with pursuing the case, or to any remedy deemed warranted by the court pursuant to those provisions, or any other applicable statutory or common law.

**AB 673: Child abuse and neglect reporting:** This new law makes two changes to existing law covering the reporting of suspected child abuse and neglect. First, it expands the current definition of “child abuse” to include “death inflicted by other than accidental means.” The current wording of the law only includes *injury* inflicted by other than accidental means and the amended law corrects this oversight. The second clarification provides that a mandated reporter who is currently required to report suspected child abuse which he or she observes *in the scope of employment or professional capacity* may *also* report suspected abuse that he or she observes *outside* his or her professional capacity. Current law simply never addressed that issue and it remained an unresolved issue for many individuals who are mandated reporters.

**AB 1175: Clinical Laboratories personnel:** This bill is a technical clean-up of last year's AB 2156. That bill enacted the current law pertaining to "autoverification" of clinical laboratory tests and *required* a laboratory director to appoint an authorized designee to establish, validate, and document explicit criteria by which clinical laboratory test results are autoverified even though, in many laboratories, the laboratory director performs these duties himself or herself and, therefore, does not need to appoint an authorized designee to do so. The law now *authorizes*, but no longer requires, a designee to be named.

**AB 1178: Confidentiality – Disclosure of Mental Health information:** By way of background, in Tarasoff v. Regents of the University of California 17 Cal.3d 425 (1976), the California Supreme Court was presented with a case where a college student in therapy at a student health service stated to his psychologist his intent to kill a young woman who had apparently spurned his romantic advances. The psychologist requested that the campus police detain the student, who was shortly thereafter released, as he appeared to the officers to be rational. *Neither the young woman, Tatiana Tarasoff, nor her parents received any warning of the threat.* Several months later the student killed the young woman. The court, finding that a therapist has a duty not only to his patients, but also to persons who are specifically threatened by the patient, held that "the public policy favoring protection of the confidential character of patient-psychotherapist communications must yield to the extent that disclosure is essential to avert danger to others. The protective privilege ends where the public peril begins." Consequently, Evidence Code 1024 was enacted to suspend the psychotherapist-patient privilege, “.if the psychotherapist has reasonable cause to believe that the patient is in such mental or

emotional condition as to be dangerous to himself or to the person or property of another and that disclosure of the communication is necessary to prevent the threatened danger.”

This bill amends the Confidentiality of Medical Information Act (CMIA) by establishing in the CMIA what the Tarasoff case law and existing statutes have already stated regarding this subject: that a therapist is permitted, if not obligated, allowed disclosing confidential information when there is reasonable cause to believe his or her patient is a threat to themselves or others. HIPAA permits providers to disclose protected health information that they believe is necessary to prevent or lessen a serious and imminent threat to a person or the public, when such disclosure is made to someone they believe can prevent or lessen the threat.

**AB 1298: Confidentiality – Identity theft protection:** Because medical information can be used to commit certain types of identity theft, the expansion of current privacy protections was felt to be needed by the bill’s authors. As such, this new law amends existing law relating to the disclosure of personal information. Two of its provisions seek to protect the privacy of an individual's medical information. First, this new law expands the definition of "personal information" in the state's data “breach notification” law to include medical and health insurance records. Businesses and state agencies already are required to notify persons of any unauthorized disclosure of their personal information, such as a social security numbers or protected health information (PHI). This law applies the state's Confidentiality of Medical Information Act (CMIA) to *all* companies that maintain personal health records, not just those that, under a loophole in current law, are “primarily” engaged in the business of health record management.

This bill also changes California's credit security freeze law to conform to a recent opinion by a California appellate court. The "security freeze" law permits a person who may have been a victim of identity theft to place a hold, or freeze, on his or her credit report. A recent court ruling (UD Registry v. California (2006) 144 Cal App. 4th 405) held that the law was unconstitutional insofar as it applied to information in the credit report that a credit agency had lawfully obtained from public records. This bill responds to this ruling by expressly exempting lawfully obtained public records information from the freeze.

**AB 1323: Tuberculosis testing:** Current law requires employees of school districts, health care providers treating persons with active TB and others to be tested at specified intervals for TB. Currently, there are a number of statutes that specify that only the Mantoux intradermal TST be used for such testing. This bill revises those laws and expands the types of tests that may be used to include *any* CDC- and FDA-approved diagnostic test for TB.

**AB 1324: Health plan coverage:** This California Medical Association (CMA) sponsored bill reaffirms and reinforces that it has long been illegal for health plans or insurers to rescind or modify an authorization for services a provider renders in good faith *after* the care has been given. This new law additionally specifies that a health care service plan or a health insurer is precluded from rescinding or modifying its

authorization for *any* reason, including its subsequent rescission, cancellation, or modification of the contract or its subsequent determination that it did not make an accurate eligibility determination.

**AB 1531: Parking for persons with disabilities:** In response to apparently escalating problems with the issuance and use of placards for drivers with disabilities, and the unauthorized use of reserved spaces for persons with disabilities, this bill, authored by Assembly member Mark DeSaulnier of Martinez, was enacted to control some of the perceived abuses. Specifically, new law limits the maximum consecutive number of times a person could renew a temporary disability placard to 6. Of importance to Plant Operations and/or the department that oversees your parking services, effective July 1, 2008, all new or replacement signs installed for parking spaces for disabled persons must also state, "Minimum Fine \$250."

To help reinforce compliance by the public, fines for unauthorized parking in reserved spaces have been scaled up to (1) not less than \$250 and not more than \$500 for the first offense, (2) not less than \$500 and not more than \$750 for the second offense and (3) not less than \$750 and not more than \$1,000 for three or more offenses. **NOTE:** As a reminder, any information that a health care provider uses in support of a patient's application for a parking placard is subject to review by the provider's licensing agency upon request.

**AB 1640: Mental incapacity: revised terminology:** In several current state statutes, terms that apply to mentally incapacitated individuals include "idiot," "imbecility," and "lunatics." The purpose of this law is to delete these terms and substitute more current, clinically appropriate terminology, such as "mental incapacity." According to the author's office, "It is important that the California Code utilizes language that is respectful of persons with disabilities, but moreover, it is essential that our codes use terms, especially medical terms, that actually have a defined meaning in a clinical setting. The terms being changed in this bill are no longer used in the mental health field, and have no clinical meaning or definition. It is time to update the codes to be more accurate, and less demeaning."

**AB 1687: Confidentiality – minors:** The bill's author determined that in order to properly provide medical care for children who are within the jurisdiction of the juvenile court system, caregivers must have access to the children's medical records. Although existing law provides a means for the authorization to share medical records among agencies and those responsible for the care of these children, many providers of mental health care were found to be hesitant to release medical records to them because of potential or perceived restrictions in state and federal law. Consequently, this bill was drafted to assure mental health care providers that they *can* provide health care information to individuals participating in the treatment and coordination of health care, such as county social workers, probation officers, and custodial caregivers, without concern for having violated the law.

Specifically, this new law clarifies and expands the state's Confidentiality of Medical Information Act (CMIA) to permit health care providers to disclose information to a

county social worker, a probation officer, or any other person who is legally authorized to have custody or care of a minor for the purpose of coordinating health care services and medical treatment. The new law also prohibits a county social worker, probation officer, etc. who receives medical information from further disclosing that information *unless* the disclosure is for the purpose of coordinating health care services and medical treatment of the minor and the disclosure is authorized by law.

This new law also establishes that if a health care provider determines that the disclosure of medical information concerning the diagnosis and treatment of a *mental health* condition of a minor is reasonably necessary for the purpose of assisting in coordinating the treatment and care of the minor, that medical information may be disclosed to a county social worker, probation officer, or any other person who is legally authorized to have custody or care of the minor. The law would also prohibit the further disclosure of such unless the disclosure is for the purpose of coordinating mental health services and treatment of the minor and the disclosure is authorized by law.

## **MISCELLANEOUS**

**SB 7: Smoking in a car with a minor:** This new law makes it an infraction, punishable by a fine not exceeding \$100 for a person to smoke a pipe, cigar, or cigarette in a motor vehicle, *whether in motion or not*, in which there is a minor.

**SB 33: Cell phone use by minors in automobiles:** In recognition of statistics from the insurance industry that show that motor vehicle accidents are the leading cause of death among 16 to 20 year olds, and the California Highway Patrol's own findings that cell phone use is the "number one identified source of distracted driver related accidents" in California, the following restriction has been added to Vehicle Code Sec. 12810.3 which prohibits a person *under the age of 18* years from driving a motor vehicle while using a wireless telephone, *even if equipped with a hands-free device*, or while using a mobile service device. The prohibition does *not* apply if the driver is using the phone for "emergency purposes."

## **FEDERAL LEGISLATION**

**Stark III:** Phase III of the final rule amending the Stark Regulations. On August 27<sup>th</sup>, the CMS released the third, and final, phase, of rulemaking governing the Stark law passed back in 1995. These regulations essentially, 1) prohibit physicians from referring Medicare and Medicaid patients for specific services to entities in which they, or an immediate family member, have a direct or indirect financial relationship, and 2) prohibit entities from billing the CMS for services or products furnished through a prohibited referral. Exceptions to these prohibitions ("safe harbors") have been published in the first and second phases of these regulations (aka Stark I and Stark II), and the tradition

carries on in this final phase. Even a cursory review of all of the new additions and deletions to the list of “safe harbors” far exceeds the scope of this Update. However, for purposes of getting an idea of the types of issues addressed, here are a few randomly selected examples; the definition of “physician in the group practice” has been modified to clarify that an independent contractor physician must furnish patient care services for the practice under a *direct* contractual arrangement with the group, and not between the group and other entity, such as a locum tenens agency; the “physician recruitment” exception was relaxed to protect certain remuneration provided by hospitals to induce physicians to relocate their medical practice into the “geographic area served by the hospital”; and the “professional courtesy” exception was modified by deleting the requirement that an entity notify an insurer when the professional courtesy involves the whole or partial reduction of any coinsurance obligation, although the CMS does state that it believes it is a prudent practice to do so anyway.

**State Children's Health Insurance Program (SCHIP):** On December 29, 2007, President Bush signed the Medicare, Medicaid and SCHIP Extension Act of 2007 (Act) into law, extending the State Children's Health Insurance Program (SCHIP) and temporarily addressing a number of Medicare program issues. The Act prevents the 10.1 percent reduction in Medicare physician payments that was scheduled for 2008 and gives physicians a 0.5 percent increase through June 30, 2008. The 10.1 percent reduction in Medicare physician payments is driven by the statutory sustainable growth rate (SGR) formula, which is intended to control the growth in aggregate Medicare expenditures for physician services. Therefore, Congress will have to revisit the issue before July 1, 2008 or the 10.1 percent reduction will take effect at that time.

## **FEDERAL BILL UPDATES**

**Genomics and Personalized Medicine Act of 2006:** This bill attempts to improve access to and appropriate utilization of valid, reliable and accurate molecular genetic tests, thereby promoting the possibility of increasingly personalized medicine. (Read twice and referred to Committee on Finance in 2006).

**Hospital Quality Report Card Act of 2006:** This bill established a Hospital Quality Report Card Initiative under the Medicare program to assess and report on health care quality in hospitals. (Read twice and referred to the Committee on Finance in March, 2006).

**Attacking Viral Influenza Across Nations Act of 2005:** This bill amended the Public Health Service Act with respect to preparation for an influenza pandemic, including an avian influenza pandemic. (Read twice and referred to the Committee on Health, Education, Labor, and Pensions in 2005).

**National Medical Error Disclosure and Compensation Act:** This bill amended the Public Health Service Act to promote a culture of safety within the health care system through the establishment of a National Medical Error Disclosure and Compensation Program. (Read twice and referred to the Committee on Health, Education, Labor, and Pensions in 2005).

**IMPORTANT REMINDER:** Effective **July 1<sup>st</sup> of 2008**, you will *not* be permitted to use a cell phone in the car unless it is entirely hands-free. ***Don't wait. Get your hands-free device now!***

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