

California and National News



Governor Signs CMA's Medical Staff Self-Governance Bill:

The governor on Wednesday evening signed into law the Medical Staff Self-Governance Act (SB 1325), a CMA-sponsored law that strengthens the self-governance rights of hospital medical staffs. The new law will ensure that the needs of patients remain the top priority in all medical decisions.

“Thank you to all the physicians who wrote the governor and asked him to support this bill. This is a huge step forward for physicians, medical staffs, and their patients,” said CMA CEO Jack Lewin, M.D. “This law ensures that the relationship between a hospital and its medical staff remains a horizontal and balanced one and promotes having medical staffs and hospitals as partners in high-quality patient care, rather than adversaries.”

SB 1325 is important because it clearly establishes the independent status of the medical staff and sets forth medical staffs' basic rights and responsibilities. Specifically, SB 1325 provides legal protection for six key principles of medical staff self-governance that are essential for the professional teamwork of the medical staff:

1. Creating and amending medical staff bylaws. (Although all bylaws changes are subject to approval by the hospital governing body, the governing body cannot unreasonably withhold its approval.);
2. Establishing and enforcing criteria for medical staff membership and privileges;
3. Establishing and enforcing quality of care and utilization review standards, and overseeing other medical staff activities, such as medical records review and meetings of the medical staff and its committees;
4. Selecting and removing medical staff officers;
5. Collecting and spending medical staff dues;
6. Hiring independent legal counsel, at the expense of the medical staff. (This bill would also give the medical staff the right to expeditiously seek resolution of self-governance disputes through the court system.) (From *CMA Alert*, September 24, 2004.)

Physicians, Protect Yourself from Fraudulent CME Providers: Physicians should protect themselves against fraud by verifying the accreditation status of an unfamiliar Continuing Medical Education (CME) provider before registering for a course. To do so, simply call the Institute for Medical Quality, a CMA subsidiary.

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IMQ accredits all CME providers in the state. Unscrupulous individuals are victimizing physicians by posing as CME companies. Some create legitimate-looking program brochures. CMA was recently contacted by a physician who lost \$1,500 when a fraudulent CME firm, which claimed to be accredited, “cancelled” a scheduled CME course and disappeared without refunding the physician’s money. The only way to be sure that a provider is actually accredited is to call IMQ.

Physicians who are aware of fraudulent CME providers should notify IMQ. If victimized, you may also file a complaint with the California Attorney General’s office, which investigates and prosecutes fraud.

For more information, contact the Institute for Medical Quality, (415) 882-5151. (From *CMA Alert*, July 22, 2004.)

Medi-Cal Payments Will Be Delayed: In an attempt to reduce Medi-Cal fraud, the Department of Health Services (DHS) has added an additional week to the turnaround time for provider reimbursement checks. This will give DHS more time to identify potentially fraudulent claims.

Effective July 1, all claims will be held “in process” for a period of seven days pending DHS verification. Claims held “in process” for longer than seven days have been earmarked by DHS for further review.

Some claims will be randomly selected for review. Some claims will be specifically selected by DHS because they were identified as a suspicious billing. Claims selected for review may require physicians to submit additional documentation to substantiate billed services. If additional documentation is required, physicians will be notified by DHS. Contact: Frank Navarro, (916) 444-5532. (From *CMA Alert*, July 15, 2004.)

Report Finds MICRA Works: A study just published by the Rand Corporation found that California’s Medical Injury Compensation Reform Act (MICRA) works. “MICRA does appear to have had the California Legislature’s intended initial result of limiting defendants’ expenditures,” the report says. The study looked at reductions in jury awards in 257 cases from 1995-1999, finding that these awards were reduced by an average of 30 percent.

And where was most of the impact? Not on plaintiffs, as MICRA opponents frequently charged, but on lawyers. The report points out that because MICRA not only caps non-economic damages, but also limits attorney fees, the net reduction to plaintiff damages in cases where MICRA applied has been only 15 percent.

Unfortunately, the Rand report does not discuss the stabilizing effect MICRA has had on malpractice premiums in California.

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Before MICRA was passed in 1976, California malpractice premiums were among the nation’s highest, and some physicians were facing one-year premium increases of 400 percent. Confronting this severe medical liability crisis, Governor Jerry Brown in 1975 called a special session of the Legislature. The result was MICRA, which limits attorney fees and caps noneconomic damage awards at \$250,000. Damages for economic damages, such as lost wages and medical expenses, are not capped. Contact: CMA’s legal information line, (415) 882-5144 or legalinfo@cmanet.org. (From *CMA Alert*, July 22, 2004.) (*Editor’s Note: See Dr. Dailey’s article on pages 54-60.*)

“Retired” Physicians Can No Longer Practice: As reported in a previous issue of the *Bulletin*, physicians with “retired” licenses are no longer allowed to practice medicine, even in a volunteer capacity, after July 1. Retired physicians who wish to volunteer their services need to apply for the new “volunteer” license. Volunteer licenses will still be exempt from licensing fees. All physicians who practice for pay, no matter what the amount, will be required to maintain an “active” license and pay licensing fees. Contact: Sandra Bressler, (415) 882-5107 or sbressler@cmanet.org. (From *CMA Alert*, June 24, 2004.)

Health Plans Must Allow Physicians One Year to File Dispute: Did you know that the State of California’s new unfair payment practices regulations prohibit Knox-Keene licensed health plans and their contracting medical groups/IPAs from imposing provider dispute filing deadlines that are less than 365 days from the date of the plan’s disputed action?

CMA recommends that physicians keep clear and dated records of every billing or contract dispute. It is important that payers who reject disputes because of improperly shortened submission deadlines or who engage in other unfair payment practices be reported to DMHC, so that the department can identify and take action against them. Provider complaint forms are available online at <http://www.calphys.org>.

Please contact CMA’s Center for Economic Services at (888) 401-5911 prior to submitting a complaint to get help with filing the appropriate forms and supporting documentation to substantiate the unfair payment practice.

Please also fax a copy of your complaint to CMA’s Center for Economic Services at (916) 551-2027. This will allow CMA reimbursement specialists to monitor DMHC enforcement. (From *CMA Alert*, May 27, 2004.)

Workers’ Comp Agency Publishes Revised 2004 Fee Schedule: The Division of Workers’ Compensation (DWC) recently published a revised 2004 Official Medical Fee Schedule (OMFS). The revised fee schedule, which went

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into effect July 1, 2004, is available online for download. (Web site address: <http://www.dir.ca.gov/dwc/OMFS9904.htm>.)

When the legislature last year cut workers' compensation physician reimbursement by 5 percent, CMA worked hard to ensure that CPT codes already paid below average California Medicare rates would not be subject to further reduction. DWC had not planned to publish a revised fee schedule to reflect the 5 percent cut, but rather intended to let the individual workers' comp carriers calculate the rate adjustments. CMA opposed this and worked closely with DWC, and even provided hundreds of hours of staff time, to assure that an official OMFS was available and free to physicians.

After DWC in January released the 2004 OMFS, however, numerous changes to the Medicare fee schedule in February required the fee schedule to be recalculated to reflect the changes. Most of the changes are minor. Contact: Nileen Verbeten, (916) 444-5532 or nverbeten@cmanet.org. (From *CMA Alert*, July 1, 2004.)

ERs Getting Faked Out: Uninsured Who Can't Afford to Pay Falsifying Identities: Coloradans are increasingly using fake names when they show up in emergency rooms because they can't afford their medical bills. At Centura St. Anthony Central Hospital, 11.3 percent of the bills sent to ER users are returned because there is no such person or address. Two years ago, the rate of returned mail was just 4 or 5 percent. Since then, the number of uninsured people seen in the emergency department has skyrocketed. Now, one in three is uninsured, having neither private insurance nor Medicaid or Medicare.

A group of emergency specialists gathered recently to say that emergency rooms are stretched thin and about to snap, overwhelmed by the 720,000 Coloradans who don't have health insurance. Nationwide, an estimated 44 million are uninsured. The American College of Emergency Physicians joined sponsors of Cover the Uninsured Week in calling for universal health care coverage. They unveiled a national survey of 2,000 emergency doctors in which respondents reported that the uninsured are delaying care, showing up in emergency rooms sicker, and dying sooner because they lack access to regular treatment. The doctors attributed the rising number of uninsured both to the loss of employer-based health insurance and to higher unemployment.

Ten years ago, 20 percent of St. Anthony Central's patients lacked private or government health insurance. Now, the number is 50 percent. Colorado's hospitals lost \$3.2 billion two years ago in charity care expenses, bad debt, unpaid bills and the lower-than-cost reimbursements from Medicare and Medicaid. That's \$3.2 billion out of the \$13 billion in total hospital charges that year. If everyone were insured, the number of people getting treated at the \$600-per-hour emergency

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room rate would plunge, people wouldn't delay care and everyone's premiums would drop by about one-third. (From *Rocky Mountain News*, May 14, 2004.)

Attorney General Says Medical Board Can Discipline Physicians Who Provide False Expert Witness Testimony: A physician who knowingly provides false or misleading expert witness testimony can be subject to professional discipline by the California Medical Board, according to an opinion recently issued by the California Attorney General.

CMA in February submitted comments to the attorney general on the issue and the published opinion is consistent with CMA's analysis of the Board's ability under the law to discipline physicians for unprofessional conduct.

The medical board has been reluctant to discipline physicians who knowingly provide false or misleading expert witness testimony, saying that testifying is not the "practice of medicine" and as a result is not within the Board's purview.

The attorney general took the opposite view, stating that while a physician who provides expert witness testimony may not be sued in civil court on the basis of his or her testimony, "the Board may discipline a physician for unprofessional conduct even though the actual misconduct does not constitute the practice of medicine or cause harm to individual patients, as long as the misconduct relates to the physician's fitness or competence to practice medicine."

It is unclear whether the opinion will compel the California Medical Board to begin reviewing complaints concerning expert witness testimony. Contact: Susan Penney, (415) 882-3322 or spenney@cmanet.org. (From *CMA Alert*, May 20, 2004.)

CMA Endorses Initiative to Fund Stem Cell Research: CMA's Board of Trustees has endorsed the California Stem Cell Research and Cures Initiative. The initiative, which will appear on the November 2004 ballot, would authorize a \$3 billion bond that would provide approximately \$295 million a year for 10 years to support stem cell research at California universities and other research facilities throughout the state.

The initiative is supported by a coalition that includes the Christopher Reeve Paralysis Foundation, Juvenile Diabetes Research Foundation, Elizabeth Glaser Pediatric AIDS Foundation, Parkinson's Action Network, and a long list of Nobel Prize-winning scientists.

While the Board voted to endorse the initiative, **the trustees [CMA] declined the coalition's invitation to become an official signatory on the ballot.** (Emphasis added.) (From *CMA Alert*, June 10, 2004.)

The Educational Programs Division of the
California Society of Anesthesiologists
gratefully acknowledges its

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