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New Medical Transparency Act Will Impact All Physicians

Most physicians are probably aware that, during the 2007 legislative session, the Colorado Legislature passed the Michael Skolnik Medical Transparency Act, which significantly expands the information about individual physicians that will be disclosed to the public on the Colorado Board of Medical Examiners website. The flipside to that disclosure is a requirement effective January 1, 2009, that all physicians applying for an initial license to practice medicine or reinstating or reactivating an existing license must provide extensive information, and in some cases documentation, and must update the BME of any changes in the required information within 30 days of such a change. Physicians who held an active license prior to January 1, 2008, will be required to comply with the Act as part of the next license renewal cycle in May 2009.

DMS Works for Physician Interests

Colorado organized medicine was intimately involved in negotiations on this bill when it was introduced into the legislature. Although it grew out of a specific Colorado case, it is part of a movement across the nation for increased transparency regarding health care professionals and a more general emphasis on transparency in many arenas, including medicine's successful efforts to pass legislation in Colorado mandating increased transparency on the part of health plans with regard to contracting and physician ranking programs. Given this backdrop, every effort was made to influence this legislation and remove the most onerous and intrusive elements, resulting in a better bill for physicians than would have otherwise been the case.

DMS sponsored two informational sessions presented by COPIC in-house counsel on the requirements of the Act in September and will present an additional program on the topic in January 2009 (date and location to be determined).

The specific information required to be disclosed under the Act is:

- Name
- Aliases
- Current address
- Telephone number
- Information regarding all medical licenses ever held
- Current Board certifications
- Practice specialty(ies)
- Affiliations with hospitals and health care facilities
- Current ownership interests in businesses

- Current employment contracts
- Public disciplinary actions against a medical license
- Agreements and stipulations to temporarily cease medical practice
- Involuntary hospital or health care facility privileging actions
- Involuntary surrender of a Drug Enforcement Administration (DEA) registration
- Criminal convictions or plea arrangements for felonies and crimes of moral turpitude
- Judgments, settlements and arbitration awards for medical malpractice claims
- Refusal by an insurance carrier to issue medical liability insurance

To locate information on the implementation process, physicians can visit the BME's website at <http://www.dora.state.co.us/medical/physicianprofile.htm>. From this page, physicians can access the Board's adopted rules and policies regarding the Act and an electronic profile by which they can submit their required information. The web based profile contains instructions for each required reportable element. Physicians who have questions regarding the profile can contact the BME physician profile administrator Tracey Martinez at tracey.martiniz@dora.state.co.us or 303-894-5965. This page also allows physicians to view the completed profiles currently accessible in order to understand how the information will be displayed to the public.

Penalties for Noncompliance

Enforcement of the Act is complaint-driven, and the BME has not been charged with the responsibility for monitoring physicians' self-reported profile information. The legislation does authorize the Board to issue fines up to \$5,000 and gives them the authority to take disciplinary actions in cases of noncompliance with the requirement to report updated information and provide required documentation within 30 days of the action. The Act also prohibits the BME from renewing the license of a physician who has failed to pay an imposed fine.

More information will be forthcoming as implementation of the Transparency Act proceeds. If you were not able to attend one of the DMS information sessions in September, please look for information on our upcoming January program.



October 17, 2008

Dear Colleague:

We are writing you today to discuss the new reporting required of Colorado physicians as a result of the Michael Skolnik Medical Transparency Act. We want to assure you that we are exploring options to modify some of the Act's reporting requirements that we perceive to be unduly burdensome. At the same time, we want to reiterate the long-standing support of all our societies for a high degree of transparency and accountability from all elements of our health care delivery system. This is a principle we have vigorously pursued with health plans in both their contracting and physician profiling activities, and it is one that the Skolnik Act also embodies.

Background

Passed in 2007, the Skolnik Act requires that physicians disclose a variety of information to the Board of Medical Examiners; the information is then publicly available on the BME Web site. It was spurred by the 2004 death of Michael Skolnik, and represents an effort to help patients make informed decisions about their physicians.

As the medical community determined its course of action on the bill, it had to consider a number of factors, including other legislation pending at the time. For example, CMS was working with COPIC to defeat a bill that would have substantially affected its mode of operation and thereby increased premiums for their insured physicians, and simultaneously advocating its own "transparency in managed care contracting" bill.

In a legislative environment filled with such opportunities and threats, we did not (and, indeed, never do) have the luxury of looking at any legislation in a vacuum. Our actions on every one of these bills would affect the odds of achieving our goals for each of them as well as all the other legislation on which we were engaged.

Accordingly, CMS and COPIC decided to support the Skolnik Act while working diligently to make significant changes that struck an appropriate balance between transparency for patients and fairness to physicians. Although we were successful in obtaining many changes, the final bill as enacted still needs improvement.

Implementation of the Act

The Board of Medical Examiners has developed rules to implement the Act. They strove to minimize the burden on physicians by narrowing the scope of some of the reporting requirements.

Required disclosures include ownership interests in health care businesses, health care contract relationships, Board actions, adverse peer review actions, crimes, and past malpractice judgments, settlements and arbitration awards. (Complete information on required disclosures may be found at <http://www.dora.state.co.us/medical/physicianprofile.htm>.) An article appearing in this month's *Colorado Medicine* discusses the required disclosures more fully and is enclosed for your reference.

Much of the information required under the Act is already publicly available and the Act simply enables its collection and publication in one place. Some of the information, however, has not been publicly reported in the past.

Despite the BME's efforts to contain the Act's impact, many physicians have expressed concern that some of the requirements are still overly broad and could be modified without sacrificing patients' interests – for example, by creating a "floor" dollar value for reportable contracts or narrowing the time period covered by some of the reporting requirements.

CMS, CSOM and component and specialty societies are engaging in dialogue with the backers of the original bill both within and outside of the legislature, as well as with the BME, about potential modifications. We will keep you apprised as we move forward with these discussions.

In the meantime, we encourage you to approach your own discussions about the bill in a spirit of reasoned judgment. There is no question that complying with the Act's reporting requirements is a burden for physicians. Yet, approximately 1,000 Colorado physicians have already done so. We stand the best chance of achieving our policy goals when we engage in constructive dialogue, rather than passionate oratory.

If you have any comments, questions or concerns about our proposed approach, please feel free to contact any of the undersigned physicians.

Sincerely,

W. Ben Vernon, MD
President
Colorado Medical Society

Susan Townsend, MD
President
American Academy of Pediatrics – Colorado Chapter

Debra Ganter, MD
Chair
American College of Gynecology – Colorado Chapter

Christine Lamoureux, MD
President
Boulder County Medical Society

Brigitta Robinson, MD
President
Clear Creek Valley Medical Society

John L. Bender, MD
President
Colorado Academy of Family Physicians

Karlotta Davis, MD
President
Colorado Gynecological-Obstetrics Society

Jennifer Hagman, MD
President
Colorado Psychiatric Society

J. Timothy Ammons, MD
President
Colorado Society of Eye Physicians and Surgeons

Jeffrey Bacon, DO
President
Colorado Society of Osteopathic Medicine

Christine Gieszl, MD
President
Curecanti Medical Society

Nora E. Morgenstern, MD
President
Denver Medical Society

Julie Newburg, MD
President
Pueblo County Medical Society

Mark E. Wallace, MD
President
Weld County Medical Society