



UPDATE Health Law Pulse

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In This Issue:

- [CMS May Disclose Individual Physician Medicare Reimbursement Data Under New Policy](#)
- [Massachusetts Legislature Proposes Amendment to State Physician Licensing Law Tying Licensing to Proficiency in Using Electronic Health Records](#)

CMS MAY DISCLOSE INDIVIDUAL PHYSICIAN MEDICARE REIMBURSEMENT DATA UNDER NEW POLICY

The Centers for Medicare & Medicaid Services (CMS) have instituted a new policy (Policy) regarding requests made under the Freedom of Information Act (FOIA) for disclosure of the amount of Medicare payments made to individual physicians, effective March 8, 2014. Under the Policy, CMS will determine on a case-by-case basis whether requested information qualifies for release under Exemption 6 of the FOIA. Exemption 6 requires CMS to weigh the public's interest in transparency with the privacy interest of the physician. CMS acknowledges that the outcome of the balancing test may vary based on the facts surrounding each FOIA request but hopes that the Policy will provide greater access to Medicare data while maintaining the privacy of individual beneficiaries. The Policy replaces a prior FOIA disclosure policy established in 1980 in response to a 1979 district court injunction, based on the Privacy Act of 1974 (Privacy Act), that barred the Department of Health and Human Services from releasing Medicare physician reimbursement data in a manner that could identify a physician. The previous policy prohibited such disclosures on the grounds that the public's interest in such data was outweighed by the privacy interests of individual physicians. CMS sought to replace the previous policy with the new Policy after a district court found that the injunction was no longer authorized by the Privacy Act and vacated it in May 2013.

MASSACHUSETTS LEGISLATURE PROPOSES AMENDMENT TO STATE PHYSICIAN LICENSING LAW TYING LICENSING TO PROFICIENCY IN USING ELECTRONIC HEALTH RECORDS

The Massachusetts House of Representatives recently put forth a bill, 2013 MA H.B. 3903 (Bill), that would amend Massachusetts' physician licensing law, Mass. Gen. Laws ch. 112, § 2. To be granted a license to practice medicine in 2015 without the passage of this Bill, Massachusetts physicians will have to demonstrate adoption of and proficiency in using electronic health records (EHRs) pursuant to federal "meaningful use" standards set forth by the Centers for Medicare & Medicaid Services (CMS). A previous Robinson & Cole Health Law Pulse article on meaningful use eligibility and criteria is available [here](#).

The Bill instructs the Massachusetts Board of Registration in Medicine to require physicians, as a condition of full licensure, to demonstrate that their practice uses digitized patient-specific clinical information. It does not define the term "digitized patient-specific clinical information"; rather, it places determinations of compliance within the jurisdiction of the Board of Registration in Medicine. Physicians who do not adopt digitized patient-specific clinical information will be required to demonstrate familiarity with using digitized records in connection with patient care. The Bill appears to be a response to significant concerns voiced by physicians statewide that thousands of providers could lose their licenses

in 2015 due to noncompliance with the current law.

The Bill is currently being reviewed by a conference committee composed of members of both the House and Senate. Robinson & Cole will continue tracking the Bill and will send updates as it progresses through the Massachusetts legislature.

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