

**Administrative Office: 805 / 484 - 6822**

**www.venturamedical.org**

**June 10, 2016**

## **REMINDER: DEADLINE TO REGISTER FOR CURES IS JULY 1, 2016**

Under California law, all individuals practicing in California who possess both a state regulatory board license authorized to prescribe, dispense, furnish or order controlled substances and a Drug Enforcement Administration Controlled Substance Registration Certificate (DEA Certificate) must register to use the Controlled Substance Utilization Review and Evaluation System (CURES) by July 1, 2016.

The California Medical Association (CMA) has compiled a list of educational materials to familiarize physicians with the registration process and key features of the newly upgraded system, CURES 2.0. These resources are available at [www.cmanet.org/cures](http://www.cmanet.org/cures).

Among the resources is an on-demand recording of CMA's webinar, cohosted with the Department of Justice (DOJ), to help physicians navigate the CURES 2.0 registration process. The webinar provides an overview of key user features of the updated system and tips on how to avoid technical issues. This webinar is available in CMA's online resource library and is free to all interested parties.

To register with the new automated system, visit <http://oag.ca.gov/cures>. Physicians who experience problems with the new system should contact the DOJ CURES Help Desk at (916) 227-3843 or [cures@doj.ca.gov](mailto:cures@doj.ca.gov). Providers are also encouraged to report these technical issues to CMA's member service center at (800) 786-4262 or [memberservice@cmanet.org](mailto:memberservice@cmanet.org).

## **THE END OF LIFE OPTION ACT TOOK EFFECT YESTERDAY**

"As physicians, there are a lot of questions about requirements under the new law, required documentation and forms, requests for the drug, consulting physicians and so on," said CMA President Steven E. Larson, M.D., MPH. "There certainly will be areas that evolve as we look to best practices in areas like which drugs to prescribe, but this is a resource to help us all navigate the new landscape." On-Call document #3459, "The California End of Life Option Act" – is free through CMA's online health law library at [www.cmanet.org/cma-on-call](http://www.cmanet.org/cma-on-call). CMA is also has a webinar On Demand, "The California End of Life Option Act: An Overview"

## **REMINDER: CMS MEANINGFUL USE HARDSHIP EXCEPTION DEADLINE IS JULY 1**

Physicians should be aware that July 1, 2016, is the extended deadline for physicians to file hardship exception applications from the electronic health record incentive program meaningful use requirements. In mid-December 2015, Congress adopted a last-minute bill that gave the Centers for Medicare and Medicaid Services (CMS) the authority to grant a blanket exception for all eligible physicians who applied for an exception from the 2015 meaningful use penalties.

CMS reports the extension is being granted "so providers have sufficient time to submit their applications to avoid adjustments to their Medicare payments in 2017."

CMS also released new "streamlined" hardship exception application forms "that reduce the amount of information that eligible professionals must submit to apply for an exception," the agency said. The new application forms and instructions on filing a hardship exemption are on the CMS website.

To help physician members navigate the hardship exemptions process, the California Medical Association (CMA) has published "Meaningful Use Hardship Exception Frequently Asked Questions." This document answers questions about the blanket exemption, including who should apply, deadlines and more.

## **JULY 1, PAYORS WILL BE REQUIRED TO ENSURE PHYSICIAN DIRECTORIES ARE ACCURATE, WITH PHYSICIANS REQUIRED TO DO THEIR PART**

The new law also requires physicians to do their part in keeping their information up-to-date. Specifically, the law requires providers to notify payors within five business days if they are no longer accepting new patients or, alternatively, if they were previously not accepting new patients and are now open to new patients.

If a provider is not accepting new patients and is contacted by a new patient based on information found in the payor's provider directory, the new law requires the provider to direct the patient to the plan/insurer to find a provider, or to the regulator to report a directory inaccuracy.

Physicians are also required under the new law to respond to plan and insurer

notifications regarding the accuracy of their provider directory information, either by confirming the information is correct or by updating demographic information as appropriate. **Failure to do so may result in a delay in payment and removal from the provider directory. Additionally, a payor may terminate a contract with a provider for a pattern or repeated failure to update the required information in the directories.**

## **SUPREME COURT SENDS CONTRACEPTIVE COVERAGE UNDER ACA CASE BACK TO LOWER COURT**

On May 16, 2016, the U.S. Supreme Court issued an unsigned unanimous opinion announcing that it would not rule on the merits of the case regarding the contraceptive coverage requirement under the Affordable Care Act (ACA). The move is seen as an effort to avoid a four-to-four deadlock. The Court instead vacated the judgments of the lower courts and instructed the courts to afford the parties an opportunity to arrive at compromise. The opinion instructs the courts to allow the parties sufficient time to resolve any outstanding issues between them that would accommodate religious exercise while ensuring that women "receive full and equal health coverage, including contraceptive coverage."

In February, CMA filed an amicus brief with the Supreme Court in support of the contraceptive-coverage provision for group health plans under the ACA. CMA joined the American College of Obstetricians and Gynecologists, Physicians for Reproductive Health and American Academy of Family Physicians, as well as other state medical associations and health care provider organizations, in filing the brief.

The issue in this case, *Zubik v. Burwell*, is whether the Religious Freedom Restoration Act of 1993 (RFRA) not only entitles religiously-affiliated non-profit corporations to opt out of providing contraceptive coverage themselves, but also prevents the government from arranging for third parties to provide separate coverage to their employees.

Under the ACA, employers with more than 50 full-time equivalent employees must provide health coverage for their employees or face fines in the form of a tax. The ACA also requires group health plans to cover certain preventative services at no cost to

patients, including a full range of contraceptive coverage.

Religious institutions, including churches, temples and mosques, are exempt from the ACA's contraceptive coverage requirement. Nonprofit faith-based charities and religiously affiliated educational institutions and hospitals, however, are not automatically exempted from the requirement; rather, they are afforded an accommodation that requires them to notify the health plan or the U.S. Department of Health and Human Services of their religious objections. Such a notice then triggers independent birth control coverage for employees, students and their dependents who want it. After the U.S. Supreme Court's 2015 decision in *Burwell v. Hobby Lobby Stores, Inc.*, this accommodation was also extended to closely held for-profit entities that object to providing contraceptive coverage based on their owners' religious beliefs.

CMA's brief stressed the importance of widespread access to contraception as an essential component of health care for women of child-bearing age. The brief also argued that decisions concerning contraceptive use, like all health care decisions, should be made by patients in consultation with their health care professionals based on the best interests of the patient. This is best accomplished when contraceptive coverage is provided within the same overall framework as a woman's other health care services in consultation with a woman's chosen provider. The accommodation accomplishes this, while at the same time respecting an employer's sincerely held religious objections to contraception.

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### **PHYSICIANS ADVISED TO CHECK ENROLLMENT STATUS OF PREGNANT PATIENTS INSURED BY COVERED CALIFORNIA**

In April, news broke that nearly 2,000 pregnant women with Covered California health plans were automatically – and without their knowledge or consent – transferred from their exchange plan to Medi-Cal, even though they were supposed to have the option to stay with Covered California.

The problem, attributed by Covered California partly to a computer glitch, can be traced to a recent policy change. Usually, consumers are placed in either Covered California or Medi-Cal based on their income, with no choice in the matter.

But the rules are different for some pregnant women whose household income falls between 138 percent and 213 percent

of the federal poverty level, or roughly \$22,100 to \$34,100 for a family of two.

Under the October policy change, women who are pregnant at the time they apply for health coverage and fall into this income bracket will automatically be placed into Medi-Cal. Previously, they had a choice between Medi-Cal and Covered California.

Women in the affected income range who already have Covered California plans before they become pregnant are now supposed to be given the choice to remain in their subsidized exchange plans—which have out-of-pocket costs such as co-pays and deductibles—or move to Medi-Cal, which is free.

The Covered California computer glitch, however, is moving these women into Medi-Cal automatically, without giving them the option to stay with their current plans. Covered California has promised to fix the problem, but the fix is not expected to go live until September.

CMA called representatives of Covered California for clarification and was advised that providers should check the eligibility of their pregnant patients to determine if the patient is still enrolled in a Covered California plan or if they have been migrated to Med-Cal.

If the patient has been migrated, physicians should ask the patient if she intends to keep Medi-Cal or if she wants to be reinstated with Covered California. Patients who would like to be reinstated should call the Covered California "Pregnancy Escalation Line" at (800) 675-2607.

This issue reinforces the importance of verifying eligibility each time the patient is seen to ensure the physician can be paid for services rendered. If the patient opts to switch back to Covered California and pays her premiums retroactively back to the cancellation date, the claims will be paid by the patient's Covered California plan. However, if the patient opts to keep her Medi-Cal coverage and the physician is not a Medi-Cal participating provider, the physician will not be paid and cannot bill the patient. If a provider knows a patient has Medi-Cal coverage, regardless of whether the provider participates in the Medi-Cal program or not, California law prohibits them from seeking payment from the patient.

Covered California has taken several steps to help reduce the number of women who are switched without their consent. The agency sent multiple written notices to the approximately 2,000 women that it identified as having been impacted by the glitch. The agency has updated its main website to give consumers more

information about reporting a change related to pregnancy.

It is also important to note that the exchange does not require members to report a pregnancy. Covered California patients only need to report a pregnancy if they are interested in other coverage options for pregnant women such as Medi-Cal or the Medi-Cal Access Program.

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### **STATE SUPREME COURT ENDS TRIAL LAWYERS' BID TO CIRCUMVENT MICRA BY ALLEGING ELDER ABUSE**

On Thursday, the California Supreme Court issued a unanimous opinion in the case *Winn v. Pioneer Medical Group*, ending the trial lawyers' bid to circumvent the Medical Injury Compensation Reform Act (MICRA) by claiming elder abuse.

CMA, together with the AMA Litigation Center, filed an amicus brief in this case after an appellate court failed to draw a line between medical professional negligence and elder abuse claims. If the appellate court's decision had been left standing, it would have eroded long-standing protections of MICRA and the clear definition of professional negligence.

This case involved the issue of whether, in an outpatient setting, a health care provider's failure to refer an elderly patient to a specialist constituted "neglect" under the Elder Abuse and Dependent Adult Civil Protection Act.

The case arose after an 83-year-old woman received care at Pioneer Medical Group in Cerritos in 2000. Several health professionals treated her for onychomycosis, which limits mobility and indirectly impairs peripheral circulation. Years later, she was diagnosed with peripheral vascular disease by a Pioneer family physician. The patient's condition deteriorated and she visited Pioneer Medical Group at least seven more times during the next two years complaining of various ailments associated with peripheral vascular disease. She was admitted to a hospital with gangrene in 2009 and her right leg was amputated. She died from blood poisoning in 2010.

In 2011, the patient's daughters filed suit against Pioneer Medical Group and several staff members alleging professional negligence and elder abuse. The plaintiffs said the medical group's failure to refer the patient to a vascular specialist constituted neglect and abuse under the Elder Abuse Act.

CMA's brief, filed together with the AMA's, set forth how this lawsuit was a veiled attempt to reclassify acts of professional

negligence in order to circumvent MICRA and invoke the heightened remedies available under the Elder Abuse Act. The restrictive effect that such reclassification would have had on access to care for the elderly, and the expansive effect it would have on malpractice insurance costs for health care providers, is significant. CMA's brief asked the Supreme Court to reject such reclassification and to state with certainty that claims based on a health care provider's decision as to an appropriate course of treatment cannot, through artful pleadings, be recast as claims for elder abuse, as doing so threatens to undermine the carefully crafted provisions of MICRA.

CMA told the court that allowing plaintiffs to seek enhanced remedies for elder abuse based on such conduct would conflict with the provisions of MICRA, which limit plaintiffs' remedies in an action based on that same conduct.

In a ruling that is largely aligned with the position advocated by CMA and AMA, the state's high court concluded that the Elder Abuse Act does not apply unless the defendant health care provider had a substantial caretaking or custodial relationship with the elderly patient that involved ongoing responsibility for one or more of the patient's basic needs.

The Supreme Court stated that it is the nature of the elder or dependent adult's relationship with the defendant, not the defendant's professional standing, that makes the defendant potentially liable for neglect under the Elder Abuse Act. The Supreme Court found that plaintiffs could not adequately allege neglect under the Elder Abuse Act.

Significantly, this opinion blunts the trial lawyers' attempts to make an end-run around MICRA and turn every professional negligence action involving an elderly patient into an elder abuse claim.

Contact: CMA's legal information line, (800) 786-4262 or [legalinfo@cmanet.org](mailto:legalinfo@cmanet.org).

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### **MARK YOUR CALENDAR**

For more information go to Calendar Tab at [venturamedical.org](http://venturamedical.org)

#### **September 22 – Candidates Forum**

hear panel of State Senate/Assembly candidates. Spanish Hills Country Club. 6pm Reception; 7pm Dinner/Program. Watch email for invitation to RSVP.

### **CMA WEBINARS**

[www.cmanet.org](http://www.cmanet.org) to pre-register

**June 15 MACRA and the Quality Payment Program: An Update on the Recent Proposed Rule**  
12:15pm-1:15pm

**June 22 DMHC IMR and Other Complaint Processes: Tips and Best Practices for Physicians** 12:15pm-1:15pm

**June 29 California Healthcare Performance Initiative (CHPI) Physician Quality Rating Program: Navigating the Review and Corrections Process** 12:15pm-1:15pm

### **CLASSIFIEDS**

Free listings for VCMA members. Submit ad info to: [marycarr@venturamedical.org](mailto:marycarr@venturamedical.org)

### **PRACTICE OPPORTUNITIES**

**Camarillo** - Office with two to three exam rooms to share. Part time or full time. Affordable and flexible. Please contact (805)383-2929.

**Simi Valley** – full time FP MD needed at the Med Center. Hours are Monday 8am-8pm, alternating Tuesdays 8am -8pm, Fridays 8am -8pm and every other weekend 9am-5pm. Call Denise (805)583-5555 ex 23, or send resume: [admin@medcenterofsimivalley.com](mailto:admin@medcenterofsimivalley.com)

**Thousand Oaks** - Sublease up to 4 days per week; 7 exam rooms in prof. bldg. Please call Lynn at (805)482-8989

**Thousand Oaks** - 2700 SF office with large procedure room and recovery area, and 4 exam rooms. Available Mondays and Tuesdays 8 AM to 12 noon; Wednesdays 2 to 6 PM. More info, visit [www.AGImedical.com](http://www.AGImedical.com)

**Ventura** – For Lease: 500 sq.ft. Beautiful medical office on Brent St. (805)258-2059 ext.2447 for info.

**Westlake Village** – Remodeled, medical office for sublease. Available up to four days a week. (818)438-5997 [Brisbee@aol.com](mailto:Brisbee@aol.com)

### **FOR SALE**

**OB/GYN Equipment** - Colposcope, microscope, cryo gun, surgical and colposcopy instruments, speculum lights (Welsh Allen), chart racks, exam table, stools, office chairs, waiting room chairs, 10 station business phone system, endometrial samplers, ultrasound, leep system. Call (805) 535 4422

**Closing Practice Sale** - Family practice medical equipment for sale. Equipment includes exam tables, chart files, MidMark M9 UltraClave, AT-2 plus Schiller/WelchAllyn ECG recorder, printers and other equipment associated with family practice medicine. Call for pricing (805) 525-5518.

**Office Desk** - Mint condition desk unit with detachable wall unit with storage. Dark Wood; Original \$800; sell for \$300. Dr. Paul Rehder (805) 479-1086.

**Pediatric Practice Equipment** - Vaccine 4.3 cubic ft. refrigerator-freezer combo; paid \$1499, only used 4 months. (Best offer) WelchAllyn Rectal thermometer. \$100  
2 different sizes pediatric Aneroid Sphygmomanometers; \$30 ea. or \$50 both.  
SECA newborn scale \$70  
X-acto paper trimmer \$40  
Email: [spa.pinzonarellano@gmail.com](mailto:spa.pinzonarellano@gmail.com)

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### **MEMBER BENEFITS HI-LIGHTS**

#### **Insurance Programs**

NEW Workers Comp Preferred plan, members receive 5% discount off premium. Many members' savings equal to VCMA/CMA annual dues. Disability, Life, Health & Business Overhead plans available, too. Call a Mercer Client Advisor at (800) 842-3761 or [cmacounty.insurance.service@mercer.com](mailto:cmacounty.insurance.service@mercer.com)

**Broadcast Email Service:** Email .pdf to [marycarr@venturamedical.org](mailto:marycarr@venturamedical.org) Accessible one time each year per member.

**Physicians Legal Handbook** search over 1500 titles; legal opinions, sample letters and current law/court references. [www.cmanet.org](http://www.cmanet.org)

**Online CME:** new online CME platform from CMA's Institute for Medical Quality (IMQ) provides access to AMA PRA Category 1 Credit™. Easy tracking of course participation and credit. Discounts for CMA members. Catalog and register for courses at <http://imq.inreachce.com>.

**Resume Service:** Call 484-6822 or email [julie@venturamedical.org](mailto:julie@venturamedical.org) to request resumes to fill practice personnel positions. FREE to members.

#### **Waste Management – NEW BENEFIT!**

Any member signing a contract with Enviromerica for waste pick-up, **between now and June 30th**, will receive an additional 10% discount...that's 40% off of what you are currently paying to any other vendor. This 40% discount is guaranteed for the length of your contract with Enviromerica. Any member currently under contract with another vendor can sign a letter of intent with Enviromerica now, and receive these same terms when their current contract ends.

Act now to take advantage of this special membership offer.

If you have any questions you may contact Enviromerica directly at 888-323-0583