

**Breakout Sessions: An Overview**  
**So, What Else Do We Do About it?**

10:00 a.m. – 11:30 a.m.

Sunday, May 3, 2009

**Thesis:** The steady growth of a popular “patient safety movement,” coupled with rising health care costs and continued threats to access to health care, suggests that now may be the time for embracing a comprehensive review of patient safety, medical liability and physician accountability as a component of health care reform. The Institute of Medicine has clearly documented its position that Americans should be able to count on receiving health care that is safe. Patients have a right to a reformed system that will detect, respond to and correct adverse outcomes before they occur; ensure fair, appropriate and timely compensation to patients who are injured in the course of care; and protect patients from individuals who present a risk to their safety by holding individual providers accountable for their actions. It is time for the Colorado legislature to consider new ideas and fresh approaches to health care delivery and provider accountability that will meet these goals.

**Our Positioning Strategy:** CMS has taken the position that Sunset Review of the Board of Medical Examiners (BME, or the Board) and the on-going disagreements with Colorado Trial Lawyers Association (CTLA) present a strategic opportunity to re-position public policies involving medical malpractice litigation in the context of health system reform. We have argued to policy-makers during the last two legislative sessions that the laws governing malpractice should be treated as a subcomponent of patient safety and professional accountability. Patient safety and professional accountability are, in themselves, each subcomponents of the health care delivery system. As a result of these efforts, we believe that legislators are beginning to understand that any alteration in the balance between plaintiffs and defendants in a malpractice suit can be linked to broader policy concerns—such as minimizing the potential for patient injury; expediting the fair resolution and remediation of compensable adverse events, while fully caring for the injured patient; and accountability of health care entities and professionals. We have also tried to demonstrate that there are inevitable trade-offs between system costs, patient compensation, access to essential medical services and patient safety.

CMS has for several years been working with a broad range of provider and consumer stakeholders through active participation with Colorado Patient Safety Coalition, Common Good Colorado and Colorado Foundation for Medical Care. Additionally, our proactive stance on the Michael Skolnik Medical Transparency Act and collaboration with Colorado Hospital Association on the new Rocky Mountain Patient Safety Organization has further positioned CMS as an ally within a broader coalition of organizations dedicated to Colorado’s patient safety movement. This involvement and

outreach has given us valuable insight during many positive interactions with all of the participants in this movement.

**BME Sunset as a “Bully Pulpit”:** Last summer, CMS developed an ad hoc committee to develop strategies to pre-empt anticipated moves against our stable medical tort environment. This committee of physician leaders, attorneys and consultant experts has met three times since December 2008 to incubate both short- and long-term strategies regarding patient safety, physician accountability and professional liability. At the same time, the Department of Regulatory Affairs (DORA) has begun its sunset review and analysis of the Medical Practice Act (MPA) and the BME. The sunset review is a broader opportunity to examine the systems in place that are intended to reduce the potential for adverse events. Accordingly, it offers Colorado physicians an ideal opportunity to seize the initiative. CMS and its allies do not intend to merely sustain the status quo, which we have concluded is a failing liability system that is neither fair nor cost effective, and emphatically does not reduce the potential for adverse events. Rather, CMS can craft and advance policies that reflect a crucial principle:

***Medical professional discipline, liability and patient safety systems should evolve away from a culture of shame and blame toward one of prevention, transparent investigation, accountability, restoration and timely resolution.***

The ad hoc workgroup used that principle as the basis for its discussions and structured retreats conducted earlier this year with state agencies, leading patient safety advocates and experts, and practicing attorneys and consultants with extensive experience in this field. The principle is reflected in the policy options that will be discussed in Sunday’s breakout sessions.

**Political Realities:** Breakout session participants should keep the following in mind:

1. *Sunset means that all laws governing the practice of medicine will be on the floor for a vote. It will be a very public discussion. The General Assembly will likely accept the notion that physicians should continue to be licensed and regulated, and thus will vote to continue the Board and its body of enabling statutes (the MPA). This in turn means that legislators are guaranteed to have legislation before them in both chambers with broad titles that will allow for a range of germane amendments to address every aspect of the Board’s policies and operations*
2. *Legislators and interest groups with a stake in the Board’s activities may also see opportunities. Both constructive and hostile ideas may well surface from a variety of groups, such as other health professions, patient advocacy organizations and the plaintiffs’ bar. CMS is thinking pre-emptively and is defining the scope of this debate in terms of patient safety well in advance of adversarial assaults.*
3. *The sunset process presents the only opportunity to contemplate systemic tie-ins and reforms to patient safety associated with medical (and other professions’)*

*licensure*. This is especially true since it coincides with health system reform initiatives and the Governor's recent patient safety executive order. It is far better for physicians to constructively assess the BME's adequacy in protecting public safety during the sunset process rather than be forced to do so in response to a scandal or system failure (which has been the case in other states).

4. *Sunset presents a once-in-a-decade opportunity to make major adjustments to how physicians deliver health care.* This is the profession's opportunity to set the stage, as best we can, for the changes we see ahead.

**Breakout Sessions:** Following our plenary sessions on opportunities and challenges for better safety systems, we will ask participants to break out Sunday morning in smaller groups to further the process of helping CMS arrive at specific policies to include in our patient safety proposals. Please give consideration to the breakout session that interests you the most and the one you can inform the best. The outcome of each breakout group will be forwarded to the ad hoc work group on patient safety and professional accountability for consideration in their report to the 2009 House of Delegates. The breakout sessions are:

- Medical Practice Act / Board of Medical Examiners: Sunset
- Peer Review / Quality Improvement / Patient Safety Organizations
- Adverse Events / Accountability / Compensation: Alternatives
- Real World Application of Patient Safety Initiatives
- Grassroots

We want to build greater consensus among physicians on the subject of patient safety by drilling down on policy options and grassroots strategies to achieve the following:

- System-based reforms to reduce the risk of adverse events.
- Expedited and fair resolution of non-meritorious and meritorious claims.
- Reducing the propensity for defensive medicine practices.
- Insulating essential medical services from being compromised by litigation threat.