

Of Note

Fear of Lawsuits Drives Costs in ED, Says ACEP

More than half of emergency physicians say they practice defensive medicine to protect themselves from lawsuits according to a survey by the American College of Emergency Physicians. Forty-four percent of the nearly 1,800 physicians who participated in the study said fear of lawsuits is the biggest challenge to cutting costs in the emergency department. Fifty-three percent said fear of litigation drives many of the tests they order.

“Medical liability reform is essential to meaningful healthcare reform,” said ACEP President Sandra Schneider, MD. “Without it, healthcare costs will continue to rise. Estimates on the costs of defensive medicine range from \$60-\$150 billion per year.” John Commins, *HEALTHLEADERS*, May 31, 2011

Missed Meds Could Cost More than \$250 Billion A Year

Americans may waste as much as \$258 billion a year by not taking prescribed medications because the missed doses lead to emergency room visits, doctor’s visits and in-patient hospitalizations, according to a study by Express Scripts, a prescription-filling firm. A second study conducted by CVS Caremark, Harvard University and Brigham and Women’s

Hospital cited \$290 billion in waste. Both studies looked at data from their own customers, insurance payouts, previous research and survey data. The CVS study also looked at productivity losses. Kelly Kennedy, *USA Today*, June 1, 2011.

End-of-Life Care: How You Can Help Stressed Surrogates

One in three surrogates carries a lasting emotional burden related to decisions they make on behalf of loved ones at the end of life, according to a systematic review published March 1 in the *Annals of Internal Medicine*. Guilt and lingering doubts about whether they made the right choices can lead to anxiety, depression and insomnia for surrogates. “Too much of the thinking about end of life care has focused on decisions – whether to withdraw life support, for example – rather than on the patient as a person,” said Daniel Sulmasy, MD, Ph.D., associate director at the University of Chicago’s MacClean Center for Clinical Medical Ethics. Dr. Sulmasy says surrogate’s distress can be ameliorated not only by focusing on the patient’s expressed preferences, but also by discussing his or her best interests in the current clinical situation. Kevin B. O’Reilly, *amednews.com*, June 13, 2011.

Proposal to Withhold Care from Sick Babies is Unethical, Vatican Adviser Says

Neonatalogist Carlo Bellieni, MD, director of the Neonatal Intensive Therapy Unit at Siena Hospital and member of the Pontifical Academy for Life, has condemned a controversial proposal by James Wilkinson, MD in the *American Journal of Bioethics* that it is “justifiable in some circumstances for parents and doctors to decide to allow an infant to die even when though the infant’s life would be worth living.” Dr. Bellieni, who is also secretary of the Bioethics Committee of the Italian Pediatrics Society, said the suggestion makes for bad ethics and poor patient care. “Even when burdens do seem to be high, for example in the case of severe disability, this is not a sufficient reason to withhold life-saving treatments. After all, a disabled baby has a full right to life too,” he said. David Kerr, www.catholicnewsagency.com, May 20, 2011.

Could Prenatal DNA Testing Open Pandora’s Box?

Scanning fetal DNA from a blood test will be “without question a major medical advance that promises to greatly improve current prenatal care,” says Jamie King, associate professor at the University of California Hastings College of Law in San Francisco, who studies genetic testing. “Bringing it into practice, however, “raises significant practical, legal, ethical and social challenges,” she says. The tests could reveal a range of medical conditions such as Down syndrome, eye color, height, risk for developing depression, Alzheimer’s disease and a range of other

medical conditions. Since this information would be available early in the pregnancy, Dr. Brian Skotco, board member of the National Down Syndrome Society, said, “The ultimate question for society is, “What forms of human variation are valuable?” Such testing also poses concerns regarding informed consent, parental ability to sort through and understand a potential flood of information and make appropriate decisions. Associated Press, June 13, 2011.

Doctors’ Loss of Moral Agency

Medicine is a moral profession. Medical school and residency training remain as much about building character as about building skills. Yet demands of modern medical practice are less about service than productivity and self-protection. For many physicians, this situation poses a moral dilemma, begging the question, “What can one doctor or practice do?” Much could be accomplished if physicians actively reengaged with their “better angels”, according to Joel Levine, MD, professor of medicine at University of Connecticut Health Center, and Wendall Wallach, consultant at the Yale Interdisciplinary Center for Bioethics Research. Physicians could say it isn’t right to pack 20 patients into an afternoon, devise methods for accommodating the uninsured and make prevention integral to patient care even if few insurers as willing to pay for it. This would build trust between physicians and patients, pitting both against diseases and less against each other. Joel Levine, MD

and Wendall Wallach,
www.americanthinker.com, July 5, 2011.

Students from the Center for Health Law Studies at Saint Louis University School of Law contributed the following items to this column. Amy N. Sanders, assistant director, Center for Health Law Studies, supervised the contributions of health law students Chelsea Mortimer (JD anticipated '12) and Ann Schunicht (JD anticipated '12).

Vermont and Maryland Poised to Create Prototype for State-Run Health Care

Vermont Gov. Peter Shumlin may be the impetus behind one of the first state-run health insurance plans by signing a bill that would create a health insurance exchange with a single-payer health care system. The exchange is set to be operational in 2014, but funding for the plan has not been solidified. David Himmelstein, professor at City University of New York's public health program, is calling the potentially groundbreaking legislation "an announcement of intention rather than an accomplishment". The plan has not addressed soaring health care costs yet, which is a major component to a successful system. However, if the plan is successful, it may provide a template for other states to follow as they attempt to comply with the federal health care initiatives. (Vermont's Shumlin Uses Obama Health Law to Build Bridge to State-Run Care, Bloomberg, Michael McDonald, May 26, 2011)

<http://www.bloomberg.com/news/2011-05-26/vermont-s-shumlin-uses-obama-health-law-to-build-bridge-to-state-run-care.html>.

Maryland is also in the front of the pack of health care reform pioneers. The state passed a law to create a health benefit exchange earlier in 2011. Health policy experts, a legal aid official and former business lobbyist have been appointed to the committee to move forward on the state health care initiatives. (Md. Health Secretary Sharfstein: Health Law Brings 'Fast and Furious' Opportunity – The KHN Interview, Kaiser Health News, Christopher Weaver, May 26, 2011)
<http://www.kaiserhealthnews.org/Stories/2011/May/26/sharfstein-q-and-a-maryland-health.aspx>.

Study Shows Too Many Medicare Reimbursement Exceptions

A study by the Institute of Medicine (IOM) reveals that 40 percent of hospitals are receiving exceptions to their Medicare reimbursement adjustments, leading some to believe that the scheme is not functioning as intended. It is meant to even out Medicare reimbursement among hospitals and doctors based on geographic location. However, according to the report, the process is not transparent enough and results in wasteful spending. Salaries and benefits to Medicare providers are a large chunk of Medicare spending and were one focus of the study. The creators of the study suggest that

Bureau of Land Statistics be used to calculate wages and benefits to doctors and hospitals, though critics say these numbers may not accurately reflect the cost of living and doing business in each geographical region.

(Medicare payments to hospitals not correct: study, Reuters, Anna Yukhananov, June 1, 2011)
http://health.yahoo.net/news/s/nm/us_medicare_geography.

U.S. Supreme Court Rules Patent Split in HIV Test Kit Correct

In a June ruling, the U.S. Supreme Court affirmed that Stanford University and pharmaceutical company Roche are co-owners of HIV detection technology (*Stanford University v Roche*). The patent is for technology featured in a kit that identifies the level of HIV in patients' blood. Stanford argued that it should be the sole owner of the technology because the inventor worked there at the time of invention and used government grants to fund the project. Under the 1980 Bayh-Doyle Act, a university is allowed to retain rights to research funded by federal grants. However, the Stanford employee signed a contract with Roche stating that technology patents they created jointly would be held by Roche. The U.S. Circuit Court of Appeals for the Federal Circuit held that both entities would be owners and the U.S. Supreme Court affirmed in a 7-2 decision. Justices Breyer and Ginsburg dissented. In his dissent, Justice Breyer did not believe that an individual could assign

rights to property created with public funds to a private entity under the Bayh-Doyle Act. (Court says university, company co-owners of patent, Associated Press, June 6, 2011)

http://old.news.yahoo.com/s/ap/20110606/ap_on_re_us/us_supreme_court_university_patents.

Not-For-Profit Companies Could Receive Loans Under Health Care Overhaul

In a move to stimulate more entities to participate in the state health exchanges, the federal government stated that not-for-profits such as churches or other groups could compete with insurance companies like WellPoint, Inc. with the help of government loans. The loans would total \$3.8 billion and the government estimates that 1/3 of those loans will never be repaid. The groups, called co-ops, must be governed by a board elected by their members and consist of a majority of co-op members. This stipulation was promulgated by the U.S. Centers for Medicare and Medicaid Services in order for the co-ops to apply for the government funded loans. The loans consist of two types: "start-up" loans and "solvency" loans. The former would be used to begin the co-op and the latter is meant to help co-ops conform to state requirements. Recipients would be required to pay off start-up loans in five years and solvency loans in 15 years.

(Not-for-profits vying with WellPoint may get \$3.8B in loans, *Indianapolis Business Journal*, Bloomberg News, July

18, 2011)

<http://www.ibj.com/notforprofits-vying-with-wellpoint-may-get-38b-in-loans/PARAMS/article/28361>.

HIV-positive Patients in Africa Living Almost Normal Lifespans

The first study to look at how long HIV-positive patients could plan to live has found very positive results. In Uganda, the average life expectancy is 55 years. Ugandans on HIV treatment are now living almost as long as their non-HIV positive counterparts. Dr. Deborah Cotton of Boston University School of Medicine said, "We knew it was good. It turns out to be great." By treating Ugandans earlier and no longer waiting until their immune systems are devastated, the drugs are much more effective. Unfortunately, not all groups access drugs at an early stage. Men wait longer to get HIV treatments than women, and as a result, men are only living about two-thirds as long as women. Younger Ugandans also have a lower rate of use than women. Young Ugandans born with HIV at birth usually spend more of their childhood without treatment. Richard Knox, NPR News, July 19, 2011.

Zocor Gets a Label Change

After concerns of an increased chance of muscle damage, the FDA recommended limiting the highest approved dosage of Zocor. New contraindications were also added. These risks were identified in patients taking 80 milligrams of Zocor, usually within their first year of taking the

medication. Last year, more than 2 million people were prescribed 80 milligram dosages of Zocor. The changes came after the publication of a clinical trial called the Study of the Effectiveness of Additional Reductions in Cholesterol and Homocysteine. The FDA also reviewed other trials and adverse event reports submitted to the agency. Steven Reinberg, *U.S. News*, June 8, 2011.

Half of Americans Claim Personal Tie to Medicaid

The latest Kaiser tracking poll shows that 51 percent of adults surveyed had a personal connection to Medicaid either because they received benefits directly or had a friend or family member who received benefits. Eighty-six percent of participants reported an overall positive experience with Medicaid. According to previous reports from Kaiser, 70 percent of nursing home patients have Medicaid coverage, 60 percent of low income kids, 44 percent of HIV/AIDS patients, 41 percent of pregnant women, 20 percent of persons with severe disabilities, and 21 percent of Medicare beneficiaries. Katherine Hobson, *Wall Street Journal*, May 25, 2011.

New Alzheimer's Testing - Would You Want It?

New screenings and early detection programs are becoming more available, but for what advantage? At the Alzheimer's Association International Conference in Paris in July, experts debated whether to test patients for early

signs of Alzheimer's and then tell them the results, even though no cure exists. The newly available scans can detect brain plaques that show individuals they might be developing Alzheimer's even in the absence of symptoms. Although the brain plaques suggest a patient might be developing Alzheimer's, they may not get the disease or they may not live long enough to experience the symptoms. In addition to the inconclusiveness of the testing, Dr. Kenneth Rockwood of Dalhousie University of Halifax, Nova Scotia says that there is no data "to show that knowing makes any difference in outcomes." This leaves the question of why testing is necessary at all. Another "camp" of medical experts encourages testing to rule out Alzheimer's and continue searching for the explanation for the patient's symptoms. There is also an argument for allowing patients to put their financial and legal matters in order and possibly start a medication regimen to treat symptoms. AP, NPR News, July 21, 2011.