

Hospitals Alter Routines to Control Drug Spending

With higher drug prices accounting for nearly 11 percent of the rise in hospital pharmacy cost last year, facilities are looking for new ways to control spending. One approach is to decrease the amount of drugs present on hospital floors (e.g. in crash carts). These facilities will still dispatch the medication from the pharmacy, but with fewer boxes less waste will occur from expiring stock. Another approach is to switch to more generic versions of popular drugs or to repackaging expensive labels into smaller, more appropriate doses.

"Prompted by Valeant's price increases last year, Intermountain Healthcare, which operates 22 hospitals, now gets eight doses of Valeant's Isuprel from a single ampul." This action has saved the system \$1.1 million annually. Melanie Evans. *The Wall Street Journal* (Dec. 18, 2016) www.wsj.com

Too Many People Misunderstand the 'Vegetative State'

"Research suggests that 68 percent of severely brain-injured patients who receive rehabilitation eventually regain consciousness, and that 21 percent of those are able to eventually live on their own." Unfortunately, many patients are quickly dismissed and assigned a diagnosis of vegetative state. This

then makes them unqualified for rehabilitation services under insurance.

As Catholics, we aspire to focus on the dignity of the person, providing the necessary care that is most appropriate at the time. Dr. Rastrelli, a deacon and licensed physician, wants to move the debate back towards a focus on the patient, recognizing the gaps in knowledge on the subject of unconsciousness. He believes that, "The terminology has been so confused over the last 10-15 years, that sometimes families are not sure what kind of decisions to make when they're faced with a neurological insult." As a ministry of the Church, Catholic hospitals need to do more to address the needs of these patients and their families, guiding them in these troubled times. Meanwhile, Catholic health care must push for more research on the effects of brain injuries in order for better outcomes and greater respect for human dignity. Mary Rezac. *The Catholic News Agency* (Dec. 17, 2016) www.catholicnewsagency.com

Organs Donated By Elderly Show Good Track Record

Currently, U.S. policies and practices regarding organ donation "impose caps and strict federal regulations that penalize centers for poor outcomes." Such a system potentially restricts the pool of applicants for donation, often people over

65 years old. “Of the 9,079 deceased organ donors in the U.S. in 2015, only 618 were 65 or older, according to the Organ Procurement and Transplantation Network, or OPTN.” This has a disturbing effect on the nearly 120,000 people waiting for a transplant.

However, the University of Torino in northwestern Italy “suggests that age alone should not exclude older organs — in this case kidneys — from consideration.” The new study reveals that the 5 year patient survival rate for patients who received a liver from a donor in their 70s was 88 percent to 90 percent. For patients who received a kidney, the rate was 66 percent.

This new study gives support for those who seek a more open policy regarding acceptable organ donations. Leaders in the field understand that a liver from a 70 year old should not go into a 20 year old, but could be great for any of those over 65 who are awaiting transplant. Also, by not restricting people purely by age, we could reduce the current discard rate for organs – kidney discard rate is around 48 percent for those older than 80, “mostly because of age-related problems.” What this research and others highlight is the continued conversation on the best route for addressing organ shortages in the U.S. JoNel Alleccia. *USA Today* (Dec. 17, 2016) www.usatoday.com

Pope Denounces Corruption and Using Hospitals as a Business

Pope Francis met with leadership and staff of the Vatican’s children’s hospital, Bambino Gesu. In his address he denounced the temptation “to transform a good thing like a children’s hospital into a business, where doctors become businessmen and nurses become businessmen.”

This statement stems from the corruption investigation of the past president of the hospital who directed nearly \$440,000 in foundation money to “pay for apartment renovations of the Vatican’s retired No. 2.” Yet, his words of caution are appropriate for all of those who assist in the health ministry of the Church. *The Associated Press* (Dec. 15, 2016) www.ap.org

Ohio House GOP Weighs Options after Governor's Abortion Veto

Ohio Governor John Kasich vetoed a bill banning abortions at the first detectable fetal heartbeat, meanwhile signing into law a bill banning abortions after 20 weeks (with no exceptions for rape or incest). This split action of Kasich has forced the GOP-ruled legislature into considering a possible override vote.

Brad Miller, spokesman for the Republican Speaker Cliff Rosenberger said in a statement, “The speaker

will be working with caucus members to determine possible options and the outcome will be decided after further consideration." The Ohio House and Senate would need a three-fifths majority vote for an override to take effect. Gov. Kasich vetoed the heartbeat bill because he believes it would not survive a court challenge and did not want to spend taxpayer money for large legal fees. Andrew Welsh-Huggins. *The Associated Press* (Dec. 14, 2016) www.ap.org

Students from the Saint Louis University School of Law Center for Health Law Studies contributed the following items to this column. Amy N. Sanders, Associate Director, supervised the contributions of Merlow Dunham (J.D./M.H.A. anticipated 2019) and Joshua Rose (J.D. anticipated 2018).

Colorado Becomes Sixth State to Pass a Medical Aid in Dying Measure

The Denver Post reports that Colorado passed its "End of Life Options" ballot measure, modeled after Oregon's "Death with Dignity" law that passed 22 years ago. Colorado's law permits a person choosing to die to self-administer a prescribed dosage of secobarbital, historically used as a sleeping pill in small doses, after two physicians agree the person is mentally competent and has less than six months to live. Those with dementia or Alzheimer's are not eligible for the prescription

under the law. Opponents argue that the law lacks safeguards by not requiring that a physician is present at time of death, by not preventing "doctor shopping," and by not preventing an heir from plotting the death of a relative to gain inheritance. Colorado became the sixth state to pass a medical aid in dying measure, joining Oregon, Washington, Vermont, Montana and California. Jennifer Brown, *The Denver Post* (November 8, 2016) <http://www.denverpost.com/2016/11/08/colorado-aid-in-dying-proposition-106-election-results/>

Congress Passes the 21st Century Cures Act

The 21st Century Cures Act passed with unusually overwhelming bipartisan support this legislative session with a 392 to 26 vote in the House followed by a 94 to 5 vote in the Senate, as reported by *The Washington Post*. The act increases medical research funding, eases the drug development and approval process, and reforms mental health care federal policy. The act includes an allocation of \$4.8 billion in new funding for the National Institutes of Health, with \$1.8 billion earmarked for the "cancer moonshot" launched by Vice President Biden, \$1.6 billion for brain disease research, \$500 million for new Food and Drug Administration funding, and \$1 billion for state grants aimed at fighting opioid abuse. Mike DeBonis, *The Washington Post* (Dec. 7, 2016) <https://www.washingtonpost.com/news/powerpost/wp/>

[2016/12/07/congress-passes-21st-century-cures-act-boosting-research-and-easing-drug-approvals/?utm_term=.d0aad9b84dea](https://www.congress.gov/2016/12/07/congress-passes-21st-century-cures-act-boosting-research-and-easing-drug-approvals/?utm_term=.d0aad9b84dea)

Facing Addiction in America: The Surgeon General's Report on Drugs, Alcohol, and Health

In November 2016, the Surgeon General released his report entitled "Facing Addiction in America: The Surgeon General's Report on Drugs, Alcohol, and Health," which a *Health Affairs* article designates as the first report to ever place addiction and substance abuse front and center in discussions about how to improve health in America. The report promotes a comprehensive public health model to address substance misuse and related consequences by reforming the current policy and practice of addiction prevention, treatment and recovery in America. The proposed public health approach is referred to as "Screening, Brief Intervention, and Referral to Treatment" (SBIRT), which provides a framework to prevent or delay substance misuse, especially in young people. The report emphasizes a need "for enhanced public education to improve awareness about substance use problems," for "widespread implementation of evidence-based prevention policies and programs," for "improve[d] access to evidence-based treatment services, integrated with mainstream health care," and for an investment in "recovery support services (RSS) that can support people in sustaining their

recovery and preventing relapse." Alexa Eggleston, *Health Affairs* (Dec. 16, 2016)

<http://healthaffairs.org/blog/2016/12/16/facing-addiction-in-america-its-about-time/> The Surgeon General's Report:

<https://addiction.surgeongeneral.gov/>

CMS Launches Two New Compare Websites

On December 14, CMS launched two new Compare websites where patients can obtain consumer-oriented information about the quality of inpatient rehabilitation facilities and long-term care hospitals. A *Modern Healthcare* article explains that the new Compare websites will report quality measures such as the percentage of residents or patients with new or worsened pressure ulcers, and unplanned readmissions, for any reason, within 30 days after discharge. Despite the praise the websites have received for publishing data and informing consumers, the Compare websites are controversial due to industry concerns that the websites and methodology behind the quality star rating system used by the Hospital Compare site may lack accuracy and precision. Nevertheless, the growing list of CMS' Compare websites demonstrates a push for increased transparency regarding quality and engagement of patients in their health care. Elizabeth Whitman, *Modern Healthcare* (Dec. 14, 2016)

<http://www.modernhealthcare.com/article/20161214/>

[NEWS/161219960?utm_source=modernhealthcare&utm_medium=email&utm_content=20161214-NEWS-161219960&utm_campaign=am](https://www.modernhealthcare.com/news/161219960?utm_source=modernhealthcare&utm_medium=email&utm_content=20161214-NEWS-161219960&utm_campaign=am)

Assessment Shows that Public Libraries are Well Positioned to Improve Population Health

A *Health Affairs* article presents findings from an assessment of how public libraries can be used to improve population health. The assessment analyzes the effectiveness of the Healthy Library Initiative in Philadelphia, a partnership that provides support programs through the city's public library system for vulnerable populations, including the homeless, those with mental illness and substance misuse, recent immigrants, and those suffering from trauma. Of the 5.8 million in-person Free Library visits in 2015, 500,000 included attendance at programs focused on addressing health determinants such as housing and literacy. The assessment indicates that public libraries are well positioned to provide programming to address social determinants of health. Anna Morgan, et al., *Health Affairs*, 35(11) (Nov. 2016)

<http://content.healthaffairs.org/content/35/11/2030.full>

ACLU, HHS Ask Court Not to Delay Obamacare Nondiscrimination Rule

On May 18, the U.S. Department of Health and Human Services (HHS) interpreted a nondiscrimination provision of the Affordable Care Act (ACA) to include discrimination on the basis of gender identity. In effect, Section 1557 precludes health care providers in receipt of federal funds from discriminating against patients seeking gender transition or similar procedures. In *North Dakota v. Burwell*, religiously-affiliated providers in North Dakota, Minnesota and Michigan are challenging the HHS rule as an infringement of religious freedom under the Religious Freedom Restoration Act. Specifically, the providers claim the HHS rule imposes a "transgender mandate," where religiously affiliated providers are forced to perform gender orientation procedures against religious belief, medical judgment and concern for patient care. A similar case, *Franciscan Alliance, Inc. v. Burwell*, was brought by eight states in early December. In response, HHS argued Section 1557 inherently protects against the type of harm purported by the religiously affiliated providers, including administrative procedures and a right to counsel patients in accordance with medical judgment. Further, at the preliminary injunction stage, HHS argues, the claims are not ripe for consideration. To date, no plaintiff to *North Dakota v. Burwell* has been sued for gender identity discrimination. The

American Civil Liberties Union, by way of amicus curiae, described the providers' request as a "blanket right to engage in federally funded healthcare discrimination." Of note, the providers are especially concerned with application of the rules to children. Matthew Loughran, *Bloomberg BNA Health Law Reporter* (Dec. 15, 2016)

Health Insurers Get Only 1.6% of \$6 billion They Are Owed for Costly ACA Customers

Inherent in the Affordable Care Act (ACA) is an effort to deter marketplace insurers from solely targeting individuals with lower-than-average medical costs. Known as "risk corridors," annual costs for marketplace insurers are estimated and benchmarked. Insurers with costs below the benchmark remit earnings to a fund, from which insurers with greater costs than anticipated are compensated. In essence, risk corridors are designed to offset the cost of accepting individuals with higher-than-average medical needs, where high-cost individuals receive coverage and insurers receive compensation for the added risk. The program, designed to run from 2014 through 2016, is vastly underfunded. In 2015, insurers covering customers with unexpectedly high medical expenses were slated to receive nearly \$6 billion; to date, the insurers have received \$96 million. At origination, the risk corridor program was to be funded through a combination of the remittance payments and

federal funding. Yet, Republican critics of the ACA defeated a funding bill for the risk corridor program, which contributed to the shortfall. At present, approximately 70 percent of marketplace insurers are owed money under the risk corridor program, with a mere 15 percent of insurers with costs below benchmarks and contributing to the fund. The shortage in funding for the risk corridor program is but one example of insurer dissatisfaction with the ACA. Citing losses from sicker-than-expected insureds, United Healthcare and Aetna have withdrawn from the marketplace in the majority of geographies. Amy Goldstein, *The Washington Post* (Dec. 15, 2016)

https://www.washingtonpost.com/national/health-science/health-insurers-get-16-percent-of-6-billion-theyre-owed-for-costly-aca-customers/2016/12/14/510bc490-be4d-11e6-91ee-1adddfcbe_story.html?utm_term=.7abe19f7a3f8

AARP Sues U.S. Over Rules for Wellness Programs

In May, the Equal Employment Opportunity Commission (EEOC) issued a rule for employee wellness programs, capping the incentive to participate at 30 percent of the annual cost of a worker's health insurance coverage. On average, the Kaiser Family Foundation reports, the annual cost for individual coverage is \$6,435. Thus, as of the latest EEOC ruling, an employee's refusal to

participate in an employee wellness program could cost a worker up to \$2,000. To participate, however, employees are often required to complete health risk assessments and biometric testing. Requiring workers to release private medical or genetic information, AARP argues, violates anti-discrimination laws protecting employee health information. Further, given the significant cost associated with not participating, AARP "questions whether the programs are truly voluntary." Granted, many employers cap incentives to participate below the maximum allowed, and employers often utilize third-party services to collect employee information in a confidential manner. Yet, AARP insists the incentive hike ultimately forces workers to choose between reducing the cost of health care and divulging personal health information, a predicament AARP believes violates anti-discrimination laws of the Americans with Disabilities Act. Critics of the AARP point to the voluntariness of the programs and a lack of evidence to indicate employers actually discriminate against employees on the basis of health information received through wellness program screenings. The AARP has filed a request to enjoin the EEOC from enforcing the rule. The courts have yet to weigh in on the issue. Reed Abelson, *The New York Times*, (Oct. 24, 2016)

http://www.nytimes.com/2016/10/25/business/employee-wellness-programs-prompt-aarp-lawsuit.html?_r=0