

Of Note

Some Hospital Infection Rates Rise

The Health and Human Services Department's 2009 quality report to Congress found "very little progress" on eliminating hospital-acquired infections and called for "urgent attention" to the shortcomings. Rates of illnesses increased for three of five major types of serious hospital-related infections. According to the report, bloodstream infections following surgery increased 8% while urinary infections from a catheter increased 3.6%. Under the new health reform legislation, Medicare payments to hospitals will be reduced for preventable readmissions and for certain infections that can usually be staved off with good nursing care. (*Wall Street Journal*, April 14, 2010).

New Focus on Averting Errors: Hospital Culture.

Errors made by doctors, nurses and other medical caregivers cause 44,000 to 98,000 deaths a year. Hospital infections, many considered preventable, take another 100,000 lives. According to the Food and Drug Administration, mistakes involving medications injure 1.3 million patients annually in the U.S. The National Quality Forum, a government advisory body that sets voluntary safety standards for hospitals, has developed a Care of the Caregiver standard to address the trauma of caregivers who are involved in medical

errors as part of an overall approach to reduce and avert errors. The model calls for initially treating staffers as patients who need care followed by involving them in the investigation of what went wrong if their behavior was not reckless or intentional. A study of medical mistakes in the April edition of the *Joint Commission Journal on Quality and Patient Safety* showed that assessing blame for errors can be a murky exercise. The study was led by researchers at the Institute for Safe Medication Practices. (*Wall Street Journal*, March 16, 2010).

Project to Get Transplant Organs from ER Patients Raises Questions

A project funded by the Department of Health and Human Services is exploring the feasibility of rapidly identifying potential organ donors from victims of car accidents, heart attacks and other critically-injured emergency room patients and preserving organs so transplant teams can rush to the scene to retrieve them. "This is about helping people who have declared themselves to be donors and helping the large number of people awaiting transplants who could die waiting because of the shortage of organs," said Clifton W. Callaway, associate professor of emergency medicine at the University of Pittsburgh who is leading the project. Critics say the program represents a troubling attempt to bring a questionable form of organ procurements

into the tumultuous environment of ER, raising the specter of doctors preying on dying patients for their organs. (*The Washington Post*, March 15, 2010).

Stem Cells: One Year Later, a Long Way to Go

Although it's been about one year since President Obama lifted the ban on federal funding for stem cell research, experts say it will take time before research leads to new treatments or cures. "There's no question in my mind that stem cell biology is going to revolutionize the way we practice medicine," said Dr. John Kessler, director of the Feinberg Neuroscience Institute at Northwestern University and a researcher of spinal cord injuries and Alzheimer's disease. "These are very painstaking experiments....that take a long time to accomplish. And patience is not something you can suggest to a patient or the family of patient who has a very serious disease." The National Institutes of Health has approved 43 stem cell lines, with more lines pending. NIH recently proposed expanding the definition of the human embryonic stem cells eligible for federal funding to include stem cell lines from blastomeres, cells developed after a fertilized egg has divided several times. (*Medill Reports Chicago*, March 3, 2010).

Minority Children in the U.S. Face Pervasive Gap in Quality and Extent of Health Care

The country's 31.4 million minority children face higher overall death rates

than Caucasians according to a report from the American Academy of Pediatrics in the April issue of *Pediatrics*. Certain groups face greater violence and higher incidence of HIV/AIDS, sexually transmitted disease, asthma, ADHD and certain types of cancers. Minority children also have higher rates of obesity, lower rates of breastfeeding and immunizations, and have less access to adequate health care. "We need to figure out why there are such stark differences when there really shouldn't be in a country that prides itself on equity and justice," said Dr. Glenn Flores, author of the report and professor of pediatrics at UT Southwestern Medical Center. (www.news-medical.net/news/20100329, March 29, 2010).

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 Natalie Lauer (JD anticipated '11) and Meredith Farese (JD/PhD anticipated '11).

Pfizer Gives Details on Payments to Doctors

Pfizer disclosed at the end of March that it paid around \$20 million to 4,500 doctors and other medical professionals for consulting and speaking on its behalf, and \$15.3 million to academic medical centers and other research groups for clinical trials during the last six months of 2009. Pfizer is the first drug company to disclose payments for the clinical trials. Most of the disclosures were the result of “an integrity agreement that the company signed in August to settle federal investigation into the illegal promotion of drugs for off-label uses.” (*New York Times*, April 1, 2010).

Aetna Ordered to Cease Medicare Enrollment

Aetna has been ordered by Federal regulators to stop enrolling patients into their Medicare Advantage program because of misleading practices. Aetna has failed to ensure that “enrollees can continue using their previous medications, improperly processing coverage determinations, failed to expedite appeal requests when the life of health of an enrollee could be at risk and not properly checking that enrollees are eligible for a low-income subsidy.” The Center for Medicare and Medicaid Services will monitor the plan to ensure corrective actions are taken and that deficiencies are prevented in the future. If the corrective actions do not put Aetna in compliance with Medicare requirements, the company

could face penalties or have their Medicare contract terminated. (*Denver Business Journal*, April 12, 2010).

HHS Asks States to Declare Interest in Implementing New, High- Risk Pools

On April 1st, the Department of Health and Human Services sent letters to state officials to ascertain whether or not states have an interest in establishing high-risk pools to cover uninsured individuals. States may choose whether they participate in the program at all and, if so, how they will implement it. States have until the end of April to consider their positions and send their responses to HHS. The programs will begin within 90 days of the law’s enactment and are an interim program designed to provide relief until the more substantial reform can be implemented in 2014. (*BNA Health Care Policy Report*, April 12, 2010)

Benefits Attorneys See Big Task Ahead In Implementing Health Care Law Changes

Attorneys who represent business groups are working to help their clients comply with the new health care laws. Attorneys hope that many of the regulations involved in implementation will take a compliance rather than punitive approach. Concerns surrounding new provisions such as the “Free Rider Penalties” and the “Free Choice Vouchers” may leave small businesses with a need to reassess their ability or desire to offer benefits in the future. As we continue to look closely at the law, the list of question marks grows

rather than shrinks.” said Kelly Traw, a principal at the human resources consulting firm Mercer regarding the changes in non-discriminatory rules which previously applied only to self-insured group health plans. These rules will now be mandatory for fully-insured group plans as well. While consulting attorneys do face a tremendous amount of uncertainty at this point, the law doesn’t appear to have amended ERISA pre-emption or to have revised the remedies available under it. (*BNA Health Care Plan and Provider Report*, April 7, 2010)

For Same-Sex Couples, Equality in the Hospital

President Obama issued rules authorizing hospital visiting rights and decision-making authority be extended to same-sex partners. The order was issued partly in response to several high-profile cases where patients alleged they were discriminated against because of sexual orientation, and their partners were not allowed to visit them or be involved in any medical decision-making, despite having domestic partner status and proper legal paperwork giving the partner rights during medical emergencies. (*New York Times*, April 19, 2010).

Mental Health Parity Regulations Released; Rules Apply to Plans Beginning in July 2010

On January 29, federal departments issued regulations implementing the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of

2008 (Pub. L. No. 110-343). The act requires that group health plans treat medical and mental health benefits equally. HHS Secretary Kathleen Sebelius issued a statement, saying that the regulations aimed to assure that those suffering with mental health disorders “...will not suffer needless or arbitrary limits on their care.” The American Psychological Association stated that it was “...a big win for anyone seeking mental health treatment.” The National Council for Behavioral Health Care estimates nearly half of adults and children in need of mental health and addiction treatment services do not receive them because of prohibitive costs of treatments and insurance plans. (*BNA, Health Care Daily Report*, February 1, 2010).

House Approves Bill to Delay Cut in Physician Reimbursement Through April 30

The House passed a short-term funding bill that includes a delay in the scheduled cut in Medicare reimbursement for physicians originally intended to take effect April 1. The 21% cut is now delayed until April 30. The Senate has already approved a delay of the Medicare cut until October 1. Both bodies are expected to meet in an attempt to resolve the differences between the House and Senate-passed versions of the bill. (*Health Care Daily Report*, March 18, 2010).