NursingLaw Report
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The Changing Face of Advanced Practice Nursing
With the growing shortage of physicians and the growing desire to provide comprehensive health care for the poor and the insured, states are considering alternatives to expand the nursing and “extended provider” workforce. In response to the shortage, A€ task force convened by the nonprofit N.C. Institute of Medicine presented several recommendations including:
* Boosting enrollment at training programs for nurse practitioners and physician assistants, and within the state university system by 30 percent.
* Establishing care delivery models that use physicians more efficiently, possibly by delegating work to nurse practitioners and physician assistants who diagnose patients and prescribe medication.

Colorado and other state nurses association have reported changes in legislators attitudes related to expansion of the scope of NP practice.

Concurrently with Governor Schwarzenegger announcing his health care reform program, he also awarded $2,443,617 to programs that train registered nurse, to increase the number of students training as physician assistants, nurse practitioners and registered nurses; and also awarded an additional $400,000 to physician assistants and nurse practitioners who work in federally designated Health Professional Shortage Areas (HPSAs) to repay outstanding loans incurred during undergraduate or graduate education.

This month Pennsylvania’s governor Ed Rendell articulated his desire to expand the scope of practice of nurse practitioners to expand accessibility of health care. The convergence of the health needs of states, the physician shortage and the growth of advanced practice nursing, governors and state health officials are rethinking the artificial barriers imposed on advanced practice without organized nursing.

Instead of creating internally imposed limitations on practice, nursing should use the emergence of this trend to identify deficiencies in advanced practice scopes to ensure that advanced practice nurses are able to develop substantive health care practices. APNs should not be hindered by scope and economic barriers, designed to limit independent practice.

Let us focus on:

- **Expanding and standardizing the scope of practice for all APNs**. Medical Practice Acts don’t make distinctions between generalists and specialists. The profession uses its expertise, ethics and standards to define inappropriate scopes of practice.
- **Adding legislation to all nurse practice acts to allow APNs to prescribe controlled and noncontrolled substances**. Let the nurse professional define her scope and options related to her prescriptive practices. Physician researchers, clinicians and teachers have the option to obtain DEA licensure. The professional, not the law, determines whether the professional utilizes that authority.

- **Obtain legislative changes which remove economic impediments to independent practice**. In our recent past physical therapists, social workers, chiropractors had limits on independent practices and have obtained authority to practice independently. The nursing profession should focus on the removal of mandated collaboration provisions

which allow physicians, by their ability to refuse to practice with an APN, to job security of APNs and/or charge usurious rates for supervising APN practice. Likewise, we should advocate for changes in professional corporation laws in those states which impose limitations on nurses forming or joining professional corporations or partnerships.

By changing our perspective and focus, nurses and nursing organizations can find common goals and jointly advocate, using the emergency trends to promote advocacy efforts.

-- Windy Carson-Smith

January Notices and Announcements

Physician, Nurses Open Door Forum

The first CMS Physicians, Nurses & Allied Health Professionals Open Door Forum for Year 2007 is scheduled for January 23, 2007, **Start Time**: 2:00 PM Eastern Standard Time (EST)

Conference Leader(s): Herb Kuhn/Tom Gustafson/George Mills/Natalie Highsmith

Open Door Participation Instructions:

There are 2 ways to participate, by phone or "in person".

1. To participate by phone:

Dial: 1-800-837-1935 & Reference Conference ID 9383728

Persons participating by phone do not need to RSVP.

Note: TTY Communications Relay Services are available for the Hearing Impaired. For TTY services dial 7-1-1 or 1-800-855-2880 and for Internet Relay services click here http://www.consumer.att.com/relay/which/index.html .

A Relay Communications Assistant will help.

2. To participate in person:

Your RSVP is required.

Please send a reply to CMS PHYSICIANODF-L@cms.hhs.gov, by **2:00 PM EST, January 19, 2007**. Be sure to include the title of the forum "Physician ODF" in the subject line of your message, and send us the following information:

a) Your first & last name

b) Your organization or representation

c) Your telephone number

Please arrive no later than 1:30 p.m.

ADDRESS:

Hubert H. Humphrey Bldg.

200 Independence Avenue S.W.

Washington, D.C. 20201

Map & Directions: http://www.hhs.gov/about/hhhmap.html

ENCORE: 1-800-642-1687; Conf. ID# 9383728

"Encore" is a recording of this call that can be accessed by dialing 1-800-642-1687 and entering the Conf. ID., beginning 2 HOURS after the call had ended. The recording will be available for 3 business days.

Hospital/Hospital Quality Open Door Forum

The first CMS Hospital/Hospital Quality Open Door Forum for Year 2007 is scheduled for January 25, 2007; Start Time: 2:00 PM – 3:00 PM Eastern Standard Time (EST)

Conference Leader(s): Herb Kuhn/Tom Gustafson/Dr.Charlotte Yeh/Natalie Highsmith

Open Door Participation Instructions:

There are 2 ways to participate, by phone or "in person".

1. To participate by phone:

Dial: 1-800-837-1935 & Reference Conference ID 9388646

Persons participating by phone do not need to RSVP.

Note: TTY Communications Relay Services are available for the Hearing Impaired. For TTY services dial 7-1-1 or 1-800-855-2880 and for Internet Relay services click here http://www.consumer.att.com/relay/which/index.html .

A Relay Communications Assistant will help.

2. To participate in person:

Your RSVP is required. Please send a reply to CMS HOSPITALODF-L@cms.hhs.gov by **2:00 PM EST, January 23, 2007**. Be sure to include the title of the forum "Hospital/Hospital Quality" in the subject line of your message, and send us your name, organization/representation and telephone number.

Please arrive no later than 1:30 PM.

ADDRESS: Hubert H. Humphrey Bldg.

200 Independence Avenue S.W.

Washington, D.C. 20201

Map & Directions: http://www.hhs.gov/about/hhhmap.html

ENCORE: 1-800-642-1687; **Conf. ID# 9388646**

"Encore" is an audio recording of this call that can be accessed by dialing 1-800-642-1687 and entering the Conf. ID. This recording will be accessible beginning **Monday, January 29, 2007** and expires after for 3 business days.

CMS Requests Public Comment on a Revised Version of the Important Message from Medicare

A notice was published in the Federal Register on January 5, 2007 requesting comments on a revised version of the Important Message from Medicare (IM) (CMS-R-193). There is a 60-day comment period. This notice stems directly from the November 27, 2006 final rule, Notification of Hospital Discharge Appeal Rights, CMS-4105-F. Beginning July 1, 2007, hospitals must deliver a revised version of the IM to inform Medicare beneficiaries who are hospital inpatients about their hospital discharge appeal rights. Notice is required both for original Medicare beneficiaries and for beneficiaries enrolled in Medicare health plans. For now, hospitals must continue to use current notices and processes.

To view the announcement in the Federal Register goes to:
http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E6-22570.pdf

To obtain copies of the IM and supporting documents, go to
http://www.cms.hhs.gov/PaperworkReductionActof1995. On the menu on the left side of that page, click on "PRA Listing", then scroll down or search for "CMS-R-193".

Or, you may email your request including your name, address, phone number, OMB number (0938-0692) and CMS document identifier (CMS-R-193) to Paperwork@cms.hhs.gov , or call the Reports Clearance Office on (410) 786-1326.

Comments must be sent to:

CMS, Office of Strategic Operations and Regulatory Affairs,
Division of Regulations Development – C
Attention: Bonnie L. Harkless
Room C4-26-05,
7500 Security Blvd.
Baltimore, Maryland 21244-1850

Comments must be received by 5 p.m. on March 6, 2007.

Posting of the Issues Paper for the Listening Session on a Plan for Medicare Hospital Value-Based Purchasing

January 17, 2006

Posting of the Issues Paper for the Listening Session on a Plan for Medicare Hospital Value-Based Purchasing – January 17, 2007. Deadline for registration, both for on-site and teleconference participation, is Wednesday, January 10, 2007 at 5:00 PM EST.

CMS is pleased to announce that the Issues Paper addressing design considerations for the development of the Medicare Hospital Value-Based Purchasing Plan authorized by Section 5001(b) of the Deficit Reduction Act of 2005 is now posted on the CMS web page at Hospital Center Spotlights: http://www.cms.hhs.gov/center/hospital.asp.

CMS will conduct a Listening Session on January 17, 2007 focused on this Issues Paper. The Listening Session will be held from 10 AM to 5 PM in the CMS Baltimore auditorium. Attendees will have the opportunity to present verbal comments if they have registered in advance to do so. A dial-in number will be provided for those who cannot attend, but due to time constraints, telephone participants will not be able to make verbal comments.

All interested parties are encouraged to participate in the Listening Session, including, but not limited to hospitals and other health care providers, purchasers, employers, consumers, and representatives of these stakeholders. Registration is required for both on-site and teleconference participation. Registration information is available at: http://registration.intercall.com/go/cms2. Confirmation of registration is provided. The deadline for registration, both for on-site and teleconference participation, is Wednesday, January 10, 2007 at 5:00 PM EST.

Written comments on the Issues Paper will be accepted until January 24, 2007 and may be sent by e-mail to cmshospitalVBP@cms.hhs.gov . Comments may also be sent by FAX to 410-786-0330 or mailed to Robin Phillips, Medicare Feedback Group, Centers for Medicare & Medicaid Services, Mail Stop C4-13-07, 7500 Security Blvd., Baltimore, MD 21244-1850.

Annual Medicare Contractor Provider Satisfaction Survey

In January 2007, the Centers for Medicare & Medicaid services (CMS) will begin dissemination of the Medicare Contractor Provider Satisfaction Survey (MCPSS) to a new sample of Medicare providers. The survey is designed to garner quantifiable data on provider satisfaction levels with key services performed by the fee-for-service contractors (FFS) that process and pay more than $280 billion in Medicare claims each year.

Providers selected to participate in the survey will be notified by mail during the first week of January 2007. The survey is designed so that it can be completed in about 15 minutes and providers can submit their responses via a secure Web site, mail, fax, or over the telephone. CMS will ask providers to respond by February 2007.

The views of each provider in the survey are important because they represent many other organizations similar in size, practice type and geographical location. If you are one of the 35,000 providers randomly chosen to participate in the 2007 MCPSS implementation, you have an opportunity to help CMS improve service to all providers.

The MCPSS focuses on seven major aspects of the provider-contractor relationship -- provider communications, provider inquiries, claims processing, appeals, provider enrollment, medical

review, and provider audit and reimbursement. Respondents are asked to rate their experience working with contractors using a scale of 1 to 6, with "1" representing "not at all satisfied" and "6" representing "completely satisfied."

CMS will use the survey data to support claims processing improvement by contractors and to reform the Medicare Program.

Further information about the MCPSS and results of the 2006 survey are available at: http://www.cms.hhs.gov/MCPSS/.

Medicare Part D

The existing plethora of Medicare Part D plans will expand further in 2007. However, as in 2006, most of the stand-alone prescription drug plans (PDPs)and Medicare Advantage prescription drug (MA-PD) plans offered next year will not provide full prescription drug coverage in the infamous "doughnut hole," the coverage gap in the standard Part D benefit that occurs between $2,250 and $5,100 of total drug spending in 2006.

So report researchers from the Henry J. Kaiser Family Foundation in a comprehensive Medicare Part D status update, published today on the Health Affairs Web site. The authors detail organization- and plan-level market share, as well as enrollment by plan type, benefit design, and gap coverage.

You can read the article at
http://content.healthaffairs.org/cgi/content/abstract/hlthaff.26.1.w1

Health Affairs is pleased to make this article freely accessible to listserv members for two weeks.

MEDICAID DRUG PRICING REGULATION PROPOSED

HHS Secretary Mike Leavitt announced proposed changes in the payment for certain prescription drugs in the Medicaid program. These changes implement provisions of the Deficit Reduction Act of 2005 (DRA) and are expected to save taxpayers $8.4 billion in state and federal funds over five years.

To view the entire CMS Fact Sheet, please click here:
http://www.cms.hhs.gov/apps/media/fact_sheets.asp

A copy of the Reg Text can be found at:
http://www.cms.hhs.gov/MedicaidGenInfo/downloads/AMP2238P.pdf

Long Term Care Hospital Report Released

The Centers for Medicare and Medicaid Services ("CMS") in late December 2006 made available a report on long term care hospital ("LTCH") certification criteria. In 2004, the Medicare Payment Advisory Commission made recommendations to CMS on the establishment of patient and facility criteria for LTCHs. CMS subsequently awarded a contract to the Research Triangle Institute ("RTI") to review LTCH operations. The RTI report is entitled "Long-Term Care Hospital Payment System Monitoring and Evaluation." The report provides support for LTCHs treating medically

complex patients. The report also describes significant Medicare margins for certain services under the LTCH PPS. The report can be found at:
http://www.cms.hhs.gov/LongTermCareHospitalPPS/Downloads/RTI_LTCHPPS_Final_Rpt.pdf

Past Notices and Announcements of Interest

CMS Skilled Nursing Facility (SNF)/Long-Term Care (LTC) Open Door Forum

Date: January 9, 2007

ENCORE: 1-800-642-1687; Conf. ID# **9382153**

> Encore is a recording of this call that can be accessed by dialing 1-800-642-1687 and entering the Conf. ID., beginning 2 hours after the call has ended. The recording expires after 3 business days.

Post-Acute Care Patient Assessment Instrument
The Centers for Medicare & Medicaid Services (CMS) conducted a Special Open Door Forum to discuss the development of a post-acute care patient assessment instrument to be used in the payment reform demonstration mandated under Section 5008 of the Deficit Reduction Act (DRA) of 2005 on December 21, 2006. Under this provision, The Secretary is to establish a demonstration program by January 1, 2008 that would:

- use a comprehensive assessment at hospital discharge to help determine appropriate PAC placement based upon patient care needs and patient clinical characteristics;
- use a standardized assessment instrument to measure health status, functional status and other factors during treatment in PAC settings and at discharge from PAC settings
- gather data on care outcomes in various PAC settings

Through this Special Open Door Forum, CMS is seeking input and comments from health industry representatives and other interested stakeholders on the conceptual model being developed for the proposed PAC patient assessment instrument. Since the demonstration will test the use of this PAC assessment instrument starting at hospital discharge, and completed at inpatient rehabilitation facilities (IRFs), skilled nursing facilities (SNFs), home health agencies (HHAs) and long-term care hospitals (LTCHs), it would be important to receive feedback from affected stakeholders.
More information on the CMS plan to implement the DRA demonstration is available at: http://www.cms.hhs.gov/SNFPPS/11_post_acute_care_reform_plan.asp#TopOfPage

Recent Publications:

Health United States
Health United States was just released by the National Center for Health Statistics. The annual report consists of charts and selected trend tables organized by cross-cutting areas such as the African-American population, Hispanic population, child and adolescent health, Medicaid, the uninsured and a special section on pain and the great disparities among different population groups who suffer with chronic pain.

States of Preparedness: Health Agency Progress 2006
This report from the Association of State and Territorial Health Officials highlights how 12 state health agencies are using their federal preparedness funds to prepare for and respond to public health emergencies.

Reducing Racial and Ethnic Disparities and Improving Quality Health Care
Nine major health insurers formed the National Health Plan Collaborative with the goal of

reducing health disparities. This report describes collaborative members' activities to address disparities so far, and outlines their next steps to define why disparities exist and make recommendations to reduce them.

Nurse Lawsuits

Class Action Lawsuits Filed Against Major Health Care Systems For Conspiracy to Depress Nurse Wages

Washington, D.C. (June 20, 2006) Cohen, Milstein, Hausfeld & Toll, P.L.L.C., and James & Hoffman, PC today filed four class action lawsuits against major hospitals in Albany, Chicago, Memphis and San Antonio, alleging that these hospitals have conspired to keep their nurses' wages at artificially low levels. The lawsuits were filed in federal courts in these four cities.

The lawsuits invoke the federal antitrust laws to force the hospitals to pay their nurses compensation that is long overdue. These hospitals have been putting their bottom line ahead of patients and the nurses who care for them. For years, these hospitals have deliberately, secretly and systematically exchanged detailed, non-public, current information about the wages each is paying its nurses. The purpose and effect of this information exchange has been to permit the hospitals to suppress nurse wages – depriving nurses of a fair wage and contributing to the nursing shortage in our nation.

The lawsuits are based on dozens of interviews with insiders with direct knowledge of the conspiracies.

The conspiring hospitals have been taking extreme advantage of a vulnerable but critical component of the American healthcare system. In the aggregate, these hospitals have underpaid nurses in the four cities hundreds of millions of dollars. According to preliminary estimates, in Albany, nurses on average have been underpaid approximately $6,000 per year; in Chicago about $5,000 annually; in San Antonio about $1,300 each year; and in Memphis about $14,000 yearly.

"The hospitals in Albany, Chicago, Memphis, and San Antonio have decided to increase their profits on the backs of their nurses," said Daniel A. Small, a partner at Cohen Milstein who is representing the plaintiffs in all four cities. "We all know that health care costs are on the rise, but denying a fair wage to the very people with front line responsibility for patient care is not the way to contain these costs. Nurse pay should be set by the market, not by a secret agreement among hospitals."

Cohen, Milstein, Hausfeld & Toll, P.L.L.C (Washington, D.C.) has represented individuals, small businesses, institutional investors, and employees in many of the major class action cases litigated in the U.S. for violations of antitrust, securities, environmental, consumer protection, civil rights/discrimination, ERISA and human rights laws.

James & Hoffman is a Washington, D.C. based law firm with a nationwide litigation practice and a special focus on effective resolution of labor and employment disputes.

Media Inquiries: Deborah Schwartz, Media Relations, Inc., 301-897-8838/240 355-8838

Federal Trade Commission Activities

FTC Testifies on Competition in Group Health Care
The Federal Trade Commission today told the Senate Judiciary Committee that the agency protects health care consumers from anti-competitive conduct by enforcing antitrust laws, and

that the FTC is committed to working with physicians and other providers to give them guidance to avoid antitrust pitfalls as they respond to market challenges. (September 6, 2006)

FTC Charges Physician Groups With Price Fixing
Physicians Must Modify Behavior to Protect Competition (August 24, 2006)
The Federal Trade Commission today announced its decision to challenge the conduct of two independent practice associations (IPAs) and 18 member physician practices in the Kansas City area for refusing to deal with health care plans, except on collectively agreed-upon terms, including price. The FTC's complaint charged that their actions unreasonably restrained competition, in violation of Section 5 of the FTC Act. In settling the FTC's charges, they will refrain from engaging in such anticompetitive conduct in the future.

"Legitimate joint contracting arrangements among competing physicians can be lawful and pro-competitive," said Jeffrey Schmidt, Director of the FTC's Bureau of Competition. "The physicians in this case went too far, however, when they agreed to restrict the traditional competition among themselves for services offered outside of the joint venture."

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