Health Care Insights

Volume XV / Issue 1
Winter 2008

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Medicaid Fee Schedule Discussed

Health Letter, the monthly overview published by Public Citizen Health Research Group of which Dr. Sydney M. Wolfe is editor, devotes two pages in its October 2007 issue to the failure of the Medicaid system to properly pay the physicians who provide that care.

Tellingly, the article states that "different fees (are) paid for the same service under two publicly-financed programs: Medicaid, which seeks to serve the poor, and Medicare, which covers primarily the aged."

The establishment of a national Medicare fee schedule with geographic variations based on practice costs in different regions, has sharply narrowed the differences between the fees Medicare pays for the same services throughout the 50 states, *Health Letter* points out.

> "(a)s long as Medicaid fee schedules short-change providers, the program and its clientele will be considered less worthy and access to care will be restricted for the poorest, neediest Americans."

Lacking a national fee schedule, however, the Medicaid system's fees are structured by each state based on its own budgetary considerations and, unfortunately, its attitudes towards the poor. Only Alaska and Wyoming, both heavily rural and doctor-deficient, pay Medicaid primary care providers more than is paid to Medicare practitioners. Delaware, Arizona, North Carolina and Arkansas, according to *Health Letter*, pretty much apply their Medicare fee schedule to Medicaid services.

However, in more populous states, the ratio between the fees paid by the two programs to practitioners for the same services varies shockingly. For example, New York's Medicaid to Medicare fee ratio for certain selected primary care procedures is only 20 per cent; the District of Columbia makes it up to 48 per cent.

Health Letter warns that "(a)s long as Medicaid fee schedules short-change providers, the program and its clientele will be considered less worthy and access to care will be restricted for the poorest, neediest Americans."

For a copy of this article or further information, please contact Michael A. Kurs in our Hartford office at 860-424-4322 or at mkurs@pullcom.com.

Can Managed Care Plans Rank Their Physicians?

New York Attorney General Andrew M. Cuomo challenged CIGNA Healthcare to change the way it ranks physicians. Did the "profit motive" result in CIGNA ranking physicians who charge the lowest fees higher than those doctors who provided better but more expensive care? Did the HMO press employees to upgrade the rankings of low charging physicians?

Asserting that such an approach was a conflict of interest, the New York Attorney General negotiated an agreement with CIGNA under which the insurer would increase its criteria to include elements other than cost, employ more generally accepted national care quality standards and retain an omsbudsman to confirm compliance with the agreement.

Elliott B. Pollack in our Hartford office at 860-424-4340 or at epollack@pullcom.com can furnish further information about this topic.

Stark: "Roll Back Stark"?

In an interview with *Forbes* magazine, congressman Fortney ("Pete") Stark of California expressed regret at ever having come up with the idea of the restrictive health care laws which bear his name. Although his intention was laudable, Stark maintains, his legislation, like many other regulatory regimes, may have produced undesirable consequences. "It gave every shyster and promoter a loophole," Stark told Forbes staff writer David Whelan. "We now have to keep rewriting the laws like the tax code," the Congressman stated.

He sarcastically noted that none of the consultants and "Stark law firms" that design and opine on legal structures to comply with the "Stark" requirements have ever given him any thanks for creating so much work!

Broccoli Fights Cancer(?)

Researchers at the Department of Pharmacology and Molecular Sciences at Johns Hopkins University published a report in the proceedings of the National Academy of Science last October which was most provocative.

Their preliminary research indicates that "an extract of broccoli sprouts protects skin against the deleterious effects of UV radiation," according to the reporting of Dr. Tracy Hampton in the December 19, 2007, issue of the *Journal of the American Medical Association*.

In addition to functioning as a partial sunscreen (it cannot block UV radiation), the researchers, led by Dr. Paul Talalay, also suspect that a beneficial chemical in the sprouts may be able to work inside cells "by boosting the production of protective enzymes that defend against UV damage."

The Associate Director for Disease Prevention at the National Institutes of Health cautions that additional studies are required for verification and to develop practical applications for health care and cancer prevention.

Pharmacists as Conscientious Objectors?

When a Texas pharmacist refused to dispense emergency contraception for a rape victim in accordance with a physician's valid prescription in 2004, the question raised by this article's headline first arose. Pharmacists in other states have taken similar positions maintaining that they have the right to raise moral objections to performing certain services. This position is sanctioned by the American Pharmacists Association (APA) - as long as another pharmacist is available in the community to dispense the particular prescription.

As noted by Katrina A. Bramstedt of the Cleveland Clinic Foundation Department of Bioethics in the April 15, 2006, issue of *The Lancet*, the APA policy may not be a fair solution to the problem. She points out that limited pharmacy staffing, restrictive managed care rules and transportation issues in smaller communities could play a major role in limiting patient access to a legally recognized drug.

Moreover, how far can the moral objection principle be extended, Ms. Bramstedt asks? If pharmacists are allowed to insert themselves between patients and physicians, are the doctor's and patient's legal rights being infringed upon? The American Medical Association adopted a policy in 2005 responding to the APA position with its own protocol which does not appear to solve the problem.

Would robotic dispensing makes sense? Many pharmacies already use automatic dispensing systems, the author notes. She adds, "(w)hile the role of the pharmacist does not completely eliminate it, (robotic dispensing can be a way) to satisfy his or her comfort level in the setting of ethically controversial drugs."

Ms. Bramstedt closes her note by urging that "pharmacies should require that their pharmacists, as a condition of employment, agree to never abandon their patients no matter what their personal values and beliefs are about a particular drug."

For further information, please contact Jennifer Willcox in our Bridgeport office at 203-330-2122 or at jwillcox@pullcom.com.

Incentives for Medicare to Save Money

A pilot project which began in 2006 seeks to encourage physicians to improve patients' care while saving money for the Medicare system. If they succeed, the physicians receive a bonus from Medicare.

As many as 5,000 doctors treating over 200,000 patients in 10 states are experimenting with this new dose of capitalism and our seniors' health care reimbursement system. Conditions such as diabetes and hypertension are the primary targets of this "pay for performance" prototype because these patients consume significant amounts of health care resources. Medicare patients who present with five or more of these chronic conditions, "typically see 14 different physicians and make almost 40 visits annually," - according to a health care consulting group.

Although only two of the 10 group practices which joined the experiment received bonuses after the first year, the general sense of participants is that their care for their patients is improving with indicators such as emergency room visits and hospital admissions trending down.

Whether "pay for performance" will hit the trifecta of 1) better care, 2) at lower costs and 3) with more compensation to physicians will be studied intensively at the end of the pilot project. For those of us in or about to enter the Medicare system, we can only hope this program succeeds.

Christine Collyer in our Hartford office at 860-424-4329 or at ccollyer@pullcom.com can furnish further information about this topic.

Attorney Notes

Pullman & Comley Hartford health care partner Michael Kurs published "From Hospital to Locked Ward To Civil Rights Action" in the December 2007 issue of *Healthcare Liability & Litigation*, a publication of the American Health Lawyers Association. The article can be found on our web site.

PULLMAN & COMLEY, LLC ATTORNEYS AT LAW

Visit our website: **www.pullcom.com**

Health Care Insights

850 Main Street
Bridgeport, CT 06604
Phone: (203) 330-2000
Fax: (203) 576-8888

90 State House Square
Hartford, CT 06103
Phone: (860) 424-4300
Fax: (860) 424-4370

300 Atlantic Street
Stamford, CT 06901
Phone: (203) 324-5000
Fax: (203) 363-8659

253 Post Road West
Westport, CT 06880
Phone: (203) 254-5000
Fax: (203) 254-5070

50 Main Street
White Plains, NY 10606
Phone: (914) 682-6895
Fax: (914) 682-6894

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Winter 2008
Volume XV/ Issue 1

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PULLMAN & COMLEY, LLC ATTORNEYS AT LAW 850 MAIN STREET P.O. BOX 7006 BRIDGEPORT, CT 06601-7006