

POLICY & PRACTICE

Court Shields Billing Records

An appeals court has ruled against the release of Medicare billing records, which was sought by the group Consumers' Checkbook so that it could grade physicians on quality. The non-profit had filed a Freedom of Information Act request for all 2004 Medicare claims from physicians in several locations, and the group won in a lower court in 2007. But the Department of Health and Human Services, joined by the American Medical Association, appealed, and the U.S. Circuit Court of Appeals for the District of Columbia ruled that HHS does not have to release the information. Disclosure of the requested data would constitute an invasion of physicians' privacy, the appeals court said. The AMA praised the decision. "The court clearly found that the release of personal physician payment data does not meet the standard of the Freedom of Information Act, which is to provide the public with information on how the government operates," Dr. Jeremy Lazarus, AMA board member, said in a statement.

IOM Report: HIPAA Is Inadequate

The government's main health-privacy rule doesn't adequately protect people's health information, yet it hinders important health research, a report from the Institute of Medicine concluded. The privacy rule, stemming from the Health Insurance Portability and Accountability Act (HIPAA), is difficult to reconcile with other federal regulations governing research and personal information, the IOM report said. In addition, organizations that collect and use health data vary greatly in how they interpret and follow HIPAA, leading to potential privacy problems, the report said. Congress should create an entirely new approach to protecting personal health information in research, separate from the HIPAA rule, an IOM panel recommended. "We believe there is synergy between the goals of safeguarding privacy and enhancing health research," said panel chairman Lawrence Gostin, a professor of health law at Georgetown University, Washington.

Many People Go Without Drugs

More children and working-age adults are failing to take needed prescription medications because of cost concerns, according to a national study by the Center for Studying Health System Change. In 2007, 1 in 7 Americans under age 65 years reported not filling a prescription in the previous year because they couldn't afford the medication, up from 1 in 10 in 2003. Rising prescription drug costs and less-generous drug coverage probably contributed to the change, the report said. Uninsured, working-age Americans saw the biggest jump in unmet prescription needs between 2003 and 2007, with the proportion going with-

out medications rising from 26% to almost 35% in that time, the report said. However, a growing proportion of working-age Americans with employer-sponsored health insurance also reported going without prescription medications.

FDA on High-Risk List

The Food and Drug Administration faces significant challenges that compromise its ability to protect Americans from unsafe and ineffective products, the Government Accountability Office said in adding the FDA to its biennial "high-risk" list. The GAO gives that label to government programs or agencies that need to address internal mismanagement. In its 2009 report, the GAO said the FDA needs to beef up its foreign-drug inspection program, better manage its reviews of companies' promotional materials, and ensure that drug makers properly present clinical data.

Poll: Affordability Is Tops

Making health insurance more affordable trumps improving quality and expanding coverage among the public's priorities for health care reform, according to a new poll. The survey from the Kaiser Family Foundation and the Harvard School of Public Health found that most people believe that action on health care is important to help the nation out of recession. But when respondents were asked to choose between coverage expansion, cost reduction, and delivery-system change, 4 in 10 named affordability as most important, followed by 3 in 10 who said that expanding coverage is the top priority. Roughly 2 in 10 picked improving the quality and cost-effectiveness of the health care delivery system. Two-thirds of those surveyed favored requiring all individuals to have health insurance, but when told that some people may then have to buy health insurance they consider too expensive or don't want, support for the mandate dropped to 19%.

Humana Supports ID Cards

Humana has become the first health insurer to publicly support the Medical Group Management Association's drive to get standardized, machine-readable insurance cards into people's wallets by next January. "Our goal is to continue working with MGMA and the industry to eliminate waste, create efficiencies, and reduce the hassle factor for providers," Humana Senior Vice President Bruce Perkins said in a statement. Adopting readable cards is part of an overall drive by the company to simplify health insurance administration, he said. MGMA estimates that machine-readable insurance cards could save physician offices and hospitals as much as \$1 billion a year by reducing paperwork and avoiding denial of many claims.

—Jane Anderson

Liability Can Prompt Docs To Avoid Nursing Homes

BY MIRIAM E. TUCKER

NATIONAL HARBOR, MD. — Fears about liability appear to be one of several factors undercutting the ability and desire of physicians to provide care in nursing homes.

That conclusion comes from a study funded jointly by the Southern Illinois University School of Law, the California HealthCare Foundation, and the Commonwealth Fund. The findings suggest that legal reforms, as well as changes in practice conditions, could make nursing homes more appealing settings for physicians, said Marshall B. Kapp, J.D., M.P.H., a professor at the law school's Center for Health Policy and Law, Carbondale, Ill.

"Many facilities have difficulty attracting and retaining high-quality, conscientious medical directors and attending physicians in part because of physicians' legal anxieties," said Mr. Kapp, who did the study's survey and reported its results at the annual meeting of the Gerontological Society of America.

He conducted 44 structured telephone interviews with 20 physicians, 6 advocacy organization representatives, 5 trade association officials, 4 nursing home administrators, 4 health services researchers, 2 attorneys, 2 insurance industry representatives, and 1 nurse.

The aim was to elicit in-depth information about physicians' apprehensions regarding their own personal legal exposure, the reasons for those fears and whether they're justified, and the consequences of such fears for both physicians and nursing home residents.

Overall, study participants agreed that nursing home residents today are sicker, older, more disabled, and more in need of medical care than in the past. On the other hand, Mr. Kapp said, wide geographic variation emerged in both the degree of liability anxiety felt by physicians and in the accuracy of their concerns. Attitudes ranged from "almost paranoia" in California to "not worried enough" about liability in New York, he said.

Physicians' anxieties were often influenced by factors such as attorney advertising, media coverage of nursing homes, and residents' and families' threats to sue.

Whether or not nursing homes have "deep pockets" to pay liability claims also contributes to physicians' concerns about their own liability. Some nursing homes have made themselves unlikely defendants in malpractice lawsuits by purchasing less insurance or in some cases even "going bare," Mr. Kapp said. He contrasted this financial tactic for reducing facilities' legal vulnerability to the improvements in quality and safety that are now being made at many nursing homes.

Some state laws have further limited nursing home liability, thereby leaving physicians as the primary targets for lawsuits, Mr. Kapp said. For example, tort reform in Florida increased legal protection

for nursing homes but resulted in almost a doubling since 2001 in the proportion of nursing home-related lawsuits in which individuals, including physicians, were named as defendants, from 13.5% to 26.5%.

In some states, physicians have had problems obtaining liability insurance for their actions as medical directors or attendings because insurance companies have increasingly pulled out of the nursing home market. Affordability of coverage for nursing home care also was cited as a problem, Mr. Kapp reported.

In addition, physicians complained that insufficient nursing home staffing and training often yield unreliable information about residents' health status and poor follow-through on the doctors' orders. Physicians practicing in nursing homes whose workforce includes trained physician extenders, especially geriatric nurse practitioners, were less apprehensive than others about their legal liability.

"The overwhelming sentiment was that while we do need physicians, we can greatly improve quality of care and reduce liability with the use of physician extenders," Mr. Kapp said.

Physicians' legal anxieties can result in positive consequences for nursing home residents, such as improvements in safety, patient rights, and documentation of care, Mr. Kapp said. However, negative consequences are also common. Some physicians have curtailed nursing home work or abandoned it because of legal anxieties, he noted. This problem is particularly acute in California.

Physicians' legal anxieties also can result in overtreatment of residents, including unnecessary transfers to hospitals, or undertreatment, especially with pain medication. Nursing home "overprotectiveness" may result in a loss of autonomy for residents, Mr. Kapp said.

The survey also showed that legal anxieties aren't the only reason physicians limit or avoid nursing home involvement. Other factors cited include low prestige for the work, less control over care than in hospital or office settings, professional isolation, poor compensation, administrative and regulatory burdens on medical directors, and patient populations prone to bad outcomes, no matter the quality of care.

These issues, as well as liability, require attention, Mr. Kapp said. He cited the nursing home-physician reimbursement mechanisms of Medicare, Medicaid, and private insurers as problematic.

In fact, Mr. Kapp said he was surprised by the strength of the issues, beyond liability concerns, that prompt physicians to avoid nursing home care. "I thought that if we could change [liability laws], it would solve the problem. But really, that's only one small piece of a larger puzzle." ■

A full report of the study is available at www.chcf.org/documents/chronicdisease/PhysicianLiability.pdf.