

IMPLEMENTING HEALTH REFORM

The Ban on Physician-Owned Specialty Hospitals

The criticisms of physician-owned specialty hospitals are chiefly that they receive the same tax breaks and insurance payments as do traditional hospitals, but don't provide the same breadth of care (no labor and delivery, no emergency care), and that they are rife with conflicts of interest. Periodically, the federal government has imposed moratoriums on physician ownership, but even so, the number of facilities has grown. Now, a provision of the Affordable Care Act bans the construction of new physician-owned hospitals that do not receive Medicare certification before Dec. 31; existing physician-owned facilities have been prohibited from expanding since the law was enacted on March 23.

Dr. Jack Lewin, CEO of the American College of Cardiology, talks about the upcoming ban on physician-owned specialty hospitals.

CLINICAL NEUROLOGY NEWS: What finally moved Congress to approve permanent restrictions on physician ownership? **DR. LEWIN:** Strong opposition from hospitals was very effective in protecting their interest. There are legitimate concerns related to specialty hospitals in some communities – for example, where services for low-income patients may be jeopardized by the shifting of high-revenue patients from public and community hospitals to specialty hospitals. This is certainly not a phenomenon everywhere specialty hospitals exist.

The contrary position is that specialty hospitals provide services at a higher quality and a competitive cost, which benefit patients. If legitimate problems were caused by the introduction of a hospital into a community, it would be better to address the concern in approving the new facility rather than to create an outright ban, which is all too often simply an anticompetitive effort of the existing traditional hospital.

CNN: Critics claim improper referrals and higher procedure rates among their reasons to ban physician-owned hospitals. The ACC is against a ban. What is the argument for physician ownership? **DR. LEWIN:** The ACC supports a policy that promotes better medical and clinical quality outcomes and patient satisfaction. There are a number of ways to protect against physician self-interest, self-referral, and overuse of services. The use of ACC registries could readily identify such problems. In many instances, physician investors in these facilities are limited to less than 1% of overall ownership. It is hard to argue that this in itself is an unfair self-interest, in particular when there is no source of funding available to improve the situation in communities where operating rooms are overbooked, understaffed, and ill equipped. In other words, the ACC supports assurances that physician

self-interest is not the key factor behind a specialty hospital, but rather that the central issues are the best interests of the patient and community, and the quality of care.

CNN: How can physicians ensure that appropriate and high-quality care is being delivered at specialty hospitals?

DR. LEWIN: More than 2,400 hospitals participate in the ACC's NCDR (National Cardiovascular Data Registry) programs, but by using just a few specialty-hospital registries, we could provide objective feedback and comparisons based on clinical data, rather than on claims data that insurance companies and the government use. Our registries



'Thoughtful policies' can address concerns related to physician-owned specialty hospitals.

DR. LEWIN

provide most of the U.S. hospitals that offer cardiac care access to data and feedback on quality outcomes, system problems, and rates of complications. If specialty hospitals were required to participate in these registries, most of the concerns could be mediated.

CNN: Does the ACC support legal challenges to the coming ban on physician ownership?

DR. LEWIN: The ACC believes that the ban should be lifted and replaced with thoughtful policies that allow for specialty hospitals to improve access, quality, patient satisfaction, and efficiency. These policies could address concerns about self-referral, self-interest, or adverse impacts on other needed community-based hospital services.

CNN: What would the ACC propose as an alternative to the ban?

DR. LEWIN: The ban notwithstanding, the way care is provided in the United States will change due to public and market pressures. Community hospitals will continue to need to provide emergency surgeries, general intensive care, and other services as currently provided in the traditional model, but the ACC believes that the best care and services will evolve into specialty units that focus on increased volume and increased quality in cardiology, orthopedics, gynecology, trauma, neurosciences, oncology, and other specialized areas. This will include pediatric as well as inpatient services. If we are serious about promoting the best outcomes, best quality, and patient and physician satisfaction, then this is where we are headed, regardless of the politically inspired ban. ■



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VA Adds to Agent Orange List

The Department of Veterans Affairs has added Parkinson's disease to its list of disabilities presumed to be associated with exposure to Agent Orange, the blend of herbicides used by the U.S. military to remove jungle cover during the Vietnam War. VA Secretary Eric K. Shinseki announced that a new federal rule also added hairy cell and other chronic B-cell leukemia and ischemic heart disease to the list of about a dozen diseases with "presumption of service connection." The action means that veterans no longer must prove an association between their illnesses and exposure to Agent Orange to get VA health care and other benefits.

In addition to accepting new claims for the three diseases, the VA will review about 90,000 previously denied claims from Vietnam vets, Mr. Shinseki said on the White House blog. "This rule is long overdue. It delivers justice to those who have suffered from Agent Orange's toxic effects for 40 years," said Mr. Shinseki. Acute and subacute peripheral neuropathy was already on the list of presumed Agent Orange-linked conditions.

Bill Would Raise Alzheimer's Funds

Rep. Michael Burgess (R-Tex.) wants Americans to buy bonds for the war effort – the war on Alzheimer's disease, that is. Rep. Burgess, an ob.gyn., has introduced H.R. 6169, the Making Investments Now for Dementia (MIND) Act, which would create U.S. "Alzheimer's Bonds." Proceeds of sales would go to the National Institutes of Health but would solely fund Alzheimer's research. The funds would be in addition to those appropriated normally, the bill states. In announcing his proposal, Rep. Burgess said that "Alzheimer's disease is one of the most burdensome diseases facing Americans today, taking an immense emotional, physical, and financial toll on those affected ... yet research funding is not equivalent to other comparable illnesses."

Two New Udall Centers Added

The National Institute of Neurological Disorders and Stroke has named Emory University in Atlanta and the Feinstein Institute for Medical Research, Manhasset, N.Y., as Morris K. Udall Centers of Excellence in Parkinson's Disease Research. The two centers will receive a total of more than \$16 million over the next 5 years, bringing the number of Udall Centers

to 11. With a component at Vanderbilt University, Nashville, Tenn., the Emory University program will focus on the mechanisms of existing and new Parkinson's treatments. The center at the Feinstein Institute will explore a new brain-imaging technique and the clinical side effects of levodopa, according to the announcement. Morris K. Udall was a Democratic representative from Arizona who died in 1998 after a battle with Parkinson's disease.

Botox Maker Fined \$600 Million

Pharmaceutical manufacturer Allergan pleaded guilty to marketing Botox for the unapproved uses "headache, pain, spasticity, and juvenile cerebral palsy in children" from 2000 to 2005, the company announced. Although it pleaded guilty only to a single misdemeanor charge – "misbranding" – Allergan will pay a \$375 million criminal fine. Another \$225 million will settle a civil claim under the False Claims Act. Allergan admitted that it marketed Botox for the off-label uses. On the other hand, it said, "Allergan denies liability" associated with the civil claim but settled it for the good of stockholders.

As part of the settlement – still subject to approval by a federal court – Allergan agreed to withdraw a pending lawsuit claiming a First Amendment right to "proactively share truthful scientific and medical information with the medical community to assist physicians" in how to use Botox. The company also pointed out that as of last March, Botox has been approved for treating muscle stiffness in adults with upper limb spasticity.

Proposed New Rules Target Fraud

The Department of Health and Human Services has proposed new rules to fight waste, fraud, and abuse in Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). The rules are authorized by the Affordable Care Act and would tighten screening of providers wishing to bill the government programs for services, for example, by using broader criminal background checks and even fingerprinting. The rules also require states to terminate from their Medicaid and CHIP programs any provider who has been thrown out of Medicare or another state's health programs. The proposed rule asked for advice on how best to ensure provider compliance.

–Naseem S. Miller

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