POLICY & PRACTICE

Bill Seeks Consent for Off-Label Rx

A new bill in the California assembly would require physicians and surgeons to get informed consent from their patients before "prescribing, administering, or furnishing" a prescription for off-label use. A failure to adhere to the requirement would be considered a violation of the Medical Practice Act, which means physicians could be charged with a crime. For dermatologists, the requirements "would bring many a practice to a snail's pace," said John R. Valencia, a lobbyist for the California Society of Dermatology and Dermatologic Surgery. Karmi A. Ferguson, executive director of the organization, said the legislation "is on our hot list." If passed, the bill would not reach the governor's desk until September, but "we're hoping to kill it in committee," said Ms. Ferguson. AB 2856 was introduced by Assemblywoman Loni Hancock (D-Berkeley). It would require physicians to specify that the medication is not approved by the Food and Drug Administration for the use that the doctor is recommending, that the risks are unknown, and that there is not a consensus on the efficacy. A patient could withdraw consent at any time.

Botox Popularity

In 2005, the most popular nonsurgical cosmetic treatment was Botox injection, with almost 3.3 million procedures, according to the American Society for Aesthetic Plastic Surgery. Laser hair removal was second, with 1.5 million treatments in 2005. Rounding out the top five: hyaluronic acid injection (almost 1.2 million); microdermabrasion (1 million); and chemical peel (more than 550,000). The total number of nonsurgical procedures dropped 4% to 9.3 million. Last year, Americans spent $12.4 billion on cosmetic procedures—$8.2 billion for surgical and $4.2 billion for nonsurgical. To get the data, ASAPS sent 14,000 questionnaires to plastic surgeons certified by the American Board of Plastic Surgery and to other specialists.

MDs Preferred for Cosmetic Tx

A still-small but growing number of Americans are electing to have invasive (7% of those polled) and noninvasive (8%) cosmetic treatments even though these procedures are rarely covered by insurance, according to a Wall Street Journal Online/Harris Interactive Health-Care Poll. Noninvasive treatments included teeth whitening and cosmetic dental work, chemical and other facial skin resurfacing, filler injections, laser hair removal, or vein therapy. Most invasive procedures were not medically necessary, with the exception of bariatric surgery. Fifty-four percent of those who had bariatric surgery said the operation was medically necessary, but those who elected the surgery doubled from 23% in 2004 (when the last poll was conducted) to 46% in early 2006. Liposuction, on the other hand, was done more often as a medically necessary procedure—from 4% in 2004 to 19% in the latest poll. About 81% of those who had liposuction said it was elective, down from 96% in 2004. Most procedures were performed by physicians, except for laser treatments, which were performed by a technician in 61% of the cases, a 25% increase from 2004. Those contemplating a cosmetic procedure said they were somewhat concerned (24%) or very concerned (32%) about receiving care from a technician instead of a physician. Not surprisingly, the number of complications has increased with the growing volume. Ten percent of patients said they'd had complications, compared with 7% in 2004.

Lester Crawford, Lobbyist

Former Food and Drug Administration Commissioner Lester Crawford, D.V.M., has taken a position at Policy Directions, Inc., a Washington, DC-based lobbying firm with drug, biotechnology and food company clients. Mr. Crawford will be senior counsel. By law, he will be barred from directly lobbying Congress for at least a year. Policy Directions declined to make him available for an interview. Mr. Crawford resigned abruptly from his FDA post in September, 2 months after he was confirmed by the Senate. In the 5 years of the Bush Administration, the FDA has had a permanent commissioner for only 18 months. (Mr. Crawford served in an acting capacity for 16 months without Senate confirmation.) In early February, Sen. Chuck Grassley (R-Iowa) wrote to White House Chief of Staff Andrew Card asking that a permanent commissioner be nominated, adding that the agency was adrift without such leadership.

Medicare Drug Prices Up?

Several new reports charge that prescription drug prices rose in the first month that Medicare beneficiaries were eligible for coverage under the Part D drug benefit. For example, Consumers Union said it found an average increase of 5%. The group compared prices in five zip codes for Lipitor, and for a bundled package of the top-selling therapy in each of five classes (including Lipitor), from December to January. In a letter to the organization, Dr. Mark B. McClellan, administrator at the Centers for Medicare and Medicaid Services, said the sample was not representative because Lipitor and Celebrex had wholesale increases that contributed to most of the rise. Instead, he said, the increases were partly because of the expected rise in average wholesale prices that occurs each January. In another example, a report by the Democratic staff of the House Committee on Government Reform found that between December and mid-February, the prices of the 10 most popular drugs used by Medicare recipients at the 10 biggest drug plans increased by more than 4% on average—from $1,144 to $1,194. The Pharmaceutical Care Management Association said the House report did not acknowledge that drug plans can't set prices.

—Alicia Ault

Views Mixed on Benefits Of Health Savings Plans

BY JOYCE FRIEDEN

Associate Editor, Practice Trends

As President Bush puts health savings accounts higher on his agenda, experts continue to debate whether they are a good idea for solving the problems of the uninsured.

"The more I think about these proposals, the more troubling I find them to be," Leonard Burman, codirector of the Urban-Brookings Tax Policy Center, said in a teleconference sponsored by the Center on Budget and Policy Priorities (CBPP). "I don't think the idea [that people will be more cost conscious] is really going to play out."

Health savings accounts (HSAs) are accounts that employees contribute to in order to pay for the first several thousand dollars of their health care costs. The accounts are almost always combined with a high-deductible health insurance plan. Contributions to the HSA are tax free, as is money that is withdrawn from the account for covered medical expenses. If the money is not used in a particular year, it can accumulate in the account.

Some argue that HSAs give consumers more control over their health spending decisions, but others say the accounts favor the healthy and fail to help the sick.

The Galen Institute, an organization that supports consumer-driven health care, has a more positive view of HSAs.

"HSAs give consumers even more control over their health spending decisions—and provide them an incentive to spend wisely and save for future health care needs," according to a statement from Galen.

Critics argue that sick people are not always in a position to shop around for care; that making consumers more cost conscious won't help lower health care costs because most health care spending is for expenses higher than the amount of the deductible, which is out of the consumers' control; and that HSAs tend to attract mostly healthy people, driving up premiums for sicker individuals who remain in more traditional plans.

President Bush highlighted HSAs in his State of the Union address, vowing to "strengthen health savings accounts—making sure individuals and small business employees can buy insurance with the same advantages that people working for big businesses now get."

In a more detailed statement, White House officials said that the president "proposes making premiums for HSA-compatible insurance policies deductible from income taxes when [these policies are] purchased by individuals outside of work. In addition, an income tax credit would offset payroll taxes paid on premiums paid for their HSA policies."

The president is also proposing to allow any spending on out-of-pocket health expenses incurred by HSA enrollees—up to $10,500 per family—to be tax free, not just expenses pertaining to the deductible, as allowed under current law.

Such changes would make HSAs even more tempting to some people, said Jason Furman, senior fellow at the CBPP. "HSAs are already an unprecedentedly favored tax vehicle. This proposal now takes a system already tilted and adds a new tax credit."

If enacted, these proposals could make HSAs so attractive financially that they could begin to rival 401(k) plans as retirement savings vehicles, Mr. Furman said.

For example, suppose a family in a 25% tax bracket contributed the maximum $10,500 to an HSA that is invested at a 3% interest rate. Under the president's proposal, they would owe a payroll tax of $1,607, but they would also get a tax credit for that amount, so the entire $10,500 would stay in the account. If they contributed the same amount into a 401(k), they would still owe the payroll tax, but would not get a tax credit, so only $8,893 would be deposited into the 401(k) account. As a result, the HSA account would end up with $25,486 in it by 2036, versus $21,587 for the 401(k), Mr. Furman said.

With such results, "a lot of employers who offer 401(k) plans would have a lot less of an incentive to," he added. "Their employees could go on their own and get a much better deal from an HSA than from a 401(k), and avoid nondiscrimination rules." The payroll taxes that HSA account holders no longer have to pay would also put a dent in the federal budget, Mr. Furman said.

Barry Barnett, a principal in PricewaterhouseCoopers' human resource solutions practice, acknowledged that the proposal would result in substantial tax incentives, but said he did not think that employers were going to get rid of their 401(k) offerings because of it.

Ever since employers have switched to defined contribution retirement plans, "there has been enough noise in the system by employees feeling they've lost the entitlement to a defined benefit plan in retirement," Mr. Barnett said. "If employers start canceling 401(k) plans and instead offer HSAs, I think there will be a major outcry by employees and Congress or some other body of people saying, 'There's got to be some form of retirement benefit,' especially as the government tries to cut back on Social Security entitlements and Medicare entitlements as the president is talking about."

A recent report from the Government Accountability Office found that federal employees who enrolled in the government's high-deductible health plan combined with an HSA were more likely to be younger and to earn higher salaries than were employees who did not enroll in the plans. The report did not compare the health status of HSA enrollees with that of other federal employees. ■