By Barry Perlman, M.D.

The Fifth Annual Legislative Brunch was held on December 7 at the Mark Hotel in Manhattan. Ann Sullivan, M.D., NYCD's Legislative Representative and NYSPA's Area II Trustee, moderated the event hosted by NYCD in conjunction with the Brooklyn, Bronx, and Queens District Divisions. The brunch is partially funded by NYSPA.

The event featured speeches by six legislators and a representative from NYS-OMH. Detailed information about their speeches is included in the sections below.

Lloyd Sederer, M.D., the Executive Deputy Commissioner for Mental hygiene in the NYC Department of Health and Mental hygiene, spoke about legislative and clinical topics. (See page 7 to read about his presentation.)

Other speakers were NYCD President Vivian Pender, M.D., who emphasized the importance of psychiatrists and legislators working together; President Barry Perlman, M.D., who provided important data on the numbers and the time it takes the readers; and Lloyd Sederer, M.D., the Executive Deputy Commissioner for Mental hygiene;

By Barry Perlman, M.D.

To restate the preceding words of the New York State Psychiatric Association, the Legislative Brunch is not over! Given the relatively small proportion of NYSPA members who return their email addresses in order to receive it, I have begun to wonder whether I am the only person in New York State to read about his presentation. (For those who do not receive the E-Bulletin there was a delay in learning that Oxford had pulled back from their heavy handed, unfounded audit of the medical records of participating psychiatrists during the course of which they demonstrated a wanton disregard for patients' privacy rights. NYSPA, APA, and other professional organizations will be meeting with Oxford around the time this message is received. Those of you who are online through our E-Bulletin were delayed in receiving word of this success but that delay did not weaken our organization's capacity for advocacy.

Not being online did ill serve NYSPA's members' interests. One of the patients we serve when members did not hear about the budget proposal to eliminate the Medical crossover payment for patients insured jointly by Medicare and Medicaid. By the time the bill was passed, psychiatrists providing outpatient therapy services suffered a 40% decrease in payment based on the Medicare rate. As a result of members' neglect, members lacked the timely access to the information which would have permitted them to increase their efforts for patients' privacy rights. NYSPA, along with the other mental health professionals regarded the “Crossover” cut, NYSPA has been actively involved in discussions with the Department of Health and the Legislature since the law was enacted. As a result of legislative discussions, Assemblyman Kevin Cahill (D-Kingston) with twenty-five of his Assembly colleagues have introduced A.9345. Presently, Assemblyman Cahill is circulating to his colleagues a “sign on” letter addressed to the Speaker of the Assembly, Sheldon Silver, A.9345, Office of the Commissioner of Medicaid Crossfund in the context of the Assembly Majority budget position. Timothy's Law.

Last year, Senator Thomas Libous (R-Binghamhamton) and Assemblyman Paul Tonko (Ballston Spa) introduced S.5239 and A.8626. By the “Crossover” cut, NYSPA has been actively involved in discussions with the Department of Health and the Legislature since the law was enacted. As a result of legislative discussions, Assemblyman Kevin Cahill (D-Kingston) with twenty-five of his Assembly colleagues have introduced A.9345. Presently, Assemblyman Cahill is circulating to his colleagues a “sign on” letter addressed to the Speaker of the Assembly, Sheldon Silver, A.9345, Office of the Commissioner of Medicaid Crossfund in the context of the Assembly Majority budget position. Timothy's Law.

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By Barry Perlman, M.D.

The 2004 Legislative Session is well underway with the completion of two early session events; the Governor's Annual Message to the State of the State on January 7, and the presentation of his Executive Budget on January 20. By tradition and design, the State of the State is a broad brush presentation of hopes, dreams, aspirations and scant details. In contrast, the Budget Request, accompanied by briefing books and budget bills affords the opportunity to examine the particulars of the State's fiscal state, provided one is willing to dig way beneath the surface rhetoric to find them. As we have in the past, NYSPA is analyzing the Budget Request and has tentatively formulated its position which, when finalized will be presented to the Legislature and the Governor. (See Budget Overview below) Principally, we will continue our quest for the reinstatement of the Medicaid Crossfund. By way of background: “Crossover” funding and will lobby to maximize State financial support for various mental health programs consistent with NYSPA's traditional areas of interest.

NYSPA's other immediate concerns for the 2004 legislative session include several issues carried forward from last year. These include:

- Restoration of Crossover;
- The passage of Timothy's Law; Opposition to legislative initiatives that seek to restrict the administration of Electroconvulsive Therapy (ECT).
- The exemption of psychotropic medications from legislation establishing a Prescription Drug List. (See Brunch on page 6) for Medicaid or other health programs;
- Restoration of Crossover

We have extensively reported on this issue in previous Bulletin articles. Specifically, the fact that the Legislature did not fully restore the 2003-4 Executive Budget cuts for Medicaid funding of the coinsurance costs associated with the Medicaid “dually eligible” population. This action results in a 40% reduction in reimbursement for psychiatrists treating dually eligible patients in private practice. In conjunction with MSSNY and other organizations, NYSPA is devoted to the “Crossover” cut, NYSPA has been actively involved in discussions with the Department of Health and the Legislature since the law was enacted. As a result of legislative discussions, Assemblyman Kevin Cahill (D-Kingston) with twenty-five of his Assembly colleagues have introduced A.9345. Presently, Assemblyman Cahill is circulating to his colleagues a “sign on” letter addressed to the Speaker of the Assembly, Sheldon Silver, A.9345, Office of the Commissioner of Medicaid Crossfund in the context of the Assembly Majority budget position. Timothy's Law.

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Mental Health Court  
by Liz Lipton, M.A.

The statistics are sobering. Rikers Island and the L.A. County Jail are the largest psychiatric institutions in the United States. About 25 percent of events that occur in a private practice setting. This issue will be central to NYSPA and the Medical Society of the State of New York’s legislative agenda this year. Likewise, the continuing fight to pass “Timothy’s Law,” the NYS bill the goal is the development of a parity mental health benefit in our state, the ongoing struggle to preserve appropriate access to ECT (electroconvulsive therapy) and access to a full array of necessary psychotropic med-

them to express their concerns to their legislators. As a result, psychiatrists have suffered a considerable financial loss and their patients have most likely lost access to high quality, cost effective care. This issue set will be central to NYSPA and the Medical Society of the State of New York’s legislative agenda this year. Likewise, the continuing fight to pass “Timothy’s Law,” the NYS bill the goal is the development of a parity mental health benefit in our state, the ongoing struggle to preserve appropriate access to ECT (electroconvulsive therapy) and access to a full array of necessary psychotropic med-

...is received by...
The response has been overwhelmingly positive. Written on individual circumstances. Both Judge D’Emic and the Brooklyn District Attorney, represented by David Kelly, the 1st Deputy Bureau Chief for Alternative Programs, can exclude a defendant from participating in the court. If a defendant is accepted into the program, the court’s team begins to line up community-based services and, if needed, supported housing. While the staff is doing this, the candidates—most of whom are incarcerated—appear before the judge and are put in the context of their personal hygiene rules. After one of the team’s forensic coordinators went to his residence and persuaded him to follow the rules, he was allowed to stay. Another reason for their success is their bond with Judge D’Emic. As they appear at a time before his home, it is quite evident that they are in trouble. When he praises them, their faces light up. For example, he said to one defendant, “Great report. Straight As—you couldn’t have done better than that.” Another said, “Keep up the good work. You’re the hardest working man in this program.” That Tuesday, Judge D’Emic was proudly smiling as he awarded certificates to several participants who had completed a particular case of the court. After the individual approached the bench, Judge D’Emic would shake their hand and hold it while they spoke privately for a few minutes. “Thank you, Judge, thank you,” said one participant as he left with his certificate. Judge D’Emic admitted that when Ms. Jackson approached him with the idea of awarding certificates, he wasn’t sure of its merit: “Before we started the program, I was skeptical of giving out the certificates. But every time I gave one the person lights up. I’ve even had people ask me—when am I getting my certificate? It’s a reinforcement. It’s a pat on the back. It’s an affirmation. It’s everything that most of us are used to, but people never get to experience it. We take it for granted that we get credited for things, but some people never had it in their life.” He continued, “Most of them have experienced a lot of hardship. They have a sense of survivorship and persistency. It helps them struggle through life with that and to add to their recovery and self-esteem, and wonder how they are doing as well as they are doing.”
Most, if not all, of the organizations working with the TIC, cite Timmy’s Law as their top priority for the 2004 legislative session and are focusing enormous advocacy resources on its passage this year. Likewise, NYSPA is committed to the enactment of Timmy’s Law in 2004. To succeed in this endeavor will require TLC to demonstrate a powerful presence at the local level through a mounting groundswell of constituent support. In that regard, TLC is asking members to:

- Develop or join local coalition efforts to pass Timmy’s Law.
- Write or call our members’ legislators in support of Timmy’s Law (A.8301/S.5239), and
- Write a letter to the editor of one’s local newspaper(s) in support of Timmy’s Law.

For additional information regarding what NYSPA members can do to assist with Timmy’s Law, please contact Richard Gallo at rgallo@nyspa.org.

ECT

Last year’s successful effort to defeat anti-ECT legislation culminating in the Governor’s veto of the ECT reporting bill has slowed but not stopped the efforts of those who want to enact such laws. Hence, three of last year’s Assembly-sponsored bills are back again. They are, A.5943, A.5944, and A.5947. In addition to these three bills, which do not have companion bills as of yet in the Senate, we expect the proponents to again introduce an “ECT reporting bill” of some sort.

Meanwhile, based upon a directive in the Governor’s veto message, which relied heavily on NYSPA comments, the State Department of Health and State Office of Mental Health have begun looking at ways to create an empirically useful pool of information about the utilization of ECT by combining certain disparate statistical reporting mechanisms in their respective agencies.

The 2004/05 Executive Budget recommends creating a Preferred Drug Program, also known as a “Preferred Drug List” under Medicaid and other state government sponsored health insurance programs, such as EPS and CHP. Currently the Executive Budget recommendation, as well as similar initiatives by both houses of the Legislature calls for psychoactive medications to be exempt from any such programs. NYSPA will continue to closely monitor this issue.

Key Initiatives (State Operations)

Middletown Closure

The 2004/05 Executive Budget recommends that the Middletown Psychiatric Center be closed on January 1, 2005 and that necessary inpatient capacity be consolidated at the Rockland Psychiatric Center. This measure will achieve savings of approximately $30 million for potential construction savings ($27 million). Fifty percent of the facility closure savings achieved by consolidating the Middletown facility will be available to support a range of new and innovative mental health initiatives that will be established in conjunction with the local level through a mounting groundswell of constituent support.

The Governor has proposed legislation to establish a bipartisan Blue Ribbon Commission for the closure of State Psychiatric Centers. The Commission will be comprised of gubernatorial and legislative representatives and will offer facility closure recommendations based upon the overall OMH-proposed need for inpatient beds. Extension of the Community Reinvestment Act

This legislation will continue the Community Health Support and Workforce Reinvestment Act through 2010 in an effort to ensure that the Governor’s proposed policy of reverting one-half of any facility closure savings for State operated community services is continued for closures recommended by the Commission. Establishment of an Additional Provision in the Reinvestment Program

Legislation that increases the existing thirty percent of the savings achieved through facility closures to expand State-operated community based services in the catchment areas of those facilities. Increased Funding for Community Programs for Children and Adults

The Executive Budget proposal seeks to redirect savings from maximizing Federal reimbursement for programs previously funded by Reinvestment and other sources, to provide more than $9 million in funding increases for the continued operation of 8,600 community residential beds for adults and children. Expanding Services for Forensic Populations

An appropriation of $7 million in new funds will be provided to expand the mental health treatment capacity and clinical staffing for prisoners with serious and persistent mental illnesses. The funds are earmarked to support a range of new and expanded treatment services based upon a statewide review of the forensic programs. The Office of Mental Health and the Department of Correctional Services (DOCS) will work in conjunction to establish a new Behavioral Health Unit program model that seeks to triple the number of beds for the Special Treatment Program; expand current bed capacity for the Intermediate Care Program; and increase access to clinical staff for mental health services.

Key Initiatives (Bill to Localities)

Rate Methodology

Authorize the Commissioner of the Office of Mental Health to review and retroactively certify the rate methodology for all Medicaid home providers that include:

- Conducing resident assessments;
- Providing enhanced medication assistance;
- Implementing independent case management services and pest educator services;
- Improving wellness, social, and recreational activities; and
- Providing competitive grants to adult homes to implement quality of life initiatives as approved by resident councils.

The Executive proposal also recommends that individuals requiring placement outside of the adult home system will be able to access OMSI’s community-based residential system that currently develops and operates approximately 26,700 beds, in addition to the several thousand new beds that are in the pipeline over the next several years. However, this is not a prioritized eligibility.

ABMS

The Executive Budget seeks to achieve $800,000 in savings with the elimination of the Alternative Rate Methodology. The proposed elimination will primarily impact Erie County Medical Center, which receives more than 40 percent of the $3.1 million in total Medicaid support under ABMS. The other nine hospitals still receiving the ABMS supple- ment are: United Health, Women’s Hospital Group, St. Mary’s Hospital, St. Francis Hospital, Orthopaedic Hospital, Mercy Hospital, Good Samaritan Westchester, General Hospital, Eastern Long Island, and Montefiore Medical Center.

To receive an application please call 212-630-0039

HIP is committed to provider satisfaction, autonomy & exceptional support services.
The APAs move forward in 2004!

We have a balanced budget, and even a surplus to help replenish our reserves and offer revenue sharing to some district branches that need it. The vision for a Mental Health System is being refined with very specific goals to advocate for our patients and our profession. The battles against psychiatrists prescribing continue, as well as the war for quality care and access for all our patients. Membership has stopped declining, so thanks to all of you who are beginning to attract more members! So far, the year looks promising!

Highlights of the December Board Meeting include:

Advocacy:
- APA has taken a major role in advocating for a responsible and effective Prospective Payment System for Inpatient Psychiatry. As you may know, CMS (the Medicare Payment System) will no longer block all payments for inpatient Medicare services.
- The APA will continue to advocate for universal access to quality care. In tune with the vision for a Mental Health System, the Board has asked the appropriate councils and components to review and develop an action plan that focuses on the ways and means to finance such universal access, ensure its quality, and how to work at the state and national level to accomplish this critical goal.
- A balanced budget was approved, with a surplus of approximately $300,000 for the reserves. This definitely improves the overall financial picture of the APA and it has not been necessary this year to borrow funds to meet expenses. Also, $280,000 was set-aside in the 2003 budget (which may be increased) for revenue sharing with District Branches/State Associations.
- Prior to being brought to the Board will be proposals regarding the establishment of a new payment for inpatient care. Since the 1970's, a new payment for inpatient Medicare services has existed in the Medicare Payment System (which has been successful in prohibiting prescribing by psychologists). A real victory for us!
- The vision for a Mental Health System is being refined and specific goals developed and prioritized for the next few years. This plan will need dollars and the efforts of all members to make it a reality!
- The Board supported the American Psychiatric Association of Geriatric Society in advocating for an NIMH official specifically designated to develop and coordinate research for the aging mentally ill.
- The APA will continue to advocate for universal access to quality care. In tune with the vision for a Mental Health System, the Board has asked the appropriate councils and components to review and develop an action plan that focuses on the ways and means to finance such universal access, ensure its quality, and how to work at the state and national level to accomplish this critical goal.
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- Priority will be given to small District Branches, which are State Associations with so small a member number that an infrastructure could not be supported. This includes Montana with less than 50 members!
- A committee made up of Assembly, Board, and general members will make recommendations as to how to allocate the funds going forward. Some are in favor of all District Branches/State Associations receiving a fixed amount across the board, while others favor a formula based on size, membership, etc.
- What do you think? Is it clear that revenue sharing, while there is a surplus, is critical. However, just remember, the reserves have to be replenished too!

Membership:
- A meeting was held with the Texas and Washington Psychiatric Societies focused on increasing membership recruitment and financial issues. The APAs have been approached by the Arizona, Maryland, California, Connecticut, and New York Societies to develop local partnerships with these Associations.
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- A vote on having an Annual Meeting in Las Vegas was once again postponed for further study.
- The Association Management System (Information System) was approved as technically capable of meeting national and District Branch needs. A final look at financials will be completed by the March Board Meeting.
- The Board voted against a proposal by the membership committee to limit benefits, e.g. a discount at the annual meeting, for members who had not paid dues by April 1st. This was thought to be too “punitive” rather than helpful to the membership!
- The Board also approved a new conflict of interest procedure, where at the beginning of each Board meeting, all Board members, in addition to their formal filling of conflict of interest statements, will verbally again announce any current conflicts of interest for the awareness of all members of the Board present.
- Finally, the Board approved a position statement on HIV and Adolescents and established an Awards Oversight Committee to review the establishment of any new APA Awards.

Hopefully 2004 will be an active and successful year for the APA. Membership has stopped declining, and we look forward to a robust increase! Once again, let me know your thoughts, ideas, and suggestions!
The Medicare Law

Senator Liz Krueger: Timothy’s Law, Medicaid

Senator Liz Krueger (Democrat, Working Families Party) represents the 26th District, which is part of New York County. She is the Ranking Member of the Senate Standing Committee on Housing, Construction and Community Development. She is also a member of the following Senate commissions: Banks, Children and Families, Cities, Consumer Protection, Ethics, Rules, and Social Services.

Senator Krueger offered detailed information about Timothy’s Law. She said that 83 out of 38 Republican Senators are sponsoring Timothy’s Law, based on her own sub-survey, 20 out of 24 Democratic senators would cosponsor this legislation, and they are committed. She also explained that 53 of our 62 members are New York State senators and will pass this bill to the floor, so it can be debated.

She also spoke on Medicare. Senator Krueger said that Congresswoman Maloney said an excellent job of explaining why the Medicare bill is so bad. She added, “With the Medicare bill, we will face even decreased dual coverage between Medicare and Medicaid as the years go forward. I hope I am wrong but I am predicting.”

Regarding the New York State budget deficit, which is projected as being $6 billion dollars for the coming year, she said, “New York State is one of the only states in the country that requires the localities to pick up half the cost of the state Medicaid bill. Therefore, local governments are up in arms because of their own deficits due to the costs of Medicaid.”

She added, “The Governor, believing that the State Senate wasn’t going to go far enough in supporting its costs to Medicaid this coming year, has created his own Medicaid Task Force with an agenda of cost-cutting and the privatization of Medicaid.”

Assembly Member Jonathan Bing: Timothy’s Law

Assembly Member Jonathan Bing (Democrat, Working Families Party) represents the 73rd Assembly District, which consists of the western half of the Upper East Side and East Midtown. He serves as a member of a five-committee standing committee on Housing, Labor, Judiciary, Social Services, and Tourism, Arts and Sports Development.

Assembly Member Bing said he is proud to be a sponsor of Timothy’s Law to stand with Assembly Member Paul D. Tonko, [D-Amsterdam] the author of this legislation.

One of the key reasons he is sponsoring it is that “virtually every other mandate the state has passed has been a worst piece of legislation than the Medicare bill. Beginning the dismantling of the health care system not about as horrible as they’ve done and that is what this bill does. Every core element of the Medicare program will be dismantled in this legislation.”

He emphasized, “The fact that all of the elderly have been in the same boat probably could be the reason for the financial element that has kept the Medicare program as afloat as it is. According to Assembly Member Gottfried, the Medicare law will place Medicaid recipients in different categories such as ‘poor,’ ‘middle income,’ and ‘rich.’”

He explained, “The minute you start putting the elderly into different boats and the disabled into different boats, it will be much easier for companies to let ships sink and boats leak or fire torpedoes at them.”

On the other hand, he said, “It is really tough to sink a boat and let the middle-income and rich passengers sink.”

Assembly Member Gottfried also explained how the Medicare law will affect dual-eligibles. He said that currently dual-eligibles receive their prescription drugs from fee-for-service Medicare even if they are in managed care. However, with the Medicare law, dual-eligibles will be getting their prescription drugs from the managed care plan they will have to sign up for in order to get their Medicare benefits,” he said.

Because of this change, dual-eligibles will be required to pay co-payments. Assembly Member Gottfried predicted that as a result of this added cost, some people will start purchasing their psychiatric medication. Additionally, if dual-eligibles want to go off the formulary, they will have to go through the managed care company’s appeal process.

Assembly Member James Brennan: Timothy’s Law

Assembly Member James Brennan (Democrat, Working Families Party) represents the 44th Assembly District in Brooklyn. Assembly Member Brennan serves as a member of four committees: Codes, Corporations, Authorities and Commissions; Education; and Real Property Taxation.

From 1995 through 2000, Assembly Member Brennan chaired the Assembly Standing Committee on Mental Health, Mentally Retarded, and Developmental Disabilities. Assembly Member Brennan spoke about the importance of passing Timothy’s Law, which includes parity for alcohol and substance abuse services. For six years, Assembly Member Brennan sponsored mental health parity legislation that passed the NYS Assembly.

In discussion of the importance of passing Timothy’s Law, Assembly Member Brennan pointed out “virtually every other mandate on the insurance industry has gotten into law.”

Supportive Housing

Assembly Member Brennan emphasized that the City of New York needs more supportive housing. “We now have 38,000 homeless people in the City of New York. Every mentally ill homeless person government funding a year, including the direct cost of shelter, the cost of incarceration, the cost of hospitals, and all the other kinds of services for that person.”

“Studies have indicated that supportive housing... can save each individual’s in-patient hospitalization costs of $20,000 to $17,000 a year within two years. And the cost of the housing itself is $16,000 to $17,000 a year, and the cost of supportive housing services means on the average, $40,000 a year, and tax payers as well as better care for that person.”

“We need to continue to talk about this in the legislature. Authorizing funds for supportive housing is a capital expense, meaning that it doesn’t necessarily go up front... We spend money later down the road, and it’s much safer, and it is much... ultimately, that investment will come back to benefit all of us,” Assembly Member Brennan concluded.

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“Most of the time, the professionals who treat mental illness have provided not just the support they are expected to provide, but also the advice on what happened with him—their experience will be in my mind through the rest of my career,” said Assembly Member Bing.

One of the key reasons he supports this legislation is that “he said it would enable people to get mental health treatment at the earlier stages of their illness, thereby, decreasing the likelihood that they would require emergency services or hospitalization. [See Brunch on next page]
Fifth Annual Legislative Brunch
Continued from page 6

In closing, Assembly Member Ring emphasized, as did several of the other legislators, that it is important for psychiatrists to attend legislative trips and to personally contact legislation. “The person who is meeting with your legislator makes a difference,” he said.

City Council Member David Weprin: Timothy’s Law
City Council Member David Weprin [Democrat] represents the 21st District in Queens. He is Chair of the Finance Committee; Council Member Development and Agency Services; Jeffrey Bonnestein, M.D., is his mentor on mental health issues. Dr. Bonnestein, who is the Editor-in-Chief of The Bulletin, is CEO of Hofstra Hospital, a psychiatric hospital, Council Member Weprin’s district.

Council Member Weprin explained, “He [Dr. Bonnestein] brought to my attention the status of Timothy’s Law, and I thought that we at the City Council could do something about it. We introduced a resolution which calls upon the State Senate to join with the State Assembly in passing Timothy’s Law and held a press conference, ‘a step by step the City Hall.’”

Attendees of the November 5th press conference included Council Member Weprin; Council Member Margarita Levin, Chair of the Mental Health, Retardation, Alcoholism, Drug Abuse & Disability Committee; Tom and Jennifer Sullivan; and O’Chast of Timothy; Jessica Lynch, Miss New York State and Miss Queens; Dr. Barry Perlman, M.D., NYSFDA’s President, Glenn Martin, M.D., NYSFDA’s Secretary; Dr. Bonnestein, and Dr. Carpinello, RN, Ph.D., Acting Director of NYSOMH.

She continued, “So I’ll be there at the City level. Even though I can’t directly affect Timothy’s Law, I can certainly indirectly help and because through our putting pressure, and through our putting together coalitions of legislators and other people, we can be the community to support Timothy’s Law.”

Francine Cournos, M.D., NYS OMH
Francine Cournos, M.D., is the Acting Director of New York State Psychiatric Institute, which is operated by the NYSOMH. Dr. Cournos said, “Sharon Carpello, RN, Ph.D., [Acting Commissioner] was sorry she could not make it, and she asked me to attend in her place.” “The position of the state is to move along with the coalition, the intensive case management, Project Liberty, and the ACTI teams. All of these programs are moving things away from the hospital [and] out into the community.”

She continued, “I would recommend two things that Sharon is personally involved in: One is a new data system that will really help us track [services] in the different county systems and the confidentiality. The other is introducing more evidence-based practices into the system. On the state side [this means] prescribing psychotropics, on the city side [this means] thinking of how to modify psycho-educational initiatives, so they are culturally appropriate.”

Photo Credits: David S. Goldman, M.D.
Revised New York Law Requires Subpoenas to be Accompanied by Written Patient Authorization

By Rachel A. Fernbach, Esq. and Seth P. Stein, Esq.

Effective September 1, 2003, New York law (CPLR §3122) provides that health care providers are no longer required to respond to subpoenas requesting medical records if the subpoena is not accompanied by a written patient authorization for the release of records requested. The purpose of the revised law is to prevent the issuance of a subpoena requesting medical records without proper notice to and permission from the individual who is the subject of the medical records.

If a psychiatrist receives a subpoena that does not include a written authorization from the patient, the psychiatrist is not required to respond, but may choose to respond in writing to the attorney who issued the subpoena, stating an objection because the patient authorization was not included. It is then incumbent on the attorney making the request to attempt to obtain the patient authorization. If the attorney is unable to do so because the patient refuses, the attorney may then bring a proceeding in court requesting a court order to compel the production of the record sought.

The written patient authorization accompanying the subpoena must be directed to the provider, must describe the records to be released and must contain the patient's signature. Psychiatrists who request that the attorney making the request add to the subpoena the court's direction to comply. This court held that such requests for so-ordered subpoenas must also be accompanied by the patient's authorization and declined to so-order the subpoena in that case because the patient's authorization was not submitted to the court. In addition to the patient authorization, the subpoena must also state in conspicuous, bold-face type that the records requested shall not be provided unless the subpoena is accompanied by a written patient authorization.

By Rachel A. Fernbach, Esq. and Seth P. Stein, Esq.

THE BACK PAGE

E-BULLETIN
NEW YORK STATE PSYCHIATRIC ASSOCIATION

Volume 2, 2004 February 13, 2004

DEADLINE TO COMPLETE MANDATORY NEW YORK EXCESS MEDICAL MALPRACTICE INSURANCE RISK MANAGEMENT COURSE EXTENDED TO MAY 1, 2004

The NYS Superintendent of Insurance recently extended the deadline for completion of the mandatory excess medical malpractice risk management course to May 1, 2004. State regulations require all physicians who participate or plan to participate in an excess medical malpractice program to complete an excess coverage risk management program. All programs are administered by individual carriers or independent contractors hired by the carrier. Qualifying programs must include a five-hour basic course taken in the first year and a three-hour follow-up course to be taken every year thereafter, in either a classroom format or an internet-based format. Both the basic course and the follow-up course also include a mandatory “project” that must be completed within 60 days after completion of the classroom or internet-based course. It is permissible to complete the project after May 1, 2004, as long as the basic course is completed by that date. The project is intended to demonstrate and reinforce the concepts taught in the course and may include, for example, critical review of case studies.

The Medical Society of the State of New York has been designated to oversee and review programs offered by different insurers to ensure compliance with subject matter requirements and consistency among programs. Insurers are not permitted to charge a fee or other assessment in connection with the risk management program.

For psychiatrists covered by the APA-sponsored medical malpractice insurance program, PRMS will be administering the risk management program on behalf of the insurance carrier, AIG. PRMS plans to conduct in-person lectures and internet-based courses in March in the New York City area and in April in Upstate New York. In order to indicate preferences regarding course format and scheduling, PRMS has asked that all participating members contact its automated hotline at (800) 245-5333, extension 310 or log on to <http://www.psychprogram.com/excess> www.psychprogram.com/excess no later than February 20, 2004. If you do not participate with AIG, please contact your individual carrier for more information.

Psychiatrists who complete the five-hour basic risk management course on or before May 1, 2004, will be deemed to have met the program requirement for excess medical malpractice coverage for the July 1, 2003-June 30, 2004 policy year as well as for the July 1, 2002-June 30, 2003 policy year. Psychiatrists must take follow-up courses annually to continue to qualify for the excess coverage.

Special rules apply for psychiatrists already participating in a qualified risk management program through their malpractice carrier. Contact your carrier for more information regarding those specific rules.

You have just been subpoenaed.
Do you know how to respond?

If you have your malpractice insurance through The Psychiatrists’ Program you can rest assured. With a simple toll-free call, a risk manager can assist you with the immediate steps you need to take to protect your practice.

As a Program participant, you can call the Risk Management Consultation Service (RMCS) to obtain advice and guidance on risk management issues encountered in psychiatric practice. Staffed by experienced professionals with both legal and clinical backgrounds, the RMCS can help prevent potential professional liability incidents and lawsuits.

If you are not currently insured with The Program, we invite you to learn more about the many psychiatry-specific benefits of participation. Call today to receive more information and a complimentary copy of “Six Things You Can Do Now to Avoid Being Successfully Sued Later”

The Psychiatrists’ Program

The APA-sponsored Psychiatric Professional Liability Insurance Program

Call: 1-800-245-5333, ext. 389
E-mail: TheProgram@prms.com
Visit: www.psychprogram.com

Managed by Professional Risk Management Service, Inc. (a California-based LIPIR insurance agency, Inc.)