President's Message: Once Again the APA is Asked to “Confront” a Political Issue

By Deborah Cross, M.D.

This November, the APA Assembly will be asked to consider an Action Paper that reflects a core mission of the APA involvement in “political issues.” An Action Paper has been written by some APA Board of Trustees members to issue a “public statement” opposing the attempt by boycotters and individuals and institutions that do not publicly dissociate themselves from Israel’s polices to boycott the APA.

As you can imagine, a fierce debate quickly ensued in which many other organizations and individuals expressed opposition to the APA’s participation. This boycott would, as I understand it, mean that any individual or institution, including those in the United States, who do not publicly dissociate Israel’s political positions, would face the possibility of being “boycotted.”

From the time this topic began to be discussed, often quite heated, as to whether, when and on what topics the APA should weigh in on, it has been this “hot button” topic of the moment. The first I remember (though I am quite sure this has been going on for much longer) was in the early 1990s when, at Business Meeting after Business Meeting at the Annual Meetings, some APA members struggled to decide whether to develop a Position Statement against the boycotting of scientists, academics and researchers based upon a political test.

I'll get back to this specific issue later in the column but for now I would like to talk about the more general issue of whether our APA should formally endorse positions or policies, based upon political action.

Our APA currently is the world’s largest organization representing psychiatrists. We have members from around the world. In that large membership there have been discussions, often quite heated, as to whether, when and on what topics the APA should weigh in on. APA members are the “heavy hitters” in this discussion. Our APA currently is the world’s largest organization representing psychiatrists. We have members from around the world. In that large membership there have been discussions, often quite heated, as to whether, when and on what topics the APA should weigh in on. APA members are the “heavy hitters” in this discussion.

Our APA’s current Mission, Values and Goals include:

- APA Mission includes promoting “psychiatric education and research.”
- APA Values include “collaborative support, respect for diverse views and pluralism.

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Healthy Minds

Healthcare Sundays at 11:30 am; Rebroadcasts Sundays at 7:30 am

In one of ten Americans experience some disability from a diagnosable mental illness in the course of any given year - but for many of those, the fear and shame associated with a diagnosis often leads to suffering without hope. Healthy Minds aims to remove the stigma that prevents patients and their families from seeking help for mental disorders. Each half-hour of programming highlights a particular mental condition through inspiring personal stories, with leading researchers and experts from institutions such as Columbia University, Rockefeller University and the Cold Spring Harbor Laboratory providing the latest information.

Episodes will cover a wide range of topics, including anxiety, mood, insomnia, chemical dependency, post-traumatic stress disorder (PTSD), attention deficit disorder, Alzheimer’s disease and schizophrenia, to bring the general public a better understanding of disorders that can affect anyone, at any age.

In the premiere episode, news veteran Mike Wallace and his wife Mary discuss how they dealt with his Huntington’s disease at the time it became public and his struggle with the first time intimate details about his suicide attempt and ultimate recovery. Series guests also include Nobel Prize winner author and lecturer Eric Kandel and broadcast journalist Jane Pauley, who shares her personal struggle with bipolar disorder.

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Senate Passes Timothy’s Law

By Rachel A. Fernbach, Esq.

In a landmark vote, the New York State Senate passed the mental health mandate formerly known as Timothy’s Law by a vote of 55-0 during a special session held on September 15, 2006. If enacted into law, this bill will help for the first time require that New York health care insurance policies and HIPAA health plans include benefits for the treatment of mental illness. The bill is named for Timothy O’Clair, a 12-year-old Schenectady boy who took his own life in 2001. The O’Clair family’s health insurance plan provided only limited mental health coverage, and as a result, Timothy did not receive the care and treatment he needed.

“Mental illness can result in tragedy if it is not properly treated. However, many families do not have access to the medical treatment they need,” said Senate Majority Leader Joseph L. Bruno (R-Brunswick), an advocate of the bill. “This legislation would provide patients parity in coverage and help people get the treatment they need.”

State Senator Thomas Libous (R-Binghamton), the prime-sponsor of the bill, said, “It is very pleasing to be able to work together to craft this bill that we’re passing today in remembrance of Timothy and to help other individuals affected by mental illness. Not only is this legislation providing access to mental health care, but it also has built in safeguards to protect small businesses and their employees.”

State Senator Nicholas Spano (R-Yorkers), a longtime supporter of mental health parity, declared on the floor of the Senate, “This is the most significant bill we have done this year.”

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very important improvement is that mental health services to diverse populations throughout New York State.

As reported in the last issue of the Bulletin, NYSAPA strongly supported banning the practice of controlling psychiatrically disabled individuals to specific living arrangements. However, the bill itself had a number of technical and programmatic deficiencies that were expected to be addressed through ongoing negotiations; when, at the end of session, the bill suddenly did not get voted out of Senate Floor and was passed unanimously. The Assembly had passed the bill earlier in the year.

In his Veto Message, the Governor stated that, while he shares the sponsors’ commitment, “to ensuring that all inmates with serious mental illness receive necessary medical health services in clinically appropri-

T<br>his edition of the Bulletin features in-depth articles addressing significant legislative suc-

cesses. The New York State Senate, led by Timothy’s Law – which requires the inclusion of benefits for the treatment of mental illness – was enacted, New York would be the only state in the country to provide coverage for the treatment of mental illness.

The APA Mission, Values and Goals include: to foster a collaborative environment for the treatment of mental illness, the promotion of psychiatric educa-

tion and research, and improving access to mental health services. In this issue, we have included in this issue a list of the APA’s 2006 Leadership Action Committee Action, Inc. We also have reports about Medicare Part D as well as the CMS mandate that all providers must enroll in Electronic Funds Transfer and have a National Provider Identifier. The President’s Message and Articles on the New York State Psychiatric Association • THE BULLETIN Fall 2006
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September 10 Mike Wallace on Depression
News veteran Mike Wallace and his wife Mary discuss how they dealt with his depression and reveal for the first time intimate details about his suicide attempt and ultimate recovery.

September 17 Depression
Uncover the latest in diagnosis and treatment of depression. Guests include psychiatrist Dr. Eric Kandel and Joshua Wolf Shenk, author of Lincoln's Depression.

September 24 Chemical Dependency
Reformers and scientific evidence debunk the long-held mistaken beliefs about drug abuse and addiction, showing that addiction is a chronic, relapsing, and treatable disease.

October 1 Schizophrenia
Explore the chronic condition of schizophrenia with guests who share their struggle and experts on the forefront of research and treatment.

October 8 Adolescents and Antidepressants
Are antidepressants safe for our children appropriately? A close examination of diagnosis and treatment of mental health issues in adolescents.

October 15 Attention Deficit Hyperactivity Disorder (ADHD)
Experts bring you the latest in symptoms, causes and treatments of ADHD while parents and teachers talk about ways of coping and getting help.

October 22 Insomnia
Visit a sleep lab and find out what researchers are doing to uncover the mysteries surrounding sleep disor-
Medicare Part D Update
By Rachel A. Fernbach, Esq., NYSPA Staff Attorney

In late 2003, the Centers for Medicare and Medicaid Services (CMS) issued a final rule establishing a specific prescription program in conjunction with Medicare Part D, the prescription drug benefit. "E-prescribing" is a method by which providers may transmit prescriptions directly to a patient's pharmacy via electronic means. The e-prescribing program is mandatory for Part D plan sponsors only. Health care providers may choose to participate in e-prescribing, but are not required to do so. Psychiatrists who do not participate in e-prescribing may continue to use paper prescriptions, paper-originated faxes and phone calls to send prescriptions to pharmacies or other dispensers. However, if a psychiatrist opts to send prescriptions electronically, the psychiatrist must utilize the specific electronic standards set forth in the final rule.

The e-prescribing regulation, which went into effect on January 1, 2006, defines e-prescribing as "the transmission, using electronic media, of a prescription or prescription-related information between a prescriber, dispenser, pharmacy benefit manager, or health plan, either directly or through an intermediary, including an e-prescribing network." The rule defines prescription-related information as information "regarding eligibility for drug benefits, medication history or related health or drug information for Part D eligible individuals." Under the rule, Part D drug plans, but not Part D providers, are required to establish and implement an e-prescribing program using specific data-interchange standards. For example, electronic transmission of prescriptions must utilize the National Council for Prescription Drug Programs SCRIPT Standard, while eligibility inquiries and responses must utilize the Accredited Standards Committee X12N Standard. If a psychiatrist chooses to participate in e-prescribing, the psychiatrist must use computer hardware and software that can support the mandated e-prescribing data standards. It will likely be quite costly for a solo practitioner or small group practice to purchase and maintain the required equipment and software. As a result, it is anticipated that drug plans, hospitals and other employers may assist physicians in the use of e-prescribing by donating computer hardware, software and training services to participating providers. However, donation of such items to prescribers could conflict with federal fraud and abuse laws prohibiting the receipt of nonmonetary remuneration by health care entities that bill Medicare and Medicaid. To eliminate this potential conflict, Congress included in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) a provision requiring the United States Department of Health and Human Services (HHS) to implement new exceptions to the federal fraud and abuse prohibitions.

On August 6, 2006, in compliance with the MMA, CMS and the HHS Office of Inspector General (OIG) simultaneously issued final rules implementing new exceptions, or safe harbors, under the federal physician self-referral law and the federal anti-kickback law. The physician self-referral provisions, commonly referred to as the "Stark" law, generally prohibit physicians from referring patients for certain health services to an entity with which the physician, or an immediate family member of the physician, has a financial relationship. The anti-kickback law generally prohibits payments in any form made knowingly and willfully to induce or reward the referral of business reimbursable under any federal health care program. The two regulations are substantially similar, except that the Stark exceptions apply only to physicians, while the anti-kickback exceptions apply to other prescribing health care professionals as well. Both regulations go into effect on October 10, 2006.

ADDITIONAL NYS MEDICAID REIMBURSEMENTS FOR PSYCHIATRISTS

Because of NYSPA advocacy, the 2006-2007 NYS budget included an extra $2 million to provide psychiatrists with additional Medicaid reimbursement for outpatient treatment provided to patients covered by both Medicaid and Medicare. Under current law, Medicaid only pays 20% of the balance of the unpaid Medicare fee. For most outpatient psychiatric services, Medicaid pays only 50% (not 80% as in the case of all other services) of the Medicare fee. Medicaid will then only pay 20% of the unpaid 50% balance of the Medicare fee or only an additional 10%. Thus, psychiatrists receive only 60% of the Medicare fee as payment in full. In the case of all other services paid at 80% by Medicare, Medicaid pays 20% of the unpaid balance or an additional 4% for a total payment of 84% of the Medicare fee.

For example, assuming a Medicare fee of $100, Medicare will pay $80 for most services and NYS Medicaid will pay an additional $4 for a total payment of $84. For outpatient psychiatric services, Medicare will only pay $50 and Medicaid will pay an additional $10 for a total payment of $60.

In our example, the $2 million appropriation would provide an additional $240 so that the total payment received for the outpatient psychiatric service would be $84 compared to the $60 amount in total paid for all other services.

This $2 million appropriated for the 2006-2007 fiscal year is intended to provide additional reimbursement for outpatient psychiatric services so that psychiatrists will receive 84% of the Medicare fee - the same total reimbursement received for all other physicians.

However, the additional reimbursement will not be paid when the claim is initially processed, but will be paid after the end of this fiscal year. NYS Medicaid will calculate the additional reimbursement due psychiatrists based upon the number of claims submitted during the fiscal year. Once the total liability is calculated, if the total amount due is $2 million or less, each psychiatrist will be paid in full. However, if the amount due is greater than $2 million, then the $2 million will be disbursed on a prorated basis because the budget only provided $2 million for this enhancement.

Therefore, psychiatrists are urged to submit Medicaid claims for outpatient services even though current payment according to the volume or value of referrals or other business generated between the parties. Conversely, the recipient is not permitted to make the receipt of items or the amount or nature of items a condition of doing business with the donor. Finally, the arrangement between the parties must be set forth in writing and the donor must not have actual knowledge or act in reckless disregard of the prohibition.

MS has mandated that all Medicare providers must enroll in Electronic Funds Transfer (EFT) and must have a National Provider Identifier (NPI). This new requirement will be imposed on a rolling basis on all providers who file Medicare claims.

All current Medicare providers who file any claims in their Medicare provider status (e.g., change in office address, change in group status) with a Medicare carrier on or after June 1, 2006, will be required to enroll in the EFT of Medicaid reimbursement - direct deposit of Medicare reimbursement into the provider’s bank account or the 855 form will be rejected.

Although the mandatory requirement for obtaining and using an NPI for Medicare and other third-party payers does not go into effect until May 23, 2007, CMS is mandating that providers secure an NPI if they file a Medicare enrollment application or change in Medicare provider information after June 1, 2006.

EFT of Medicaid reimbursement is essentially identical to direct deposit of paychecks, Social Security payments and wire transfers of funds. The physician must provide a photocopy of a bank check (marked void) where the Medicare reimbursement will be deposited. The name of the bank account to which the Medicare carrier will remit the reimbursement must be the same name as shown on the Medicare enrollment application. This requirement may cause difficulties in hospitals, clinics and other group settings where the facility or group practice bills and collects all third party payments on behalf of physicians working in the facility. In these situations, these facilities or group practices may have to consider establishing a billing group with one Medicare carrier to ensure that Medicare reimbursement can be electronically transferred to a single facility bank account.

(Note: Electronic transfer of funds does not constitute the electronic transmission of personal health information for purposes of HIPAA compliance.)

The following links can be used to download forms and/or additional information about Medicare enrollment and changes and the National Provider Identifier.

Medicare Enrollment Application - CMS-855I

Apply on-line for a National Provider Identifier (NPI)
https://nppes.cms.hhs.gov/NPPES/StaticForward.do?forward=static.npistart

Download a form to mail an application for a National Provider Identifier (NPI)

Frequently Asked Questions about the National Provider Identifier

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gard or deliberate ignorance of the fact that the recipient has already received equivalent items or services from another donor.

Donation of Electronic Health Records Technology

Similarly, under both the Stark law and the anti-kickback law, the donation of electronic health records software and/or training services will also fall under a safe harbor if certain conditions are met. The technology and services will qualify if they are donated to a physician by: (i) an individual or entity that provides services covered by a federal health care program and submit claims to the federal health care program or provides certain other designated health services or (ii) a health plan.

In addition, donated electronic health records software must be “necessary and used predominantly to create, maintain, transmit or receive electronic health records” and must be “interoperable,” meaning “able to communicate and exchange data accurately, effectively, securely, and consistently with different information technology systems, software applications, and networks.” Donors are not permitted to select recipients based on the volume or value of referrals or other business generated between the parties, and if the recipient is a physician, the physician must cover 15% of the donor’s cost for the software or training. Finally, the electronic health records software must contain e-prescribing capability, either through an independent e-prescribing component or the ability to interface with the physician’s existing e-prescribing system.

The new e-prescribing program and the attendant safe harbors for e-prescribing and electronic health records reflect movement by the federal government towards widespread adoption of computerization in the delivery of health care. The development of interoperable software will be expensive and it is unlikely that such software will be available in the near future. With this in mind, it is incumbent upon physicians, and especially psychiatrists, to familiarize themselves with the currently available technologies and the changes that are being proposed in the healthcare system. To assist members, NYSPA plans to prepare additional, more detailed guidance materials on e-prescribing and the new safe harbors, which will be made available on the NYSPA website this Fall.

Classifieds

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Legislative Events

Please join our Federal, State and City Legislators to discuss the mental health needs of New Yorkers.

LET YOUR VOICE BE HEARD.

The New York City Branches of the American Psychiatric Association will be hosting its Eighth Annual Citywide Legislative Breakfast on December 5, 2006 from 3:30 AM - 1:30 PM at The New York Academy of Medicine 1216 Fifth Avenue (corner of 80th Street) New York, NY 10029

The Psychiatrist Society of Westchester will be hosting its 20th Annual Legislative Brunch on December 10, 2006 from 1:00 AM - 1:30 PM at The Crowne Plaza Hotel 66 Hale Avenue White Plains, NY 10601

For further information regarding the Citywide Legislative Breakfast or the Psychiatric Society of Westchester Brunch or to purchase tickets contact your District Branch at the phone number below:

Bronx/Westchester: 914-967-7065
Brooklyn: 631-286-9193
New York County: 212-685-9633
Queens: 1-877-612-7110

All events are free and will feature breakfast (and in the case of the Citywide Legislative Breakfast, lunch as well) and a panel discussion.

Please join us as we discuss the mental health needs of New Yorkers.