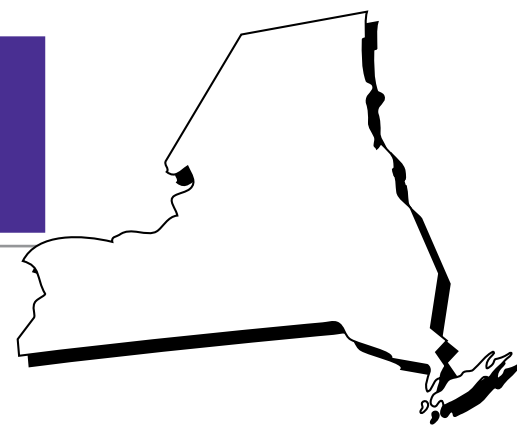


THE BULLETIN

NEW YORK STATE PSYCHIATRIC ASSOCIATION

Spring 2010, Vol. 54, #1 • Bringing New York State Psychiatrists Together



President's Message: Area 2 and NYSPA–2010 and Beyond

By C. Deborah Cross, M.D.

This is my last column as President of NYSPA. It has been an exciting and wonderful four years! Two components make NYSPA an extremely effective and outstanding professional organization—our members and our staff! Over the last several years I have met a large number of our members practicing in all sorts of settings. Our members are dedicated psychiatrists, dedicated to their patients and to our profession. I have the deepest respect for all of our members. NYSPA's staff, many of whom have been with NYSPA for an incredible number of years (our



C. Deborah Cross, MD

Executive Director and our Lobbyist have both been with us for over 30 years), are the glue that holds us all together. The miracles that they work on a daily basis for us in Albany, in the legislative arena, and in the financial marketplace are unparalleled in the rest of the APA.

NYSPA is, however, a part of a greater whole, the national APA. My work as your President has also allowed me to know and experience a variety of other states and Areas in the APA. And while I have learned much

[See **President's Message** on page 5]

Federal Parity Regulations and New York's Timothy's Law: A Winning Combination

By Rachel A. Fernbach, Esq.

New federal regulations implementing the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) are expected to work together with New York's Timothy's Law to create an unprecedented level of parity for many New Yorkers. The MHPAEA is a landmark federal parity law that requires health plans that cover mental health or substance use disorder benefits to provide full parity with other medical and surgical benefits, with respect to financial requirements, treatment limitations and out-of-network benefits. The federal law went into effect on October 3, 2009, and applies only to employers with more than 50 employees. The regulations were issued jointly by the U.S. Departments of Health and Human Services, Treasury and Labor and generally apply to group health plans and group health insurance issuers for plan years beginning on or after July 1, 2010.

Overview of the Regulations

The federal parity law and regulations are not a mental health mandate, but rather a requirement for parity in treatment coverage. If a group health plan provides both medical/surgical and mental health or substance use disorder ("MH/SUD") benefits, the plan is prohibited from applying to the MH/SUD benefits any financial requirement or treatment limitation that is *more restrictive* than the *predominant* financial requirement or treatment limitation applied to *substantially all* medical/surgical benefits in the same classification. Financial requirements (FRs) include deductibles, copayments, coinsurance and out-of-pocket maximums. Treatment limitations (TLs) include limits on benefits based on the frequency of treatment, number of visits, days of coverage, days in a waiting period, or other similar limits on the scope or duration of treatment. The general parity requirement applies separately for each type of financial requirement or treatment limitation, for example, copayments are compared to copayments and deductibles to deductibles.

For the purpose of applying the general parity requirement, the regulations create six different classes of benefits: (1) inpatient, in-network; (2) inpatient, out-of-network; (3) outpatient, in-network; (4) outpatient, out-of-network; (5) emergency care; and (6) prescription drugs. If a plan provides MH/SUD benefits in any of these six classes of benefits, the MH/SUD benefits must be provided in each classification in which medical/surgical benefits are provided, including out-of-network classifications. It is not permissible for a health plan to create a new classification of benefits that would be outside the purview of the parity rules.

Predominant limitations are those that apply to more than one-half of medical/surgical benefits in a classification. A type of financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in a classification is one that applies to at least two-thirds of the medical/surgical benefits. If a type of FR or TL does not apply to at least two-thirds of the medical/surgical benefits in a classification, then that FR or TL cannot be applied to MH/SUD benefits in that same classification. In addition, health plans may be prohibited from categorizing MH/SUD benefits as treatment provided by a specialist, which normally results in higher copays and greater coinsurance requirements.

The regulations also differentiate between quantitative treatment limitations (QTLs) and nonquantitative treatment limitations (NQTLs). QTLs are treatment limitations that are expressed numerically and include annual, episode and lifetime day and visit limits. NQTLs are treatment limitations that are not expressed numerically but otherwise limit the scope or duration of benefits, for example, prescription drug formularies, medical management standards, reimbursement rate calculation methods and fail-first policies.

Due to the unique nature of nonquantitative treatment limitations, the drafters

[See **Parity Regulations** on page 6]

NYSPA Wins Reversal in Medicare/Medicaid Crossover Lawsuit; Appellate Court Orders Reimbursement to Providers

NYSPA recently received a resounding victory in its lawsuit against the NYS Department of Health seeking to enforce the provisions of a 2006 amendment to the New York State Medicaid law mandating that psychiatrists receive 100% payment of the Medicaid share of the Medicare copayment for patients who are covered by both Medicare and Medicaid. In the lawsuit brought by NYSPA and four NYSPA members, a panel of the Supreme Court of New York, Appellate Division, Second Department, unanimously declared unconstitutional a 2008 State statute that retroactively repealed the 2006 law. The Appellate Division decision, issued on March 16, 2010, reversed an order of the Supreme Court, Nassau County, which dismissed the action. The Appellate Division held that the plain language of the 2006 law clearly granted psychiatrists 100 percent reimbursement of the Medicare deductible and coinsurance fees for dual eligible individuals and that the subsequent law could not retroactively eliminate that right. Following this decision, however, the Department of Health filed an appeal on April 19, 2010, with the New York Court of Appeals, the highest court in the state. If the New York Court of Appeals decides to hear the case, it will be submitted to the Court sometime this winter with a decision shortly thereafter. If the Court finds in NYSPA's favor, the Department of Health must reimburse psychiatrists for all crossover claims processed between August 12, 2007 and April 11, 2008.

Albany Report

By Richard Gallo & Barry B. Perlman, M.D.

Arduous, argumentative, bizarre, bombastic, conflict-ridden, confrontational, contentious, convoluted, different, discordant, divisive, lackluster, off the wall, out of the ordinary, peculiar, problematic, quarrelsome, strange, tortuous, tough, troublesome, undistinguished, uninspiring, wild, weird, and zany – are among the adjectives used in this column over the years to describe what at the time seemed like an especially difficult or dreary New York State Legislative Session. This year, we could use all of the above adjectives and still fall short of depicting the present atmosphere at the Capitol.

Clearly, nothing much has been accomplished at the Capitol so far this year – unless, of course, you count scandals, accusations, indictments, convictions, expulsions, and on-going investigations as accomplishments. Presently, the Governor is besieged, politically and otherwise, by his own admissions. The Senate is gridlocked with the Democrats holding a mere two seat majority. The projected budget deficit is \$9 billion and growing. In addition, it is an election year with all Senate and Assembly seats up for grabs – so every incumbent who is looking to be re-elected wants as much of the budget largesse as possible for projects and programs located in his or her Election District.

And so, once again, New York State has begun a new fiscal year (April 1) without a budget in place. For all the reasons (adjectives and nouns alike) listed above, the wait for a budget could be a prolonged one. How long is "prolonged?" Well, the tardiest state budget on record was enacted on August 11th (2004). As for the frequency of late budgets in the state, only six have been on-time in the last 35 years.

Fortunately, not all the news from

Albany is bad news – at least as far as NYSPA's interests are concerned.

Parity in Claims Processing for Psychiatrists

Among the upbeat items reported in this issue of the Bulletin (see Spring Area II Council Meeting by Rachel Fernbach) is NYSPA's success in garnering a soon to be issued directive from the New York State Insurance Department (SID) instructing health insurers and HMOs that they must accept and process claims submitted by psychiatrists for Evaluation and Management (E&M) services utilizing the current procedural terminology (CPT) codes. Although it has taken over two years to achieve this result, it is a significant victory for psychiatrists and their patients with respect to parity in claims processing.

In February of 2008, while working with the SID on compliance issues relative to "Timothy's Law," NYSPA advised SID staff that insurers were apparently discriminating against psychiatrists in violation of Insurance Law §3224-b, which took effect on the same day as Timothy's Law (January 1, 2007). Specifically, §3224-b provides that an insurer or HMO, "shall accept and initiate processing of all health care claims submitted by a physician pursuant to, and consistent with, the current version of the American Medical Association's procedural terminology (CPT) codes, reporting guidelines and conventions..." Yet, the prevailing practice of insurers and HMOs after the law went into effect was to refuse to accept and process E&M code claims submitted by psychiatrists. Instead, insurers advised psychiatrists to resubmit their claim using a 908xx psychotherapy code, despite the fact that the service provided was E&M.

[See **Albany Report** on page 5]

THE BULLETIN

NEW YORK STATE PSYCHIATRIC ASSOCIATION

Editorial Board

Jeffrey Borenstein, MD
Editor-in-Chief
Holliswood Hospital
87-37 Palermo Street
Queens, NY 11423
Tel: (718) 776-8181 ext. 321
Fax: (718) 776-8551
e-mail: jborenstein@libertymgt.com
http://www.nyspsych.org/web-
pages/bulletin.asp

Manoj Shah, MD
Ann Sullivan, MD

Rachel A. Fernbach, Esq.
Assistant Editor

Robert J. Campbell III, MD
Editor-in-Chief Emeritus

Leslie Citrome, MD, M.P.H.
Editor-in-Chief Emeritus

PLEASE NOTE: NEW ADDRESS

**New York State Psychiatric
Association**
400 Garden City Plaza, Suite 202
Garden City, NY 11530
(516) 542-0077; Fax: (516) 542-0094
e-mail: centraloffice@nyspsych.org
http://www.nyspsych.org

Executive Committee 2008-2010

C. Deborah Cross, MD, *President*
Glenn Martin, MD, *Vice President*
Seeth Vivek, MD, *Secretary*
Darvin Varon, MD, *Treasurer*
James Nininger, MD, *Area II Trustee*
Seth Stein, Esq., *Executive Director*
Barry Perlman, MD, *Past President*

Information for Contributors

The Bulletin welcomes articles and letters that NYSPA members will find timely, relevant, and compelling. Articles should be between 750 and 1500 words (three to five double-spaced manuscript pages) and letters no more than 750 words. All submissions must be made electronically, preferably by email to the editor. All authors are encouraged to also provide a photograph of themselves which will be printed alongside their article.

Information for Advertisers

The Bulletin welcomes advertisements from both NYSPA members and commercial enterprises. Total circulation averages 5,500 copies per issue. *The Bulletin* is received by members of the American Psychiatric Association who belong to a district branch in New York State. *The Bulletin* is also sent to the leadership of other district branches across the United States and to New York State legislators, medical libraries, and science writers. *The Bulletin* is published quarterly. Both classified advertisements and display advertisements are available. Please contact the editor for current rates and media requirements. NYSPA members receive a discount of 50% off the basic classified ad rate.

The opinions expressed in the articles or letters are the sole responsibility of the individual authors, and may not necessarily represent the views of NYSPA, its members, or its officers.

Graphic Design & Production

Lydia Dmitrieff
A to Z Design Group
<lydiad@hvc.rr.com>

FROM THE EDITOR'S DESK... By Jeffrey Borenstein, MD

We are living in a time of many challenges but also many opportunities. This edition of the Bulletin highlights issues on a national and statewide level which impact our patients and our profession. First, we are pleased to report a major victory in the NYSPA Medicare/Medicaid Crossover Lawsuit. We also have a report on what psychiatrists should know about the federal par-



Jeffrey Borenstein, MD

ity regulations. The parity law and how it is implemented is even more important in the context of national health reform.

The President's Message focuses on changes in the APA Assembly and NYSPA's response to these changes. The Area II Trustee Report provides an overview of actions taken by the APA Board. The Spring Area II Council Report highlights the issues and initiatives which were dis-

cussed at the council meeting.

The Albany Report summarizes key issues in New York State, including the Executive Budget Recommendations. We also have a response to the NYS OMH Report on Inpatient Suicide. In addition, we have an announcement for NYSPA's Third Annual Scientific Paper Contest. Finally, I am pleased and honored to report that the Public Television series *Healthy Minds* was nominated for two New York Emmy Awards. ■

Area II Trustee's Report By James Nininger, M.D.

The Board of Trustees met last in March. Major issues discussed include: fiscal concerns, the development of DSM-V, the relationship between individual psychiatrists, the APA and the pharmaceutical industry, mechanisms to consider adding or re-establishing needed components or committees, the APA's role in the new emerging health care structure, ongoing concerns about maintaining and enhancing membership, and scope of practice. Additionally, the Board discussed the APA national election process, changes in Psych News, appropriate minority representation on the Board, and possible changes to the APA's corporate structure, which now includes both 501(c)(3) and 501(c)(6) entities.

Regarding financial matters, after a year of sacrifice by many components, large cuts requiring restructuring of the Assembly and increased work load with fewer positions for our dedicated APA staff, we were informed of a 1.4 million dollar surplus for the 2009 fiscal year. The factors that lead to this unanticipated, more positive financial status were increased revenues from the annual meeting (\$200k) and publications (\$400k), continuing success of DSM-IV sales (over \$5 million), improvement in the investment portfolio, and decreased expenses, including salary payments (down by \$1.9 million),



James Nininger, MD

decreased CALF (Committee for Advocacy and Litigation Funding) grants (down by \$130k), publications (down by \$1.1 million), employee benefits (down by \$150k) and outside consultants (down by \$200k). The Annual Meeting in New Orleans is currently ahead

of schedule in number of registrations, but at the time of the Board meeting there were no confirmed Industry-Sponsored Symposia, with a maximum of four possible. 138 exhibits are planned but for a smaller space. The Institute of Psychiatric Services meeting this year had the largest turnout ever. David Kupfer, M.D., Chair of the Task Force on DSM-V, provided an update. Since the list of DSM-V clinical issues under consideration was posted on the internet on February 10th, there have been 27.8 million hits, 338 visits (hits involving spending a period of time on the site) and 3,700 comments to be considered. The length of time and design of the field trials, the cost of the project and the hopeful dovetailing of DSM-V publication with the emergence of the next ICD-M manual remain issues to be refined, debated and monitored. A Board Oversight Committee chaired by Dr. Carolyn Robinowitz reported good communication with Dr. Kupfer's group.

2010 is a time of transition for Psychiatric News. Dr. Jim Krajcski is

retiring as Editor-in-Chief after 12 years, following the Annual Meeting. Advertising revenue has decreased by about 45% from 2004 to 2009 and 20% of the staff have been lost in the last two years with increasing pressure to downsize the paper. Newspapers of all kinds throughout the United States have faced similar declines in revenue. Dr. Jeff Borenstein will chair a task force to look to the future in terms of possible strategies involving electronic publications and the need for a balanced focus between the member benefit/communication aspect of Psych News and the revenue aspect.

The Board also discussed the role of the APA in health reform legislation. On March 20, 2010, APA President Dr. Schatzberg sent a letter to President Obama, Majority Leader Reid and Speaker Pelosi which supported elements of the bill such as prohibiting discrimination based on pre-existing conditions, including mental health and substance abuse in any minimum benefits package, expanding dependent coverage to age 26, and expanding Medicaid. The letter also raised our concerns regarding a number of Medicare issues in the Senate legislation that could inadvertently harm patient access to care. Finally, Dr. Schatzberg's letter supported language in the House bill that maintains the voluntary status of the PQRI program, which has had documented technical problems.

[See **Trustee's Report** on page 5]

Public Television Series *Healthy Minds* Nominated for Two New York Emmy Awards

The public television series *Healthy Minds*, which is hosted by Jeffrey Borenstein, M.D., and supported in part by the American Psychiatric Foundation, was nominated for two New York Emmy Awards on February 25th by the New York Chapter of the National Academy of Television Arts and Sciences.

The two *Healthy Minds* episodes nominated for Emmys in the category of Health/Science: Program/Special are:

Healthy Minds: Autism, Part 2. November 16, 2008. (WLIW21); and

Healthy Minds: PTSD Helping Our Troops. February 15, 2009. (WLIW21).

Produced by WLIW21 for WNET.ORG, *Healthy Minds* premiered nationwide in October 2009, and has been seen in more than 60% of U.S. TV households on public television. The 16-episode series seeks to demystify specific mental health conditions through interviews with leading mental health experts and encouraging personal stories. *Healthy Minds* host, psychiatrist Dr. Borenstein, is CEO and medical director of Holliswood Hospital in Queens, New York. National distribution of the series is made possible by a grant from the American Psychiatric Foundation (APF), APA's philanthropic and educational arm. Since the series' premiere in the New York metropolitan area, *Healthy Minds* has earned numerous awards, including

five Tellys honoring the best in local television.

Healthy Minds is also made possible with support from the New York Academy of Medicine, NARSAD, the van Ameringen Foundation, the New York State Office of Mental Health, Value Options, and the New York City Department of Health and Mental Hygiene.

"My hope for the show is to encourage people who may have a mental disorder to seek help and not to suffer in silence," said Dr. Borenstein.

"The American Psychiatric Foundation is deeply committed to its mission to educate the public on mental health issues," said APF President Richard K. Harding, M.D. "Our partnership with WLIW21 offers the potential on a national scale to increase awareness of psychiatric conditions."

"We are thrilled about the Emmy nomination and the response from stations and viewers across the country. It shows us that *Healthy Minds* is serving a need in people's lives, which is what we set out to do," said the show's executive producer, Theresa Statz-Smith.

"The American Psychiatric Association is proud of its relationship, through the Foundation, with this groundbreaking mental health series. We recommend it to anyone who is interested in mental health issues," said James H. Scully, Jr., M.D., APA medical director and CEO.

A Response to the NYS OMH Report on Inpatient Suicide

By Barry B. Perlman, M.D. and Virginia L. Susman, M.D.

The poet A. Alvarez entitled his book about suicide, "The Savage God" to evoke its lure and horror for its victims and their families. Suicide is one of the most upsetting paths to death for all touched by it. It has been the subject of much study, aiming to understand what drives it and how to diminish it. Changes in public health and education as well as patient care are understood to have contributed to the national incidence of suicide per 100,000 of population in the United States gradually but significantly decreasing from 13.2 in 1950 to 10.8 in 2003. A parallel improvement occurred in New York State where the suicide rate per 100,000 fell from 9.5 during the period from 1980 - 1985 to 6.2 in 2005, the 49th among the 50 states.

No matter the gains for the broad population, it is essential that once a person is hospitalized for mental illness their safety is assured. During June, 2009 the NYS Office of Mental Health released a report about inpatient suicide titled, "Incident Reports and Root Cause Analyses 2002-2008: What They Reveal About Suicides." Their overview addresses inpatient suicide, suicides within 72 hours of discharge, and suicide while on pass or AWOL. During those years the average number of suicides of inpatients was 5 per year and for patients in the 72 hours post-discharge, AWOL or on pass group the rate was about 12 per year. When presented with positive data such as this, the question arises as to how to further think about it. To consider data and draw conclusions from it, a frame of reference is necessary. OMH's overview,

draws on broad numbers about suicide and how it compares to other causes of death, to present a rather gray picture about inpatient suicide. We ask, is that perspective accurate?

The OMH report provides a limited frame of reference when it says that, "... NYS inpatient mental health treatment facilities operate approximately 3,660,000 bed days each year." The decreased numbers of suicides would be better understood if the report included data on total numbers of admissions or discharges, and on average lengths of stay. For instance, in New York State in 2004 there were 107,271 discharges from general hospital inpatient psychiatric units and the average length of stay (ALOS) was 14.81 days. By contrast, in 1990 the number of discharges was 74,563 and the ALOS was 24.77 days. Additionally, state psychiatric centers discharge approximately 7,000 persons per year. Elsewhere, OMH has presented data on where patients are served: in one recent year, general hospitals served 69,939, state psychiatric facilities served 11,288 and private hospitals served 10,378 individuals. These additional numbers flesh out a picture of service delivery and underscore just how infrequent suicide is amongst people served in our mental health system. While we agree that every suicide is a tragedy, 17 deaths (5 inpatient and 12 post-discharge) per 114,000 discharges, a rate of 0.01%, is an achievement to be commended. Another study conducted on all discharges between 2002 and 2007 from a consortium of 6 prominent free-standing private psychiatric hospitals reported 3 inpatient suicides, all by hanging,

among 153,552 discharges, a rate of 0.002%. This lower rate adds support to the conclusion that OMH could have more vigorously emphasized - suicide among inpatients has meaningfully declined. In a review of post-discharge suicides among the same cohort, the consortium has preliminarily identified 49 suicides in the first post-discharge month. We suggest that the immediate post-discharge period warrants more careful study and add that study of this higher-risk period should separate planned discharges from patients who were AWOL or on pass at the time of suicide.

The recent OMH review might have benefited by drawing on earlier work by another interested NYS agency. In May, 1989, the NYS Commission on Quality of Care for the Mentally Disabled (CQC) released a report, "Preventing Inpatient Suicide: An Analysis of 84 Suicides by Hanging In New York State Psychiatric Facilities (1980-1985)." Their study focused on a subset of the 131 inpatient suicides during those years. The suicide rate of 48 per 100,000 inpatients was 0.05%. (For purposes of perspective, the odds that a person who auditions for American Idol will win is 1 in 103,000 or 0.001%.) Thus, over the past 25 years the inpatient suicide rate in NYS psychiatric facilities has dropped from 48 per 100,000 to 5 per 100,000 - clearly, inpatients are far safer now, despite the risks during both eras being very low. A strength of the CQC work was that it studied over 50 variables allowing for data-based conclusions, which providers could incorporate into practice. It recognized, as most scholars have, the unreliability of predicting which persons were likely to attempt suicide. It directed attention to the value of making the environment safer and paid detailed attention to specific matters such as actual times of higher risk and human factors such as making sure safety orders are clearly written and implemented. (We suggest that CQC consider posting their study on their web site.) The OMH report might have been strengthened had it followed up on some important questions it raised, and presented in a fuller context. As an example, the important question of increasingly shorter lengths of stay is raised but not addressed.

The OMH report based its recommendations on the results of root cause analyses. While this methodology is designed to identify system failures, it also is dependent on self-examination, introducing the risk of subjectivity and bias. To counter that risk OMH requests re-investigation when they feel an institution has overlooked something. We do not dispute the value of fostering rigorous scrutiny of processes, and we feel there are important and generalizable lessons to be learned from their summary of root cause analyses. However, it should be recalled that these lessons emanate from reviews of very rare occurrences, and they are unavoidably anecdotal and subjective. The OMH report highlights "communication" deficiencies and makes particular note of a parallel conclusion drawn in a 2005 Joint Commission report. While this certainly may be a contributory problem, the likelihood that similar communication occurred in tens of thousands of other cases where suicide was not the outcome, must not be over-



Virginia L. Susman, MD

looked. We must not return to the approach of believing we can predict who among high risk population is most likely to attempt suicide. Identifying faulty communication as something to eradicate stops significantly short of outlining processes and practices based on data, which if adhered to, could further improve outcomes. Once we understood the frequency and means of suicide by hanging, including where and how it occurred within the hospital, significant environmental changes were made and the rates dropped - this was a major achievement. How to systematically lower post-discharge suicide rates is far more difficult to imagine; yet real data on frequency compels us to address this more sizeable challenge. As we attempt to meet this challenge, in an age of limited resources, it will be important to weigh the benefits of purchasing and building increasingly sophisticated environmental safety elements against the costs of enhancing the skills of staff who provide programs and aftercare. In conclusion, the OMH report makes clear that more than two decades of effort have made our inpatient units far safer. These gains are the result of concerted and collaborative efforts among governmental agencies, hospitals, and the professional teams providing direct care to our patients. While no system should "rest on its laurels," the mental health care system in NYS has done a remarkable job of driving down the number and probability of inpatient suicides. Persons admitted to our hospitals have every reason to believe they are in a safe place. All who worked to realize these goals should feel justifiable pride in what has been accomplished. ■

Barry B. Perlman, M.D. is Director, Dept. of Psychiatry, Saint Joseph's Medical Center, Yonkers, N.Y. Virginia L. Susman, M.D. is Associate Medical Director & Site Director, New York Presbyterian Hospital, Westchester Division

The New York State Psychiatric Association

is pleased to announce its

Third Annual Scientific Paper Contest

Eligibility: Any APA Member in Training (MIT) who is a Resident or a Fellow in an approved program in NYS is eligible.

Details: Contestants are invited to submit a paper, 5,000 words or less. This paper could be an original study, a case report or a review of literature. It must represent the efforts of the contestant. Presenting the work of a faculty member who was assisted by the trainee is not permissible. It is acceptable to present material that was supervised by a faculty member.

Ownership: The paper remains the property of the author before and after the contest.

Judging: A panel of judges, who are not connected to any of the participating programs, will score the entries. All papers will be labeled and identifying information removed before being sent out to the judges. Judges will choose a first place, and two honorable mentions.

Awards: All contestants will receive a Certificate of Participation. Names of contestants and the title of their paper will be published in the Bulletin. The First place winner will be invited to the Fall NYSAPA meeting on Saturday, October 23, 2010 and receive a plaque, a certificate and a cash prize of \$500. The winner will be given 15 minutes to make a power point presentation of their paper. If the winner is from outside the NYC area he/she will be reimbursed for travel and hotel for one night.

Deadlines: Papers should be received by close of business day on Friday, September 3, 2010.

New York State Psychiatric Association
Scientific Paper Contest
400 Garden City Plaza, Suite 202
Garden City, NY 11530
Or e-mail to centraloffice@nyspsych.org

Committee for Scientific Paper Contest
Seeth Vivek, MD (Chair), Secretary, NYSAPA
Ramaswamy Viswanathan, MD, Rep. Brooklyn
William Lewek, MD, Dep. Rep. Genesee Valley
Marvin Koss, M.D. Rep. Central NY
Jack Hirschowitz, MD, Rep. NY County
Emily Stein, MD, ECP Rep
Ada Ikeako, MD, MIT Rep

SAVE THE DATE!

Early Career Psychiatrists Meet and Greet

June 15, 2010

6:00 pm

Merchants East

1125 First Avenue

New York, NY 10065

Contact the NSYPA Central Office
email: centraloffice@nyspsych.org
phone: 516-542-0077
for additional information
or to RSVP

Spring Area II Council Meeting By Rachel A. Fernbach, Esq.

The New York State Psychiatric Association held its annual Spring Area II Council Meeting on Saturday, March 20, 2010 at the New York LaGuardia Airport Marriott in East Elmhurst, New York. NYSPA President C. Deborah Cross, M.D., called the meeting to order. Richard Altesman, M.D. introduced Edward Herman, M.D., who will replace Maria Tiamson-Kassab, M.D. as Deputy Representative from the Westchester District Branch because Dr. Tiamson-Kassab has relocated to California.

Various NYSPA officers provided their reports. Dr. Cross noted that she will be ending her tenure as NYSPA President this Spring and that it has been a pleasure working alongside such talented and hardworking psychiatrists. She recognized Jeffrey Borenstein, M.D., host of the Healthy Minds television program, which has been nominated for two New York State Emmy awards. Glenn Martin, M.D., NYSPA Vice-President, provided an update on the Medicaid Preferred Drug List and the development of regional health information organizations throughout the state. He also reported on the use of electronic health record (EHR) technology in medical offices and the related Medicare and Medicaid incentive programs. CMS recently issued proposed regulations addressing the issue of meaningful use of EHR technologies. Finally, Dr. Martin reminded Council members that NYSPA Central Office has created new HIPAA templates to comply with the changes to the privacy and security rules that took effect in February. The new templates and instructions for use are posted on the NYSPA website.



Marvin Koss, MD

NYSPA Secretary Seeth Vivek, M.D. presented minutes from the November 20-22, 2009 Area II Council Meeting at the Fall APA Assembly Meeting. Darvin Varon, M.D., NYSPA Treasurer presented the 2009 financial statement and financials for January to March, 2010. Dr. Varon discussed reduced revenues for 2009 which are attributable to delayed receipt of dues revenue collected by the APA and fluctuations in the Assembly block grant amount. In addition, he reported that the Executive Committee plans to hire an outside firm to conduct a financial audit for fiscal year 2009, which is in keeping with customary operating procedure.

Executive Director's Report

Seth P. Stein, Esq., NYSPA Executive Director, provided an update on NYSPA's efforts to ensure that private insurance carriers process claims from psychiatrists for outpatient evaluation & management (E & M) services. The NYS Insurance Department recently

shared with NYSPA a revised draft circular clarifying that New York State health insurance carriers must accept and process E & M codes submitted by psychiatrists and may not limit psychiatrists to psychiatry codes only. Psychiatrists can significantly increase their reimbursement by utilizing E & M codes because they often have higher fees than psychotherapy codes. In order to take advantage of the new rule when it is finalized, members may need to resubmit previously rejected claims, but the clarification is retroactive to January 1, 2007.

In another piece of good news, Mr. Stein also reported that NYSPA received a resounding victory in its lawsuit against the NYS Department of Health seeking to enforce the provisions of a 2006 amendment to the New York State Medicaid law mandating that psychiatrists receive 100% payment of the Medicaid share of the Medicare copayment for patients who are covered by both Medicare and Medicaid. In the lawsuit brought by NYSPA and four NYSPA members, a panel of the Supreme Court of New York, Appellate Division, Second Department unambiguously declared unconstitutional a 2008 State statute that retroactively repealed the 2006 law. As a result, the Department of Health must reimburse psychiatrists for crossover claims processed between August 12, 2007 and April 11, 2008. However, since the Court found a state statute unconstitutional, the State has an automatic right to appeal this decision to the New York State Court of Appeals, the highest Court in the State.

Finally, Mr. Stein reported that he has been participating in discussions with the APA Committee on RBRVS, Codes and Reimbursements regarding its five year review of Medicare fees. He has been advocating for an increased focus on CPT codes and reimbursement as a way to enhance the livelihood of APA members.

Legislative Report

Barry Perlman, M.D., Chair of the NYSPA Committee on Legislation, reported that NYSPA has been invited to partner with a newly formed state association of medical specialty organizations. After due diligence and an expression of support from MSSNY, the Executive Committee has decided to accept the invitation to join this coalition. Dr. Perlman also provided an update on Kendra's Law, the New York State assisted outpatient treatment law, which will sunset on June 30 unless extended by the Legislature and Governor. There are ongoing efforts either to make Kendra's Law permanent or extend it for another five years. NYSPA supports a five year extension but would seek amendments to the law that would reduce expenses resulting from staff time spent in court and also enhance enforcement activities.

Next, Dr. Perlman reported on NYSPA's ongoing discussions with OMH regarding its recent guidelines on use of ECT in youth and adolescents. He recently participated in a conference call with Mr. Stein and Lloyd Sederer, M.D., OMH Medical Director, to express NYSPA's concerns regarding the guidelines and suggestions for improvement. While the guidelines do not have the force of law, it is a publicly available and potentially influential document. In addition, Laura Fochtmann, M.D., a NYSPA member with expertise in the use of ECT in youth and adolescents,

prepared a flow sheet for evaluating appropriate use of ECT, which was shared with Dr. Sederer.

Dr. Perlman reported on a bill pending before the NYS Legislature regarding the participation of health care professionals in torture or improper treatment of prisoners. NYSPA is concerned that imprecise language in the bill may result in it being used against psychiatrists in cases where medical care and treatment provided was in keeping with generally accepted psychiatric principles NYSPA will advocate for clarifications to the bill.

Richard Gallo, NYSPA Government Relations Advocate, provided an update on several pieces of pending legislation that implicate the corporate practice of medicine doctrine. NYSPA believes that the proposed bills would violate existing state law prohibiting the practice of medicine by unlicensed for-profit or



Richard Gallo

not-for-profit businesses and plans to oppose the legislation in order to prevent improper encroachment on the medical profession.

Regarding the 2010-11 Executive Budget, Mr. Gallo reported that the Office of Mental Health and community mental health services fared well considering the dire economic straights facing New York. However, the budget does call for a reduction in the small business subsidy used to pay for benefits required under Timothy's Law. If enacted, the annual subsidy would be reduced from \$100 million to \$50 million given the additional reductions that were adopted in the 2009-10 deficit reduction plan.

In other budgetary news, Mr. Gallo reported on a proposal for an extension until June 1, 2014 of the exemption from the professional licensure requirements contained Article 154 of the Education Law that applies to certain individuals employed at facilities operated, licensed or funded by OMH, OASAS and OMRDD.

In addition, Mr. Gallo reported on a handful of leadership changes in the Assembly and Senate that are of particular interest. Assemblyman Peter Rivera (D-Bronx), who has served as Chairman of the Assembly Mental Health Committee for years, was named Assembly Speaker ProTempore, while Assemblyman Felix Ortiz (D-Brooklyn) has been tapped to succeed Assemblyman Rivera as Mental Health Committee Chair. Assemblywoman Amy Paulin (D-Scarsdale) is now Chair of the Assembly Alcohol and Substance Abuse Committee formerly headed by Assemblyman Ortiz. In the Senate, Senator Thomas Morahan (R-Rockland), former Chair of the Senate Mental Health Committee under the Republican majority, was named chair



Barry Perlman, MD

of his old committee by Senate Democrats.

Nominating Committee

Dr. Perlman, NYSPA Past-President and Chair of the NYSPA Nominating Committee, presented the proposed slate for the NYSPA 2010 elections:

President	Glenn Martin, M.D.
Vice-President	Darvin Varon, M.D. Seeth Vivek, M.D.
Secretary	Richard Altesman, M.D. Ramaswamy Viswanathan, M.D.
Treasurer	Jeffrey Borenstein, M.D. Edmond Amyot, M.D.

There being no nominations from the floor, the slate was unanimously approved. Elections will be held in May, 2010.

Assembly Update

The Council discussed the Assembly plan for downsizing Assembly representation and changing to representation by state association, which is to be implemented at the May, 2010 Assembly meeting. As required by the plan, the Council adopted a special rule for designating Council members to the New York State delegation to the APA Assembly in order to reduce the number of delegates from 19 to 14.

The Council heard brief presentations from various candidates for Assembly office, including Jo-Ellen Ryall, M.D. and Scott Benson, M.D., Candidates for Assembly Recorder, and Ann Sullivan, M.D. and Khushro Unwalla, M.D., Candidates for Assembly Speaker-Elect.

OMH Report

Lloyd Sederer, M.D., OMH Medical Director, provided an update on OMH activities, including the issuance of new clinic standards of care, new regulatory reforms and Medicaid financing reforms.

MIT Deputy Representative Election

Dr. Cross announced that the winner of the election is Michael Reinhart, M.D., a resident at SUNY Downstate in Brooklyn.

Area II Trustee's Report

James Ninger, M.D., Area II Trustee, provided an update on APA finances and membership. The 2009 budget included a \$1.4 million surplus, which was the result of reduced expenditures and unexpected increases in revenue from APA publishing and the annual meeting. To date, APA membership has decreased by 600 individuals. In addition, the Board of Trustees voted to shorten the time period for national elections from 5 months to 3 months and to implement electronic voting for those members with email addresses on file.

[See **Area II Council** on page 5]

Albany Report continued from page 1

The SID now concurs with NYSPA's reading of the law and will so instruct insurers and HMOs. NYSPA wishes to thank the SID staff who worked on this matter and also the Medical Society of the State of New York (MSSNY) for their participation and support.

Executive Budget Request for Mental Health Services

The 2010-2011 Executive Budget Request proposes major spending cuts to confront the State's escalating financial problems. However, proposed funding for mental health services fares well by comparison to other state agencies. Details about the Executive Budget Request for mental health services, can be found on-line at:

<http://www.omh.state.ny.us/omhweb/budget/2010/>.

The Senate and the Assembly, following

their joint hearings on the Governor's proposed budget, have each prepared their own budget proposals. Neither House did much to alter the Governor's recommendations for programs funded or operated by the State Office of Mental Health (SOMH). The chart

below shows highlights from the Governor's SOMH request and the Assembly and Senate positions on those items. (See table below).

NYSPA's current posture on the Budget with respect to our areas of interest is

"so far, so good." We will, of course, continue to closely monitor developments and work with other mental health and related organizations to help assure the best possible budgetary outcome for the full array of mental health programs and services. ■

EXECUTIVE BUDGET RECOMMENDATIONS	ASSEMBLY	SENATE
Adult home reinvestment of \$1M relating to adult home litigation	Accepts	Not addressed
NY/NY III bed development	Accepts	Reduces by \$1M
Proposes State recovery of exempt income from residential programs	Rejects	Rejects
Rebase DSH methodology for 2008	Accepts	Accepts
Increase number of days for substitute caretakers at family care providers	Accepts	Accepts
Support conversions to Personalized Recovery Oriented Services (\$9M)	Accepts	Reduces by \$4.5M
Complete reconciliations of Comprehensive Outpatient Programs	Accepts	Reduces \$2M rate appeals
Eliminate Unified Services funding	Accepts	Accepts
Extend 4-year social work licensure exemption to June 1, 2014	Rejects	Accepts, and extends to other state agencies

Trustee's Report continued from page 2

In the 2009 calendar year, the APA-PAC contributed \$256k to 102 candidates for office. Average contribution per capita rose from \$132 to \$145 and the total for both dollars and donors are above average and represent non-presidential cycle highs. The PAC's activity during the year has helped secure APA's seat at the table on health reform discussions. The APA Advocacy Day this year, which had already been scaled down, was hampered by its being scheduled in the middle of a huge snow storm but the intrepid travelers who attended made it a productive and enjoyable time.

In other news, the Board voted to shorten the time period of the APA national elections from five to three months so that there will be a two month campaign period and one month ballot period. Additionally, the plan to move to an all electronic national election is

being postponed by one year so that voters without a valid email address can receive a paper ballot for the 2011 election. Several candidates have expressed an interest in using blogs and social networking sites for campaigning. It was decided that these modalities will not be permitted for the 2010 and 2011 elections, but as these forms of communication are becoming more and more common, particularly by younger members, the issue will be readdressed in the future. Members frequently express an interest in more direct exchange with candidates, a wish to receive answers to particular questions, and dissatisfaction with the somewhat unrevealing statements currently put forward by the candidates.

The Board discussed a report from the Ad Hoc Work Group on Future Relationships with Industry, which is chaired by Dr. Sidney Weissman. The

report recommended that relationships with an outside organization must foster and aid the APA mission, must not foster goals that are counter to those of the APA and that the APA shall not market products it does not control other than the usual and accepted member benefits, such as insurance coverage, without the approval of the Board of Trustees. The Work Group also recommended the development of a Committee on Disclosure and Potential Conflicts of Interest.

Dr. Carol Bernstein, APA President-Elect, gave a preliminary report from the Board of Trustees Ad Hoc Workgroup on Governance Restructuring that she Co-Chairs with Dr. Ann Sullivan. The Workgroup has been charged to develop methodology for Councils requesting modifications in their structure or charge, including formation or reinstatement of commit-

tees or councils, to recommend changes in the overall governance of the APA, including the BOT, Assembly, etc. and to consider changes in the relationship between the APA and the district branches. In February, the Workgroup recommended the reinstatement of the Committee on Psychiatric Dimensions of Disasters which will report to the Council on Research and Quality Care. The Workgroup recommended the formation of a Committee of Members-in-Training, details of which remain to be worked out. There were no other substantive discussions, but a promise for future feedback and guidelines to come. I look forward to seeing many of you at the Annual Meeting in New Orleans. Please feel free to contact me (nininger@bestweb.net) with any questions, comments, or concerns. ■

President's Message continued from page 1

from the exposure and enjoyed the variety, I remain convinced that NYSPA represents our psychiatrists in a unique manner which is not present elsewhere in the country. That is why I and your other officers have fought so hard to make sure that every member's voice is heard, both at the state and the national level.

As many of you know from reading my prior columns, the national APA has been in the midst of a significant financial downturn; one which has necessitated a serious cutback in the representation of NYSPA to the national APA Assembly. On Saturday March 20, your NYSPA Council took steps to ensure that such downsizing in NYSPA's representation would be achieved as fairly and equitably as possible. By now all of you have heard reports from your DB representatives as to how NYSPA will deal with the shrinkage of our national

delegation to the APA Assembly. For the May 2010 Assembly NYSPA will have 14 general representatives along with your Vice President and President (Glenn Martin and me). Those 14 representatives will represent 11 of NYSPA's 13 DBs, and the 2 remaining DBs will each share a rep. Those DBs who will be sharing a rep are Northern NY and Central NY and West Hudson and Mid Hudson. The plan approved by the Council sought to balance the largest DBs and the smallest DBs; the downstate DBs and the upstate DBs. New York County DB alone has almost half of NYSPA's members (close to 2,000), while some of our DBs have fewer than 100 members.

At this time, your NYSPA officers are committed to ensuring that the NYSPA Council continues to have broad representation from every DB. With that in mind, each DB will continue to main-

tain the number of reps and dep reps it had prior to this downsizing for purposes of the Council meetings. As an example, Westchester and Greater Long Island each had 2 reps prior to the downsizing. Now they will each have an Assembly Rep and a State Rep, both of which are critical to the continued functioning of NYSPA and the Council. Deputy reps will also continue to be vitally important to Council functioning and our Committee representation. As you know, the NYSPA Council meets twice a year in addition to the APA Assembly meetings. These March and October meetings have traditionally included NYSPA committee meetings. We have a number of highly active and well functioning committees, Economic Affairs, Legislative, Psychiatry and the Law and Public Psychiatry to name only a few. Additionally, our MITs (residents) and E.C.Ps (Early Career

Psychiatrists) are energetic and eager to continue their involvement at the state and national level. With much of the future of medicine switching to the states, NYSPA must have a strong, active and energetic Council to meet the challenges of our professional future. Glenn Martin has been an outstanding Vice President and (he is running unopposed for President) will be an extremely competent and dedicated President whose priority will be to ensure that NYSPA and its members are effectively represented, both nationally and statewide. The challenges facing NYSPA in this coming year are great, but our officers, members and staff are dedicated, committed, and incredibly smart. I am proud to have been your President for these four years and know that as I retire from the Presidency I leave our organization in good hands. ■

Area II Council continued from page 4

Dr. Nininger announced that James Krajewski, M.D., Editor of PsychNews, plans to retire and that Carolyn Robinowitz, M.D. will take over as interim Editor. Proposed changes to the DSM were posted on the internet in

February and approximately 2,700 public comments have been received to date. Finally, NYSPA plans to send out an e-survey to members requesting feedback on the recommendations of the Draft Report of the APA Workgroup

on Relationships between Psychiatrists and the Pharmaceutical and Medical Device Industries.

The meeting was concluded with reports from the following NYSPA Committees: Public Psychiatry,

Addiction Psychiatry, Children and Adolescents, Economic Affairs, ECP, MIT, and Presidents/President-Elects. ■

Parity Regulations continued from page 1

of the regulation developed an additional level of inquiry for determining whether these types of limitations are applied equitably to medical/surgical and MH/SUD benefits. Under the rule, any NQTL applied to MH/SUD benefits must be (i) comparable to and (ii) applied no more stringently than those applied to medical/surgical benefits. First, plans may not apply an NQTL to MH/SUD benefits that does not exist with respect to medical/surgical benefits. For example, plans may not require preauthorization for all inpatient MH/SUD benefits if the same preauthorization requirement is not applied to all other inpatient services. Second, even if the same NQTL is in place for both medical/surgical and MH/SUD benefits, different application of the same NQTL will violate the rule. An example of this prong of the test would be a plan that conducts concurrent review for inpatient MH/SUD benefits but conducts retrospective review for inpatient medical/surgical benefits. The federal rules also prohibit health plans from maintaining separate deductibles for MH/SUD benefits and medical/surgical benefits, even if the amount of the deductible is the same. Finally, there have been some questions raised regarding whether the federal law and regulations apply to Medicaid managed care organizations and mental health advocates are awaiting official guidance on this issue.

Intersection with New York State Law

Timothy's Law, New York's mental health mandate that became permanent in 2009, requires all group health plans to provide coverage for at least 30 inpatient days of treatment and 20 outpa-

tient days of treatment for all mental health diagnoses that are covered by the health plan provided to New York State employees and their families, which covers essentially all mental illnesses. In addition, among other things, Timothy's Law requires employers with more than 50 employees to provide full coverage for schizophrenia, psychotic disorders, major depression, bipolar disorder, delusional disorder, panic disorder, obsessive compulsive disorder and bulimia and anorexia. Finally, a separate New York law requires health plans to provide at least 60 days of outpatient treatment for alcoholism and substance use disorders.

A significant limitation of the federal law is that it fails to require health plans to provide coverage for all or even certain MH/SUD diagnoses. Therefore, under the federal law, plans could potentially provide coverage for certain mental illnesses but not others, as long as the benefits provided are at par with other non-MH/SUD benefits offered under the plan. However, when combined with the powerful mental health mandates included in Timothy's Law, this limitation not only loses its teeth, but is altogether eliminated.

Under the federal guidelines, the Timothy's Law 30/20 minimum that applies to essentially all mental illnesses will be expanded to provide complete parity for those same diagnoses. Pre-existing limits on inpatient hospital stays and outpatient mental health visits will disappear. In fact, benefits, coverage limitations, deductibles and co-payments (for both in-network and out-of-network services) for mental health will become the same as for all other

medical conditions. Further, New York's minimum 60-day outpatient alcoholism treatment benefit will be expanded into a parity benefit for outpatient *and* inpatient treatment of alcoholism and substance use disorders. There is an exception under ERISA, the federal law regulating employee benefits, for health plans provided by employers who are self-insured, large plan multi-state employers and labor unions. ERISA-exempt health plans are not subject to state insurance mandates such as Timothy's Law and, therefore, are not required to cover any specific mental health diagnoses. ERISA-exempts, however, will be subject to the new federal parity law and will be required to provide parity in benefits with respect to any mental health or substance use disorder benefits offered under their plan.

In sum, all group health plans that are subject to MHPAEA and Timothy's Law (and that are not ERISA-exempt) will be required to provide full parity in connection with financial requirements and treatment limitations imposed on essentially all MH/SUD diagnoses. This powerful combination of state and federal law more than enhances mental health and substance use disorder benefits in New York State -- it creates a multiplier effect, whereby the whole is far greater than any of the individual parts.

The Future

It remains to be seen how true parity will play out in the insurance marketplace. The insurance industry has repeatedly argued that the requirement for combined deductibles will be difficult to implement as well as cost-prohibitive. Carve-out companies expect

difficulties in reworking their infrastructure to accommodate the new rules for management of mental health benefits, parity in prescription drug benefits and reimbursement rates. In fact, a group of managed behavioral healthcare organizations has brought an action in federal court seeking to enjoin the federal government from implementing and enforcing the federal parity regulations. Regardless of the ultimate outcome of the litigation, the new parity requirements are likely to have an adverse impact on the financial health of the mental health carve-out industry, which is likely to affect mental health providers and their patients.

Notwithstanding the challenges ahead, Timothy's Law, MHPAEA and the final interim regulations represent major victories in the longstanding fight for mental health parity. For new plan years commencing on or after July 1, 2010, individuals seeking MH/SUD benefits, particularly in New York, should expect an unprecedented level of parity between MH/SUD benefits and other benefits. In addition, the Patient Protection and Affordable Care Act (P.L. 111-148), the health care reform bill recently passed by Congress, includes provisions confirming that the parity protections of the MHPAEA will continue to apply to minimum benefits packages. It seems clear that the parity movement has truly turned a corner and that significant change lies just ahead. ■

Medical Professional Liability Insurance Designed for Psychiatrists

TOP
TEN

Reasons to Join The Psychiatrists' Program

1. Discounts available for part-time, early career, child and adolescent, and moonlighting psychiatrists, and much more!
2. Endorsed by the American Psychiatric Association
3. Top-notch legal counsel
4. Both occurrence and claims-made coverage available*
5. Highly rated insurance carrier
6. Coverage for forensic psychiatric services and administrative defense benefit included
7. Policies issued require the insured's consent to settle - no "hammer clause" (may vary by state - see policy for details)
8. Psychiatric-specific risk management services including the toll-free Risk Management Consultation Service, a quarterly newsletter, CME seminars and more!
9. Vicarious liability coverage is available
10. Complimentary access to online customer service, risk management library, online education center, multimedia presentations, and more!

* may vary by state, and subject to individual account underwriting

The Psychiatrists' Program
Medical Professional Liability Insurance
Designed for Psychiatrists

www.psychprogram.com
(800) 245-3333, ext. 389
TheProgram@prms.com

PRSRT STD
US POSTAGE
PAID
Permit #9161
Monsey, N.Y.

New York State Psychiatric Association
Area II Council - American Psychiatric Association
400 Garden City Plaza
Suite 202
Garden City, NY 11530

To receive the E-Bulletin, email NYSPA at centraloffice@nyspsych.org Read
The Bulletin online at <http://www.nyspsych.org/bulletin>