THE BULLETIN

NEW YORK STATE PSYCHIATRIC ASSOCIATION

Spring 2006, Vol. 49, #1 • Bringing New York State Psychiatrists Together

President's Message: NYSPA's Position Regarding Sexually Violent Predator Legislation

By Barry Perlman, M.D.

Barry Perlman, M.D.

The goal of civilly committing sexually violent predators (SVP) in New York State at the completion of their terms of incarceration, which had long been a "back burner" issue, jumped to the fore with the publication of an article in The New York Post during the summer of 2005 which informed that, using current civil commitment laws, " The Pataki administration had quietly begun locking up dangerous sex fiends in a Manhattan mental institution after they complete their prison terms…". As I read The Post article, I was aghast to learn that many of the "monsters", as they were referred to, had received sentences of only 3 1/2, 4 1/2, 6, & 7 years. It seemed an affront that such heinous crimes had been so lightly punished. The New York Times of November 16, 2005 contained 2 related articles. One told of a repeat sex offender being sentenced to 50 years to life for the murder of a 12 year old boy in 1998. The other informed that a judge had ruled that NYS was illegally holding 12 convicted sex offenders in a mental hospital after they had served their prison sentences. We believe the former, imprisonment, is the better way to go rather than the latter, civil commitment.

The controversy regarding the use of civil commitment at the end of terms of imprisonment has been an issue of national concern since 1989 when it was first utilized by the state of Washington ~~State~~ and 1997 when the U.S. Supreme Court upheld Kansas' SVP law. (Please see Karin Moran's article, "Civil Commitment for Sexually Violent Predators" in The Bulletin Winter 2005 – 2006, V 48 # 4.) From the time the debate was first joined the APA has taken a clear and unambiguous position in opposition to such use of civil commitment. The APA filed an amicus curiae brief in the U. S. Supreme Court case Kansas v. Hendricks. At that time Richard J. Ciccone, M.D., a NYSPA member, was quoted as saying that the Kansas law does not refer to a mental disease or disorder which would allow for civil commitment but rather to a mental abnormality which it defines "as having been convicted of committing or attempting to commit a sexual crime and being likely to commit the act again based on a preponderance of the evidence. In 1998 the APA's Board of Trustees approved a report by the Council on Psychiatry and the Law addressing sexually dangerous offender. At that time Paul Appelbaum, M.D., who had been Chair of the task force at its creation, said, "We were concerned that psychiatry was being used to preventively detain a class of people for whom confinement rather than treatment was the real goal. This struck many people as a misuse of psychiatry."

Despite many states having adopted statutes similar to that of Kansas, NYSPA has continued to reject the use of civil commitment in these situations as being poor public policy since it first wrote a memorandum of opposition in 1998 to Senate Bill S-751. Today NYSPA opposes proposed legislation which would permit the civil commitment of SVPs at the end of their term of incarceration for a number of reasons. First, it creates an unwarranted link between persons with mental illness and sexually predatory behavior. We believe this is a retrogressive step in the face of NYSPA's work along with other groups which advocate on behalf of those with mental illness to erase the stigma which often accompanies the condition. Second, the cost of "housing and treating" SVPs would likely rise to close ~~an~~ a half billion dollars per annum within a decade. (It is estimated that it would cost $200,000 per year in today's dollars to house and treat an SVP. It is projected that approximately 200 SVP would enter the system annually. Thus in a decade the cost of the program would rise beyond $400 million per year.) We are concerned that those funds will be attributed to the cost of providing publicly funded men-

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Commissioner Carpinello Continues Suicide Prevention Efforts

By Karin L. Moran, M.S.W.

As was recently reported in a feature *Bulletin* Article, New York State Office of Mental Health (OMH) Commissioner, Sharon Carpinello, R.N., Ph.D., launched an innovative suicide prevention campaign referred to as SPEAK (Suicide Prevention Education Awareness Kits) in May of 2004. The initiative followed recommendations made in the President's Freedom Commission on Mental Health Report which called for increased suicide prevention strategies.

At the Summit, Elsie and Gerald Weyrauch, center, founders of the Suicide Prevention Action Network (SPAN) presented OMH Commissioner Sharon Carpinello, left, and Gary Spielmann, right, with SPAN's Fire and Ice Award. The "Ice" symbolizes the grief that a survivor experiences following the death of a loved one, and the "Fire" represents the conversion of grief into suicide prevention activities that will spare others grief.

Since the programs inception, Commissioner Carpinello has continued her efforts to stem the number of suicides in New York State through several prevention focused initiatives. One such effort was New York's first Statewide Summit on Suicide Prevention recently held in Saratoga Springs, New York. Over 250 local officials, mental health providers and stakeholders from across the state attended the two day event that focused on assisting communities with the development of suicide prevention strategies and increasing their capacity to implement such plans.

Set to a slide show backdrop depicting Samaritans Life Keeper Quilt – a memorial to hundreds of New Yorkers lost to suicide; Commissioner Carpinello underscored the importance of such an initiative as she reported on the suicide rate in New York State, "With more than 1,200 suicide deaths annually, New York State ranks sixth

[See **Suicide Prevention** on page 6]

Albany Report

By Richard J. Gallo and Karin L. Moran, M.S.W.

On January 17, 2006, Governor Pataki released his 2006-2007 Executive Budget Request. In general, NYSPA is pleased with the Governor's proposed budget as it relates to support for mental health programs. The proposal is more generous to mental health than in past years and includes funding for a number of new community-based initiatives.

One such initiative, referred to as *"Achieving the Promise for New York's Children and Families,"* is an expansive and comprehensive mental health program dedicated to children's services. The initiative has several components, including a $33 million *Child and Family Clinic Plus* program that OMH lauds as a "transformation of local mental health clinics from passive programs waiting for clients to present, to active programs that will intervene earlier in a child's developmental trajectory." In addition, the initiative seeks to: substantially increase children's mental health screenings and assessments, expand clinical services, and increase in-home treatment services. Also, $21.5 million is slated to fund 450 additional Home and Community Based Waiver (HCBW) slots (300 OMH and 150 OCFS), $0.45 million for telepsychiatry services, and $6.3 million for a three-year 2.5% Cost of Living Adjustment (COLA) for children's community based program staff. In total, the Governor proposes an annual investment of $62 million for the program.

Other noteworthy mental health appropriations include:

- $6.5 million for supported housing.
- $7.7 million ($1.1 billion annualized) for the development of additional housing capacity for the New York / New York III agreement – a ten year initiative to provide 9,000 units of supportive housing for individuals and families with special needs who are chronically homeless or at risk of homelessness. 5,500 units are allocated to individuals and families with serious mental illness.
- $1.5 million in annualized funding and an additional $400,000 grant for suicide prevention efforts.
- $2 million initiative to sponsor a managed care demonstration project for the provision of services to individuals with co-occurring disorders.
- $2 million for the implementation of the 2005 Geriatric Mental Health Act.
- $0.6 million to provide for increased inmate services.
- $68 million for the initial phase of a $226 million capital plan to rebuild the Bronx Adult and Children's Psychiatric Centers.
- $28 million for initial phase of plan to maintain Kirby Forensic Psychiatric Center.

Not all of the Executive Budget proposal for mental health services can be seen as welcome from psychiatry's point of view. One not so welcome item is the Governor's recommendation to allocate major funding, within the context of the Office of Mental Health's budget, for civil commitment of sexually violent predators (SVP). Among other things *(See President's Report)*, NYSPA is gravely concerned about the potential for this misuse of psychiatry embodied in the enabling legislation which accompanies the budget proposal. As for the proposed funding, it includes:

- $26.8 million to support the civil commitment of sexually violent predators

[See **Report** on page 3]

Legislative Brunches

By Karin L. Moran, M.S.W.

Viviane Pender,M.D., Congressman Charles Rangel, and Barry Perlman, M.D.

The Westchester Psychiatric Society and New York City based district branches of the APA held their annual Legislative Brunches on December 4th and 11th. The Westchester Brunch was moderated by Westchester District Branch Legislative Representative, Anna Dolan, M.D., while the New York City event was moderated by Viviane Pender, M.D., New York County District Branch Representative.

As is customary, each of the events included a legislative overview of the coming year, presented by NYSPA President, Barry Perlman, M.D., who highlighted NYSPA's legislative priorities for 2006 – Timothy's Law, Sexually Violent Predator legislation, the Commission on Health Care Facilities in the 21st Century and Crossover Funding.

During each of his addresses, Dr. Perlman articulated his desire to see mental health parity legislation finally enacted in New York State; his concern over the potential misuse of psychiatry in relation to pending sexually violent predator legislation; the need to monitor deliberations by the Commission on Health Care Facilities in the 21st Century; and the continued need to fully restore Medicaid Co-insurance payments for Medicare / Medicaid dually eligibles.

Although Perlman's remarks encompassed the above mentioned array of topics, it was parity that seemed to capture the attention of legislators at the Westchester event, where despite an early morning snowstorm, Congressional Representatives Nita

[See **Brunches** on page 4]

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FROM THE EDITOR'S DESK... By Jeffrey Borenstein, M.D.


Jeffrey Borenstein, M.D.

This edition of The Bulletin highlights a number of ongoing as well as some new legislative and public policy issues. The President's message focuses on the NYS Commission on Healthcare in the 21st Century, and how the commission would impact the state's mental health system. Given the lack of excess capacity in the mental health system, changes in the Article 28 hospitals' capacity require an evaluation of the consequences on the entire mental health system. We also report on another new initiative which has received much attention in the press: the controversy about civil commitment for sexually violent predators and the concern about the potential effect of this initiative on psychiatric care.

The new Medicare prescription drug plan has also received much media attention. We provide information about the program, in particular how this program will impact the benefits of a significant population: people with dual eligibility for medicare and medicaid. We also provide information about Preferred Drug Programs and the recommendation of NYSPA's task force on this important topic.

The Albany report focuses on the upcoming Legislative Session including the budget and parity. We also have the Area II Trustee Report as well as an overview of the Fall Area II Council Meeting. ■

President's Message continued from page 1

tal health care in NYS which will then be said to be too expensive and subject to unwarranted cuts. At the bottom line the SVP program will become an unstoppable competitor for community treatment dollars to the detriment of the latter. Third, we remain concerned about using the public mental health (MH) system in an expedient manner to solve a problem inchoate to the criminal justice system. While making use of the mental health system for what appear to be political ends may not seem like a "big deal" to many, it alarms psychiatrists who have seen governments misuse mental health systems in other countries with terrible consequences for the publics' trust of our profession and the MH system. The definition of a SVP is a judicial finding not a psychiatric diagnosis. No psychiatric diagnosis is contingent on the presence of an individual having committed a felony from a defined class. Finally, we question why those convicted of sexual offender felonies, if deemed mentally ill, receive no targeted treatment during their term of incarceration. It would seem disingenuous given the expression of concern to initiate treatment only at the conclusion of their sentences.

While NYSPA will continue to raise its concerns about and oppose the passage of SVP bills as presently proposed, we do recognize society's legitimate concern for securing public safety. In recognition of that concern we offer an alternate approach based in the State's past use of civil commitment when it created the Narcotic Addiction Control Commission (NACC) in 1966 for those suffering with addictions who had been arrested or convicted for related felonies or misdemeanors. (Despite some success that program was ended due to being too hastily made operational and its being poorly administered and implemented.) However, the NACC precedent is worthy of consideration. The creation of ~~a~~ either a new agency or one under the auspice of the Department of Correction which purchased treatment services from either an outside vendor or OMH to "treat" SVPs would offer several advantages over the current proposals. It would avoid identifying SVPs with persons diagnosed with and requiring traditional psychiatric care and would be less likely to engender an inadvertent mistrust of the public MH system. It would assure that SVPs were not mixed with persons being treated in the state psychiatric centers for usual psychiatric disorders, an expressed concern of many advocates for persons with mental illness. It would separate the budget for the SVP program from the budget of the NYS Office of Mental Health and thus avoid a contest for scarce resources among the several divisions of the agency.

If legislation is passed, no matter what its approach, NYSPA believes it should incorporate several provisions. These include: necessary protection from liability for psychiatrists participating in the process acting in good faith, treatment of costs consequent to the establishment of the program as a separate line item in the budget, inclusion of an alternative program of intensive community monitoring and "treatment", sentences requiring mandatory indefinite parole, evaluation of those convicted as sexual offenders at the time of incarceration in order that they receive "treatment" while in prison.

This article presents NYSPA's position in opposition to the proposed civil commitment of sexual offenders at the conclusion of their sentences, an alternative approach, and those elements which NYSPA believes must be addressed by an any legislation which may become law. NYSPA stands ready to discuss and work with lawmakers to the end of satisfying both their concerns about public safety and our concerns about the impact of such a law on our profession and its relation to society. ■

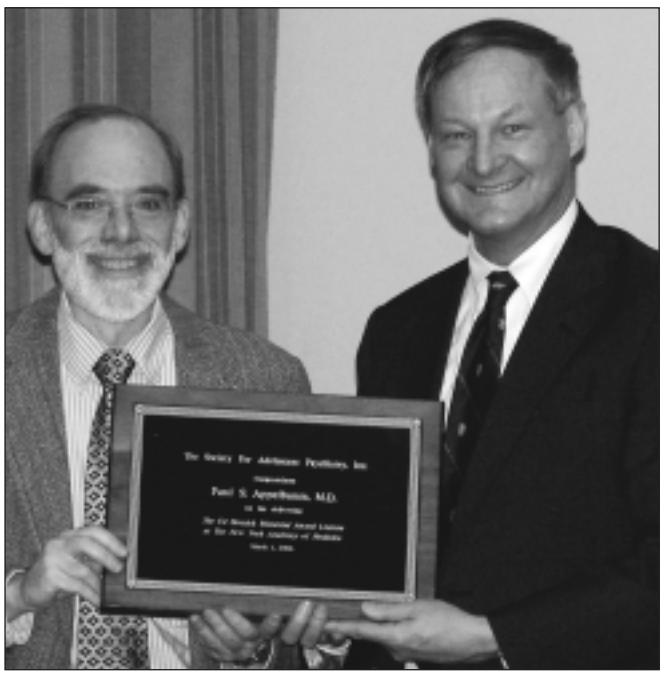
Photo Credit: Jacqueline Federici, RN, MS

Steve Billick, M.D. presents the Ed Hornick Memorial Award to Paul Appelbaum, M.D.

Paul S. Appelbaum, M.D., presented the Ed Hornick Memorial Lecture at the New York Academy of Medicine on March 1, 2006. The lecture which was sponsored by The New York Academy of Medicine Section on Psychiatry, the Society for Adolescent Psychiatry, and the New York County District Branch was entitled "Suicidality in College Students: The Ethical Dilemmas." Dr. Appelbaum is the Professor of Psychiatry and Director of the Division of Psychiatry, Law and Ethics in the Department of Psychiatry at the College of Physicians and Surgeons of Columbia University and Past President of the American Psychiatric Association as well as Past President of the American Academy of Psychiatry and the Law. ■

In Memoriam

Harvey Bluestone, M.D.

Dr. Harvey Bluestone, past President of the New York State Psychiatric Association, past Speaker of the Assembly of the American Psychiatric Association, and past Area II Trustee to the Board of Trustees of the American Psychiatric Association, died on March 11, 2006.

Dr. Bluestone was recognized as an outstanding clinician, educator and administrator as Professor Emeritus of Psychiatry at the Albert Einstein College of Medicine and past Director of the Department of Psychiatry at Bronx-Lebanon Medical Center.

On behalf of the members of the New York State Psychiatric Association, we mourn his death and extend our sympathies to his wife, Eleanor, and their children.

AREA II TRUSTEE'S REPORT By Ann Sullivan, M.D.

Ann Sullivan, M.D.

The Board of Trustees met March 5th and 6th and had a busy session focusing on policy issues, finances, and advocacy. A key policy position on psychiatrist participation in interrogation was drafted; this is a critically important issue due to the interrogation of detainees in Guantanamo.

THE HIGHLIGHTS ARE:

Policy on Interrogation of Detainees

The APA has been in the heat of the controversy regarding the role of psychiatrists in the interrogation of detainees in military custody. The APA position paper on absolute opposition to torture in any form has been in place and promulgated for some time (see on APA website). However, the ethical position of psychiatrists, as medical professionals, in their role in specific individual interrogations of detainees in custody needs to be clearly defined. The APA Board with much input from councils and members has a draft position statement that is going to the Assembly for further discussion and hopefully ratification. The entire position statement can be read on the website but a key paragraph reads as follows:

3. No psychiatrist should participate directly in the interrogation of persons held in custody by military or civilian investigative or law enforcement authorities, whether in the United States or elsewhere. Direct participation includes being present in the interrogation room, asking or suggesting questions, or advising authorities on the use of specific techniques of interrogation with particular detainees. However, psychiatrists may provide training to military or civilian investigative or law enforcement personnel on recognizing and responding to persons with mental illnesses, on the possible medical and psychological effects of particular techniques and conditions of interrogation, and on other areas within their professional expertise.

It is important to note that this refers only to detainees in custody. As our country faces increasingly difficult questions in the arena of human rights, it becomes important that the issues relevant to psychiatrists be thoughtfully and firmly delineated.

Membership

Membership was up again in 2005 nationwide, showing a strong positive trend for the APA. However, the members who may be dropped for dues non-payment increased slightly in 2006. Often this improves in the first quarter of the new year, but please support members remaining with us! We need all psychiatrists to be effective!

The President of the Louisiana District Branch, Dr. Patricia Toups, met with the board and expressed her gratitude to all the members, district branches and national staff for all their help and support in the wake of the Katrina disaster. It was also clear that much still needed to be done!!

Advocacy

The APA has been your active and vigilant spokesperson in Washington on the key issues of Medicaid and Medicare cuts, electronic databases and sharing of medical information, pay for performance and Medicare Part D. A few key points about these issues:

- The 2006 Budget Reconciliation Bill calls for extensive cuts to Medicaid and Medicare totaling over 40 billion dollars over the next five years. APA continues to be a major advocate to preserve the necessary services for our patients. On the positive side, AMA and APA were successful in preventing cuts to payment rates to physicians in Medicare – a 4.4% reduction was in the original bill.
- Pay for Performance is a major initiative of CMS and will be affecting psychiatry in the near future. So far, performance indicators, which may be used to either increase or decrease payments to hospitals and physicians, are being developed in areas of depression treatment, management and outcomes as well as hospital based performance indicators. APA is active in consulting with CMS and advocating for us as these indicators are developed.
- The new federal budget puts aside 169 million dollars to accelerate progress for health information technology, including the development of health care databases nationwide as well as the individual electronic health record. Clearly privacy and confidentiality of sensitive medical information is a key issue for our patients and profession, and APA through its committees and staff is a constant and strident voice to protect patient confidentiality.
- Medicare Part D has caused serious problems in many states for our dually eligible patients. APA is providing information, advocacy for safety net services, and works with our members to try and ensure our patients get the care they need.
- The Medicare Prospective Payment System for acute inpatient psychiatric care had its first series of annual revisions. The joint efforts of APA and the Theori group at the Greater NY Hospital Association have had a major influence on preserving dollars in the system for patient care.
- Other issues on Capitol Hill that we continue to fight for include: elimination of the discriminatory 50% Medicare Co-pay; parity; and incentives to increase the child psychiatry workforce. In the midst of budget cuts, the APA fought and defeated the expansion of Medicare to allow marital and family therapists to bill directly for services. This victory is only because of the vigilance of APA in reviewing all, however small, pieces of legislation that affect us and our patients as they proceed through Congress!
- Good news from California! An attempt to gain admitting and inpatient transfer privileges for psychologists was defeated by our hard working California colleagues.
- Finally, the battle against psychologist prescribing continues and is particularly fierce this year in Hawaii. The Hawaii psychiatrists with considerable assistance both monetary and strategic from national are fighting aggressively to prevent passage of another psychologist prescribing law. The laws and regulations in Louisiana and New Mexico, which allow for psychologist prescribing, are seriously flawed with inadequate training and supervision and the APA is struggling to modify these as much as possible at the local levels.

FINANCE

Budget

- APA has a surplus in 2005 of 4 million, which was immediately placed in the reserves. We have now met our reserve target of 40% of operating expenses!! This puts us in solid financial shape going forward! The 2006 budget is balanced and we have kept personnel costs at appropriate levels. Dr. Jay Scully our CEO and Terri Swetnam our CFO should be congratulated on helping to make APA fiscally sound again!
- Going forward, we need to be mindful of maintaining a balanced budget. In addition, the role of the District Branch grant process, how much and how to share dollars between the district branches and national needs to be reviewed in light of greater fiscal stability.
- Finally, our investment strategies were reviewed. While we increased the flexibility of some investment strategies, a relatively conservative approach continues to be utilized, with fairly good return on investment. The value of our pooled investments improved in market value from 30.5 million in 2004 to 36.4 million in 2005.

GOVERNANCE

- The board approved by-laws language that reaffirms the requirement for dual membership in both the district branch and national APA. This will be forwarded to the Assembly for ratification. Dual membership is vital for the growth and development of the APA at both the national and local levels!
- The board also discussed in detail the relationship between itself and the Assembly and how to enhance communication and the effective working relationship of these key governance bodies. A work group composed of board and assembly members will consider increasing the voting capacity of assembly members on the board, for example, possibly giving the speaker elect a vote on the board.

OTHER ACTIONS

- The Board voted to join the Federation of Medicine Campaign to establish a National Health Museum in Washington DC, at a cost of $10,000 this year. If successful , this would offer a major opportunity to educate the public and reduce the stigma of mental illness.
- The board established a legislative fellowship in memory of Jay Cutler, the previous Director of Governmental Affairs, who championed the causes of the APA for decades in the capital. The presence of a fellow in the Congress is a very positive enhancement to our lobbying efforts.

So far, 2006 has gotten off to a good start!! Let me know your thoughts and comments and as always thanks for your support of the APA!! You can reach me at ann.sullivan @mssm.edu or 718-334-3536. ■

Albany Report continued from page 1

upon their release from prison.

- $35 million in capital resources for the modification of existing facilities and programs related to civil commitment.
- $135 million in capital resources for the construction of a new facility on the grounds of Camp Pharsalia in Chenango County.

Another key budget issue for psychiatry, once again, is the failure of the Governor's proposal to address the continued discrimination against psychiatry with regard to the previously imposed forty percent reduction in reimbursement for services to patients who are dually eligible for both Medicare and Medicaid; i.e., "crossover" restoration. NYSPA representatives will again work to more fully restore Medicaid co-insurance for dually eligible patients of private practicing psychiatrists.

Other Medicaid related initiatives worthy of mention include the Governor's proposal to alter the recently enacted Preferred Drug Program by eliminating the 'physician override' provision, which currently allows physicians final authority to prescribe a 'non-preferred drug' to a patient.

Additional attempts to stem the rising costs of Medicaid include the continuation of the cap on county Medicaid costs and an initiative to create an independent Office of Medicaid Inspector General whose focus would be to: prevent, detect, and investigate fraud, waste, and abuse in Medicaid. In addition, the proposal includes the establishment of criminal penalties for illegally obtained prescription drugs, and increased penalties for Medicaid providers found guilty of Medicaid fraud.

Medicare Part D Transition Assistance...Depending on such things as: weather, moon phases, and constituent outrage, the disposition of this issue can be likened to the life of a ping-pong ball in play. First, the Governor proclaims a six week safety net with Medicaid covering the cost of prescriptions not yet covered by Medicare Part D. Then, the Legislature passes a bill to extend the safety net indefinitely pending resolution of the Part D authorization debacle. The Governor vetoes the bill, the Legislature overrides the veto, and finally, the Governor says, post-override, okay you're right and I'll handle the paperwork.

Additional items of interest in the Governor's Budget proposal include:

- a reduction of Graduate Medical Education (GME) fee-for-service payments by using the lower of current payments or the costs effective on or after 3/1/06;
- cutting inpatient detoxification rates for uncomplicated cases;
- eliminating specialty rates for hospital outpatient mental health programs; and
- eliminating the six-month health insurance coverage guarantee for enrollees in Medicaid managed care or Family Health Plus (FHP).

OTHER LEGISLATIVE MATTERS OF CONCERN FOR 2006

Health Insurance Parity for Mental Illness and Chemical Dependency

For Timothy's Law, the challenge continues. The voices get louder. The numbers increase. NYSPA is working hard with the Timothy's Law Campaign (TLC) to: strengthen grassroots lobbying, recruit additional coalition partners and create a wave of parity based activities throughout the state. How much longer can anyone endure the perpetuation of this most blatant manifestation of discrimination against mental illness?

Scope of Practice Legislation

NYSPA is currently engaged in opposing a far-reaching and fast moving bill to license the practice of naturopathy. Senate Bill 1617–A / Assembly Bill 5208–A would allow non-physician naturopaths to: diagnosis and treat any and all illnesses, disease or injury using both conventional medical means, as well as "natural therapies," which include the administration of chemical or biological compounds or medical devices that have not been approved by the FDA.

We are also closely monitoring a number of potential encroachments on psychiatric practice by psychologists and others. Last year, under the guise of the Kendra's Law extension debate, psychologists made an attempt to expand their scope of practice through a bill that sought to allow them to perform all of the functions reserved to psychiatrists in the original statute with respect to assisted outpatient treatment (AOT) protocols. Fortunately, we were able to defeat the measure but the bill itself is still alive in the Assembly. ■

Medicare Fees for 2006

By Seth Stein, Esq.

On February 8, 2006, President Bush signed the Deficit Reduction Act of 2006 into law. The Act prevented implementation of a 4.4% reduction in Medicare Part B payments to physicians by mandating use of the 2005 conversion factor in 2006. Because of problems is how the annual Medicare conversion factor is updated, Medicare Part B fees would have decreased by at least 4.4%. However, even with the roll-back of the conversion factor reduction, Medicare psychiatric fees for 2006 were decreased by approximately 1% because of changes in the work value, practice expense and malpractice expense components of many psychiatric services.

Medicare carriers will re-process claims previously submitted by participating providers for services rendered in 2006 at the higher 2006 rates. This reprocessing process should be completed by July 1, 2006. Psychiatrists who have not yet submitted claims to Medicare should use the new 2006 fees for all services provided on and after January 1, 2006.

New NYS Medicare Fee Schedules for 2006

Once the 4.4% fee cut was rescinded, NYSPA prepared 2006 fee schedules and a explanatory memorandum that was mailed out to all NYSPA members in mid-March. This mailing is the 18th annual memorandum prepared exclusively for the members of the New York State Psychiatric Association on Medicare issues. In addition, the Medicare fees for 2006 can also be viewed and downloaded from the NYSPA website (~~HYPERLINK http://www.nyspsych.orgwww.~~nyspsych.org) by clicking on the Medicare 2006 Update at the bottom of the homepage. The fee schedules are included in the Members' Only and require a user name and password. If you need help with your password, call or email the NYSPA central office (516 542-0088 or ~~HYPERLINKmailto:centraloffice@nyspsych.org)~~centraloffice@nyspsych.org)

CPT Coding Changes Effective January 1, 2006

There were several changes in CPT codes that became effective January 1, 2006 and were adopted by Medicare.

The follow-up inpatient consultation codes (99261-99263) were deleted. In their place use the following codes for follow-up consultations: in hospital settings, use the subsequent hospital care codes (99231-99233); in nursing homes, use the new (see below) subsequent nursing facility codes (99307-99310); and in the office or other outpatient settings, use the office established patient codes (99212-99215)

The nursing facility care codes (99301-99303) and the nursing facility care subsequent codes (99311-99313) were also deleted. They were replaced by the following new nursing facility codes: initial nursing facility care codes (99304-99306) and subsequent nursing facility care codes (99307-99310).

The psychological testing code (96100) was deleted and replaced with three new codes: psychological testing by physician with report (96101); psychological testing by technician with physician report (96102); and psychological testing by computer with physician report (96103).

Medicare Part D

As an additional service to NYSPA members and their patients, the NYSPA website now includes a detailed memorandum prepared by Seth P. Stein, Esq., and Rachel A. Fernbach, Esq., on the new Medicare Part D prescription drug program which went into effect January 1, 2006. The website includes a description of the new program, the new prescription drug plans, information for dual eligibles covered by both Medicare and Medicaid, and a comparison of drug coverage for 15 benchmark plans. You can access the information by clicking the Medicare Part D link on the left side at the bottom of the NYSPA home page (~~HYPERLINK http://www.nyspsych.org~~ www.nyspsych.org). The information on Medicare D can be downloaded without a password and is available for patients and family members.

The E-Bulletin

Throughout the year, NYSPA provides members with important updates and recent developments in Medicare, confidentiality, managed care, legislative action and other issues of interest to our members through the E-Bulletin. In order to receive E-Bulletins, members must provide their email address to the NYSPA central office either by email (~~HYPERLINK mailto:(centraloffice@nyspsych.org).~~centraloffice@nyspsych.org) or by phone. In the future, NYSPA will rely more and more on email and our website to transmit important information.

ADDITIONAL MEDICARE PAYMENT FOR TREATMENT PROVIDED IN SHORTAGE AREAS

Psychiatrists should be reminded that effective January 1, 2005, physicians will automatically be paid a 10% bonus payment when treating patients in both primary medical care Health Professional Shortage Areas (HPSA's) and mental health HPSA's. In order to be eligible for the ten percent bonus payment, the service being billed must have been provided in an area designated as a HPSA.

In order to be considered for the bonus payment, the name, address, and zip code of where the service was rendered must be included on all electronic and paper claims submissions. The incentive payment is 10 percent of the amount actually paid, not the approved amount, of both assigned and unassigned claims. Incentive payments will be paid separately from the claim payment, on a quarterly basis. A list of HPSA zipcodes in New York is listed on NYSPA website. ■

Legislative Brunches

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Barbara Rosenfeld, M.D., Senator Liz Kruger, and Herb Peyser, M.D.

Lowey (D-White Plains) and Sue Kelly (R-Fishkill), Senators Nicholas Spano (R-Yonkers) and Jeffrey Klein (D- Bronx), and Assembly members Adam Bradley (D-White Plains) and George Latimer (D-Rye) all attended and all addressed the importance of providing New Yorkers with increased access to mental health services, via mental health parity legislation.

Congressional Representatives Lowey and Kelly spoke of federal initiatives such as the Paul Wellstone bill, which has languished for years but seeks to expand on the 1996 Mental Health Parity Act by closing existing loopholes that allow discrimination with regard to co-payments, coinsurance, and deductibles. Congresswoman Lowey's remarks centered on returning Iraq veterans, noting that "Recent statistics estimate at least 25 percent of our servicemen and women returning from Iraq will be in need of mental health benefits…we must meet these needs." Echoing her colleague's sentiments, Congresswoman Kelly pointed to the fact that "studies have consistently shown the correlation between

Congresswoman Susan Kelly and Richard Gallo

access to comprehensive mental health benefits and overall health care costs. Health care costs decrease when benefits are provided. Parity just makes sense."

Senator Spano asserted his belief that "It's time to pass parity legislation in New York State. Advocates and legislators need to work together in identifying a reasonable compromise, understand that it won't be as comprehensive as everyone would like and pass a bill this year. It will, at the very least, be a place to start." Senator Klein reiterated Spano's assertion that parity legislation needed to be passed this year. He also spoke of his work to support TLC efforts, pointing to his district Rally for Timothy's Law last spring.

Assembly members Bradley and Latimer spoke of their commitment to Timothy's Law as well, with Bradley discussing his conferences unwavering support and Latimer encouraging NYSPA to ramp up its public message on the need for such legislation. "Public opinion will create political will…you must increase public awareness" said Latimer.

In addition to Timothy's Law, the highly controversial issue of civil commitment for New York's sexually violent predators was discussed. With members from each

Lloyd Sederer, M.D., Bruce Schwartz, M.D., and Jeffrey Borrenstein, M.D.

house in attendance, both sides of the aisle acknowledged that while no compromise had yet been reached, one was expected. Senator Spano commented that although he understood psychiatry's concern about such legislation he believed that "Some type of bill to address sexually violent predators would indeed be enacted this session." Assemblyman Bradley agreed with Spano's assumption but warned that the Senates current bill was not the answer, pointing instead to an assembly version that would require treatment and extend sentencing.

Topics seemed to vary a bit more the following week at the New York County Brunch which was attended by Congressman Charles Rangel (D-Manhattan), Senators Toby Stavisky (D-Queens) and Liz Krueger (D-Manhattan), Assembly Members Richard Gottfried (D-Manhattan), Pete Grannis (D-Manhattan), Frank Seddio (D-Brooklyn), Nick Perry (D-Brooklyn), Jonathan Bing (D-Manhattan), and Andrew Hevesi (D-Queens), New York City Council Members Robert Jackson and Miguel Martinez, and Lloyd Sederer, Executive Deputy Commissioner for Mental Hygiene in New York City. Senator David Paterson (D-Manhattan) and Congresswoman Carolyn Maloney (D-Astoria) were unable to attend this year's event; however, they did send representatives.

Anna Dolan, M.D. and Senator Nicholas Spano

A wide range of issues were discussed as Senator Kruger and Assemblyman Gottfried both touted their belief that a single payor system is at this point, the only answer in providing access to quality health care. Assemblyman Gottfried went on to discuss the complicated and confusing nature of ~~Medicaid~~'s new Part D program; specifically his concern regarding the complex maze seniors must maneuver through in attempting to choose the most appropriate plan.

Agreeing with his colleague's assessment of the new initiative, Assemblyman Grannis called the program "An absolute catastrophe" going on to ask "What were they thinking?" He then focused his remarks on the issue of Timothy's Law; encouraging the group to closely examine the State's Empire Plan as a model of parity based benefits. He went on to suggest that any bill that attempted to bifurcate between large and small employers was a mistake.

Assemblyman Bing echoed the concerns of fellow legislators with regard to ~~Medicaid~~ Part D and discussed his worry that the primary means of communication between the federal government and seniors regarding the new program is through the internet-- a realm that many seniors are not familiar with. ■

Position Statement on Sexually Violent Predator Civil Confinement Legislation

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

TheNew York State Psychiatric Association (NYSPA) opposes the enactment of a sexually violent predator civil confinement statute in the State of New York. NYSPA is the statewide professional medical association representing over 4,500 psychiatrists practicing in this state. NYSPA is a constituent component of the American Psychiatric Association, the national professional psychiatric organization representing over 30,000 psychiatrists in the United States.

A "sexually violent predator civil commitment law" would, if enacted, provide for extended and potentially indefinite civil retention of so-called sexually violent predators after completion of their prison sentences. There are presently two bills introduced in both houses of the New York State Legislature that would create a new Article 10 in the Mental Hygiene Law establishing a procedure for civil commitment of persons adjudged to be "sexually violent predators" upon completion of their prison sentences. (S-6325 (Volker) and A-9282 (Silver))

Sexually violent predator (SVP) legislation in its current form is a response to the social problem of release of prisoners who have completed their sentences for crimes involving sexual violence and who are perceived to be likely to commit similar offenses in the future. In many instances, persons accused of sexually violent crimes have been able to secure relatively short prison sentences by plea bargaining to avoid the need for their victims, often children, to testify in court regarding the crimes committed against them. Throughout the country, there is a perception that society is not doing enough to protect children and adults from individuals who have a prior criminal record of sexual violence and who are released back into society after completing their prison sentences. The media is replete with stories of prison releasees who commit heinous offenses soon after their release. SVP legislation is an attempt to address this issue and protect the public safety.

Recently, the NYS Office of Mental Health pursued civil commitment under Article 9 of the Mental Hygiene Law of 12 individuals who were characterized as SVPs and who were scheduled to be released from prison upon completion of their sentence. State officials attempted to use existing law applicable to noncriminal persons with mental illness, to evaluate sex offenders before their release to determine whether they should be sent to mental hospitals after their release from prison.

Under Article 9 of the MHL, a person may be involuntarily committed to a psychiatric hospital if it is determined that the person has a mental illness for which the person is "in need of involuntary care and treatment" and which is "likely to result in serious harm to himself or herself or others." "In need of involuntary care and treatment" under the MHL §9.01 "means that a person has mental illness for which care and treatment as a patient in a hospital is essential to such person's welfare and whose judgment is so impaired that he is unable to understand the need for such care and treatment." The court held that the detention of these releasees violated state law because the state failed to meet these long-standing statutory standards for involuntary civil commitment of persons with mental illness.

It is precisely because these SVPs do not fit into the existing statutory scheme for civil commitment of persons with serious mental illness that SVP legislation is being considered.

Under the SVP legislation currently introduced in New York, individuals are targeted for post-sentence commitment if they meet the definition of sexually violent predator. A sexually violent predator means a person who has committed a sexually violent offense and who suffers from a mental abnormality. Sexually violent offenses include rape, incest or any felony involving assault or violence if sexually motivated as defined to mean that the crime "was committed in whole or in substantial part for the purpose of sexual gratification."

Mental abnormality is defined in the bills as "a congenital or acquired condition, disease or disorder that affects the emotional or volitional capacity of a person in a manner that predisposes him or her to the commission of an act or acts constituting a sexually violent offense and that results in serious difficulty in controlling behavior to a degree that the person is a menace to the health and safety of others."

Once a person is determined after a trial to be an SVP, such person "shall be committed to a secure treatment facility for care, treatment and control until such time as he or she no longer is a sexually violent predatory. This secure treatment facility is under the jurisdiction of the Office of Mental Health.

Although the terms "mental abnormality" and "mental illness" appear to be synonymous, "mental abnormality" as defined is essentially a vague and circular determination that has no scientific or clinical basis. The outcome of the recent attempt to use existing civil commitment laws to involuntarily hospitalize 12 prison releasees demonstrates that individuals who would likely be selected for SVP commitment would not meet the current standard for civil commitment precisely because they do not have a mental illness as required by Article of the MHL. "Mental abnormality" is a nonmedical definition of what purports to be a clinical condition which usurps psychiatric terminology to achieve a social and political result.

In fact, the bills create an improper and inappropriate link between persons with mental illness and sexually predatory behavior and would only enhance the stigma currently associated with mental illness by identifying criminal behavior as mental illness.

"Sexual predator commitment laws represent a serious assault on the integrity of psychiatry, particularly with regard to defining mental illness and the clinical conditions for compulsory treatment. Moreover, by bending civil commitment to serve essentially nonmedical purposes, sexual predator commitment statutes threaten to undermine the legitimacy of the medical model of commitment."

Review of the evidence regarding SVP legislation in the 17 other states with SVP laws reveals that the individuals who are committed as SVPs cannot benefit from any form of psychiatric treatment currently available. Presumably, this lack of treatment prospects results directly from the fact that most SVPs do not have a legitimate psychiatric diagnosis. The absence of the prospect of beneficial treatment belies the professed "treatment" purpose and renders the scheme as nothing more than preventive detention.

The cost of the proposed bills must also be considered. It is reasonably estimated that the cost of housing and "treating" an SVP will be approximately $200,000 per year per SVP. Current data suggests that as many as 200 prison releasees could enter the SVP system each year and in a decade the annual cost could exceed $400 million. This extraordinary level of funding within the Office of Mental Health could result in a reduction in OMH funding for the current mental health system. The SVP program will be an unstoppable competitor for community funds and could swallow up mental health funding.

We also question why treatment for SVPs is delayed until completion of their sentences. If the Legislature truly believes that treatment for SVPS is possible, then resources should be given to the Department of Corrections to provide treatment during incarceration - not after. We note that the Assembly bill does include provisions for treatment during incarceration and we support this approach as a first step to properly addressing the problem.

We suggest that the Legislature consider the use of indeterminate sentences for sexually violent offenses as the best way of addressing the social concerns of recidivism. In conjuncture with indeterminate sentences, treatment programs should be offered during incarceration on a voluntary basis, but with participation and outcome having a significant bearing on the length of sentences. We strongly recommend that any SVP program, if enacted into law, be placed under the jurisdiction of the Department of Correction, not the Office of Mental Health.

In conclusion, the serious social problem of the recidivism of individuals who have committed sexually violent crimes and who are eligible for release from prison should be addressed through the criminal justice system by development of alternative sentencing approaches and treatment during incarceration. This problem should not be thrust upon the mental health system. While persons who might meet the definition of an SVP may also have a mental illness, there is no clinical evidence that sexually violent offenses result from mental illness. Mental abnormality as defined in the proposed legislation is not mental illness and the problem of SVPs is a problem of the correctional and criminal justice system - not the mental health system. ■

Testimony to the Commission on Health Care Facilities in 21st Century

This testimony is submitted on behalf of the New York State Psychiatric Association, the statewide medical specialty organization, representing over 4,500 psychiatrists in the state.

As part of 2005-2006 budget process, Govenor Pataki and the New York State Legislature created the Commission on Health Care Facilities in the 21st Century. The Commission was charged to review health care capacity and resources including inpatient and outpatient hospital services and nursing homes operated by voluntary and private providers in each of six designated regions of the state and to make recommendations for "reconfiguring" the state's hospital and nursing home bed supply to "align bed supply with regional and local needs."

The Commission has asked for public comment regarding:

- identifying misalignments between the supply of services and the needs of the community
- recommending specific changes regarding nursing home and hospital bed supply in order to correct any misalignments
- identifying necessary investments to rectify the identified misalignments
- recommending a time line to carry out the changes to rectify the identified misalignments.

The Commission's enabling legislation did not include a direction to the Commission to make recommendations regarding the reconfiguration of the state's public mental health system - the state system operated by the NYS Office of Mental Health through which most persons with serious and persistent mental illness receive care. Nevertheless, the recommendations of the Commission have the potential to exert a vast impact on the entire mental health system - public, voluntary and private - in the state.

The law envisions that the Commission will make recommendations on the reconfiguration and "right sizing" of health care facilities to the Governor in November of this year. The Governor will send the Commission's recommendations to the Legislature and the Legislature will then vote only to reject the recommendations as received, without further amendment, before year's end. A failure to vote to reject will be tantamount to adopting the Commission's recommendations. If adopted, a process of reconfiguration will begin to be implemented.

Although mental health services comprise a relatively small part of the entire spectrum of services provided by the voluntary hospitals, private hospitals and nursing homes, those same institutions play an enormous role in the provision of all mental health services in New York. The Factors Book distributed to Commission members including data regarding the state health care system to assist the Commission in preparing its recommendations. The Factors Book breaks down the health care system into several "Major Service Categories" which include "Psychiatric inclusive of: Psychiatric, Drug Detoxification and Rehabilitation, Alcohol Detoxification and Rehabilitation".

It is critical that data regarding the mental health system be separately identified and analyzed in more detail. In 2003, the total of expenditures by Article 28 hospitals in New York was $38 billion. Of that amount, $2.5 billion (7%) was expended on mental health and substance abuse services. Mental health expenditures were: inpatient $1.4 billion (55%), outpatient $660 million (26%). Substance abuse expenditures were: inpatient $250 million (10%), outpatient $242 million (9%). (This data was derived from 2003 institutional cost reports.) From this data, one would correctly conclude that mental health and substance abuse services comprise a relatively small part of the total expenditures of general community and teaching hospitals in the state.

However, if we ask what proportion of all expenditures for mental health care by licensed facilities and programs is accounted for by expenditures by Article 28 hospitals and to what extent do those hospitals serve adults with serious and persistent mental illness (SPMI) and children with serious emotional disturbance (SED), the results are very different.

[Survey can be viewed on NYSPA's website]

Currently, there are approximately 5,800 inpatient psychiatric beds in general hospitals and between 800 and 900 in psychiatric hospitals licensed by OMH. These numbers do not include the number of beds available in the state psychiatric centers. The data in Table 1

[See Tetimony on back page]

Suicide Prevention continued from page 1

in the nation for the number of deaths by suicide." In light of such staggering statistics, Carpinello went on to say that "OMH was proud to bring together such a comprehensive group of suicide prevention stakeholder organizations, survivors, and governmental officials for this two-day event to increase suicide awareness, discuss prevention tactics, and create an opportunity for all key stakeholders to share and distribute suicide prevention materials and practices."

The event offered participants the opportunity to hear from a myriad of experts in the field of suicide prevention. To name only a few; Commissioner Carpinello, spoke of her personal experience with suicide and her work in increasing prevention efforts, Mary Jean Coleman, President of Samaritans USA also spoke of her personal experience with suicide and her work to raise awareness and increase prevention efforts both on a statewide and national level, Gary Spielmann, Director of Suicide Prevention for OMH, discussed the challenging aspects of suicide prevention, David Litts, Associate Director of Prevention Practice at the Suicide Prevention Resource Center spoke about the collaborative efforts on the national level to increase prevention strategies, Gisele Stolper, Executive Director of the Mental Health Association of New York City was one of four speakers who presented on the United States Air Force Model of suicide prevention, Eric D. Caine, M.D., Chair of Psychiatry at the University of Rochester Medical Center presented on the link between risk factors and suicide, Jerry and Elsie Weyrauch, founders of SPAN/USA, a national suicide prevention program discussed their work to raise awareness about suicide, and Madeline Gould, Professor of Psychiatry and Public Health at Columbia University shared information on suicide contagion.

In addition to the above mentioned topics, the Summit also included subject matter in evidence based practices, community engagement and mobilization, at risk populations, screening strategies, the correlation between depression and suicide, the link between alcohol and substance abuse and suicide, and the media's role.

In addition to this wealth of information, participants were also provided with an extensive three volume report - *Saving Lives in New York State: Suicide Prevention and Public Health* - A comprehensive data driven report on suicide, its risks and prevention released by the Office of Mental Health in the spring of 2005. A first of its kind in New York State, the report focuses on risk factors, recommendations and action steps, prevention strategies, and county specific data regarding suicide deaths in the state, as reported by the Department of Health. Copies of the report may be accessed at www.omh.state.ny.us.

As is evidenced through her continued efforts around suicide prevention, it is clear that Commissioner Carpinello has indeed set a course for New York State to address this serious public mental health challenge. Confirmation of this can be seen in the Governors 2006-07 Executive Budget proposal, as there is for the first time in New York State's history a $1.5 million allocation that, if passed by the Legislature would increase the number of localities with a local suicide prevention plan tailored to meet the needs of their communities and allow OMH to expand upon an already successful suicide awareness and education campaign. ■

Testimony continued from page 5

demonstrates the critical role played in the public mental health system by Article 28 hospitals. As the largest component of the system, Article 28 hospitals represent 37 % of all costs for adults with SPMI and children with SED including 48 % of inpatient and 40 % of outpatient costs. Article 28 hospital inpatient and outpatient services served a population with almost as many seriously and persistently ill adults and seriously emotionally disturbed children as Article 31 facilities (inpatient private psychiatric hospitals and free-standing outpatient mental health programs).

The data in Table 2 (from NYS SPARCS - Psych Discharges 2003) demonstrates the relatively stable number of discharges, days in hospital, and average length of stay (ALOS) from inpatient psychiatric units in general hospitals over the 6 most recent years for which data is available. Since 2003, a number of hospitals with inpatient psychiatric units have closed and other hospitals have closed their inpatient psychiatric units. As a result, the pressure on the inpatient system has grown. In conclusion, these data demonstrate that Article 28 licensed hospitals, key among the facilities slated for review by the Commission, play a central role in the state's mental health system. Indeed, the current system relies on the three provider sectors, the Article 28 voluntary hospitals, the Article 31 hospitals and clinics and NYS-OMH facilities.

Our members and advocates for our patients know there is virtually no excess capacity in the overall mental health system. Community based inpatient units as well as those in the state psychiatric centers are full and hard pressed, outpatient clinics must maintain waiting lists, psychiatric emergency services are often overflowing and stressed, supported housing remains scarce despite welcome, recently announced additions to the pipeline, and case management, CSP, and ACT services are unable to handle all of those in need. Children's services at all levels remain scarce and difficult to access.

Any "realignment" of the Article 28 hospital system must include as a critical factor the assessment of the impact upon access to inpatient and outpatient mental health services. The failure to take this factor into consideration could have a potentially devastating impact on the state's mental health system. Primum non nocere - "First, do no harm" - is a maxim familiar to physicians. It should apply as much to those seeking to change health care systems as to those treating individual patients. The New York State Psychiatric Association urges the Commission to mandate that all proposals for "realignment" be evaluated based upon the impact on access to inpatient and outpatient mental health services and that significant weight be given to the impact of any proposed changes, closures or realignments upon access to services for persons with mental illness.

Respectfully submitted,

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