

THE BULLETIN

NEW YORK STATE PSYCHIATRIC ASSOCIATION

Spring 2011, Vol. 55, #1 • Bringing New York State Psychiatrists Together



President's Message

By Glenn Martin, M.D.

Before I head off to Hawaii for the APA Annual Meeting and Assembly meeting, I want to take a moment to underscore two deadlines that many members may not be aware of. The DSM-5 development process is now open for another round of public feedback. The deadline is **June 15** and comments can be made at www.dsm5.org. This is the second round of comments, with a third round slated for next year after the results of the field trials are available to inform the development process. The revision process has been guided by several principles, but "the highest priority is clinical utility – that is, making sure the manual is useful to those who diagnose and treat patients with mental illness, and to the patients being treated." For those who fear the revision is being run by academicians and researchers who won't actually have to use the darn thing when complete, **THIS IS AN OPPORTUNITY TO INFLUENCE THE PROCESS!** Some of the changes may be seen as fine tuning and tweaking but many proposed changes



Glenn Martin, MD

are very substantial. In particular, comments are being solicited on the Proposed Organizational Structure, as well as new proposed diagnostic criteria. As stated on the DSM-5 website: "Numerous disorders contain updated criteria. For example, nearly all of the Bipolar and Related Disorders contain updates. We have also posted several newly proposed disorders, such as Premenstrual Dysphoric Disorder. Furthermore, we have added many diagnostic-specific severity measures, including the Anxiety, Obsessive-Compulsive-Related, and Trauma-Related Disorders. A hybrid dimensional-categorical model for personality and personality disorder assessment and diagnosis has been proposed for DSM-5 field testing."

The new proposed organization is as follows:

- Neurodevelopmental Disorders
- Schizophrenia Spectrum and Other Psychotic Disorders

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

Spring Area II Council Meeting

By Rachel A. Fernbach, Esq.

New York State Psychiatric Association held its annual Spring Area II Council meeting on Saturday, March 26, 2011 at the LaGuardia Marriott Hotel in East Elmhurst, New York. Glenn Martin, M.D., NYSPA President, called the meeting to order and welcomed guests Bruce Hershfield, M.D., Assembly Speaker, Leah McCormack, M.D., MSSNY President, Rick Abrams, MSSNY Executive Vice President, and Martin Tracy, President of PRMS. Dr. Martin thanked PRMS for its support of today's meeting.

The meeting was continued with reports from NYSPA officers. NYSPA Secretary Richard Altesman, M.D. presented minutes from the October 23, 2010, Area II Council meeting, which were approved with minor corrections. NYSPA Treasurer Jeffrey Borenstein, M.D., presented the financial statements for January-March 2011 with a comparison to the same period for 2010 and 2009, as well as full year financial statements for 2008, 2009 and 2010. Dr. Borenstein noted that timing issues were responsible for a negative income figure for calendar year 2009. He also noted that in response to reduced revenues over the past few years, the organization has attempted to reduce its expenses accordingly.

Vice-President Seeth Vivek, M.D., reported that the 2010 Scientific Paper Contest was a great success and thanked Drs. Denea, Satloff and Nininger for serving as judges. The committee will be sending out an announcement shortly about the 4th annual contest to training directors and chief residents throughout the state. Even though the winners are now announced in the Fall, PGY-4s who are graduating will still be

eligible to participate.

Next, Dr. Martin presented his President's Report. First, he shared a letter written by four NYSPA Past-Presidents regarding the need for a formal NYSPA conflict of interest policy, particularly for individuals running for office. Dr. Martin plans to appoint a work group to look into the matter, which will be chaired by Seeth Vivek, M.D., and Herb Peyser, M.D.

Dr. Martin reported that he hopes to make changes to the NYSPA website to enhance its functionality and make it more interactive for members. He also hopes that NYSPA committees will use the NYSPA website as a tool for communicating with members, posting information and updates. Dr. Martin announced that the position of Specialty Societies Representative to the MSSNY House of Delegates, which he held previously, is now open and if anyone is interested, to please let him know. Finally, Dr. Martin reported that the Executive Committee plans to reinstitute its regular meetings with the OMH Commissioner.

Budget Committee

Aaron Satloff, M.D., Chair of the Budget Committee, presented the 2011 NYSPA budget, which had been approved at the Area II Council meeting in October. Dr. Satloff discussed the need to increase dues for 2012 in order to offset a revenue deficit of \$24,000. The Council voted to approve a \$15 dues increase starting in 2012.

Legislative Report

Barry Perlman, M.D., Chair of the Committee on Legislation, presented the most current NYSP-PAC financial statement and list of contributors and encouraged everyone present to con-

[See **Council Meeting** on page 4]

Psychiatrists Must Comply With June 30 Deadline To Avoid Medicare E-Prescribing Penalties

All physicians, including psychiatrists, are facing a June 30 deadline for Medicare e-prescribing compliance. In our NYSPA e-bulletin dated January 7, 2011, we outlined changes to the Medicare e-prescribing incentive program for 2011, including penalties to be imposed in 2012 and ways to avoid them.

BACKGROUND ON E-PRESCRIBING

The e-prescribing incentive program was created by Congress as part of the Medicare Improvements for Patients and Providers Act ("MIPPA"), which became law in July, 2008. The program, which started in 2009, was designed to encourage the use of electronic health systems to improve the delivery of care and reduce medication errors resulting from handwritten prescriptions. Since its first year, CMS has provided updates to the program prior to each new calendar year.

The CPT codes that are eligible for the program are for **outpatient services only** (office, outpatient clinic, nursing home, adult home and patient's home). The following codes relevant

to psychiatry are eligible: 90801, 90802, 90804, 90805, 90806, 90807, 90808, 90809, 90862 and the Evaluation & Management Codes for the outpatient service locations listed above.

In order to participate in the incentive program, physicians must adopt an e-prescribing system and report G-code 8553 on the CMS 1500 claim form each time a prescription is sent electronically. Free web-based electronic prescribing software is available to all physicians at www.nationalerx.com. The G-code is reported as an additional line item on the same claim form as the CPT code, for the same beneficiary, same date of service, with \$0.00 as the line item charge.

To become a successful electronic prescriber for 2011, physicians only need to report G-code 8553 for **25 patient visits** during 2011, at least 10 of which must be by June 30.

Successful electronic prescribers are eligible to receive incentive payments in the form of an add-on to their fee

[See **E-Prescribing** on page 4]

Area II Trustee's Report

By James Nininger, MD

This report will focus on the March 2011 APA Board Meeting and the April 2011 APA Advocacy Day.

The APA Board of Trustees met March 12-13, 2011 in Arlington, VA. The following is a list of some issues addressed that may be of special interest to members:

Update on Electronic Records

Electronic Health Records (EHRs) are playing importantly in the national strategy to improve healthcare quality and communication and to reduce cost. Recent legislation has involved financial incentives to develop policy and technical standards, encourage broader EHR adoption, and establish networks to exchange health information within communities and beyond. Psychiatrists are likely to face increasing pressures to adopt an EHR system. The market for small practice behavioral health EHR software products is modest compared to primary care and large group practices. Under the Medicare and Medicaid EHR incentive program, which launched on January 1 of this year, physicians who engage in meaningful use of a certified EHR system can earn up to \$64,000. The federal government is in the process of recognizing entities that will certify EHR software products. Inherent in the use of EHRs is an emphasis on performance measurement.

The APA Department of Governmental Relations (DGR) and associated member components review proposed legislation and regulation pertaining to EHRs and submit comments of importance to psychiatry, such as the importance of privacy protection. The APA Committee on Electronic Health



James Nininger, MD

Records generates materials to educate members about EHRs. The Committee posts these materials on the APA website (www.psych.org/ehr and www.psych.org/ehrincentive) and sponsors educational sessions about EHRs at the Annual Meeting.

Maintenance of Certification (MOC)

MOC is an initiative of the American Board of Medical Specialties to ensure that certified physician specialists offer quality patient care through an ongoing process of self-improvement. There are four basic components: professional standing, self-assessment and lifelong learning, cognitive expertise, and performance in practice. Maintenance of licensure (MOL) is the process where a licensee provides evidence that he or she is actively participating in a program of continuous professional development, measured against objective data sources and aimed at improving performance over time. Psychiatrists are concerned about a suggested requirement that patients provide feedback on a practitioner's performance. There is an APA ad hoc work group on MOC to provide feedback to the APBN regarding the special needs of psychiatry to provide some flexibility in determining the MOC requirements.

Implementation of Parity

An APA work group on health reform and parity has been charged with identifying and prioritizing parity issues of significance to psychiatric practice, such as reimbursement (in- and out-of-network), medical management protocols and coding limitations as well as analyzing remedies where there is a misalignment with federal and/or state parity

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

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/bulletin/Pages/default.aspx>

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

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 2010-12

Glenn Martin, MD, *President*
Seeth Vivek, MD, *Vice President*
Richard Altesman, MD, *Secretary*
Jeffrey Borenstein, MD, *Treasurer*
James Nininger, MD, *Area II Trustee*
Seth P. Stein, Esq., *Executive Director*
C. Deborah Cross, 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

The current edition of the *Bulletin* includes some important time sensitive information. First, we have an article about the June 30th deadline for Medicare e-prescribing compliance. Second, the President's Column highlights the June 15th deadline for public feedback con-



Jeffrey Borenstein, MD

cerning the DSM-5 development process. This column also highlights the June 10th deadline for clinicians in routine clinical practice settings to volunteer to take part in field trials for DSM-5.

The Albany Report summarizes key legislative issues which relate to our patients

and our profession. The Area II Trustee Report provides an overview of the APA Board meeting and the APA Advocacy Day. We also have a report on the Area II Spring Council meeting. We have an article about responding to OPMC subpoenas. Finally, we have an interview with Jean Tropnas, M.D., the recipient of the 2010 Assembly Profile of Courage Award. ■

NYSPA Interview: Jean Tropnas, M.D., Recipient Of The 2010 Assembly Profile Of Courage Award

Interview conducted, condensed and edited by Rachel A. Fernbach, Esq.

Jean Tropnas, M.D., was born and raised in Haiti and attended medical school there before coming to the United States to continue his training. He completed a residency in psychiatry at SUNY Downstate Medical Center in Brooklyn and is currently a clinical assistant professor of psychiatry and behavioral sciences at Downstate. Dr. Tropnas is a member of the Brooklyn Psychiatric Society and a founding member and first president of the Haitian American Psychiatric Association (HAPA), where he is still an active member. He is married, with five children and three grandchildren and has lived in Brooklyn since 1973.

The 7.0 magnitude earthquake and subsequent aftershocks that devastated Haiti on January 12, 2010, was both a public and personal tragedy for Dr. Tropnas. He lost his sister, an attorney, who perished in her Port-au-Prince office. Despite his own loss, Dr. Tropnas donated his time and expertise to provide counseling and support to medical personnel, mental health workers and teachers working on the front lines in Haiti. He has also worked tirelessly at home in Brooklyn to provide enhanced mental health services to the local Haitian community and was an organizer of the Haitian Mental Health Summit, held in June 2010, at the University of Miami in Florida.

Nominated by colleague Ramaswamy Viswanathan, M.D., Dr. Tropnas received the 2010 Assembly Profile of Courage Award at the November meeting in Washington, D.C., for his work and dedication to helping those affected by the earthquake. The NYSPA Bulletin spoke with Dr. Tropnas via telephone on March 4, 2011.

NYSPA: First, please let me express my condolences on the loss of your sister. Obviously, this is a very personal and emotional topic for you. Thank you for taking the time to speak with me.

How soon after the initial earthquake were you able to travel to Haiti?

DR. TROPNAS: I went to Haiti for the first time at the end of May, 2010. I traveled on behalf of an organization named Diaspora and did some work in schools and in medical clinics. Also, we planned to have a memorial mass for my sister since I wasn't able to be there for her funeral and burial.

NYSPA: What was it like when you arrived there?

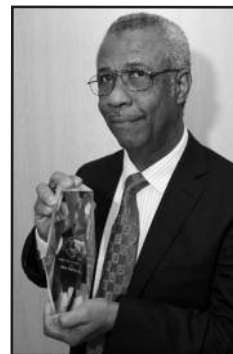
TROPNAS: At that time, Haiti was still very much a disaster zone. There were piles of rubble everywhere. Churches, schools and banks had been destroyed and the entire infrastructure of Port-au-Prince had basically collapsed. Life was quasi-impossible. Even people whose homes had been spared were afraid to be in their homes. Many would sleep in their yards, afraid of getting hurt from further aftershocks.

After the earthquake, 3,000 camps had been put together in and around Port-au-Prince to house those who had lost their homes. At that time, there were close to one and a half million people living in the camps in tent cities. Even though the camps had been set up as a temporary measure, to this date many of those people are still living in the camps and nothing is being done to improve their situation. I don't know how long this is going to last.

I visited three of those camps. Some of those camps were assigned to Partners in Health, an organization that was providing medical care and mental health services to the earthquake victims. In one camp with 60,000 people, it was heart wrenching to see how people were lined up to get medical services and psychiatric services. There were young psychologists and young social workers who were trying to do their jobs under impossible conditions, including temperatures of up to 110 degrees under those tents. In addition to the basic need for food and water and medical attention, many of those displaced were struggling with depression, anxiety and PTSD.

NYSPA: Are there any special stories or significant memories that you can share?

TROPNAS: I visited a medical clinic where the building had collapsed but they had set up tents in order to continue seeing patients, about 40-50 each day. The small staff consisted of one doctor, some nurses, a lab technician, and a couple of orderlies. Fortunately, on the day I visited the patients waiting did not have any real emergencies that needed immediate attention, so I was able to assemble the staff for a meeting, which became a sort of group therapy session. During the first part of



[See **Interview** on page 5]

Psychiatrists Must Respond To OPMC Subpoenas Issued In Connection With An OPMC Investigation By Seth P. Stein, Esq.

In a recent case in Maryland, the highest court in the state overturned a lower court decision and reinstated a reprimand and fine imposed on psychiatrist Harold Eist, M.D. for failing to cooperate with a lawful investigation. Dr. Eist became the subject of an investigation conducted by the Maryland Board of Physicians after a complaint was filed against him by the husband of one of his patients, claiming that Dr. Eist was providing improper care to the complainant's wife.

During the course of the investigation, the Maryland Board of Physicians requested copies of pertinent medical records from Dr. Eist, who was aware that the patient and her husband were in the midst of contested divorce proceedings and suspected that the complaint had been filed maliciously. Dr. Eist declined to release the records, citing patient confidentiality because the patient directed Dr. Eist not to release the records. The Maryland Board of Physicians then issued a subpoena directing Dr. Eist to release the records. Dr. Eist also declined to comply with the subpoena based on his patient's

lack of consent.

However, neither Dr. Eist nor the patient ever filed a motion to quash the subpoena or a motion for a protective order to contest the validity of the records request. If such a motion had been filed, the court would likely have held an evidentiary hearing to determine whether the state's need for access to the records outweighed the patient's need for confidentiality.

After protracted litigation between Dr. Eist and the Maryland Board of Physicians, the Maryland Court of Appeals found that Dr. Eist's failure to provide the records in the absence of a legal action to challenge the subpoena was improper and constituted failure to cooperate with a lawful investigation. As a result, Dr. Eist was reprimanded and forced to pay a fine of \$5,000, plus court costs.

Psychiatrists in New York should be aware of the applicable New York statutory provisions if they receive a similar request. Under Section 230 of the Public Health Law, the Office of Professional Medical Conduct (OPMC) is

authorized to issue a subpoena for medical records or other protected health information in connection with any lawful investigation. Further, pursuant to Section 6530 of the Education Law, failure to comply with an OPMC subpoena constitutes professional misconduct.

Issues may arise when, as in the Eist case, a complaint is made against a psychiatrist by an individual other than a patient for malicious reasons. In such situations, the patient or the psychiatrist, acting on the patient's behalf, should object to the request, citing potential violation of the doctor-patient privilege. However, if OPMC does not agree, insists on production of the records and issues a subpoena for such records, either the psychiatrist or the patient must take legal action to quash the subpoena or file a motion for a protective order. Simply writing a letter to OPMC indicating that the patient has directed you not to release the records will not be sufficient – some legal action must be taken to protect the psychiatrist and the patient. ■

Albany Report

By Richard J. Gallo, Barry B. Perlman, MD and Jamie Papapetros

The 2011 Session of the Legislature: The Challenges for Psychiatrists & their Patients

Whether it's the redesign of services provided to those with serious and persistent mental illness under the Medicaid program, the fight to maintain a physician's authority to have the final say over the medication prescribed to his or her patients, or the battle against non-physician health care professionals seeking to expand their scopes of practice into areas heretofore reserved to the practice of medicine, NYSPA is fully engaged in legislative matters of concern to psychiatrists and their patients.

2011-12 NYS Budget Highlights

- Adopted ahead of the April 1 deadline, the \$132.5 billion budget closes a \$10 billion budget deficit without raising taxes or borrowing and reduces overall spending by 2 percent compared to the previous year, a decrease of \$3.6 billion.
- The adopted budget reduces the 2012-13 budget deficit from \$15 billion to \$2 billion.
- \$8.2 billion is appropriated for the mental hygiene agencies (Commission on Quality and Advocacy for Persons with Disabilities, Office of Alcoholism and Substance Abuse Services (OASAS), Office for Persons with Developmental Disabilities (OPWDD,) and Office of Mental Health (OMH), also known as the "O" agencies).
- The budget included many of the Medicaid Redesign Team's recommendations for redesigning New York's Medicaid program resulting in \$2.375 billion in spending reductions.
- Facilities licensed under the Mental Hygiene Law are exempted from the 2 percent across-the-board cut to Medicaid reimbursements in 2011-12 and 2012-13.
- However, utilization controls on clinic visits established through patient or provider specific thresholds will result in Medicaid reductions as follows: no less than \$10,900,000 for OMH-licensed (Article 31) facilities; no less than \$2,400,000 for OPWDD-licensed facilities (Article 16); and no less than \$13,250,000 for OASAS-licensed facilities (Article 32).
- The Budget repealed the exemption from prior approval under the Medicaid Preferred Drug List for antidepressants and atypical antipsychotics and other classes of drugs; however, prescriber prevails is maintained under Medicaid fee-for-service and an additional \$30 million is appropriated to support it.
- Medicaid fee-for-service for those with serious and persistent mental illness and other chronic conditions will continue for two years pending the establishment of regional care coordination organizations and special needs plans that will allow behavioral health care to be integrated under a medical home model. NYSPA, along with 40 other mental health advocacy organizations, supported the establishment of these entities over the proposal to allow this vulnerable population to be carved into HMO-sponsored Medicaid Managed Care plans. The budget requires the Commissioners of OMH and OASAS, in consultation with the Commissioner of

Health and with the approval of the Director of the Division of Budget, to establish six regional behavioral health organizations over the next two years, which will be responsible for providing administrative and management services including prior approving and coordinating behavioral health services. The budget succinctly summarizes the purpose of these organizations stating, "Such regional entities shall also be responsible for promoting appropriate care and service utilization while safeguarding against unnecessary utilization of such care and services and assuring that payments are consistent with the efficient and economical delivery of care." Furthermore, the budget language providing for the implementation of the behavioral health organizations states that they are to facilitate "the continuity of post-hospitalization behavioral health and the integration of behavioral health services." In selecting a regional behavioral health organization, the Commissioners will have to consider specific criteria including an organization's demonstrated ability to effectively, efficiently, and economically integrate behavioral health and health services, requisite expertise and financial resources and its character, competence and standing in the community. It is worth noting that in September 2010 the Department of Health indicated that for non-SPMI Medicaid recipients enrolled in a Medicaid managed care plan, the plan must comply with the provisions of the federal Mental Health Parity Law and Addiction Equity Act ensuring parity between medical and behavioral health.

- Pharmacy & Therapeutics Committee, which is tasked with making recommendations to the Commissioner of Health on adding medications to the Preferred Drug List, will now have 18 members and a chairperson that the Commissioner of Health designates from the Department.
- Two year appropriation for Medicaid, which ties the rate of growth to the Medical Consumer Price Index, currently 4 percent, is implemented.
- Global spending cap on State Medicaid expenditures at \$15.3 billion is enacted. The Commissioner of Health obtains "superpower" authority to make reductions during the year to ensure expenditures adhere to the cap; however, the Commissioner must develop a Medicaid Savings Allocation plan, created with input from the Legislature and others including health care providers, which would outline the remedy the Commissioner will implement to bring down expenditures below the cap.
- The Office of Mental Health is authorized to close up to 600 inpatient beds in fiscal years 2011-12 in the state's psychiatric facilities through closure of wards or conversions of beds to transitional placement programs. While the 12-month notification requirement for mental health facility closures, consolidations or service reductions at OMH operated programs is suspended for 2011-12, OMH is required to provide 30 days notice when closing wards, 60 days prior

notice to closing a facility and make an evaluation based on certain criteria, which include assessing the current and long-term need for the types of services provided.

Hospital Insolvency/Physician Liability

In light of the bankruptcy of St. Vincent's Hospital, NYSPA has been working over the last few months to determine possible legislative action that can be taken on the State level to protect physicians from exposure to malpractice liability when the hospital they are employed by declares bankruptcy. Previously, NYSPA, along with the Medical Society of the State of New York (MSSNY), supported an emergency resolution that was passed by the American Medical Association and calls for Congress to amend the federal bankruptcy statute to close such a loophole that leaves physicians, residents and fellows vulnerable in the event of an institution's insolvency. While the timetable for passage of such legislation on the federal level is unclear, NYSPA hopes to have legislation introduced this year and in the interim will continue to raise the issue with members of the Legislature.

Consolidation & Merger of State Agencies

The budget merges the State Banking and Insurance Departments into the Department of Financial Services. Governor Cuomo established the 20-member Spending and Government Efficiency (SAGE) Commission, composed of corporate chief executive offi-

cers, business leaders and former office-holders, to develop recommendations for reducing the number of agencies, authorities, and commissions. In its first phase, the SAGE Commission was tasked with preparing a report that was due to the Governor by May 1, 2011, that will recommend ways the organizational structure of the State agencies can be streamlined to allow for greater efficiencies. As part of this process, the SAGE Commission formed a steering committee of the health and disability agencies, including the Department of Health and the "O" agencies.

It is expected that the initial recommendations will include consolidating "back office" functions, such as information technology (IT) and human resources (HR), which now exist separately in various agencies. Some agency consolidations or mergers can be accomplished administratively or with the approval of the Legislature, while others like joining the Departments of Health and Mental Hygiene may require a Constitutional amendment. Presently, the SAGE Commission appears to be focused on reducing the size of state government by eliminating regulatory duplication, which results in compliance with, reporting to, and inspections by multiple state agencies. The SAGE's final recommendations are due on June 1, 2012.

Evaluation/Management CPT Code: NYSPA Actively Monitoring Insurers' Compliance

NYSPA continues to monitor insurers'

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



American Professional Agency, Inc.

**THE NEW
APA-ENDORSED MALPRACTICE
PROGRAM IS HERE!**

**GREAT RATES
GREAT DISCOUNTS
GREAT COVERAGE**

**VIEW OUR COMPETITIVE RATES
AND MAKE A COMPARISON
AT**

www.apamalpractice.com

**CLAIMS-MADE AND OCCURRENCE COVERAGE AVAILABLE
WE HAVE BEEN IN BUSINESS SINCE 1945
WITH MORE THAN 110,000 POLICYHOLDERS
INSURING PSYCHIATRISTS FOR OVER 30 YEARS**



American Professional Agency, Inc.
95 Broadway, Armitville, NY 11701
www.apamalpractice.com
877-740-1777

Council Meeting continued from page 1

tribute if they had not already done so. He also reported that the Committee on Legislation would like to form an ad hoc work group to address public policy and professional issues regarding the proposed operation of convenient care clinics in retail stores and its intersection with the corporate practice of medicine doctrine.

Dr. Perlman also reported on the newly enacted state budget. The budget includes a cumulative reduction for the "O" agencies of \$8.2 million (2.7%) and an across-the-board cut of 2% in Medicaid reimbursement. However, NYSPA is pleased that the Medicaid fee for service program will remain in place for individuals with serious and persist-



Rick Abrams and Leah McCormack, MD

ent mental illness for a two-year period, while the state reviews the feasibility of Medicaid Managed Care services for this population. Finally, Dr. Perlman reported that NYSPA is pursuing the issue of continuing malpractice insurance coverage for physicians who lose their jobs after their hospital declares bankruptcy. NYSPA is hoping to propose legislation that would protect physicians put in this unusual situation.

MIT Deputy Representative Election

Dr. Martin announced that the winner of the MIT Deputy Representative election is Jennifer Goldman, M.D.

Executive Director's Report

Seth P. Stein, Esq., NYSPA Executive Director, reported that NYSPA has filed an amicus brief in the case Rueda vs. Charmaine D, a challenge to the New York State civil commitment rules. Mr. Stein also provided an update on the Medicare/Medicaid crossover lawsuit. NYSPA was successful in the Appellate Division, but the state has appealed the case to the Court of Appeals, which is scheduled to hear oral argument in October. Finally, Mr. Stein provided an update on the Medicare 5-year review of CPT codes. The psychiatry codes are now up for review and fundamental changes have been proposed. NYSPA opposes a separate E/M system for psychiatry but supports elimination of the code 90862.

Area II Trustee's Report

Area II Trustee

James Niningger, M.D., reported on the most recent meeting of the Board of Trustees. The Board is considering providing funding for Board members to attend Assembly meetings. The Board discussed conflict of interest issues as well as the possibility of converting Psych News into an electronic publication. Progress on the DSM-5 is underway and may be monitored at the DSM website, www.dsm.org.



Members of the Council

Dr. Niningger reported that proposed scope of practice bills are currently pending in Utah, Hawaii, Tennessee, Oregon, Arizona, New Jersey, Iowa, Missouri and Ohio. He noted that there is now an organization named POPP – Psychologists Opposed to Prescribing Privileges for Psychologists. Since 2001, CALF has providing over \$3 million in funding to 26 district branches/state associations to assist in the fight against psychologist prescribing.

Dr. Niningger reported that the Annual Meeting in Hawaii currently has 3,700 registrants, and that housing reservations and the number of exhibitors are down from prior years. He also noted that national membership has decreased by 762 members since this time last year.

Action Papers

The Council discussed the following action papers that will be reviewed by the Assembly in May: (i) APA Plan to Aid the Continuing Operation, Effectiveness, and Survival of District

Branches/State Associations in Financial Distress; (ii) Medicare RUC Five Year Review and CPT Psychiatric Code Revision; (iii) Addressing the American Board of Psychiatry and Neurology's Creation of a Conflict of Interest; (iv) Listening to APA Members and the District Branches/State Associations on Maintenance of Certification (MOC); (v) Representative ABPN-APA Joint Commission; (vi) Can APA Guidelines Sometimes Protect Members from Malpractice Suits; (vii) Parity and Multiaxial System; (viii) Charge to the Joint APA-ABPN Committee on Maintenance of Certification Issues; (ix) Convocation Speakers – Honoraria and Selection; (x) Reinstatement of the Committee on Persons with Mental Illness in the Criminal Justice System.

The meeting was concluded with reports from the following committees: The Bulletin, Children and Adolescents, Economic Affairs, ECPs, MITs, Presidents and President-Elects, Public Affairs, and the MSSNY Subcommittee on Psychiatric and Addiction Medicines. ■

Medicare E-Prescribing Penalties continued from page 1

schedule. The add-on is 1% of the fee schedule for 2011 and 2012 and 0.5% for 2013. As the program is currently designed, there is no bonus for 2014.

However, the program also includes penalties for those physicians who do not engage in electronic prescribing, equal to a reduction in fee schedule. The penalty amounts are 1% in 2012, 1.5% in 2013, and 2% in 2014 and subsequent years.

For this year, all Medicare physicians will fall into one of three categories: (i) physicians who get the bonus; (ii) physicians who get the reduction; and (iii) physicians who avoid the reduction by obtaining an exemption.

PHYSICIANS WHO WANT THE BONUS

In order to receive the incentive payment for 2012 (1%), the physician must adopt an electronic prescribing system and on or before 12/31/2011, report the G-code 8553 for at least 25 patient encounters where a prescription was sent electronically, at least 10 of which must be by June 30, 2011.

PHYSICIANS WHO WANT TO AVOID THE PENALTY

In order to avoid the penalty for 2012, physicians must do one of the following:

► Adopt an electronic prescribing system and report the e-prescribing measure G8553 at least 10 times during the first six months of 2011 (January 1, 2011 to June 30, 2011). As of this writ-

ing, physicians who wish to avoid the penalty have approximately three weeks to start e-prescribing and report the G-code at least 10 times in order to meet the June 30th deadline.

► Physicians are exempt from e-prescribing for 2011 (and will avoid the penalty) if the physician has fewer than 100 Medicare patient visits between January 1, 2011 and June 30, 2011. If a physician has more than 100 visits with Medicare patients during the first six months of the year and does not meet the e-prescribing requirements, the physician will get the penalty. CMS will automatically calculate each physician's number of visits during the six month period.

Medicare also provides two hardship codes for physicians who practice in rural areas without sufficient high speed internet access or sufficient available pharmacies that accept electronic prescriptions. However, these hardship exceptions are not likely applicable to psychiatrists in New York State. In addition, CMS also exempted from the penalty physicians for whom 90% of their services were coded using a CPT code other than the ones listed above. Again, it is unlikely that a psychiatrist would benefit from this exemption.

In summary, in order to meet the June 30 deadline for avoiding the 1% penalty for 2012, any psychiatrist who is not currently doing e-prescribing should either (i) begin e-prescribing immediately and report the e-pre-

scribing measure at least ten times prior to June 30 or (ii) internally confirm that they have will have fewer than 100 Medicare patient visits during the first half of 2011. Further, if a psychiatrist reports at least 10 encounters prior to the June 30 deadline, the psychiatrist only needs to report the measure 15 more times in the second half of the year to be eligible for the payment add-on.

SPECIAL CONCERNS FOR NEW YORK PSYCHIATRISTS

Even though electronic prescribing of controlled substances is now permitted under federal law, NYS regulations still prohibit electronic prescribing of Schedule II and IV controlled substances within New York State. The NYS Department of Health has reported that it is working to update its regulations to allow for electronic prescribing of controlled substances in New York; however, no regulations are currently proposed.

NYSPA is aware that some psychiatrists in New York State who prescribe benzodiazepines may not be able to meet the minimum e-prescribing thresholds to either avoid the penalty or qualify for the incentive. NYSPA plans to work with the APA to bring this issue to the attention of CMS so that psychiatrists who prescribe primarily controlled substances will not be unduly penalized. In addition, we plan to contact DOH regarding the need to accelerate the rule-making process to address this

problem.

It is likely that CMS will provide further updates and changes to the incentive program for 2012 and beyond. NYSPA will keep members apprised of any changes and updates via the e-bulletin.

For additional information visit www.cms.gov/erx incentive or the click on the Electronic Prescribing tab in the Members Only Section of the NYSPA website (www.nyspsych.org). ■

Exceptional Opportunity

Exceptional Professional Opportunity for psychiatrist to provide high quality care as part of a well respected multidisciplinary private group practice located 2 hours north of NYC in beautiful Columbia County/Hudson Valley, NY and neighboring Berkshire County, MA. Inpt/Outpt. PT/FT Flexible position can be tailored to physician's needs and interests. This is your dream job in a bucolic country setting.

Excellent salary and benefits package \$200,000 + (with opportunity for additional income).

Call Dennis Marcus, M.D. at (518) 697-8010, fax CV to (413) 528-3667 or email to scppcmd@yahoo.com

Interview continued from page 2

the session, I focused on encouraging each member of the staff to share their own personal experience with the earthquake.

Each of them had a horrible story to tell. One nurse had just given birth to a baby two weeks prior to the earthquake. On that Tuesday evening she was home with the baby and her own mother. When the earthquake started, the nurse ran into the bedroom and told her mother that they had to get out quickly. She grabbed the baby and ran out, hoping her mother was following behind. She and the baby managed to get out but the mother didn't make it.

Another nurse, with tears in her eyes, told me that she lives next to an empty lot, which had been taken over by the government for use as a mass grave. Every morning she would wake up with the sights and smells of this mass grave. She would make sure she left her house

very early in the morning and be the first one to arrive at the clinic in the morning and the last one to leave in the afternoon because she didn't look forward to going home.

During the second part of the session, I asked the staff how they managed to come to work every day in spite of their own personal tragedies. The answer I heard over and over again was that caring for these folks was a way to deal with their own grief and personal pain.

NYSIPA: I understand you've also been working with the Haitian community in Brooklyn.

TROPNAS: Within days of the earthquake, we assembled a team from SUNY Downstate comprised of psychiatrists, internists, nurses, social workers, and clergy members. Within a mile of Downstate is the second largest Haiti community in the United States, outside of Miami. As a team, we visited

churches with large Haitian congregations, flea markets, Haitian-owned businesses, even subway stations. As a means of approaching people, we offered free blood pressure screenings and hoped that mental health services would follow once people felt comfortable. The response was remarkable.

On one particular evening a week or two after the earthquake, we attended a memorial mass at St. Jerome, a church in Brooklyn with a large Haitian congregation. After the mass ended around 9:30 pm, there were a good 50-60 people that came down to get their blood pressure taken, to talk to the nurses and then talk to us. We were able to provide support and grief counseling. Many of the congregants reported feeling depressed or anxious and reported somatic symptoms, including headaches and insomnia. For those who needed medication, we had made

arrangements with a local pharmacy to provide prescriptions for only \$3.00. For those who did not have the \$3.00, we had some petty cash to pay for the prescriptions. We did this again and again over the course of three months and we are still doing it. Some individuals were referred to our outpatient clinic. We have received support from the Brooklyn Community Foundation and grants from the United Way to continue this work.

We have also used Radio Soleil, the New York Haitian creole radio station to reach out to those affected by the earthquake. Even before the earthquake, every Sunday morning, HAPA purchases a half hour of air time to provide mental health education to the community with an opportunity for the audience to call in with questions and comments. Radio Soleil is even aired in some parts of Haiti and it's always a pleasure to receive calls from people in Haiti.

I am also part of a task force that grew out of the Haitian Mental Health Summit, an event that brought together psychiatrists from New York, Boston, Chicago, Miami and Montreal, mental health professionals from Haiti, representatives from the Haiti Ministry of Health, and APA staff, to address the current situation in Haiti and provide assistance. With financial support from the APA, we hope to accomplish two goals. First, we hope to train teachers to be therapists, to reach out to the children they teach, identify problems, and through the children, reach out to their parents. Similar work has been done successfully in rural areas of Missouri. Right now in Haiti there are 16,000 schools and only 120,000 teachers.

Second, the task force hopes to rebuild and rehabilitate the two psychiatric hospitals in Haiti that were not functioning all that well even before the earthquake. We plan to send down necessary equipment and have a HAPA psychiatrist visit on a rotating basis, for one to two weeks at a time, to provide training as well as direct services. In addition, we hope to do some teaching at the medical school in Haiti and are pushing for increased mental health courses and training for the medical students.

NYSIPA: In a news article published last year you were quoted as saying that the stigma of mental illness and the fear of dealing with mental health issues is an even greater problem among the Haitian community.

TROPNAS: There is a point of view shared by everybody that Haitians have been traumatized by the system for many years, if not for centuries, and there is a serious mistrust of the westernized mental health system. But, if you break down that barrier by approaching them with someone who speaks their language and is familiar with their culture and the politics, I think it becomes a little easier. When I visited Haiti, it was clear that much work is needed to eliminate the stigma of mental health. At a school I visited, many of the teachers expressed the sense of "What need do we have of you?" In order to make some connection, I had to find a way to explain to them that when you are going through a very traumatic experience in life you may find that your personal coping skills are not necessarily enough to help you tackle your problems and that you may need professional help. I even told them stories about celebrities and other well-known individuals who have sought out help for mental health issues. Education is really the key to changing this mentality, this way of the looking at the world around us in a suspicious manner. I hope that things can happen to make a difference. ■

More than just medical malpractice insurance...

You need a medical professional liability insurance program that is more than just a policy. To safeguard your practice and reputation, you need **a real program** that includes proactive risk management resources and strategies, offers expert advice on call, and boasts a proven claims defense record.

Anything else is risky business.

That's why you should trust
The Psychiatrists' Program.

- 100% of the cases that were tried to a verdict in 2009 resulted in a decision in favor of our insured.
- In-house risk management helps you avoid risk; and includes free CME seminars, online resources and toll-free helpline.
- Occurrence and claims-made policies available.*
- Premium discounts - and much more!

The Psychiatrists' Program

www.PsychProgram.com
TheProgram@prms.com
Individual: +1 (800) 245 3333 ext. 389
Group: +1 (800) 245 3333 ext. 310

Managed by:

PRMS

For over 25 years, providing medical professional liability insurance exclusively for psychiatrists

*may vary by state

Spring 2011

New York State Psychiatric Association • THE BULLETIN

Page 5

Area II Trustee’s Report continued from page I

requirements. James Scully, M.D., APA Medical Director, has mailed a letter to state insurance commissioners making clear that psychiatrists cannot be prohibited from using appropriate evaluation and management (E/M) codes in the treatment of their patients, in compliance with the Mental Health Parity and Addiction Equity Act of 2008.

Other Activities

A current priority of the Board of Trustees is monitoring and providing input on health care reform. The Board hopes to document gaps, examine possible payment options, assess the extent to which psychiatrists are positioned to adopt EHRs, and provide systematic data to assess how health care reform

will affect access to and provision of evidence-based psychiatric treatment. Under proposed new projects and activities, emphasis has also been given to leadership development initiatives for MITs and ECPs and mentorship programs for MITs.

During Advocacy Day, participating members were briefed on a variety of topics to assist them in educating legislators as well as fellow members back home. Topics addressed included:

- a. Making psychologists “physicians” under Medicare – Representative Jan Schakowsky (D-IL) and Senator Olympia Snow (R-ME) have introduced legislation to include clinical psychologists under Medicare’s defi-

nition of “physician” on the grounds that doing so would allegedly improve patient access to care in rural communities and remove impediments to appropriate supervision. APA opposes such legislation. Psychologists continue to practice primarily in the same areas as psychiatrists, typically large and mid-sized urban and suburban communities.

- b. The need for strong federal mental health funding – Regarding federal investments in biomedical research, priorities for NIMH include more specific diagnostic tools, earlier treatment interventions and medications with fewer side effects, and the potential of genomic-sensitive treatments. States have been forced to cut mental health care funding by \$2.2 billion from 2009 to 2012. 60 percent of states reported a substantial increase in demand for community-based mental health care services. The federal Substance Abuse and Mental Health Services Administration’s (SAMHSA) programs help states and communities provide treatment. The APA supports the new programs proposed for SAMHSA to assist returning military and their families as well as the program to co-locate mental health care with primary services. The increases proposed for NIH, including NIMH, the National Institute of Drug Abuse and the National Institute on Alcohol Abuse and Alcoholism, will help keep pace with inflation.
- c. Medicare Parity for Inpatient Mental Health, a bill introduced by Senators John Kerry (D-MA) and Olympia Snowe (R-ME) recommends eliminating the 190-day lifetime limit for Medicare beneficiaries receiving care

in a psychiatric hospital. This bill would equalize Medicare mental health coverage with private health insurance coverage and expand beneficiaries’ choice of inpatient psychiatric care providers. If passed, it would build upon historic gains in mental health parity and end one of the remaining barriers to equal access and coverage for Medicare beneficiaries.

- d. Medicare Payment to Physicians: The “SGR” – Medicare’s Sustainable Growth Rate (SGR) must be replaced. The annual struggle to avoid ever-increasing payment cuts automatically generated by the SGR threatens the entire Medicare program. A new structure must be developed in partnership with physicians and the federal government and rigorously tested before implementation.
- e. Training the Psychiatric Physician Workforce – The enactment of the Mental Health Parity and Addiction Equity Act of 2008 and the Affordable Care Act of 2010 expands insurance coverage of mental illnesses and substance use disorders. One third of Americans gaining coverage through the Affordable Care Act have mental health and substance use disorders. An estimated six to ten million patients with mental health needs, previously uninsured, will now be covered. To ensure access, the psychiatric workforce must be expanded. Federal incentives through public service programs will increase numbers of psychiatric physicians. Targeted efforts must be made in the subspecialties of child and adolescent psychiatry and geriatric psychiatry. ■

Albany Report continued from page 3

compliance with the directive the State Insurance Department issued late last year that codifies an insurer’s obligation to accept and initiate the processing of all claims submitted by psychiatrists using CPT Evaluation and Management (E/M) Codes. Since the issuance of Circular No. 17 of October 25, 2010, NYSPA has received complaints from members about non-compliance, which we are pursuing with the State Insurance Department. Circular Letter No. 17 explicitly states that an insurer “who refuses to accept or process an E/M CPT code submitted by a psychiatrist is in violation of Insurance Law Section 3224-b(a)(2).” In addition, insurers are prohibited from limiting a psychiatrist to CPT codes designated as “psychiatric.”

Scope of Practice Legislation

NYSPA, together with other statewide medical specialty organizations and MSSNY, continues to battle against the myriad of bills that would dramatically expand the scopes of practice of allied health care professionals, including:

- A.1603 (Ortiz)/S.4525 (McDonald) -- Allows a nurse practitioner to admit a patient to an inpatient mental health unit on a voluntary/involuntary basis.
- A.6149 (Gottfried)/S.3884 (McDonald) -- Allows licensed clinical social workers and licensed nurse practitioners to evaluate a defendant's

fitness to stand trial by adding them to the definition of a “psychiatric examiner” under the Criminal Procedures Law.

- A.5308 (Gottfried)/S.3289 (Young) -- Establishes the “Nurse Practitioners Modernization Act,” which allows the practice of registered professional nursing by a certified nurse practitioner to include diagnosis and performance without collaboration of a licensed physician.

With regard to the nurse practitioners’ collaborative agreements with physicians, NYSPA has partnered with MSSNY and other specialty societies to explore ways to inventory, strengthen and enhance the practice agreements. In light of the assertion by nurse practitioners that the agreements are largely ignored by collaborating physicians, the participating specialties will conduct a survey of physicians to better understand their experience with the practice agreements and how such agreements might be improved. There are approximately 1,100 psychiatric nurse practitioners in New York State. ■

President’s Message continued from page I

- Bipolar and Related Disorders
- Depressive Disorders
- Anxiety Disorders
- Obsessive-Compulsive and Related Disorders
- Trauma- and Stressor-Related Disorders
- Dissociative Disorders
- Somatic Symptom Disorders
- Feeding and Eating Disorders
- Elimination Disorders
- Sleep-Wake Disorders
- Sexual Dysfunctions
- Gender Dysphoria
- Disruptive, Impulse Control, and Conduct Disorders
- Substance Use and Addictive Disorders
- Neurocognitive Disorders
- Personality Disorders
- Paraphilias
- Other Disorders

In addition to providing online feedback, there is still an opportunity for clinicians in routine clinical practice settings to volunteer to take part in the field trials. The deadline is June 10 and the information and necessary forms are

available online at www.dsm5.org. The overall aim of the DSM-5 field trials is to assess the feasibility, clinical utility, reliability, and (where possible) the validity of the draft criteria and the diagnostic-specific and cross-cutting dimensional measures being suggested for DSM-5.

The website details what is expected of volunteers and the benefits of volunteering, including CME credit and recognition in DSM-5 as a contributor. Volunteers must possess some basic computer skills, see one or more new patients a month, be willing to participate in webcast training and schedule a follow-up appointment for participants within 4-12 weeks following the initial evaluation.

In short, DSM-5 will shape psychiatry for years to come and will impact all clinicians. It is imperative we get this right. Your interest, feedback and participation is vital. As always please feel free to contact me at doctor@glenn-martinmd.com if you have further questions, comments or concerns. ■

