NYS SOCIETY OF DERMATOLOGY & DERMATOLOGIC SURGERY

New York Dermatologist

SUMMER 2009

President's Message

As I write to you during the waning days of summer, I am cognizant that we have several contentious and potentially divisive issues to resolve including: (1) whether a new subspecialty certification in procedural dermatology should be recognized; (2) whether legislation to delineate who may use Class IIIb and IV lasers should enable a physician to delegate the use of lasers to aestheticians and medical assistants; and (3) whether the parameters of acceptable health system reform legislation should include a public option and what other reforms should or should not be in the final bill. In my opinion, organized medicine is now facing one of its most defining moments. Physicians must decide whether they can remain united around fundamental principles which, among other things, protect and enhance patient access to high quality care, adequately recognize physician value, and empower physician decision making in a re-defined and improved system of health care delivery.

A united medicine denies the managed care industry the strength to continue to put its profits ahead of quality health care. A united medicine denies the managed care industry the ability to dictate the breadth and scope of patient care and the level of payment thereby eliminating the rationale which often prompts inter-specialty recognition issues. A united medicine denies the managed care industry the ability to ignore the CPT coding rules and billing methodologies in an attempt to delay or even refuse payment. A united medicine resolves delegation issues in a balanced manner thereby preserving quality of care while recognizing the realities of physician practice costs.

David E. Bank, MD
Society President

This is a critical time in our history. Will medicine remain committed to resolve its internal differences in an effort to enable a productive dialogue on reform to continue? AAD President, David M. Pariser, M.D., F.A.A.D., in a letter recounting the AAD's perspective on the health system reform debate, recently said "the goal is to remain at the negotiation table with others from the physician community to influence [that] change". We have an historical opportunity to advocate for the changes that must be made to enhance our system of healthcare and bring about the fundamental reforms which are necessary to re-position medicine vis-à-vis the managed care industry. Powerful forces, however, resist our initiatives for positive change and necessary reforms. Often they distort and obfuscate. The only question which now remains is whether medicine will work from within to resolve its differences so that it can not only remain at the table but prevail in shaping the health care delivery system of our future.

David E. Bank

Report From Albany

1.) Unprecedented Legislative Year Yields Another Freeze on Medical Liability Rates

The unprecedented series of events which stalemated the NYS Senate for most of June through mid-July did not prevent the passage of a number of important pieces of legislation. One very significant bill, A.9036, Gottfried/S.6026, Rules has been signed into law and has extended for one additional policy year (July 1, 2009-June 30, 2010) the statutory prohibition on any increase in physician medical liability insurance premiums or imposition of any premium surcharge. It is intended that this freeze maintain the 'status quo' to enable all parties involved in the medical liability insurance discussion to develop legislative solutions to: (1) provide liability premium relief to physicians; (2) stabilize and strengthen the medical liability insurance industry; (3) implement sensible tort changes; and (4) improve quality of care in New York State.

2.) Governor Signs Managed Care Reform Legislation

Legislation (A.8402-A, Morelle/S.5472, Breslin) which provides increased protections for patients, hospitals and physicians in their dealings with health plans was recently signed into law by Governor David Paterson. The bill was advanced by the Governor's office and State Insurance Department (SID) following lengthy negotiations convened by SID with representatives from the Medical Society of the State of New York, the New York Health Plan Association, the Conference of Blue Cross & Blue Shield plans, the Greater New York Hospital Association, the Health Care Association of New York State, and New Yorkers for Accessible Health Coverage. The provisions, which unless noted otherwise below will become effective on January 1, 2010. Specifically, the provisions would:

- Reduce from 45 to 30 days the time within which a health insurer is required to pay a claim electronically submitted by a physician or other health care provider;
- Require a health plan to provide 90 days written notice to participating physicians of a proposed "adverse reimbursement change", with the physician being given the opportunity to opt-out of the contract with the health plan in response to the reimbursement change;
- Permit a physician new to practice in New York joining a group practice of physicians participating with a health plan to be "provisionally credentialed" if the health plan fails to complete credentialing review in 90 days. This provision becomes effective on October 1, 2009 and applies to applications submitted after that date and not to those submitted before the date;
- Limit the ability of a health plan to pend its review of a claim based upon suspicion that a patient has additional health insurance coverage; and
- Require health plans to provide physicians and other health care providers with a minimum of 120 days to submit a claim to a health plan following the date of service. Most provider contracts limit such claim submission time period to 60 or 90 days. This provision would also require health plans to, at a minimum, pay a provider 75% of the claim when it is submitted more than 120 days after the date of service if the health provider can demonstrate that the claim could not be submitted within 120 days as a result an "unusual occurrence". This provision becomes effective on April 1, 2010.

  (Importantly, the bill clarifies that these provisions are only a statutory "floor" and that a longer time period or other more favorable terms to the provider can be agreed upon. Moreover, the bill specifies that this 120-day time frame is also subject to more generous provisions that are articulated in the recently enacted Coordination of Benefits (COB) regulation recently promulgated by the Insurance Department. That regulation assures that, for claims involving patients covered by more than one health insurance product, a provider will have at least 60 days to submit a claim to a financially responsible health insurer, following receipt of a benefit determination from another health insurer, no matter how long after the date of service such benefit determination is received from the other health insurer.)
- Extend to non-managed care health insurance products such as Preferred Provider Organizations (PPOs) patient rights to access appropriate specialty care and transitional care, as well as resolution of grievances;
- Facilitate a patient's ability to obtain an external appeal of a treatment for a "rare disease" when the physician can demonstrate that the benefit of the treatment outweighs the risk;

- Prohibit a health plan from inappropriately discounting payments to participating hospitals for a patient's care if the treating physician is non-participating, and prohibits a health plan from inappropriately discounting payments to participating physicians for a patient's care if a hospital where services are rendered is non-participating;
- Extend qualified two-year limitation on health plan refund demands currently applicable to physicians to hospitals and other health care providers, and requires health plans to establish written policies and procedures for health care providers to follow when challenging a refund demand.

3.) AAD Expresses Qualified Support for H.R. 3200

AAD President, David M. Pariser, M.D., F.A.A.D., in a recent letter provides an update to AAD members on the health system reform debate currently working its way through Congress. He notes that the process of enacting a complicated proposal such as health system reform "is complex and will require the Academy to constantly re-evaluate its position as the effort evolves". In the letter, Dr. Pariser rearticulated important principles which have guided the Academy's health policy for decades and which continue to guide the Academy's efforts on health system reform today, including the belief that:

- Americans should have access to affordable, quality health care and that individuals should be free to choose their own physicians and the health insurance coverage that best meets their needs.
- In order to maintain choice and flexibility for patients and doctors, any reform must preserve a diverse set of coverage options offered by a multitude of private insurers.
- Containment of the growth in health care costs must be done without compromising quality care or harming the doctor-patient relationship.

In the letter, Dr. Pariser notes the fact that while much of the media attention has been focused upon HR 3200, there are several reform measures which are currently under scrutiny and that the process remains very fluid. He also notes that as HR 3200 has made its way through the House vetting process, the Academy has had input on each of the amendments considered. Dr. Pariser states that after much consideration, the Academy:

> "made a tactical decision to voice qualified support for H.R. 3200, the bill currently pending committee action in the House of Representatives. It is the opinion of the Academy leadership that this bill, while not perfect, represents the best opportunity of the alternatives under consideration to meet several legislative priorities. Our support represents a commitment to the process and in no way indicates support for every provision in the 1,000-page bill. The Academy certainly has concerns with provisions of the bill including tax proposals intended to pay for health care reforms. Moreover, our current support does not indicate that we would necessarily support the final product as this legislation is amended and merged with other bills. Indeed, the Academy understands that H.R. 3200 represents one step in the process and several of its provisions will likely not survive in the Senate – the goal is to remain at the negotiation table with others from the physician community to influence that change".

Importantly, several of the provisions of H.R. 3200 have the potential to meet several of the Academy's priorities with health system reform, including those which follow:

> • $284 billion is allocated to bring stability to the Medicare physician payment system and eliminate the more than 40 percent cuts in payments to physicians currently scheduled to take place over the next four years;
> • incentives for primary care physicians are funded with new dollars, without reducing payments to specialists;
> • quality measures and reporting will continue to be driven by specialty societies, focused on quality rather than efficiency, and participation will be voluntary;
> • in contrast to several other proposals, the bill maintains our fee-for-service system; any payment reforms would be pilot tested and evaluated to minimize unintended consequences for the delivery of quality patient care; and
> • physicians may opt-out of the public plan option without penalty, and the public option.

The Academy encourages its members to visit the AAD's Government & Advocacy page on the Academy's Web site **www.aad.org/gov/affairs/index.html** to check on the status of the health system reform dialogue. .

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AAD Board of Directors Votes To Oppose Subspecialty Certification in Procedural Dermatology

The American Academy of Dermatology's (AAD) Board of Directors voted on August 1st to oppose the American Board of Dermatology (ABD) proposal for subspecialty certification in procedural dermatology. In a letter sent by the AAD to State Societies, the AAD states that "the Academy Board of Directors had a lengthy and thoughtful discussion about the ABD's proposed subspecialty certification in procedural dermatology. In preparation for the discussion, the Academy Board members reviewed extensive background materials. They heard a presentation from the ABD detailing its rationale for proposing the subspecialty certification, and had the opportunity to ask clarifying questions about the issue. In addition, representatives of the American College of Mohs Surgery, American Society of Dermatologic Surgery, American Society for Mohs Surgery, and the Association of Professors of Dermatology made presentations to the Academy Board expressing their views on the ABD proposal."

The AAD BOD also approved the AAD Advisory Board resolution "to monitor and communicate closely with AAD/A members any developments regarding sub-specialization relating to Procedural Dermatology so that its member organizations may thoroughly discuss the ramifications and its effect on the long range training of dermatology residents and our specialty as a whole".

NYSSDDS' Board of Directors in June voted to oppose the ABD proposal for subspecialty certification and authorized a letter to be sent to the AAD which articulated the opposition of the NYSSDDS to such subspecialty certification. A number of other state societies had also submitted their opposition to this proposal. We will keep you apprised of any additional information forthcoming from the AAD regarding this issue.

Laser Survey Responses Received

NYSSDDS received 105 responses to the survey conducted in late May regarding the use of Class IIIb and IV Lasers. A compilation of the vote appears below. We thank all who responded for taking the time to complete this survey.

1. Should the use of Class IIIb and IV lasers, intense pulsed light treatment, radiofrequency or medical microwave devices be legally considered the practice of medicine (including for the purpose of hair removal) in the state of New York (which would preclude the use of such devices by lay persons and unlicensed medical assistants)? **Yes. 74 No. 31**

2. Which of the following statements represents your opinion and should be the position of the NYSSDDS?

A. The use of Class IIIb and IV lasers, intense pulsed light treatment, radiofrequency or medical microwave device should be delegated to persons qualified by training, experience and licensure (physician, nurse practitioner, physicians' assistant or registered nurse).

B. The use of Class IIIb and IV lasers, intense pulsed light treatment, radiofrequency or medical microwave device should be delegated to persons qualified by training and experience (could include delegation to an aesthetician, LPN, or medical assistant or licensure (Physicians' Assistant, Nurse Practitioner or RN).

A. 65* **B. 41***

3. Which of the following statements represents your opinion and should be the position of the NYSSDDS?

A. A supervising physician needs to be on site and immediately available.

B. A supervising physician needs to be on site or immediately available provided that the site at which services is delivered is owned and operated by a physician in a medical facility whose primary focus is the practice of medicine.

A. 64 * **B. 42 ***

*One physician answered yes to both answers A and B for questions 2 and 3.