Progress Notes . . . . Early November 2012

A Monthly Publication of the Nassau-Suffolk Hospital Council, Inc.

Progress Notes *publication is a summary of regulatory and legislative news, advocacy messages, and other relevant issues affecting the delivery of hospital and health care on Long Island.*

State Legislation Clarifies Observation Care; Hospitals Could See MTA Tax Refund

Observation Care: The observation care bill, the Suburban Hospital Alliance of New York State, LLC's high priority item during the 2012 legislative session, was signed into law by the governor on October 3, 2012, following weeks of negotiations that resulted in an agreement to amend the bill. Effective immediately, the negotiated agreement, which must be passed by the Legislature again, retains key provisions and most of the intent of the original bill. The Suburban Alliance, a coalition of 51 hospitals located in the nine counties immediately east and north of New York City, advocated for this bill so that state and federal rules about observation care align. A state maximum of 24 hours on observation status as opposed to federal regulations allowing 48 hours and placement of observation beds, either in a discrete unit under the ER's supervision or in scatter-bed fashion as clinically appropriate, were the main discrepancies. The amended bill allows hospitals to decide where to place observation beds and requires the Department of Health to develop new regulations on the timeframe for providing observation care, replacing the 24-hour maximum set forth in the January 2012 regulations. As of now, it is not the 48-hour standard originally sought by the Suburban Alliance, but the amended legislation calls for the new regulations to be consistent with Medicare, unless the Commissioner of Health believes a different standard is necessary to "protect and promote patient care and safety."

MTA Employer Payroll Tax: This controversial tax imposed on employers located in select MTA service regions beginning in 2009 was deemed unconstitutional by the State Supreme Court in Nassau County in August. The state is currently appealing that decision and the tax legally continues to be collected. The state expects the decision to be overturned. Should the appeals court uphold the Supreme Court's decision, refunds would be due. The state Department of Taxation and Finance recently posted guidance on its website regarding the potential for refunds of the MTA tax, pending the outcome of litigation. The department is now accepting claims for refunds of tax payments made on or before November 2, 2009; hospitals are encouraged to complete the forms to preserve their right to claim refunds for prior tax years, if the decision is upheld. Hospitals on Long Island pay an estimated $9.3 million annually in MTA taxes**. The deadline for requesting a refund for the first year of the MTA taxes was November 2, 2012.** In December 2011, the state issued a tax/MTA relief plan, which eliminated the MTA tax for some small businesses and lowered it for others. The plan also exempted elementary and secondary public and private schools. The plan excluded not-for-profit hospitals. – Janine Logan, jlogan@nshc.org.

Recovering from Superstorm Sandy . . .

Two-weeks post superstorm Sandy, Long Island hospitals continue to operate at or near full capacity. Hospital employees, who demonstrated extreme dedication during the storm, many working extended hours and remaining at their hospitals during the storm, are easing into normal working routines. There are thousands of hospital employees, however, who suffered the loss of homes and property and are working to re-build their lives. The **Hurricane Sandy Health Care Employee Relief Fund** was established by regional and state hospital associations, including the Nassau-Suffolk Hospital Council, as well as the American Hospital Association, to provide assistance to these impacted employees. To donate go to http://www.uhfnyc.org/hurricane_sandy_relief_fund. The United Hospital Fund is receiving the charitable donations. In the coming days, hospital CEOs will receive more details about submitting names of impacted employees to the fund and how grants will be dispersed. ***Look for a SPECIAL EDITION of Progress Notes next week that will include more information about the relief fund, state waivers to address short-term cash flow needs and other operational concerns at affected hospitals, as well as a report of hospitals' continuing responses to patient and employees needs, as the crisis turns to that of housing, employment, and ongoing relief efforts.***

Tempering Medicare Audit Programs

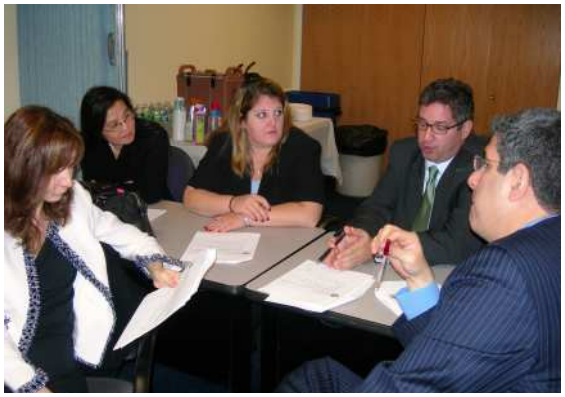
Hospitals increasingly have come under intense pressure and scrutiny due to various Medicare audit programs, and in particular, the Medicare Recovery Audit Contractor (RAC) program. There are significant process and fairness issues with these programs. The ***Medicare Audit Improvement Act of 2012***, recently introduced in the House, seeks to resolve inconsistencies and contradictions inherent in many auditing programs. The legislation addresses appropriateness of outpatient billing when inpatient claim is denied, places limits on medical record requests, calls for enhanced auditor transparency, and requires physician review of Medicare denials, among other items. – Janine Logan, jlogan@nshc.org.

Fiscal Cliff Awaits

With a lame duck session upon us, the White House and Congressional leaders are beginning to talk about the impending year-end fiscal cliff . Aside from passage of the continuing resolution that will fund the government at current levels until March 27, 2013, financial disaster for the entire country looms. The nation would plunge further into recession if the Bush tax cuts are allowed to expire, the Social Security payroll tax cut is allowed to expire, and the scheduled 27 percent Medicare pay cut to the nation's physicians occurs. The fourth lethal component is sequestration – automatic two-percent, across-the-board cuts to Medicare providers come January 2013- a cut of $375 million (2013 – 2021) to Long Island hospitals.

Diligent Detailing and Teamwork Guard Against Audits

For a few hours on Tuesday, October 9, 2012, groups of health care professionals – physicians, patient billing and finance experts, and nurses, among others – worked in teams on mock patient cases to determine diagnoses and care plans. The table top exercises were part of the Hospital Council's executive briefing about the proliferation of Centers for Medicare and Medicaid Services (CMS) Recovery Audit Contractor program audits. James Kyle MD, senior associate and medical director from Cain and Associates, led the informative and lively event that had clinicians and administrators alike thinking on their toes and making decisions, as if CMS auditors were in the room.



Hospital clinicians and administrators consult on a mock patient case at NSHC's executive briefing about RAC audits.

"Clinical documentation is critical now more than ever," said Dr. Kyle. "CMS is scrutinizing charts and will note if the patient lacked intensity or severity for admission."

To avoid denials, Dr. Kyle advised hospital leaders to establish the criteria the hospital is using; otherwise, physicians will be lost. Choose the criteria by which you will operate, says Dr. Kyle, such as Interqual or Milliman.

In this audit-rich environment, CMS will certainly heighten its vigilance, especially when it comes to short stay admissions and outpatient procedures admitted to the hospital, added Dr. Kyle.

The Quality Corner

An update on quality improvement issues

Mary Jane Milano, Director of Quality and Education

Detecting Surgical Site Infections: A new AHRQ report explores ways to enhance the detection and surveillance of hospital- acquired surgical site infections. The report, *Improving the Measurement of Surgical Site Infection (SSI) Risk Stratification and Outcome Detection*, focuses on the development and testing of a computer-assisted algorithm for retrospective assessment of medical records, laboratory test results, and demographic data to identify patients with potential surgical site infections. The algorithm was able to flag the records that were most likely to report an SSI, reducing reviewers' workload and creating significant savings.

Joint Commission Webinar Series: In November and December the Joint Commission will hold a three-part series on Navigating the CMS Survey. Part 1 - November 13, Noon to 1:00 p.m.; Part II - November 27, noon to 1:00 p.m.; and Part III - December 4, noon to 1:00 p.m. For more information go to http://www.jointcommission.org/jcr_webinar_series_-_navigating_the_cms_survey_part_1/

Online Toolkit to Help Hospitals Reduce *C. difficile*: The Agency for Healthcare Research and Quality (AHRQ) has released a new toolkit to help facilities implement an antimicrobial stewardship program that targets C. difficile. "Toolkit for Reduction of Clostridium difficile Infections through Antimicrobial Stewardship," is an online toolkit that includes an extensive list of user-ready resources and real world examples of how to use them. The toolkit is structured to address detailed questions that hospitals commonly have when considering how to set up a program such as "Is my organization ready?" and "How do I select the right intervention?" The toolkit is available at: www.ahrq.gov/qual/cdifftoolkit/.

Benefits to Palliative Care: According to the *Journal of Palliative Medicine*, palliative care programs have doubled since 2000; about 53 percent of hospitals with more than 50 beds have a program. Palliative care focuses on providing specialized medical care, drugs and therapies to enhance the quality of life for patients with chronic and advanced illnesses. Palliative care not only can ease pain and suffering, it can also decrease costs. Some examples of this include shorter lengths of stay, fewer days in intensive care units and reducing imaging and pharmaceutical costs. According to a study published in the *Archives of Internal Medicine*, hospitals could save up to $4,908 in direct costs per admission through a palliative care program.

Member Hospitals

- Brookhaven Memorial Hospital Medical Center
- Catholic Health Services of Long Island
  - Good Samaritan Hospital Medical Center
  - Mercy Medical Center
  - St. Catherine of Siena Medical Center
  - St. Charles Hospital
  - St. Francis Hospital
  - St. Joseph Hospital
- East End Health Alliance
  - Eastern Long Island Hospital
  - Peconic Bay Medical Center
  - Southampton Hospital
- Long Beach Medical Center
- John T. Mather Memorial Hospital
- Nassau University Medical Center
- North Shore-Long Island Jewish Health System
  - Franklin Hospital
  - Glen Cove Hospital
  - Huntington Hospital
  - North Shore University Hospital
  - Plainview Hospital
  - Southside Hospital
  - Syosset Hospital
- Stony Brook University Hospital
- Veterans Affairs Medical Center – Northport
- Winthrop-South Nassau University Health System
  - South Nassau Communities Hospital
  - Winthrop-University Hospital

Hospitals' Tax Exempt Status Tested

New rules pertaining to the tax-exempt status of not-for-profit hospitals are now being written by the Internal Revenue Service (IRS) in response to a provision in the Affordable Care Act (ACA) – namely Section 501 (r). The ACA section on community benefit is requiring hospitals to be more specific about what community benefits they provide.

Currently, not-for-profit hospitals quantify the community benefit they provide by completing IRS Schedule H of Tax form 990. This form was revised in February of 2011 and added, among other items, a community health needs assessment. (Refer to the August 2012 issue of *Progress Notes* for an article about this aspect of ACA/IRS compliance.)

Another revision to Schedule H appeared in December 2011 and this section relates to billing and collection practices. The ACA calls for review and revision of financial assistance policies (FAP) regarding emergency medical care, limits on charges for services provided to individuals eligible for assistance under the FAP, and examination of hospitals' billing and collection practices, which demonstrate a reasonable effort to determine a person's eligibility for assistance and which do not engage in extraordinary collection practices.

In 2007, New York State codified a charity care law that meets many of the requirements set forth by the ACA's Section 501 (r) and the IRS' Schedule H. In fact, New York was one of the first states to proactively address fair and transparent billing practices and to ensure that patients knew about hospitals' financial assistance policies. Many New York hospitals' financial assistance policies exceed state requirements, offering assistance to an even greater number of patients.

There are inconsistencies between the ACA and Schedule H, as well as areas of overlap and redundancy. For example, the IRS proposes the provision of the full, detailed FAP document on the web and when requested by a patient, as opposed to the summary document currently required by state law. The summary documents have been shown to provide patients with necessary information, but also provide instruction of how and where to obtain the more detailed and complex full FAP document, if a patient so desires it. Similarly, rules to determine limitation on charges conflict with current state policy.

NSHC, through its state hospital association – the Healthcare Association of New York State (HANYS), commented on the proposed regulations. On October 29, 2012, the IRS held a hearing to discuss regulatory changes regarding not-

for-profit hospitals' tax exempt statuses. NSHC will keep members apprised of developments regarding various issues pertaining to financial assistance policies, collection and billing practices, and community benefit. – Janine Logan, jlogan@nshc.org.

News Briefs . . .

Historic National Cancer Prevention Study . . . involves eleven hospitals on Long Island. The American Cancer Society's Epidemiology Research Program will be enrolling participants for its newest research study, the Cancer Prevention Study-3 (CPS-3). The study will follow participants for 20 years in an effort to figure out who gets cancer and why. Weight and physical activity will be a major focus of the study, but other behaviors, including the use of medications, will be examined as well. Long Island hospitals participating in the study are **Glen Cove Hospital, St. Joseph Hospital, Mercy Medical Center, St. Francis Hospital, Huntington Hospital, Good Samaritan Hospital Medical Center, Southside Hospital, Peconic Bay Medical Center, Southampton Hospital, St. Catherine of Siena Medical Center, and Stony Brook Medicine**. For more information go to: http://www.cancer.org/Research/ResearchProgramsFunding/Epidemiology-CancerPreventionStudies/CancerPreventionStudy-3/cps3-locations#ny

Stony Brook Nurses on Cover Page … of the September edition of *Advance for Nurses* magazine. This is the second time that nurses at Stony Brook University Hospital have been featured in a cover story in the Northeast regional edition of *Advance for Nurses*. The magazine recognized Stony Brook as one of 90 hospitals nationwide selected to participate in Best Fed Beginnings, a first-of-its-kind national effort to significantly improve breastfeeding rates in states where rates are currently the lowest. In the June issue of *Advance for Nurses*, nurses at Stony Brook's Ambulatory Surgery Center were featured on the cover. The nurses pioneered a way of performing peripheral nerve blocks for patients undergoing outpatient orthopedic surgical procedures that reduces pain, nausea and vomiting, the risk of errors and the amount of time patients spend in the operating room.

The Joint Commission Names 2011 Top Performers on Key Quality Measures . . . they are **Southside Hospital, St. Charles Hospital, and Good Samaritan Hospital Medical Center.** These hospitals attained excellence in accountability measure performance during the calendar year 2011. As "Top Performers" these hospitals represent the top 18 percent of Joint Commission accredited hospitals that report core measure performance data.

Committee and Meeting News …

Understanding Value of End-of-Life Care

National Palliative care expert Patricia Bomba MD held an informative workshop for NSHC members on Friday, October 2, 2012 at the offices of the Nassau-Suffolk Hospital Council. In her presentation "Understanding MOLST, Palliative Care and End-of-Life Care," Dr. Bomba explored the differences between these treatment approaches, emphasizing that palliative care focuses on quality of life at the start of diagnosis of any major or chronic disease or illness and adds an extra layer of care for the patient/ family. Hospice care also offers this, but is traditionally begun at and focused on health care needs at the very end of life. MOLST, or medical orders for life sustaining treatment, offers patients and families a lifelong guide to managing and caring for disease and illness, while honoring a patient's wishes and quality-of-life desires. Dr. Bomba, vice president and medical director, Geriatrics, Excellus Blue Cross Blue Shield and chair of MOLST Statewide Implementation Team and eMOLST Program Director, is a pioneer in the end-of-life care field. MOLST is most effective, she says, when educated patients and families come to the table with trained professionals. An excellent website for physician and community education is www.compassionandsupport.org. The bright pink MOLST forms are in use in New York State.