AHA’s Hospital Assessment Proposal Introduced

State Senator Larry Teague on February 26 introduced Senate Bill 582, proposed legislation that would authorize a “provider assessment” on most privately-operated hospitals in Arkansas. The bill would exempt all government-owned and operated hospitals, including state, city and county facilities, as well as some specialty hospitals. However, government-owned facilities that are operated through non-profit organizations would be subject to the assessment. Federal regulations allow assessments on hospital services up to 5½% of the tax basis. Under SB 582, the rate would not exceed 1% of a hospital’s total net revenues from inpatient and outpatient services.

When matched with Federal Medicaid dollars, proceeds of the tax are expected to be sufficient to add up to $115 million in supplemental payments during state fiscal year 2010 to help offset the losses which have been accruing to Arkansas hospitals over the years due to Medicaid underpayments. In 2004, that amounted to more than $66 million and it grew to about $100 million in 2006. There is no indication the losses have declined since then. The program should benefit hospitals every year, but the assessment rate and the amount of new funds to be distributed among the hospitals could increase or decrease each year.

The additional dollars are to be disbursed to hospitals through a new “Hospital Access Program,” designed to assist with the long term financial viability, availability and accessibility of individual hospitals for their communities by providing supplemental Medicaid payments. The total additional inpatient and outpatient payments will roughly equal the existing Upper Payment Limit (UPL) gap, which is defined in Federal rules and regulations for the category of privately operated hospitals. Some hospitals will pay an assessment greater than the amount which they will benefit. The increased payout is subject to approval by the Center for Medicare & Medicaid Services (CMS), once the bill becomes law. If for any reason, CMS approval is not obtained, the tax would not be levied or collected.

Bill Counters “Card Check” Provisions

Senator Jim DeMint (R-SC), along with Reps. John Kline (R-MN), Howard McKeon (R-CA) and Tom Price (R-GA), have introduced legislation that would protect employees’ right to a secret ballot in union organizing elections. The Secret Ballot Protection Act, supported by the American Hospital Association, would prevent unionization based solely on a card-check process, which forces employees to declare their preference in front of union organizers.

The bill would counter provisions proposed under the Employee Free Choice Act, which was introduced in Congress in 2005 and again in 2007, and is expected to surface again this year. Defeating that legislation, which would allow the NLRB to recognize the union’s role as the official bargaining representative solely through the card-check process and mandate first contract binding arbitration, is a key item on hospitals’ legislative and advocacy agenda during the current congressional session.
Spring AHEF Meeting, April 16

The Arkansas Health Executives Forum will hold its quarterly spring meeting on Thursday, April 16 at 11:00 a.m. at the Arkansas Hospital Association (AHA) classroom, located at 419 Natural Resources Dr. in Little Rock. The program for the meeting will be a legislative update covering state and national issues. AHA executive vice president Bo Ryall will recap hospital and other healthcare matters which the Arkansas General Assembly will have addressed during its current legislative session. Also, AHA senior vice president Paul Cunningham will present an overview of items on hospitals’ Federal advocacy agenda and review specifics of the items that Arkansas attendees at the American Hospital Association Annual Meeting will discuss with members of the state’s congressional delegation in late April.

The program will begin with registration and networking from 11:00-11:15 a.m., followed by the program and lunch. The meeting will adjourn no later than 1 p.m. Please register for the luncheon by clicking on [http://arkhospitals.org/AHEF/events.htm](http://arkhospitals.org/AHEF/events.htm). The luncheon fee is $15.

Judge Rules Against “Economic Credentialing”

Pulaski County Circuit Judge Collins Kilgore issued a February 27 ruling that Baptist Health may no longer use an “economic conflict of interest” standard in its credentialing process to prevent physicians from practicing at the health system’s hospitals across the state if they have an investment in competing institutions. The decision ends, at least for now, a legal action that has been ongoing for several years. The suit was filed by a group of physicians at the Little Rock Cardiology Clinic with an ownership interest in the Arkansas Heart Hospital. A bench trial was held a year ago. In his ruling, Judge Kilgore agreed with the doctors, who argued that the economic credentialing interfered with doctor-patient relationships. Baptist Health has yet to decide whether to appeal the ruling.

AFMC Subsidiary Is State’s First PSO

Quality Excellence Inc., a subsidiary of the Arkansas Foundation for Medical Care (AFMC), has been named the state’s first federally authorized Patient Safety Organization (PSO). The PSO system was created by Congress to help lower the incidences of medical harm in U.S. hospitals – including hospital-acquired infections, pressure ulcers, surgical mistakes and medication errors. As a PSO, Quality Excellence Inc. will offer hospitals and other healthcare providers voluntary, confidential and legally privileged analysis of their data on medical errors to identify risks and hazards, and then work with the providers to create solutions in a non-punitive environment.

PSOs must follow strict guidelines in accordance with the Patient Safety and Quality Improvement Act. Although they are authorized by the federal government, PSOs do not receive government funding. Instead, they contract privately with healthcare providers. The federal Agency for Healthcare Research and Quality (AHRQ) oversees the PSOs and will establish a network of patient safety databases to which the groups can voluntarily submit non-identifiable information. This network will be maintained as an interactive, evidence-based management resource for providers, PSOs and other entities. AHRQ will use the data to analyze national and regional patient safety statistics, including trends and patterns. The findings will be included in AHRQ’s annual National Healthcare Quality Report.
Legal Note: HIPAA and the New Recovery Act

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (the “Act”). The law spans hundreds of pages and contains many provisions that will impact healthcare. Among those provisions are several substantial changes to the HIPAA privacy and security requirements, which include but are not limited to, the following:

- Currently, business associates’ HIPAA obligations are contractual in nature, but business associates now will have direct, statutory obligations of their own under HIPAA. Business associates also will be subject to civil and criminal penalties for HIPAA violations.
- Health information organizations (HIO) and regional HIOs (RHIOs) will fall within the definition of business associates.
- Notice will be required if an individual’s unsecured PHI has been (or is reasonably believed to have been) accessed, acquired or disclosed as a result of a privacy or security breach. Specific requirements for the timing, content and delivery method of the notice also are specified.
- Breach notification requirements will apply to personal health record vendors, and the Federal Trade Commission is to issue regulations addressing these requirements.
- The Act requires that calls for the issuance of new regulations on what constitutes “minimum necessary” for purposes of HIPAA, and until these regulations are issued, covered entities must limit use or disclosure of protected health information to the “limited data set,” or if necessary, to the minimum information necessary to accomplish the intended purpose.
- Expanded accounting requirements will apply for entities that make disclosures through electronic health records.
- Receiving remuneration in exchange for protected health information is prohibited, although the Act provides for several exceptions and allows additional exceptions to be established by regulation.
- Additional communications are included under the definition of “marketing” and will require an authorization.
- Fundraising communications must state, clearly and conspicuously, that the recipient has an opportunity to opt out of receiving these types of communications in the future.
- Enforcement provisions are strengthened considerably under the Act. For example, the Secretary of Health and Human Services must investigate and can apply civil penalties if HIPAA violation is due to willful neglect. Civil monetary penalties (CMPs) for HIPAA violations are increased, and a four-tiered system for determining CMPs is established. Under the new system, the CMP amount varies based upon the nature and extent of the violation, the mental state of the individual responsible for the violation, and whether the violation has been corrected. In addition, within three years, the Secretary must establish a method to distribute a percentage of the CMP collected for a HIPAA violation to individuals who have been harmed by the violation.

Most of the Act’s provisions will take effect in February of 2010, although the increased penalty provisions go into effect immediately and the provisions require implementing regulations and will take effect as those regulations are issued and finalized. As more details are available, the AHA and the American Hospital Association will provide additional information on these and other provisions of the Act.

Suggested topics for the Legal Note may be submitted to elisawhite@arkhospitals.org. The Legal Note is provided solely for informational purpose and does not constitute legal advice. Readers are encouraged to consult with their own attorneys about any legal issues, including those discussed in this article.
**Revised Medicare Fraud & Abuse Fact Sheet**

A newly revised *Medicare Fraud & Abuse Fact Sheet*, revised in January 2009, is now available at [http://www.cms.hhs.gov/MLNProducts/downloads/Fraud_and_Abuse.pdf](http://www.cms.hhs.gov/MLNProducts/downloads/Fraud_and_Abuse.pdf) on the Medicare Learning Network (MLN). CMS works with other government agencies and law enforcement organizations to protect the Medicare program from fraud and abuse, but also relies on consumers and providers to spot illegal activities. This fact sheet provides information on many available resources to help providers and consumers understand actions which constitute potential Medicare fraud or abuse. It is an excellent source for helping providers to protect themselves by understanding the legal definitions and being able to identify fraudulent and abusive practices.

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**Healthcare Reform Is Budget Goal**

A quick review of the budget blueprint for Fiscal Year 2010 that President Barak Obama submitted to Congress last week indicates that it would create a reserve fund of more than $630 billion over 10 years to help pay for healthcare reform. Half of the reserve fund would come from savings in existing healthcare programs, including proposals to bundle Medicare payments for hospital and post-acute care ($17.84 billion in savings), reduce payments to hospitals with certain readmission rates ($8.43 billion), and link a portion of inpatient hospital payment to performance on specific quality measures ($12.09 billion).

Among other things, the budget outline also cites the need to address physician self-referral to facilities in which they have a financial interest. The Arkansas Hospital Association will provide more information on the budget proposal and its expected impact on hospitals in the state in the coming weeks. To review a copy of the proposal, see [http://www.whitehouse.gov/omb/assets/fy2010_new_era/A_New_Era_of_Responsibility2.pdf](http://www.whitehouse.gov/omb/assets/fy2010_new_era/A_New_Era_of_Responsibility2.pdf).

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**The AHA Calendar**

**March 2009**

4 Continuous Service Readiness (CSR) Workshop, Embassy Suites, Little Rock

5 “Sorry Works! Educating Doctors and Hospitals About the Value of Apologies and Upfront Compensation for Medical Errors,” AHA Classroom, Little Rock

10 Is the Relationship Between Your Hospital and Your Medical Staff Sustainable? – Webinar T2475

10 Working with Hospital Volunteers – Webinar Series #VOL09 – Session 3: Developing a Background Check Program for Volunteers


12 The Final Patient Safety and Quality Improvement Act of 2005: Why Hospitals Should Participate in a Patient Safety Organization (PSO) – Webinar #T2476

17 Ensuring Compliance with the Joint Commission’s 2009 Hazardous Materials & Waste Standard – Webinar T2477