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## Keeping-up with Changes in Healthcare Law

By James Burns, Vice President

The next few months promise to be very exciting in terms of changes in healthcare legislation. While a great deal of publicity has been generated around the issues of physician self-referrals through specialty hospital investment and the short-comings of the current inpatient DRG payment system, there have been many other significant happenings in healthcare law.

As a result of the recently-released MEDPAC recommendation to continue the moratorium on specialty hospital construction<sup>1</sup> and mentions of possible changes to Stark II laws, many hospital administrators are avoiding discussions about physician partnering. We at Corazon believe this may not be the best course of action, considering that decreasing reimbursements, rising malpractice costs, and overall increases in general operating expenses are causing doctors to seriously consider new alternatives to keep revenue streams flowing.

While the legal landscape of healthcare seems uncertain, there are new variations on traditional partnership models that can still create win-win situations for the hospital and its physicians.

The MEDPAC report to congress recognizes the need to incentivize physicians, possibly with an endorsement for fewer restrictions on gainsharing<sup>2</sup>. It appears as though the tight restrictions on gainsharing arrangements, which allow physicians and hospitals to share the rewards of reducing the cost of services or procedures to patients, may be challenged. Early in 2005, the Health and Human Services (HHS) Inspector General approved an agreement between an unnamed facility and its cardiac surgeons based on operating room standardization. Although there were no changes in its strict 2001 stance regarding gainsharing and physician anti-kickback laws, this move by the HHS does indicate some opportunity in this area.

The MEDPAC recommendation goes further to recognize that the current prospective payment system (PPS) for inpatient hospital care falls short of being equitable. For instance, the system is paying rates that are not necessarily indicative of level of care provided; this is one way that specialty hospitals are made to appear lucrative and attractive to investors. Even President Bush has noted a problem with the current system, stating a need for reimbursement changes and payment increases that keep up with inflation<sup>3</sup>.

More specific to cardiac care, there have been significant changes in terms of regulations surrounding the performance of angioplasty with off-site open heart surgical support. Several states are debating some changes to the rules that govern the provision of these services. All of this activity has occurred east of the Mississippi River where the strictest regulations have been in place, which has greatly impacted some of the very conservative regions of the Southeastern US.

In Pennsylvania, where the Certificate of Need (CON) for heart surgery was repealed in 1995, there has been a lot of speculation about legislative changes, but none have been confirmed. In the fall of 2004, the Hospital Association of Pennsylvania relayed to its members that certain legislators were interested in a rebirth of the state's CON laws. Since that time there has been no further mention of a change in law.

There has also been a great deal of activity regarding angioplasty with off-site surgical support. In 2002, Pennsylvania began granting exceptions to its angioplasty with open heart surgery back-up rule by issuing waivers for a demonstration project for elective and emergent angioplasty in non-surgical programs. With several hospitals in the state operating successful programs under this project, and several more

attempting to obtain a waiver to participate, in late 2004 a Pennsylvania Department of Health spokesperson stated that there would be no further exceptions. This has caused a great deal of activity in the state because many hospitals are not giving up on obtaining a waiver, and there will certainly be some form of legal initiative spawned by those that do not receive permission.

The situation heats up heading further South... Corazon is working with several programs in Georgia, where very strict CON laws have been in place for many years. There has been a strong push from community hospitals to provide PCI with off-site open heart surgery. In February, the state's Health Strategies Council voted to approve any hospital that meets the criteria to participate in an upcoming elective PCI trial. This motion will have a final vote by the Georgia Department of Community Health in April. Additionally, there has been some discussion of lowering the state's stringent guidelines to obtain a CON for heart surgery. These laws have been very prohibitive and limiting, especially to lower-volume and/or remote facilities.

In Alabama, one facility has been granted a waiver to the state's CON rules to allow the performance of PCI without an open heart surgery program. This ground-breaking decision is bound to cause other facilities in that state to seek a similar exception.

Further south in Florida, there has been an on-going legal battle to lower the CON threshold for open heart surgery. Although that proposed rule change was initially approved and is now under appeal, it includes a provision to allow centers that can meet minimum guidelines to perform PCI without on-site heart surgery. With the potential for this change to become law, there are a number of facilities in the state already preparing to implement this type of program.

And finally, there's the issue of rising medical malpractice costs, which is a serious topic for many physicians. In some states, such as Pennsylvania and West Virginia, physicians have actually stopped practicing medicine due to the prohibitive cost of insurance. Several states are looking at tort reform to help combat these increasing costs. For instance, Missouri is in the middle of a hot debate over proposed legislation, similar to what was enacted in Texas in 2003, which would cap what judges and juries can award for pain and suffering.<sup>4</sup>

With the legal climate constantly changing, it is imperative that hospital leaders and physicians have up-to-date information and experienced advisors before considering entry into a complex partnership arrangement or implementing a new service—especially one as controversial as angioplasty with off-site surgery. Far too often, hospitals rely on internal legal council to be the final voice of reason, but in today's complex environment, there is much more to consider. In fact, linking internal legal advisors with other outside expertise can result in a win-win situation and better position the program to succeed.

Hospitals will want to be prepared to initiate a new service or finalize an arrangement that can optimize care delivery if and when they are able. The most successful programs are remaining ahead of trends and preparing for the changes and challenges that lie ahead. And with the current situation regarding healthcare and the law, there are many changes yet on the way.

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<sup>4</sup> Kansas City Star, March 15, 2005

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<sup>1</sup> Medicare Payment Advisory Commission, March 2005, Report to Congress

<sup>2</sup> Medicare Payment Advisory Commission, March 2005, Report to Congress

<sup>3</sup> *Modern Healthcare*, February 28, 2005

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*Jim is a Vice President with Corazon, a national leader in specialized consulting services for CV program development from strategic business planning through clinical implementation. Corazon is a 2003 Ernst & Young Entrepreneur of the Year Company. Call 412-364-8200 or visit [www.corazon-consulting.com](http://www.corazon-consulting.com).*