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AMCNO Spearheads Legislation to Address Physician Ranking in Ohio

After several months of working with the AMCNO leadership and lobbyists, Senator Bob Spada (R-24) has introduced SB 355. The purpose of this legislation is to provide patients with accurate information when selecting a physician. This legislation would prevent health insurance companies from ranking physicians based solely on specific criteria to persuade a consumer to choose one physician over another. The designations would be made based on cost-efficiency, quality of care or clinical experience. This legislation will establish standards for the physician designations. It stresses that health plans must use risk-adjusted data, and base grades and the ratings on nationally recognized quality of care measures. The legislation also allows physicians the right to review and appeal their ratings prior to the ratings being released to the public.

The issue of physician ranking has been hotly debated for several years. The crux of the debate is balancing the rights of physicians to have accurate and relevant reporting of their practice with the desire of health insurers and consumers to have access to information about their treating physician.

In 2007, the New York Attorney General became active on the issue of insurance company doctor ranking programs. At that time, New York State Attorney General Andrew Cuomo reached agreements with insurance companies operating in New York to provide members with more information on how companies rank physicians. Cuomo said the deal could set a national standard for physician ranking systems. Cuomo warned insurance companies that their physician ranking programs likely would confuse or mislead consumers because of problems with the information used to rank physicians. Under the agreements, the plans will divide their preferred physician list into three lists — one that ranks by cost, one that ranks by quality and one that uses a

(Continued on page 3)

AMCNO Announces New Allergists Conducting the AMCNO *Pollen Line*

The AMCNO is pleased to announce that Allergists **Robert W. Hostoffer, DO, Theodore H. Sher, MD** and **Haig Tcheurekdjian, MD** of the ***Allergy/Immunology Associates Inc.*** are providing the daily pollen counts along with preventative methods to help allergy sufferers cope with the sniffling and sneezing brought on by the season. The AMCNO *Pollen Line* now provides pollen counts Monday through Friday with reports recorded by 8 a.m. The doctors' report is updated each weekday, available via a telephone recording and at www.amcnoma.org.

The *Pollen Line* was a service originally initiated as a partnership with the Cleveland Health Museum and Lutheran Medical Center and was conducted for many years by well-known local physicians and longstanding members of the AMCNO. This hotline has been in existence for more than 46 years. The counts are used by local news stations, The *Plain Dealer* and many Northern Ohio residents who suffer from allergies and hay fever.

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The AMCNO members providing the pollen count for the AMCNO are (from l to r) ***Drs. Tcheurekdjian, Hostoffer****, and* ***Sher.***

INSIDE THIS ISSUE

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ADDRESS SERVICE REQUESTED

AMCNO Spearheads Legislation to Address Physician Ranking in Ohio

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combination of both measures. The agreements also require that the plans report to the NY Attorney General every six months and use an outside monitor.

The AMCNO along with other medical groups including the American Medical Association have expressed concern that doctor rankings can be confusing and could be used to steer patients to the least-expensive health care providers, rather than being based on quality. It is important that the insurance companies are truly reviewing quality issues versus cost and claims data, and the data must be accurate with the ability of physicians to appeal their data.

On a national level, an agreement has been developed between physician groups and health insurers to develop national standards that the companies will use to rate physician performance. That agreement includes the development of a "Patient Charter," to protect the rights of health care consumers. That Charter has support from various medical groups, insurers and business groups.

The "Patient Charter for Physician Performance Measurement, Reporting and Tiering Programs" creates a national set of principles to guide measuring and reporting to consumers about doctors' performance.

Some of the principals that the Patient Charter emphasizes are:

1) Consumers can make more informed decisions based on both quality and cost, with adequate guidance about how to use the information and any limitations in the data,
2) Measurement is based on sound national standards and methodology,
3) Both consumers and physicians have input into the measurement process and how results are reported. This will help ensure that information is trusted by physicians and meaningful to consumers,
4) Measurement is a transparent process so that both consumers and physicians can understand the basis upon which performance is being measured and reported,
5) Physicians have adequate notice and opportunity to correct any errors. There will be no surprises, and
6) Physicians will have information that helps them improve the quality of care they provide.

Recently, legislation was introduced and passed in Colorado that embraces some of these principles. The Colorado physician community spearheaded the introduction of the legislation because they felt that there was a need to codify in legislation the standards for physician ranking data — how they are used, as well as asking for transparency. The legislation stresses that health plans must use risk-adjusted data, and base grades and ratings at least in part, on nationally recognized quality of care measures and not on cost alone. The legislation also provides physicians with the right to review and appeal their ratings. Senator Spada has taken this Colorado legislation and had it drafted here in Ohio with the assistance of the AMCNO. The AMCNO plans to provide testimony and background to the legislature on SB 355 in the coming months with an eye toward reintroducing the legislation in the next General Assembly if necessary. ■

AMCNO Announces New Allergists Conducting the AMCNO *Pollen Line*

(Continued from page 1)

The public can call the free hotline at (216) 520-1050 to hear Drs. Hostoffer, Sher, and Tcheurekdjian's recorded report on the density of the allergens, probable effects on those who are sensitive to such agents, and what precautions to take.

The AMCNO extends our sincere thanks to Drs. Sher, Hostoffer and Tcheurekdjian for providing the pollen counts and for taking the time out of their practice to take the pollen count training necessary to provide the service for the AMCNO. ■

*Drs. Hostoffer and **Sher** converse during the AMCNO training session.*

AMCNO Applauds Congress for over-riding presidential veto to stop Medicare physician payment cuts

In July, Congress voted overwhelmingly to override President Bush's veto of the Medicare Improvements for Patients and Providers Act of 2008 (H.R. 6331), allowing the bill to become law. The AMCNO applauds Congress for this action and sent thank you letters to all of the Representatives from Northern Ohio who voted in favor of the legislation along with both Senators Voinovich and Brown.

Following the president's veto, the U.S. House of Representatives reached a required two-thirds majority to override it with a 383-41 vote, and the Senate followed suit by a 70-26 margin. The veto and subsequent overrides came on the heels of the Senate's vote in favor of H.R. 6331 by a veto-proof majority of 69-30. The U.S. House of Representatives approved H.R. 6331 by an overwhelming, veto-proof majority of 355-59.

The bill replaces the 10.6 percent payment cut that went into effect on July 1 with a 0.5 percent update extension through Dec. 31, and it provides an additional 1.1 percent update for 2009. The 18-month reprieve this bill provides allows Congress time to work with physicians on developing a long-term solution to a payment system that all agree is completely inadequate.

The legislation specifies that the 0.5 percent payment update for the remainder of 2008 became effective July 1.

The AMCNO will actively work to assure that Congress reviews the Sustainable Growth Rate (SGR) formula in order to provide for a system that will appropriately reimburse physicians in order to avert this yearly battle at the legislature. The AMCNO is also concerned about the manner in which the Geographic Practice Cost Indices (GPCIs) are applied throughout Ohio creating an unfair reimbursement level for physicians in Northern Ohio. We have written to the Center for Medicare and Medicaid Services (CMS) and provided comments on the latest federal rule addressing this issue and plan to pursue a change in the GPCI formula in Ohio if possible. (See related story on page 13.)

AMCNO RESIDENT MEMBERS —

mark your calendars now for the following FREE seminar:

Preparing for the Business Aspects of Practicing Medicine

PRESENTED BY THE AMCNO AND SPONSORED BY THE WILLIAM E. LOWER FUND

DATE: WEDNESDAY, OCTOBER 29, 2008

LOCATION:
AMCNO, 6100 OAK TREE BLVD., INDEPENDENCE OH 44131, LOWER LEVEL MEETING ROOM

TIME: 6PM

Speakers from McDonald Hopkins LLC; Squire, Sanders & Dempsey; Hilb Rogal & Hobbs; Sagemark Consulting and Walthall, Drake & Wallace LLP will enlighten residents and spouses on topics that include: legal & other issues for new physicians joining a practice, estate planning for young physicians, disability issues — planning for your future, benefits available to physicians, as well as business & tax aspects of a medical practice. All AMCNO resident members and spouses are welcome to attend — for more information contact Linda Hale at the AMCNO offices at lhale@amcnoma.org

Dr. Anthony Bacevice, *host of the* Healthlines *radio program, conducts an on-location interview at University Hospitals with Pamela B. Davis, MD, Dean of the School of Medicine and Vice President for Medical Affairs at Case Western Reserve University. The interview with Dr. Davis focused on the treatment of Cystic Fibrosis*. In addition to her title as Dean of the School of Medicine, Dr. Davis is the Arline H. and Curtis F. Garvin Research Professor at Case Western Reserve University, the Chief of the Pediatric Pulmonary Division at Rainbow Babies and Children's Hospital, and Professor of Pediatrics, Physiology & Biophysics, and Molecular Biology & Microbiology at Case Western Reserve University. Dr. Davis directs the Willard A. Bernbaum Cystic Fibrosis Research Center at Case Western Reserve University, which is the site of a Core Center from NIDDK and a Research Development Center for the Cystic Fibrosis Foundation.*
**Cystic Fibrosis is an inherited chronic disease that affects the lungs and digestive system of about 30,000 children and adults in the United States (70,000 worldwide). For more information on Cystic Fibrosis or to learn about the treatment, care options and clinical trials, go to www.cff.org.*

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AMCNO MEMBERSHIP RECRUITMENT

2008 Resident Orientation a Huge Success

The Academy of Medicine of Cleveland & Northern Ohio (AMCNO) welcomed new residents this summer from the following institutions: Cleveland Clinic Foundation, Fairview Hospital, Huron Hospital, MetroHealth Medical Center, South Pointe, St. John Westshore, St. Vincent Charity Hospital and University Hospitals. In all, more than 400 new physicians joined the AMCNO as resident members. Membership entitles these new physicians to many benefits including receiving weekly updates on all manner of health care-related news as well as legislative and regulatory updates under review by the Ohio General Assembly and the United States Congress, legislative representation at the state house by AMCNO lobbyists, listing in the membership directory, seminars, publications and opportunities to serve on AMCNO committees and more.

Welcome to all new resident members!

Do you know of a resident or medical student interested in free AMCNO membership? Direct them to apply online at www.amcnoma.org Click on BECOME A MEMBER. ■

Residents from the Cleveland Clinic Foundation and MetroHealth Medical Center eagerly signed up for membership in the AMCNO.

AMCNO Legislative Update

By: Michael Wise, J.D., AMCNO Lobbyist

The 2008 Election

The AMCNO is working on a Voting Guide that will include the presidential nominee's positions on healthcare issues, background on the Ohio Supreme Court race, judicial races and candidates running for the legislature. The big issue in Ohio in November will be for control of the Ohio House. Currently, the Republicans hold a 53-46 majority. All 99 seats are up for election this Fall. Much more information on the candidates and the issues will be available in the AMCNO Voting Guide.

AMCNO lobbyist Mike Wise poses with other rally participants outside the Ohio Statehouse.

ADR and Medical Malpractice Rates

The AMCNO continues to track alternative dispute resolution ("ADR") activity around the U.S. AMCNO is a strong advocate of the use of ADR to more efficiently resolve professional liability cases and ultimately lower insurance premiums. We are somewhat encouraged by an Ohio development spearheaded by the Ohio Supreme Court to pilot the use of commercial courts in five counties. Cuyahoga County is one of the five counties that will have the opportunity to place commercial lawsuits in front of only one or two judges in order to accelerate resolution of the cases. Because those judges would specialize in such disputes, they would have a more thorough understanding of the laws that affect businesses, and companies would be able to see more consistent verdicts. Sixteen states have commercial dockets already and it has been an unqualified success for those states.

The trial period can begin Sept. 1, 2008 and will last through 2012 so that counties have enough time to decide if they want to participate and so the state will have enough time to track the court's results before officials decide if they want to implement commercial dockets throughout Ohio. AMCNO plans to contact the Ohio Supreme Court to explore ways that this initiative could positively affect the efforts to streamline medical malpractice cases.

Executive Branch Issues

AMCNO Shows Support for Tax on Other Tobacco Products at Statehouse Rally

Over the summer the AMCNO participated in a tobacco rally meant to ask the governor and the General Assembly to find a way to continue to fund tobacco prevention and cessation programs in Ohio. Participants at the rally said the state should equalize tax rates on all types of tobacco products and urged rejection of separate legislation that would create exemptions in the state's smoking ban.

The AMCNO strongly supports HB 572 — a bill currently under review by the General Assembly. The legislation corrects the imbalance between the "other tobacco products" (OTP) tax which includes all non-cigarette forms of tobacco and the cigarette tax, and dedicates the revenue generated — approximately $53 to $59 million a year — to tobacco prevention and cessation. The legislation would set up a special fund for the money and a special Center within the Ohio Department of Health requiring that the money be used for tobacco prevention and cessation. Both of these provisions would provide a layer of legislative protection to insure that the money is not used for other purposes. The AMCNO is a strong advocate for raising the tax on other tobacco products and we have become an active participant in the Investing in Tobacco-Free Youth Coalition campaign. The group is dedicated to reducing the problem of non-cigarette tobacco use. The AMCNO has sent letters of support to the sponsor of HB 572 as well as to all of the representatives on the committee reviewing the legislation. HB 572 is sponsored by Democrat Representative Tyrone Yates of Cincinnati. The Bill does not have co-sponsors and will likely stall in the House as there are a very limited number of session days left in this General Assembly.

Ohio State Board of Pharmacy Dangerous Drug Distribution Issue

On June 12, 2008 Governor Strickland signed Sub. H.B. 283, which added changes to the Ohio Revised code addressing to whom a registered wholesale distributor of dangerous drugs may sell or distribute in certain instances. Therefore, effective Sept. 12, 2008, state law will change regarding the sale and distribution of dangerous drugs by registered wholesale distributors of dangerous drugs in certain instances. The new law will allow registered wholesale distributors of dangerous drugs to sell the drugs to a business practice that is a corporation, limited liability company, or professional association, if the business practice has a sole shareholder who is a licensed health care professional authorized to prescribe drugs (prescriber) and is authorized to provide the professional services being offered by the practice.

This means that if the business practice has a single prescriber who is a sole shareholder, member or owner of the practice then this business practice is not required to be licensed as a Terminal Distributor of Dangerous Drugs (TDDD) with the Ohio Board of Pharmacy. Previously, this exemption was only for a prescriber who practiced as a sole proprietor. If the practice is a group practice and there are multiple owners, shareholders, or members then the business practice (corporation, professional association, LLC, or partnership) must continue to be licensed as a TDDD with the Board of Pharmacy. A separate license is required for each separate location where dangerous drugs are received, stored, used, or distributed. The other change in the law pertains to dentists. To obtain a copy of the memo explaining the new law and the forms required, as well as providing information on DEA status questions go to http://pharmacy.ohio.gov/Licensing_Issues_for_Prescribers_07252008.pdf.

Ohio State Medical Board Hearing on Proposed Rules

In July, the Ohio State Medical Board held a hearing on proposed rules. One of the rules dealt with controlled substances and the requirement of "good medical practice" such as a "face-to-face" meeting at least every 30 days. The issue here regards weight loss clinics and the desire to broaden prescriptive authority. With regard to the Proposed Rules on criminal records checks, this will certainly impose greater demands

on those involved in helping physicians obtain licensure. Other professionals have similar provisions and are governed by their own Boards. However, the criminal record checks do apply to all health professions and rules will be promulgated. One new provision here is the requirement that a copy of the applicant's diploma be provided. The diploma must come directly from the school. There was comment about this issue at the hearing and there may be an amendment.

Judicial Branch Issues

At the Supreme Court, the big news is that an unanimous decision was rendered in August, when the Court decided to take a case to determine whether key sections of a 2004 legislative overhaul of the personal injury lawsuit system are constitutional. The Justices said that they would answer eight certified questions from U.S. District Judge James Carr of Toledo about SB 80 from the 125th General Assembly. That Bill was sponsored by Senator Stivers and limited jury awards to injured persons for both non-economic damages such as pain and suffering, and for punitive damages. The Court also accepted a separate case from Columbiana County that raised the same issues. Justices agreed, 6-1, to review a recent declaration of the 7th District Court of Appeals that found Ohio's intentional tort law was unconstitutional on its face. Justice Paul Pfeifer dissented.

The Supreme Court in recent months has declared that some other portions of the law are constitutional. In 2007, Justices said in a 5-2 opinion that caps on noneconomic and punitive damages do not violate constitutional rights to jury trials, due process, equal protection of laws, or the separation of powers. Last February, the court upheld a section of the law that bars defective product suits against manufacturers of equipment that has been in use for more than 10 years.

In light of those recent decisions and the current make up of the court, many pundits believe that SB 80 will be upheld. Also, it would not be surprising to see either Justice O'Connor or Justice Stratton write the opinion for the majority and that opinion could be released before November. Both of these Justices are up for reelection this year and both of these Justices were in the majority in the 2007 5-2 case that upheld other provisions of SB 80.

Legislative and Insurance Issues

Senate Bill 355 – Physician Ranking

AMCNO has been working with Senator Bob Spada on this issue for most of 2008 and a recently passed law in Colorado provided a framework for this Senate Bill. The purpose of this legislation is to provide the patient with accurate information when selecting a physician. This legislation would prevent the health insurance company from ranking physicians based solely on specific criteria to persuade a consumer to choose one physician over another. The designations would be made based on cost efficiency, quality of care or clinical experience. This legislation will establish standards for the physician designations. It stresses that health plans must use risk-adjusted data, base grades, and ratings at least in part on nationally recognized quality of care measures. The legislation also allows physicians the right to review and appeal their ratings prior to the ratings being released to the public.

We first reported on this issue because of activity out of the New York AG office. AMCNO then met with AG Dann on this issue. Colorado now has moved through legislation to regulate tiered networks. The state's bill follows national agreements by health insurers to make physician-rating systems more transparent and based less on costs. A bill on the desk of Gov. Bill Ritter Jr. would require plans to disclose data and methodology in reaching physician grades and tiering, a process by which insurers group physicians based on purported quality, then offer a discount to members who only see doctors in the highest-rated tier (see related story on page 1).

Insurance Issues Under Review

AMCNO continues to address out-of-network issues and the issue of medical necessity. Medical Necessity was originally to be addressed in HB 125. It was removed from the Bill because of the strenuous objections by the insurance industry. The issue is still alive and AMCNO is still reviewing the activity around the country on this issue. AMCNO recently conferenced with the counsel who is bringing the lawsuit in Connecticut against Ingenix for artificially low reimbursement rates insurers pay to out-of-network providers. The lawsuit, which seeks class-action status and was filed in April in U.S. District Court in Hartford, claims damages from an alleged conspiracy in which insurance companies calculate their usual, customary and reasonable rates from a flawed and manipulated Ingenix database. The lowering payments to providers, according to the lawsuit, left consumers with higher out-of-pocket costs. The AMCNO will continue to update our membership on these two issues.

We are now almost through with this two-year legislative cycle. AMCNO has a comprehensive tracking system of all health care-related legislation in the General Assembly. If you are interested in receiving a copy of this document, please contact Elayne Biddlestone at (216) 520-1000. ■

CLASSIFIEDS

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NOMPAC: Working on Behalf of Northern Ohio's Physicians

John A. Bastulli, MD, NOMPAC President and AMCNO Vice President of Legislative Affairs

Election Day is right around the corner — and again physicians are faced with myriad issues. Whether you agree with me or not, it has been my experience that many health care issues and medical care options are decided by the legislature and government entities.

The way I see it, we have two choices — we can either get engaged or leave it to the legislators and government to set our agenda. I believe you should get engaged in the process. I realize that most physicians do not want to drive down to Columbus and talk to legislators about health care issues. And for the most part most physicians do not want to interact with government entities. If you are one of those physicians, there is another way you can help set the agenda.

Encourage your colleagues to join the AMCNO — the organization is geared to address legislative issues as well as providing avenues to share your viewpoints and perspectives along with your patients' concerns. For those of us who have chosen to be active within the Academy of Medicine of Cleveland & Northern Ohio, we need your support and voice. The AMCNO needs you and your patients need your involvement as well.

I want to introduce to you an important organization connected to the AMCNO: NOMPAC, the Northern Ohio Medical Political Action Committee. NOMPAC was established to provide a mechanism for the AMCNO members to use the "PAC" model in support of legislators who support your perspectives and your patients' perspectives during the election process.

Without NOMPAC's voice, our patients and physicians in Northeast Ohio would find themselves less represented at crucial times when decisions are made that significantly impact both. It is well understood that a strong NOMPAC requires significant revenues to have an impact during important election campaigns. We must support candidates who have been supportive of issues important to patients and physicians. A NOMPAC mailing will be arriving in your office soon — please take the time to read the information and consider a donation to NOMPAC. ■

AMCNO Voting Guide for Members Available Soon!

The Academy of Medicine of Cleveland & Northern Ohio Legislative Committee, in concert with our lobbyists and Medical Legal Liaison Committee, is currently updating a voting guide for the upcoming election on Tuesday, Nov. 4, 2008. As always, a summary of issues and candidates will be provided and will be made available exclusively to our physician membership.

The guide will contain:

- District Information – District Number, Description, Map, and Partisan Index
- Background Information on the Democrat and Republican Candidates, including their education and previous elected experience.
- Information on the presidential candidates and their health care reform agenda.
- Information on Common Pleas, Appellate and Supreme Court judicial candidates.
- Candidate responses to questions from the AMCNO Legislative Committee on issues affecting the practice of medicine in Northern Ohio.

Look for the AMCNO 2008 Voter's Guide in your mail soon! For information on any legislative issues the AMCNO takes positions on, contact Elayne Biddlestone at (216) 520-1000.

Ohio Supreme Court Candidates Meet with Physicians

Physicians from the AMCNO and members from the McDonald Hopkins, LLC law firm listen to comments from Justices O'Connor and Stratton at a Meet and Greet session held at the law offices.

Over the summer months, the AMCNO through our political action committee — NOMPAC — endorsed the campaigns of Ohio Supreme Court Justices Maureen O'Connor and Evelyn Lundberg Stratton. We believe that in order to maintain a court that will interpret the law and not rewrite it we need to retain Justice Maureen O'Connor and Justice Evelyn Lundberg Stratton on the Ohio Supreme Court. These individuals are dedicated to further establish and preserve the principles of judicial fairness.

Both justices attended a Meet and Greet session co-sponsored by our lobbyists' law firm — McDonald Hopkins, LLC and the AMCNO. The session was well attended by both physicians and attorneys alike. Both justices presented their views on myriad topics, including how the AMCNO should approach filing an amicus brief on specific cases that come before the court. Following the Meet and Greet session, the two justices participated in a fundraising event at the home of Dr. and Mrs. John Bastulli.

Physician leadership from the AMCNO spend a moment with Ohio Supreme Court justices Stratton and O'Connor at Dr. Bastulli's home. From l to r – ***Dr. James Sechler, Dr. Victor Bello, Justice Stratton, Justice O'Connor*** *and* ***Dr. John Bastulli.***

The Academy of Medicine of Cleveland & Northern Ohio (AMCNO) Sponsors Legislative Lunches Over the Summer

During the months of June and August, the AMCNO was pleased to co-sponsor legislative lunches at both Fairview and Saint Vincent Charity Hospitals. These are not fundraising events, rather the purpose of the legislative lunch it to provide an opportunity for physicians to meet with legislators from the Northern Ohio area in order to discuss issues of importance to the practice of medicine.

Physicians from the medical staff at Fairview Hospital discuss issues with legislators representing the Northern Ohio area.

Legislators present at the Fairview luncheon were: Representatives Armond Budish, Jennifer Brady, Tom Patton and Michael Foley, and Senators Dale Miller and Robert Spada. More than 25 physicians were also present for this event. At St. Vincent Charity Hospital the legislators present were: Representatives Tom Patton, Sandra Williams and Barbara Boyd. This event was also well attended by both physicians and hospital administrators.

Dr. Bastulli, VP of Legislative Affairs for the AMCNO, began each luncheon by providing an overview of the upcoming AMCNO legislative initiatives. He noted that the AMCNO is interested in introducing legislation that would address the physician ranking/tiering programs of health insurance companies. The rankings must be based upon evidence-based medicine, and clinical outcomes must be fair and there must be some review of the location variability for physicians in the state. It is also important that the insurance companies are using data other than just cost data in their evaluations. Dr. Bastulli also provided background on the AMCNO initiative to try and get legislation passed in Ohio to provide for an alternative dispute resolution of medical liability claims. He noted that due to the strong opposition of trial lawyers and the illusion that there is no longer a tort reform problem in the state the legislation has not moved. The AMCNO plans to continue to look at other alternatives — special courts, medical review panels, arbitration, perhaps even mediation as a possible avenue.

At both luncheons, a good portion of the discussion centered on the need for the state of Ohio as well as the federal government to find a way to provide coverage for the uninsured population.

Legislators suggested that since this was an election year there would probably not be much activity on this front until the elections are over and there is a clear indication of a legislative agenda. Legislators advised physicians participating in the luncheon that they must continue to be vigilant and remain engaged in the legislative process in order to affect change in the health care landscape. AMCNO representatives provided the group with information on AMCNO legislative initiatives such as our work with the Ohio Department of Insurance gathering information from physicians and the uninsured alike in the Northern Ohio area on the type of coverage that would be most beneficial to the uninsured.

Physicians at the luncheons also expressed concern about the manner in which insurance companies provide payments to physicians, which resulted in discussion about the need for additional insurance company oversight through the Ohio Department of Insurance as well as increased diligence on the part of the ODI with regard to prompt payments of physicians by insurance companies. AMCNO members interested in setting up a legislative lunch at their hospital should contact E. Biddlestone at the AMCNO at ebiddlestone@amcnoma.org ■

***Dr. John Bastulli** provides introductory comments to the participants attending the legislative lunch at St. Vincent Charity Hospital.*

Better Health, *Greater* Cleveland — Extending Its Reach to Improve Care for Patients with Chronic Conditions

Randall D. Cebul, MD, Director
Better Health, Greater *Cleveland*

Better Health, *Greater* Cleveland, the multistakeholder alliance dedicated to improving the care and outcomes for patients with chronic conditions in northeast Ohio, is extending its reach beyond the physicians' office.

"Better Health, *Greater* Cleveland" is the new local name for our Robert Wood Johnson Foundation-supported program under RWJF's nationwide Aligning Forces for Quality initiative. Our new name and a new Web site were unveiled in June to coincide with the publication of Better Health's first Community Health Checkup report. The Checkup, northeast Ohio's first-ever report of outpatient measures, provides data on the care and outcomes of diabetes for nearly 25,000 patients at 40 practices in Greater Cleveland. The full report is available at www.betterhealthcleveland.org.

The Checkup marked an important milestone for our fledgling alliance. But the program already has begun work on its second outpatient diabetes report, its first report on heart failure, and new initiatives to improve quality for patients who are hospitalized with chronic conditions. As in our outpatient improvement program, we are attempting to bring all major stakeholders to the table to achieve results.

Background
Better Health was officially launched in February 2007 as a broad alliance of collaborators who deliver, receive and pay for health care. The Robert Wood Johnson Foundation (RWJF) provided a $600,000 seed grant and its considerable national visibility and leverage. Our alliance has devised strategies to build and synchronize: 1) performance measurement and public reporting for targeted chronic conditions; 2) a region-wide Quality Improvement Learning Collaborative for physician office teams; and 3) tools and activities to help engage and activate patients in partnerships with their physicians.

Months before the program's first birthday, RWJF decided to expand its collaborative regional approach to other health care settings. On May 1, along with 13 other communities nationwide, Better Health, *Greater* Cleveland began its second phase with an additional $1 million grant that will expand our activities to the inpatient setting and extend program support at least through 2011. Our Community Health Checkup report, and our new Web site, were announced to coincide with RWJF's national relaunch of the Aligning Forces program on June fifth, receiving coverage in both regional and national media, including the *New York Times* and the *Wall Street Journal*.

The Community Health Checkup and Use of Its Results
The Community Health Checkup is designed to recognize achievement and motivate improvement by our partner practices and their patients. The first Checkup, focusing on diabetes, includes detailed regional and practice-level data on nine nationally endorsed and locally vetted measures of care processes and outcomes. At the regional level, without identifying individual practices, we report our results stratified in several ways that are intended to shed light on the influence of patient-level social and economic factors on their care and outcomes, including insurance status, race, income and educational attainment. At the group practice level, we also report our care and outcome measures stratified by insurance.

The regional findings offer an eye-opening window into how we are doing overall, by comparison with NCQA health plan standards as well as our own, and how different sub-groups of patients are doing in northeast Ohio. Overall, we find that: 1) we're doing well by comparison to national (NCQA) benchmarks; 2) we're doing better with care processes (e.g., obtaining hemoglobin A1c results and monitoring patients for nephropathy) than we are with intermediate outcomes (e.g., achieving good values for A1c, blood pressure, and body mass index); and 3) perhaps not surprisingly, patients with fewer resources (e.g., no insurance, lower income and educational attainment, and minority patients) do less well on outcomes than those with more resources. By contrast, we were pleased to see that our care processes seemed not to vary by much by patients' resources (e.g., as physicians, we order tests and vaccinations at similar rates across insurance categories and by race).

Practices already have begun to use the data to make important changes. Many practices are focusing on outcomes and interventions designed to better engage patients, especially those with fewer resources. The MetroHealth Buckeye facility is working to improve the BMIs of their patients and to reduce their smoking rates. Our three Federally Qualified Health Centers (FQHCs) have joined forces to seek federal funding to test the use of "patient navigators" to improve their diabetic patients' outcomes. Care Alliance, one of the FQHCs that serves patients who are homeless or living in public housing, attended to its low pneumococcal vaccination rate (Care Alliance could not afford the vaccine) and successfully pursued support from the Cleveland Clinic to purchase the vaccine for the next three years. Other practices are focusing on better process achievement and documentation, especially for services, such as eye examinations, that often are obtained outside of the home practice.

These practice changes are shared across practices and health systems through monthly conference calls (support for which is donated by One Community) and twice yearly day-long meetings of our Quality Improvement Learning Collaborative. In addition, they have spurred activities by our Consumer Engagement Committee to devise ways to help patients and our practices establish better partnerships in care.

The next report is planned for late fall. We expect additional practices to participate, including those at Huron Hospital, University Hospitals' Department of Family Practice, and the northeast Ohio general internal medicine practices of the Cleveland Wade Park VA Medical Center. Although we won't report our findings on new diabetes measures related to counseling of smokers and the performance of diabetic foot exams, these standards are being pilot tested for future reports.

New partners, new activities
In Phase II, Better Health, *Greater* Cleveland welcomed new hospital partners, including MetroHealth Medical Center and the 10 hospitals in the Cleveland Clinic Health System. The inpatient strategies are designed to complement ongoing quality improvement efforts in outpatient settings.

Planning is well underway for the two additional initiatives in Phase II: 1) Integration of evidence-based protocols for inpatient care of patients with targeted chronic conditions, and 2) Improving transitions of care from the hospital back into the community.

The American Heart Association's well established *Get with the Guidelines* (GWTG) program provides the foundation for improving inpatient care. Led by Dr. Irene Katzan, a neurologist at the Cleveland Clinic and member of MetroHealth's Center for Health Care Research and Policy, *Better Health* is working to integrate guideline-based care into the inpatient workflow so that providers

(Continued on page 12)

Better Health, *Greater* Cleveland – Extending Its Reach to Improve Care for Patients with Chronic Conditions

(Continued from page 11)

can practice real-time quality improvement. Stroke care, the GWTG program most commonly used by area hospitals, will be addressed first and serve as a model for other chronic conditions, such as heart failure, that Better Health also is targeting for improvement in outpatient settings.

"The GWTG program was designed for inpatient care and to improve outcomes for patients with stroke and heart disease," said Katzan, who leads the Cleveland Stroke Outcomes Research Program and is the physician leader for the CDC-sponsored Paul Coverdell National Stroke Registry in Ohio. "We think we can make significant quality improvements by making the guidelines an integral tool for clinicians."

The second major component of the hospital-centered work addresses system practices that begin when patients with chronic conditions are discharged from hospitals. Too often, patients and their families leave the hospital ill equipped to manage follow-up care, and primary care physicians, skilled nursing units and others have little or no information about the hospitalization. Leading the data collection and QI efforts pertaining to discharge planning and post-discharge transitions are Lisa Anderson, an RN and Vice President of the Center for Health Affairs, and Shirley Moore, PhD, Associate Dean for Research at Case Western Reserve University's Bolton School of Nursing.

Related initiatives

Better Health, *Greater* Cleveland continues discussions with the American Board of Internal Medicine and the American Academy of Family Physicians to use participation in our program as credit toward maintaining their certification. An arrangement is likely to be finalized in early 2009.

In addition, Bridges to Excellence and related physician recognition programs have expressed keen interest in partnering with Better Health, *Greater* Cleveland. Negotiations continue to advance. These programs are designed to provide incentives that reward physicians and practices for their achievement against nationally endorsed measures and for adopting better systems of care that result in good outcomes. For more information, visit www.bridgestoexcellence.org.

Editor's note: *The AMCNO is an active participant and partner in the Better Health Greater Cleveland Alliance.* ■

AMCNO provides comments on impact of chronic disease

As a partner in the Ohio chapter of the Partnership to Fight Chronic Disease (PFCD) the Academy of Medicine of Cleveland & Northern Ohio (AMCNO) has submitted a letter outlining the impact of chronic disease on our health care system to the Democratic and Republican National Committee party platforms. PFCD partners across the state provided transcripts of testimony or letters to the campaigns in an effort to educate the parties about the need to address the treatment of chronic disease as a part of the national health care agenda. A copy of the AMCNO letter is provided below.

amcno

July 28, 2008

Re: Partnership to Fight Chronic Disease (PFCD) Testimony from the Academy of Medicine of Cleveland & Northern Ohio (AMCNO)

As President of the Academy of Medicine of Cleveland & Northern Ohio (AMCNO), an organization representing nearly 5,000 physicians in Northeastern Ohio; I am writing to provide input on the importance of addressing the issue of prevention and management of chronic disease in this country.

According to the Center for Disease Control and Prevention, 7 of 10 people die because of a chronic illness and more than 90 million people live with a chronic disease. In addition, chronic disease accounts for more than 75% of the nation's total costs for medical care. The annual direct medical costs associated with selected chronic diseases are as follows: diabetes ($44 billion), arthritis ($22 billion), cardiovascular disease ($300 billion), depression ($12.4 billion), and asthma ($5.1 billion).

Declining health status also contributes to medical costs. Obesity, physical inactivity, and smoking are all contributors and these unhealthy behaviors have all added to rising health care costs. The American Medical Association estimates that 800 billion dollars a year is spent on healthcare services related to five conditions: obesity, tobacco use, sexually transmitted diseases, violence and teen pregnancy. The prevalence of obesity and diabetes has doubled over the last 25 years, with more than a quarter of health care spending growth attributable to the rise in obesity and obesity related growth of diabetes, high cholesterol and heart disease. In Ohio, the prevalence of obesity has more than doubled since 1990, ranking Ohio as the 10th most obese state in the country, over 25% of the Ohio population smokes and 10 percent of the Ohio population suffers from diabetes.

Some individuals and organizations participating in the healthcare reform debate have stated that healthcare is a basic right and should be provided for all. We believe that there is no right without individual responsibility. In order to control costs, reform must address unhealthy lifestyle choices. Therefore, the AMCNO believes that a health care reform plan should encourage third-party payers to use targeted benefit design, whereby patient cost-sharing requirements are reduced for maintenance medications used to treat chronic medical conditions, particularly when non-compliance poses a high risk of adverse clinical outcome and/or high medical costs. Consideration should be given to tailoring cost-sharing requirements to patient income and other factors known to impact compliance.

With the graying of America, the prevalence of chronic illness will increase, placing more pressure on Medicare and Medicaid. Physicians will see increasing numbers of patients with several chronic diseases. These patients will require improved coordination of care and, therefore, physicians will have to spend more time coordinating patient care. Payment for coordinating care will be an issue since generally physician fees for chronic visits are less than acute care visits. Physicians generally do not receive sufficient reimbursement for lifestyle counseling or management of patients with chronic illness from health insurance companies. The choice of performance measures such as those included in pay for performance insurance programs should reward doctors for recommending patient behavioral changes such as smoking cessation, improved diet and increased physical activity, and for management of chronic illness. Consequently, the AMCNO strongly believes that any health reform plan must include coverage for preventative care.

Chronic illness results in patients having to change their behavior; and they have to be compliant with medication management, and have regular interactions with their physicians. Effective treatment for patients with chronic disease involves complex and evolving drug and technology management, time-consuming patient education, and helping patients make decisions about their management. The consequences of not providing this depth of care include excessive use of outpatient and emergency facilities and hospitalizations. Therefore, the AMCNO supports health care reform programs whereby physicians are supported for routinely providing lifestyle counseling to patients through: adequate third-party reimbursement, and inclusion of lifestyle counseling in quality measurement and pay-for-performance incentives.

The current health care infrastructure was designed to treat acute illness and it needs to evolve to more effectively treat chronic illness and address personal behaviors associated with poor health. The AMCNO asks that the next administration consider these points when designing their health care reform plan.

Sincerely,

Raymond J. Scheetz, Jr., MD
President

The Voice of Physicians in Northern Ohio

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AMCNO responds to CMS Proposed Rule – Physician payment and GPCI calculation at issue

On behalf of our membership, the AMCNO submitted comments to the Centers for Medicare and Medicaid Services (CMS) in response to the Proposed 2009 changes to payment policies and rates under the Medicare Physician Fee Schedule (proposed rule CMS-1403-P). Our comments focused on the issue of the flawed sustainable growth rate (SGR) formula currently utilized by CMS to calculate physician payments under Medicare as well as items contained in the proposed rule relative to the geographic practice cost indices (GPCI) utilized by Medicare in Ohio.

The Medicare physician fee schedule adjusts physician fees for area differences in physicians' costs of operating a private medical practice. Three separate indices, known as geographic practice cost indices (GPCI) raise or lower Medicare fees in an area, depending on whether the area's physician practice costs are above or below the national average. These GPCIs adjust physician fees for variations in physicians' costs of providing care in different geographic areas. The three GPCIs correspond to the three components of a Medicare fee: physician work, practice expense, and malpractice expense.

At this time, CMS uses 89 physician payment localities among which fees are adjusted. CMS recognizes that changing demographics and local economic conditions may lead to increased variations in practice costs in certain payment locality boundaries. Currently, the state of Ohio is designated as a statewide locality. This designation was made with the support of the state medical association over ten years ago and over the strong objections of the AMCNO. The AMCNO objected due to the fact that a change to a statewide locality would impact payments to physicians in Northern Ohio since a statewide locality in Ohio clearly would not accurately account for the variations in practice costs in certain payment localities — particularly in Northern Ohio.

The AMCNO had myriad concerns regarding the usage of geographic practice cost indices and we provided our detailed comments to CMS last year in response to CY 2008 PFS proposed rule on the usage of the GPCIs as well as our suggestions regarding options that we believe would be better suited for physicians in Northern Ohio (see Sept/Oct 2007 issue).

AMCNO Advocacy at Work

The comments sent to CMS last year by the AMCNO along with comments from other states/organizations that expressed an interest in having their payment localities reconfigured appeared to have some impact with CMS. CMS has now contracted with Acumen, LLC to conduct a preliminary study of several options for revising the payment localities. While CMS has made it clear that they are not yet proposing to make any changes to the payment localities, the AMCNO is pleased to learn that that this study is to be conducted and that CMS is at least reviewing several alternative approaches for reconfiguring payment localities on a nationwide basis.

The AMCNO has just received the Acumen study outlining several options to change the GPCI formula and we plan to review the study and prepare our comments. When and if CMS is ready to propose a change to the locality configuration, CMS plans to hold town hall meetings and/or open forums to obtain comments on this important issue. The AMCNO has asked that CMS consider conducting a town hall meeting in the Northern Ohio area so that the medical community in this part of the state can voice their opinion on this important matter. As noted above, the state medical association supports a statewide locality and the AMCNO would welcome the opportunity to provide our comments on this issue on behalf of our 5,000 physician members.

As the regional organization representing physicians in Northern Ohio the AMCNO continues to advocate for a change in the payment localities utilized in Ohio. A copy of our letter to CMS is printed here for review. Any questions regarding this issue may be forward to E. Biddlestone at the AMCNO at (216) 520-1000, ext. 100. (To view the entire letter sent by the AMCNO see page 14.) ■

AMCNO DISCOUNTED PRACTICE MANAGEMENT CLASSES AT TRI-C

The Academy of Medicine of Cleveland & Northern Ohio (AMCNO) is pleased to partner with Cuyahoga Community College's (Tri-C) Center for Health Industry Solutions to offer Certification Courses and Continuing Education Unit Seminars at discount prices for AMCNO members and staff. Participants in the classes also earn Certification and CEUS through Cuyahoga Community College's Medical Practice Management Seminars.

Members and/or their staff will need an exclusive AMCNO course number to register and obtain the discount. For course numbers, call Linda Hale of AMCNO at (216) 520-1000, ext. 101, or e-mail lhale@amcnoma.org.

The following courses are now open for registration at the AMCNO discounted rate:

CPT CODING FUNDAMENTALS AND MORE! New! – 6 CEUs – evening or day class

A companion class to the ICD-9-CM Fundamentals program - Take advantage of this CPT coding seminar to strengthen your procedural coding skills and reduce your claims denials. In a hands-on, interactive session, you will work on multiple coding exercises with a focus on accuracy and compliance. Explore the construction of the CPT-4 Code book so that you truly understand how to use this reference guide. Coding scenarios will increase in complexity as the day progresses. Note: Bring current CPT Coding Manual.

$179 #87924 October 15, 2008, 9:00 am – 3:30 pm, Wed., Corporate College West

Teri Kleinschmidt, CPC, CPC-H, CMC

ICD-9-CM FUNDAMENTALS AND MORE! New! – 5.5 CEUs

Take advantage of this seminar to strengthen your ICD-9-CM diagnostic coding skills and reduce your claims denials. In a hands-on, interactive session, you will work on multiple coding exercises and have your coding questions answered. Explore the construction of the ICD-9-CM Code book so that you truly understand how to use this reference guide when coding for compliance. Coding scenarios will increase in complexity as the day progresses. Note: Bring current ICD-9-CM Coding Manual.

$179 #87922 September 17, 2008, 9:00 am – 3:30 pm, Wed., Corporate College East

Teri Kleinschmidt, CPC, CPC-H, CMC

Locations: Corporate College East, 4400 Richmond Rd., Warrensville Hts., OH 44128
Corporate College West, 25425 Center Ridge Rd., Westlake OH 44145

July 29, 2008

Centers for Medicare & Me
Department of Health and H
Attention: CMS-1403-P
Mail Stop C4-26-05
7500 Security Blvd.
Baltimore, MD 21244-1850

Re: Proposed Rule CMS-14

As President of the Academ ıre than 5,000 physicians in Northeastern Ohio I am writing on behalf of the organization and the physicians we represent to comment on the Medicare Program; Revisions to payment policies under the physician fee schedule for calendar year 2009; proposed rule – CMS-1403-P.

Physician Payment Updates
Physician payment updates are driven by a flawed formula called the Sustainable Growth Rate (SGR). The underlying flaw of the SGR formula is the link between the performance of the overall economy and the actual cost of providing physician services. The medical needs of individual patients are not related to the overall economy.

The AMCNO realizes that ultimately the administration and Congress will have to act in order to replace the SGR, however, CMS and its' administrators have the ability to review comments from physicians, physician organizations and other healthcare providers regarding the proposed payment and policy changes and try to find ways to improve physician payment without adding to overall Medicare costs.

Geographic Practice Cost Indices (GPCI) Locality Discussion
It is our understanding that CMS adjusts Medicare physician fees for geographic differences in the costs of operating a medical practice. At this time, CMS uses 89 physician payment localities among which fees are adjusted. However, it is our belief that the boundaries of these payment localities do not accurately address variations in physicians' costs.

The AMCNO strongly believes that Medicare's geographic payment adjustment formula does not accurately reflect practice costs in Northern Ohio. Currently, the state of Ohio is designated as a statewide locality. This is problematic for our physician members practicing in Northern Ohio because CMS has not revised the geographic boundaries of the physician payment localities since the 1997 revision. Also, since that year, CMS has indicated that the only mechanism the agency has set forth to modify the payment localities is for the state medical associations to petition for change by demonstrating that the change has the overwhelming support of the physician community. This mechanism for change in the payment localities seems biased since the state medical association does not represent all of the physicians in the state of Ohio. In addition, CMS has not required medical associations in the states that are now consolidated to continue to demonstrate that there is "overwhelming" support from the physician community for a statewide payment locality.

It is also the opinion of the AMCNO that CMS must find a new methodology for collecting and reviewing malpractice premium data from the states since there is verifiable data that the Northern Ohio area pays some of the highest medical liability rates in not only the state but the nation. While malpractice rates account for only a small portion of the GPCI calculation, this clearly has an impact on physicians in our area.

The AMCNO has myriad concerns regarding the usage of geographic practice cost indices (GPCIs) and provided our detailed comments to CMS last year in response to CY 2008 PFS proposed rule and final rule with comment period (72 FR 38139 and 72 FR 66245, respectively) on the usage of the GPCIs as well as our suggestions regarding options that we believe would be better suited for physicians in Northern Ohio (please see attached letter). It would appear based upon the information included in the current proposed rule CMS 1403-P that other States have also expressed an interest in having their payment localities reconfigured which has resulted in CMS contracting with Acumen, LLC to conduct a preliminary study of several options for revising the payment localities. While we understand that currently CMS is not yet proposing to make any changes to the payment localities, the AMCNO is pleased to learn that that this study is to be conducted and that CMS is at least reviewing several alternative approaches for reconfiguring payment localities on a nationwide basis.

In response to the options outlined in the CMS 1403-P, the AMCNO would favor either Option 2 or Option 3 as outlined in the rule. Both of these options appear to have been suggested by MedPAC and they mirror the options outlined by the Government Accounting Office (GAO) report released last year which addressed the issue of the usage of GPCIs. Option 2 would remove higher cost counties from their existing locality structure and each would be placed in their own locality, while Option 3 removes higher cost metropolitan service areas (MSAs) from the "rest of the State" locality. We believe that either of these proposed options would result in a fairer methodology for the physicians located in Northern Ohio.

The AMCNO physician leadership plans to watch for the posting of the interim report on the CMS locality study after publication of this proposed rule. When and if CMS is ready to propose a change to the locality configuration, we hope that CMS will consider conducting a town hall meeting in the Northern Ohio area so that the medical community in this part of Ohio can voice their opinion on this important matter. As noted above, since the state medical association does not represent all of the physicians in Ohio we would welcome the opportunity to provide our comments on this issue in a town hall meeting.

For the sake of our patients and profession, the members of the AMCNO ask that the proposed payment changes as well as the payment methodologies used by CMS be carefully reviewed and evaluated to assure fairness and accuracy. As it is, Medicare payments already lag behind increases in practice costs and unless the above referenced items in the proposed rule are adequately addressed additional problems will arise. If you have any questions regarding our comments please feel free to contact me through the AMCNO offices at (216) 520-1000.

Sincerely,

Raymond J. Scheetz, Jr., MD
President
The Academy of Medicine of Cleveland & Northern Ohio (AMCNO)

The Voice of Physicians in Northern Ohio
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Using A Lockbox In Your Practice

Over ten years ago, the AMCNO adopted a payment processing mechanism to help the organization better track and protect incoming finances — the bank lockbox. Physician practices that are currently receiving a lot of payments through the mail may wish to look into adopting a similar practice.

What is a bank lockbox?
A bank lockbox is a special post office box that receives payments and remittance information. When mail is sent to the lockbox, the bank's employees retrieve the documents, and scan them. This process allows for funds that are available in a shorter timeframe than a normal bank deposit. The scanned documents are available to the practice either by U.S. mail or by the practice's access to a secure Web site.

Bank lockbox processing is always on a same-day cycle. Typically, the practice will receive a lockbox envelope each day of the week — creating a process whereby cash flow is accelerated by a minimum of two days on a consistent basis. A bank lockbox expedites cash flow, and it may also reduce personnel expenses. And most importantly, it can minimize the potential for theft.

When is a bank lockbox helpful to a physician practice?
- When a practice receives checks from many third parties, including patients.
- When a practice operates with a small staff.
- When the bank is experienced in bank lockbox processing.

What are the disadvantages of a bank lockbox?
- Loss of direct control over the deposit function.
- Possibility of bank fraud if the practice doesn't monitor the lockbox processing relationship.
- There has to be sufficient volume to justify the expense of the lockbox, netted against the cost savings in the practice.

What are the advantages of a bank lockbox?
- Faster cash flow – money is deposited to your bank account on the same day of receipt.
- Improved internal controls.
- Possible reduction in staffing.

A practice may wish to determine what the costs are for having a staff member open, endorse and copy checks, prepare deposits, and distribute checks every day. This could take several hours per day and if a lockbox were used it is possible that this person could be doing something else in the practice. The use of a lockbox is important to enhance internal control. A lockbox is one way to guard against embezzlement of funds.

How do I get a lockbox set up?
In order to have a lockbox at a particular bank, the practice would have to have a depository account with the bank. Fees for lockbox services are negotiable, depending on the services the practice purchases from the bank along with the assets held by the bank from the practice and the physician. You will want to contact your current bank for additional information. The practice may also want to contact other banks in the area to compare costs and services. ■

AMCNO Attends Ohio Department of Job and Family Services (ODJFS) Session in Cleveland

In August, the AMCNO staff attended an Ohio Department of Job and Family Services (ODJFS) Listening Session regarding the Ohio Medicaid Managed Care Program. The session in Cleveland was one of five sessions held across the state of Ohio during the summer months seeking input on Ohio's Medicaid Managed Care Program in order to gain opinions and comments on how to improve Medicaid managed care. Session attendees were asked to offer ideas about how to:

1. Maximize the cost-effectiveness of Medicaid managed care;
2. Improve the quality of services and/or health outcomes for Medicaid consumers enrolled in managed care;
3. Maintain or improve consumer access to needed medical services.

ODJFS plans to utilize comments from the sessions when developing their Medicaid initiatives in Ohio. Each session had a panel that included consumers and members of the ODJFS Medical Care Advisory Committee. Speakers were allotted three minutes to present comments. Presenters included consumers, Medicaid managed care plan representatives, members of the general public and Medicaid providers.

During the Cleveland session, many suggestions were made including the following items:

1.) Simplify and streamline the enrollment process; the current process is too time consuming and costly.
2.) Hold managed care organizations accountable for adhering to plan requirements, increase prompt payment of claims; eliminate some of the red tape to gain prompt payment, resolve outstanding claims and work to obtain timely reimbursements for providers;
3.) Provide information to providers so that they may contact the appropriate person within ODJFS to discuss problem claims in an efficient manner and hold administrative staff accountable for doing their job in a timely fashion (one example was providers put on hold for over 45 minutes to talk to a representative).
4.) Be aggressive with working on preventative care issues, in particular for children in the Medicaid program.
5.) Enhance coordination of services to provide complete and timely care.
6.) There have been many changes in Medicaid Managed Care plans across the state since the inception of the program causing confusion, disruption of care, and inability to continue with a provider. Changes in coverage and contracts need to be better communicated to consumers (i.e., in particular when a large provider does not renew a MCP contract).
7.) Issues continue to arise when a Medicaid patient cannot see a physician of choice who is not contracting with a particular plan.
8.) Review the importance of a medical home concept for Medicaid consumers.
9). Any physician treating children in the MCP program should have access to patient records. Changes in healthcare plans cause confusion, especially for families of children with chronic health care problems.

Staff from the ODJFS indicated that they plan to summarize the comments provided at all of the sessions around the state and these comments will be made available to the participants in the sessions. AMCNO will follow-up with ODJFS to obtain the summary and provide additional information on these sessions to our members. ■

The Affidavit Of Merit: No Longer A Requirement?

The requirement that an "Affidavit of Merit" be attached and filed with all Complaints alleging medical, dental, optometric, or chiropractic claims is currently in jeopardy. Ohio Civil Rule 10(D)(2) was amended by the Supreme Court of Ohio (OSC), after prompting by the General Assembly, and was intended to discourage the filing of frivolous lawsuits against physicians, hospitals and other health care providers in the State of Ohio. Prior to a recent case that is now before the OSC, plaintiffs potentially faced immediate dismissal of their claims if they filed a complaint in Ohio without attaching a Rule 10(D)(2) affidavit of merit.

The express language of Rule 10(D)(2) makes it mandatory to file an affidavit of merit with a medical malpractice complaint. As the Rule states, a complaint that contains a medical claim shall include an affidavit of merit for each defendant, shall be provided by an expert witness and shall include certain information fundamental to plaintiff's claims. See Civ. R. 10(D)(2)(a). The affidavit of merit requires, among other things, that an expert witness from the same specialty as the defendant state with particularity the expert's familiarity with the applicable standard of care, his/her opinion as to how the applicable standard of care was breached, and how that breach resulted in the plaintiff's injury or death.

The Rule also provides clemency for those instances in which an affidavit of merit is not readily available. A request for an extension of time to file the affidavit of merit may be made upon a showing of "good cause." A court must consider information necessary to obtain an affidavit, whether the information is in the possession or control of a defendant or third party, the scope and type of discovery necessary to obtain the information, what efforts have been taken to obtain the information, and any other relevant facts necessary for the determination of plaintiff's ability to obtain an affidavit of merit. Civ. R. 10(D)(2)(c)(i)-(v).

In the years before the affidavit of merit became a prerequisite, plaintiffs could simply rely on an unqualified or incompetent opinion. It was the General Assembly's intent that the affidavit of merit filing requirement would significantly reduce the escalating costs and the burden of frivolous medical malpractice claims filed in Ohio. Indeed, the intent of the Rule was "to make clear that the affidavit is necessary to establish the sufficiency of the complaint" and that "failure to comply with the rule can result in the dismissal of the complaint." 2007 Staff Notes, Civ.R. 10(D). On June 7, 2007, the Eighth District Court of Appeals in Cuyahoga County issued a decision that significantly threatens this framework.

In its decision, the Eighth District inexplicably held that the procedural remedy for challenging a complaint without the requisite affidavit was not by requesting the trial court for an immediate dismissal, but rather "the proper remedy for failure to attach the required affidavit(s) is for the defendant to request a more definite statement." *Id.* Additionally, the Court held that failure to request a more definite statement waived the right to later move for a dismissal.

This case stems from a medical malpractice/ wrongful death action filed in the Cuyahoga County Court of Common Pleas. The plaintiff in the case asserted three claims for relief: negligence, wrongful death, and survivorship. Based on the allegations listed, the case focused on the medical care and treatment rendered to the patient that allegedly resulted in his untimely death. At the time of filing however, The Plaintiff failed to attach the Rule 10(D)(2) affidavit of merit and failed to request an extension of time to comply. The trial court ultimately dismissed the deficient complaint as to all claims against both defendants.

On appeal, it was argued that the complaint was not a medical claim, as defined by Ohio Revised Code §2305.113(E)(3), and therefore did not require the filing of an affidavit of merit. The Court of Appeals disagreed and found that the claims being asserted against the hospital and the physician in fact were medical claims. The claims arose out of the medical diagnosis, care or treatment of the patient, which resulted from alleged acts or omissions in providing medical care. Therefore her wrongful death complaint presented medical claims and required that she supply an affidavit of merit in accordance with Rule 10(D)(2).

Nonetheless, the Court of Appeals reversed the trial court's decision and resurrected the unsupported complaint. The Court held that the defendants were required to challenge plaintiff's deficiency by way of a "Motion for a More Definite Statement," not a "Motion to Dismiss." As a result, the Court of Appeals has single-handedly forced physicians and health care providers in Ohio to needlessly engage in costly and time-consuming motion practice, simply to enforce the clear mandate of Rule 10(D)(2). Now, a plaintiff who has failed to file the requisite affidavit of merit or failed to request an extension of time suffers no immediate penalty. It is the defendant's responsibility to bring the deficiency to the attention of the court by way of a Motion for More Definite Statement. This forces the defendant to request an affidavit of merit be filed, and allows no opportunity to truly attack the sufficiency of the complaint that is filed without one. Although a complaint may be defective on its face, it is now incumbent upon the defendant to expend time, effort, and resources in correcting the deficiency.

Perhaps even more compelling, and of broad application to Ohio's civil justice system as a whole, is the court's holding that a defendant who fails to file a motion for a more definite statement, before filing a Motion to Dismiss pursuant to Civil Rule 12(B)(6), has waived the right to assert plaintiff's failure to attach a copy of a written instrument as a basis for dismissing the complaint. The ramifications of such a conclusion are troubling when challenges to the sufficiency of a complaint are affirmatively made by a defendant but then deemed to have been waived by operation of the court and without prior notice.

The Eighth District decision eviscerates the letter and spirit of Rule 10(D)(2), and disrupts the balance of fairness and equity in medical malpractice claims litigated in the State of Ohio. Prior to the decision, if a plaintiff failed to file an affidavit of merit in a medical malpractice claim or request an extension of time, the complaint could be dismissed. After the decision, it is now necessary for the defendant to engage in

LEGAL ISSUES

motion practice to bring plaintiff's defect to the court's attention. Having multiple opportunities to remedy the defect, plaintiffs suffer no consequences for violating the Rule 10(D)(2) requirement while costs once again rise for physicians and health care providers to defend unsubstantiated claims of liability.

The Supreme Court of Ohio has accepted jurisdiction in the appeal of the case. Extensive briefing on the pertinent issues has now concluded, with merit briefs being filed on behalf of the Defendants-Appellants and the Plaintiff-Appellee, individually and as Administratrix of the Estate. In addition, Briefs of Amicus Curiae have been filed by various organizations. Oral arguments are currently scheduled for September 30, 2008.

Editor's note: The AMCNO has a committee known as the Medical Legal Liaison Committee that meets on a quarterly basis. The committee consists of attorneys and physicians and one of its goals is to track and review cases such as the case noted in this article, that could impact the medical liability climate in Ohio. This case was brought to the attention of the committee by Ms. Marshall (the author of this article). The AMCNO will continue to track this — and other cases — of importance to physicians and report on these matters to our membership.

Once the OSC has ruled on the case, the AMCNO will provide our membership with an update on the affidavit of merit issue under review.

Christina J. Marshall is a Partner at Sutter, O'Connell & Farchione Co., LPA, where her litigation and appellate practice is concentrated in the areas of automobile and medical device products liability, warranty and consumer liability, and excess insurance defense. Ms. Marshall has tried both civil and criminal cases throughout the State of Ohio, and has successfully argued in front of numerous appellate courts, including The Supreme Court of Ohio.

Ms. Marshall is admitted to practice in both state and federal courts in Ohio, Pennsylvania and West Virginia, and is a member of the Defense Research Institute and the American Bar Association. ■

AMCNO PUBLICATIONS AVAILABLE FOR MEMBERS

LAWYER REFERRAL BROCHURE
In addition to the directory the AMCNO also has available our Lawyer Referral Brochure. **If you are in need of legal counsel in a specific area of expertise this brochure could be of assistance to you.**

When legal questions or issues arise, the AMCNO believes it is important for its members to obtain sound advice from legal counsel who are knowledgeable in relevant areas of the law and who have a commitment to the effective representation of physicians and their practice groups. This brochure is the product of our effort to identify such attorneys. We encourage our members to make use of these lawyers (or other practitioners similarly qualified) whenever they encounter significant legal issues.

Keeping Your Affairs in Order & Closing a Medical Practice
The information included in this brochure is to assist physicians who are retiring or planning for retirement. It can also be used as a tool when recording important personal and professional information.

For more information on these publications or other member benefits offered by the AMCNO, please contact the AMCNO at (216) 520-1000.

COLLEAGUES CORNER

AMCNO Board member Dr. Lawrence Kent, appointed to the Department of Insurance (ODI) Committee to Standardize Communication Between Doctors and Insurers

The AMCNO board of directors was pleased to learn that one of its' members, Dr. Lawrence Kent, has been appointed to an Ohio Department of Insurance (ODI) committee set up under HB 125 to address the issue of standardizing communications between doctors and insurance companies in Ohio.

The task of the Advisory Committee members, which were appointed by Insurance Director Mary Jo Hudson, is to recommend communication standards between doctors and insurance entities to the Ohio General Assembly. These standards will enable a medical provider to send and receive from insurance entities and other payers sufficient information to enable that provider to determine at the time of the enrollee's visit the enrollee's eligibility for services. Standardized real time adjudication of provider claims for services would also be handled at this time. The report of the findings and recommendations of the Advisory Committee, which was formed pursuant to Substitute House Bill 125, is due by January 1, 2009. The Advisory Committee includes a wide cross-section of members representing insurance entities, employers, medical providers, consumers, technology vendors and the Governor's Office of Information Technology that are potentially affected by standardizing this exchange of information.

AMCNO Members Elected Officers of the Northeastern Ohio Otolaryngology — Head & Neck Surgery Society (NEOOHNS).

President:
ROBERT R. LORENZ, MD, FACS
The Head & Neck Institute
Cleveland Clinic

Secretary-Treasurer:
ROD REZAEE, MD, FACS
Dept. of Otolaryngology/
Head & Neck Surgery
University Hospitals – Case Medical Center

Program Chairman:
TORIBIO C. FLORES, MD, FACS
Partner, Cleveland Ear, Nose, Throat & Allergy Center, Inc. ■

2008 AMEF Golf Outing

Eighty-two golfers enjoyed the most perfect sunny day for golf one could imagine on Monday August 11th at the Academy of Medicine Education Foundation's (AMEF) fifth annual Marissa Rose Biddlestone Memorial golf outing. Foursomes competed in a shotgun start tournament that raised more than $38,000 for AMEF. The funds will be utilized for medical student scholarships, annual CME seminars and the *Healthlines* radio program. The 2008 AMEF scholarship recipients were invited to join the group for dinner: Shelley Chang-CWRU, Amir Durrani-CC Lerner, Craig Jarrett-CC Lerner, Jovana Martin-CWRU, Jason Robertson-CC Lerner, Rachel Roth-CC Lerner, Elim Shih-NEOUCOM, and Aaron Viny-CC Lerner.

First, second and third place foursomes were:

1st Place Team
Private Harbour: Geof Greenleaf, Rich Mackin, John Raleigh, and Tom Turner

2nd Place Team
Kellison & Co: Greg Aten, Scott Dover, Kevin Ellison, and Bill Zollinger

3rd Place Team
Greg Balogh, Paul Biddlestone, Rudy Lakosh and Dave Martin

Prizes were also awarded for the following:

Closest to the pin: Kevin Malone, Tom Ferkovic, Matt Mark, Lincoln Lafayette

Longest drive: John Bastulli, Jr., and Jim Brown

Longest putt holed: Dr. Larry Kent

Golfers at the outing could not have asked for a more picture perfect day.

Members of the foursome representing Kellison and Company (our second place winners and an event sponsor) pose on the green.

The third place winners were (l to right) Paul Biddlestone, Rudy Lakosh, Greg Balogh and David Martin (Lakosh and Martin are from the Premium Group, one of the event hole sponsors).

Members of the VNA Careplus foursome (an event sponsor) smile for the camera.

***Dr. Bruce Cameron,** Al Santilli, **Dr. Mike Koehler** and **Dr. Michael Shaughnessy** pause between putts.*

***Dr. Victor Bello** (hole-in-one sponsor) and his foursome donned matching pink shirts for the tournament play.*

Members of one of the Medical Mutual foursomes (event sponsor) enjoyed the day.

***Dr. Victor Bello** and **Dr. John Bastulli** share a laugh during the raffle prize giveaway.*

***Dr. Bill Seitz** was pleased to win one of the prizes during the raffle.*

The chocolate fountain provided by the country club was a big hit with the attendees.

A special thank you goes to all the event, hole and hole-in-one sponsors who made the day possible.

2008 Hole-In-One Sponsors
Victor M. Bello, MD
Classic Mini of Mentor

2008 Event Sponsors
Cleveland Anesthesia Group
Clinical Technology, Inc.
Joyce Graham CPA
Kellison & Company
Dr. Matthew Levy/University Hospitals
Medical Practice, Inc.
Medical Mutual of Ohio
Private Harbour Investment Management & Counsel
Sagemark Consulting
Todd Associates
VNA CarePlus
Walter & Haverfield

2008 Hole Sponsors
The Endoscopy Center at Bainbridge
ForTec Litho LLC
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M & M Management & Consulting, Inc.
McDonald Hopkins LLC
Mount Yale Capital Group LLC
The Premium Group
Reminger & Reminger
Sutter, O'Connell & Farchione
United Agencies
United HealthCare of Ohio

Get your clubs ready for next year's event on August 3, 2009 at Sand Ridge Golf Club.

amcno
THE ACADEMY OF MEDICINE OF CLEVELAND & NORTHERN OHIO

The Academy of Medicine of Cleveland & Northern Ohio (AMCNO) Presents

"Solving the Third Party Payor Puzzle"

WHEN:

Thursday, November 13, 2008

Registration: 7:30 a.m. - 8:00 a.m.
Seminar: 8:00 a.m. – 4:30 p.m.
*** Boxed lunches will be provided ***

WHERE:

AMCNO Executive Offices
Park Center Plaza I
6100 Oak Tree Blvd Independence, Ohio 44131
Lower-Level Meeting Room

COST:

AMCNO Members and their staff - $50 per participant
Non-Members - $100.00 per participant

PURPOSE:

To educate/update physicians and office staffs about the current happenings with third party payor claims and managed care issues.

FEATURED SPEAKERS:

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Aetna
Anthem Blue Cross and Blue Shield
CIGNA Healthcare of Ohio
Medical Mutual of Ohio
Ohio Department of Job and Family Services (Medicaid)
Palmetto GBA Medicare Part B
United Health Care

~~~~~~~~~~

Note: Speakers will be allotted time to answer general questions.

Registration deadline: November 6, 2008

Questions? Contact Debbie Blonski (216) 520-1000, Ext. 102; E-mail: dblonski@amcnoma.org.

Please complete & return along with your check payable to AMCNO:
AMCNO, PO Box 901724, Cleveland, Ohio 44101-9932
Or, fax this form with credit card information to: AMCNO at (216) 520-0999

ALL REGISTRANTS: Payment Amount $_____ for _____ Attendees.

Name(s) of Attendee(s): _____

Physician(s) Name(s): _____

Office Address _____ City, State, ZIP: _____

CREDIT CARD NUMBER: _____, EXPIRATION DATE: _____

SEATING IS LIMITED - MAXIMUM OF TWO (2) PEOPLE PER OFFICE PLEASE.
REGISTRATION ***MUST BE RECEIVED*** PRIOR TO THE DAY OF THE SEMINAR.

#1 Investment Strategies
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