FORMER CMS OFFICIAL SPEAKS OUT ON HOSPICE WAGE INDEX CHANGES

Thomas Hoyer, formerly head of chronic care and insurance policy for HCFA (now CMS), has written an affidavit that states that “Neither I nor anyone at CMS with whom I recall speaking ever raised the prospect of eliminating the BNAF from the hospice wage index.” The affidavit, part of NHPCO’s suit against CMS, goes on to call the BNAF (budget neutrality adjustment factor) “central” to successful negotiations between government and industry. NHPCO’s suit, according to Home Health Line, is “asking the court to require that CMS continue to apply the 1997 adjustment factor ‘unless and until CMS engages in legally adequate notice and rulemaking’ with regard to any hospice wage index changes.”

Samira Beckwith, president and CEO of Hope Hospice in Florida’s Lee County and a member of NHPCO’s public policy committee, said that NHPCO’s suit was filed because “we couldn’t get (CMS) to understand the issues nor listen. It seems this was the only way to get them to listen to the issues. They went to a new reimbursement system without going through the appropriate process. We actually believe they did it illegally because Congress didn’t give them the authority.” The District of Columbia federal judge overseeing the case has requested presentations from both sides by the end of October.

A second front in the effort to defeat elimination of the BNAF is taking place in Congress, where bipartisan legislation (HR6873 and S3484) would halt any changes in reimbursement until Congress could review the MedPAC report due next year.

Modern Healthcare’s Daily Dose says, “The mainstream press is picking up on the issue,” and PR Newswire reports that “scores of news stories have appeared in local papers and news programs.” Additionally, more than 13,000 emails have been sent to Congress, and consumer blogs have “expressed outrage and concern.” (Home Health Line, 9/22; Congressional Quarterly HealthBeat, 9/24; Modern Healthcare’s Daily Dose, 9/24; Naples Daily News, 9/20; Daily Commercial, 9/24; The Wichita Eagle, 9/20; PR Newswire, 9/23)

SENATE SPECIAL COMMITTEE ON AGING HEARS TESTIMONY

* The Senate Special Committee on Aging recently heard Richard Grimes, president and CEO of the Assisted Living Federation of America (ALFA), say, “The assisted living philosophy presumes seniors know what is best for them.” At the hearing, which focused on respecting choices at the end of life, Grimes called letting seniors decide where and how they want to live a “bedrock principle” of professionally managed assisted-living facilities.
That principle includes letting elders decide how to die, Grimes added. The article says, “Hospice care is fast becoming a standard offering by many ALFA members.”

The Committee also heard Oklahoma Attorney General Drew Edmondson, who told them that “the arrests of some doctors for prescribing drugs inappropriately has sent chills through the rest of the medical community.” Edmondson has been working with the DEA to allay the fears of physicians, and says he wants the DEA to explain why a doctor they accuse of malpractice has been “operating out of the mainstream and why that arrest should not be viewed as a warning to physicians who are managing their patients’ pain appropriately.”

Edmondson also “asked Congress to allow doctors to be paid by Medicare for counseling patients on end-of-life decisions to encourage discussion and to make more permeable the six-month terminal diagnosis required to receive the Medicare hospice benefit.” (PR Newswire, 9/24; The Tulsa World, 9/25)

**PUBLIC POLICY NOTES**

* CMS has issued survey and certification memo S&C-08-37 to State Survey Agency Directors extending the “extraordinary circumstance” exemption for hiring hospice nurses. The policy, which was instituted in 2002, allows hospices to apply for an exemption when they cannot hire enough nurses because of the nursing shortage. The expiration date of the policy is extended until September 30, 2010. (NHPCO Regulatory Alert, 9/23)

* An article in The Seattle Times looks at how experiences with the deaths of loved ones lead residents in Washington state to opposite views of Initiative 1000, which “would allow doctors to prescribe lethal doses of medication for terminally ill patients seeking to hasten their deaths.” The article says that this is Washington’s second try at a “physician-assistance-in-dying initiative” – Initiative 119 was the first, in 1991, and would have allowed physicians to both prescribe and administer lethal doses of medication to patients. Initiative 1000 would not allow administration of a lethal dose by anyone except the patient, and is closely modeled on Oregon’s Death With Dignity Act. (The Seattle Times, 9/21)

* A study to be published in Pain Medicine says that between 1998 and 2006, 725 doctors, 25 of them pain specialists, have been prosecuted or sanctioned by their state medical boards on issues of narcotics prescriptions. The study was co-sponsored by the Center for Practical Bioethics, the Federation of State Medical Boards, and the National Association of State Attorneys General. One author of the report, Dr. Scott M. Fishman, says, “One has to temper the interpretation of the data with all the other phenomenon of how physicians perceive the heat of regulators. Most of us have had visits from the DEA, and I can tell you that it can be a scary thing.” (The New York Times, 9/20)
**RESEARCH & RESOURCE NOTES**

* A new National Institutes of Health study reports that a “massage therapy may have immediate benefits on pain and mood among patients with advanced cancer.” But the study, published in the Annals of Internal Medicine, says that the effects are not long-lasting, which means that “more effective strategies to manage pain at the end of life” are needed. (Law & Health Weekly, 10/4)

* A recent study reports that “resident physicians are expected to assist their outpatients to understand and complete advance directives, but their efficacy in doing so remains uncertain. After receiving educational training, internal medicine residents identified at-risk patients and solicited them about advance directives.” (Physician Law Weekly, 10/1; American Journal of Hospice & Palliative Medicine, 2008;25(3):190-194)

* University of Michigan scientists are beginning a phase I clinical trial of gene vector therapy for the treatment of cancer pain. The trial uses “a vector created from herpes simplex virus (HSV), the virus that causes cold sores to deliver the gene for enkephalin, one of the body’s own natural pain relievers.” The study director says that pre-clinical studies have shown that HSV transfers of enkephalin reduce chronic pain. (Law & Health Weekly, 10/4)

* A study from Johns Hopkins Children’s Center, published in the September Pediatrics, says, “Parent-doctor discussions about whether to maintain or withdraw life support from terminally ill or severely premature newborns are so plagued by miscommunication and misunderstanding that they might as well be in different languages,” according to Hospital Business Week. The article says that most mothers “tuned out” much of what doctors said about “morbidity and death,” and “based their decisions about life support on things such as hope, spirituality and religion.” (Hospital Business Week, 10/5)

**HOSPICE & PALLIATIVE CARE NOTES**

* Slate has published an excerpt from Izzy & Lenore: Two Dogs, An Unexpected Journey, and Me, by Jon Katz. Katz writes about his experiences with his Border Collie, Izzy, as hospice volunteers. Katz notes that Izzy was so alert during the initial training that he “half expected him to take notes,” and that he “seemed to have an innate sense of appropriateness.” Izzy won high praise as “a natural” hospice volunteer. (Slate, 9/23)

* In Kansas City, Heartland Home Health Care & Hospice and the Marine Corps have entered into an agreement to match “Marines in need of something to do with ailing vets who wouldn’t mind a little company.” Stacy Higgins, volunteer coordinator at Heartland, established the visitation program after discovering that 25% of the organization’s patients are veterans. (The Kansas City Star, 9/28)
* Dr. Diane Meier, director of the Center to Advance Palliative Care at Mount Sinai School of Medicine in New York, has received one of the John D. and Catherine T. MacArthur Foundation’s $500,000 “genius” awards. Recipients are chosen for their originality, creativity, and “potential to make important contributions in the future.” (Modern Healthcare’s Daily Dose, 9/23)

* In a speech at the 12th Annual Scientific Meeting of the Heart Failure Society of America, Dr. Sarah J. Goodlin, Salt Lake City geriatrician, said that palliative care is a way of “improving quality of life and dignity of death” for patients with heart failure. Goodlin also called for more palliative care research, and said that heart failure symptoms can be better managed for patients when palliative care is part of the treatment plan. (PR Newswire, 9/24)

* Television station KUSA, in Denver, covered the story of a local hospice patient, Burt Banzhaf, who received his wish to speak Swahili again. Banzhaf, who spent 48 years as a missionary in Africa, recently received two special visitors from Selian Lutheran Hospice in Tanzania to his home in Denver. The two visitors spoke Swahili with Banzhaf which, he said, made him feel like “I’m home.” The Denver Hospice and Selian established a joint program in 2001 and Denver’s Exempla Lutheran Hospice joined in 2006. (9news.com, 9/24)

**OTHER NOTES**

* In a column about World Alzheimer’s Day, The Orange County Register columnist Jane Glenn Haas devoted her comments to the “victims of the victims -- the caregivers who increasingly are dealing with what is called compassion fatigue, a gradual lessening of compassion and an increased sense of tension.” She interviewed Dr. Terry Egan, medical director of Santa Monica’s Moonview Sanctuary, who strongly urged caregivers to arrange for a respite for themselves. (The Orange County Register, 9/17)

* Dr. Michael Wilkes is a professor of medicine at the University of California, Davis. Writing in the Sacramento Bee, he says, “Doctors and the American public are afraid to let people die — and even help them do so — with comfort and dignity.” Wilkes tells the stories of several patients who refused treatment at the end of their lives, and concludes, “We Americans obsess about the potential for a rare abuse of assisted suicide but downplay the frequent suffering and undertreatment of people at the end of their lives. We all should rethink care at the end of life and allow patients to determine their destinies.” (Sacramento Bee, 9/21)

* The Stateline website, at www.stateline.org, says, “A perfect storm of retiring baby boomers, an aging nurse population that’s leaving the profession and too few nursing instructors is setting up a health-care crisis.” The article says that “states are pouring money into the problem,” citing Mississippi’s $12,000 annual pay increase for nursing faculty, and funding for an extra full-time nursing faculty position at each of the 19 state schools that have nursing programs. (Stateline Website)
The New York Times cites two new studies, by the Kaiser Family Foundation and the Center for Studying Health System Change, which say that families are having increasing difficulty in paying for health care and health insurance. The author says that the current financial debate may force a rethinking of regulation and the role of government in industry, both financial and healthcare. (The New York Times, 9/25)

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