

What's Happening Here in Washington, Now

Greetings from Washington, D.C.! It's Tuesday night, Cinco de Mayo, and I'm here with several members of the NJSSA Executive Committee, attending the ASA's annual Legislative Conference. I want to let the membership of the NJSSA know that we've been hearing from some very interesting and insightful speakers, preparing us to go up to Capitol Hill to meet with our representatives Wednesday morning. This is a brief summary of some of what we've heard, taken from my personal notes; I hope I'm not misquoting anyone too badly:

States Issues Forum, Monday, May 4

Obstetric Anesthesia "Study" – Craig Palmer, M.D.

You might be confronted with an article filled with what Dr. Palmer calls "bad science" (Needleman J, Minnick A. Anesthesia provider model, hospital resources, and maternal outcome. *Health Services Research* 2009; 44:469-82) that concluded that, in a survey done, there was no advantage to having an anesthesiologist rather than only a certified registered nurse anesthetist for obstetric anesthesia! There are a multitude of flaws in this article to call the results into question, including: the statistics used were designated to generate a hypothesis rather than test a hypothesis; the validity of the data (incidence of obesity and diabetes in the population: less than 1%); there were no controls over who actually filled out the survey; the patients were not evenly divided (there were 85 thousand "CRNA only" out of one million total deliveries); you would need about 18 million deliveries to achieve an adequate denominator to show significance; complications included ob- as well as anesthesia-related.

Although this journal does not accept letters to the editor, a "commentary" is being prepared that will point out the glaring deficiencies and statistical flaws. If you are presented with the results of this survey article, be aware of the problems with it.

Problems with Balance Billing in California – Ken Pauker, M.D.

"It's a microcosm of the struggle between insurance companies and physicians." A shocking decision by the California Supreme Court said that for emergency room HMO patients, it was not legal to bill patients for the balance of the bill after the HMO pays. One would have to sue the company if you don't use their resolution system. This does not apply to anesthesia, at least not now. One of the issues is who determines what proper billing is.

The Doctor of Nursing Practice Degree Gets a Boost from the NBME – John Neeld, M.D.

The Council for Advancement of Comprehensive Care, a nursing organization, has been pushing the DNP degree program. The National Board of Medical Examiners has agreed to develop a qualifying exam, with questions from part 3 of the National Boards. The CACC is claiming that APNs taking the exam will pass an exam "equivalent" to the National Boards. The AMA and ASA have protested; the NBME has not disavowed "equivalence." This is likely to become a very contentious and serious issue.

(P.S., Regarding truth and transparency: Did you hear about Radford University in Virginia; the School of Nursing has been approved to offer a Doctor of Nursing Program – via ON LINE distance learning! Draw your own conclusions.

And Webster University, which allows nurse anesthesia students to introduce themselves as “resident registered nurse anesthetists (RRNA).”)

Federal Affairs, Tuesday, May 5

Ron Szabat, J.D., LL.M., ASA Executive Vice President and General Council, reviewed last year’s victories (passing the Anesthesia Teaching Rule, averting the cuts projected by the Medicare Sustainable Growth Rate (SVR) calculation, overriding the president’s veto of the bill that averted the SVR-mandated cuts) and talked about some of the issues facing us for this year.

What We’ll Be Talking About When We’re up on Capitol Hill

The five main issues this year are:

- **Comprehensive Health Care Reform**, including a pluralistic system that builds on the best of public and private coverage, recognizing that physicians, by virtue of our advanced education, skills, and experience, are champions of high quality, cost-efficient patient care.
- **Rebuilding the Medicare Update Formula (SGR)**, replacing it with a more reasonable mechanism based on medical cost inflation, and making anesthesiology payments (now at 33% of what private insurers pay) more in line with other medical specialties (which Medicare pays at about 80% of what is paid by private insurers). The SGR projects a 21% reduction in 2010, with more cuts after that.
- **Health Care Truth and Transparency** which will empower patients by clarifying and making it easier to identify the education and skills of the many individuals who work in health care settings, and also in their marketing and advertising. John Sullivan (R-OK) spoke to us about this, and he expects to introduce this bill in the House very soon.
- **Rural “Pass-Through” Legislation** that would allow rural hospitals to use Medicare pass-through (Part A) funds to go to anesthesiologists also, rather than only to anesthesiologist assistants and nurse anesthetists. (There are no rural hospitals in New Jersey that would qualify under this plan.)
- **The National Pain Care Policy Act** has already passed in the House; it is S.660 in the Senate, and would help patients who suffer from pain, and the physicians who treat them.

Frank Pallone (D-NJ 6th District, and previous recipient of the ASA’s Excellence in Government Award) gave us insight into how he sees health reform happening. The forces for change are aligned. As chair of the House Subcommittee on Health, Committee on Energy and Commerce, he expects a bill to be introduced within the next few weeks, and hopefully to have action on it before the recess in August, with progress to the president by the end of the year. Three House committees are working on it together,

with some input from the White House, so there may not be a lot of bickering once it's introduced. Three main issues he's dealing with:

- Current government programs – can they be more efficient? Especially Medicaid
- Employer-sponsored systems
- The health marketplace, where a small group of plans would be available, including selecting from plans through the federal “marketplace,” with subsidies. This would be similar to how Congress can select from various plans.

What he sees as controversial:

- “Public option” – where the government can provide Medicare/Medicaid as an option; would keep costs down and be competitive
- Fixing the Medicare SGR, but what would it be replaced with?
- Payments: would all this cost \$1-2 Trillion? If there's no new source of income, how will it be work? Primary care coordinators? Bundling?

He said everyone knows the current system isn't sustainable. He wants input now as to how to start to fix things.

Ron Szabat emphasized that many legislators and regulators don't know what we do as anesthesiologists, beyond “putting someone to sleep.” The perioperative work, pain control, critical care... people need to be educated on that, and we are the ones who have to do that.

(Your NJSSA Executive Committee members: Durgesh Mankikar, Mordechai Bermann, Michael Richardson, Peter Goldzweig, Robert DeSimone, Jill Young, and I will be going to Congressional offices to participate in that educational effort. We always appreciate the help of any other NJSSA members, either in Washington next year, or in New Jersey any time during the year. Please contact any of us, or the NJSSA Delegates to the ASA, to find out how you can do more to help our specialty and position it for the future.)

Ron Wyden, (D-OR), Senate Committee on Finance

Senator Wyden told us that an important group of senators agrees that they have to cover everybody, and it can't all be turned over to the government, without price control. He expects people will get choices, as do members of Congress. People would have to buy a basic health care package, or stay with what they have, or go with what might be a cheaper plan and keep the difference. Coverage would be portable as jobs change. People with low-paying jobs would get subsidies, perhaps even up to 100%.

He addressed undocumented people: children born to illegals would be covered (a moral decision; they didn't do anything wrong); adults would need to use their own money to buy into the pool.

He does not see allowing purchase of plans across state lines, so you couldn't buy a Nevada plan if you live in New Jersey.

He doesn't see a “public option” with lots of government control.

He does see malpractice reform.

Value-Based Purchasing News from CMS by Thomas Valuck, M.D., J.D.

Dr. Valuck presented where CMS is now, which seems to be only part of the way, along the path to improving quality of care as demonstrated by measures, and becoming a

purchaser of higher-quality, more efficient health care. I can't reproduce his reasonings, or his responses to some pointed questions. For some insight into some of these issues, you can check www.cms.hhs.gov/PQRI.

Medical Staff Bylaws, Codes of Conduct, Contracts, and Other Problems – Libby Snelson, J.D.

Be aware of hospitals imposing codes of conduct in response to The Joint Commission's Sentinel Event alert on disruptive behavior. The language is often extremely overly-broad and vague, and some has even included wording that would allow dismissal from the staff for having a relative who owns a competing gift shop, or being "potentially disruptive" in the community. She recommends making sure that language in the code of conduct should be in the medical staff bylaws, and should specifically allow 1) advocating for patients, and 2) criticism meant to improve care. Also, it should allow legitimate business activities, and that the code should apply to non-physicians as well.

Also, don't allow "data" from patient surveys to be used in credentialing/privileging.

Political and Federal Affairs, Wednesday, May 6

After some early-morning reviews, we'll be up on the Hill, meeting with our Senators and Representatives.

Many States' Issues Speakers Credit ASA Staff with Help on Their Issues

The members of the ASA are fortunate to have so many talented, dedicated, and resourceful staff members to help with these and other issues that arise in the states and on the federal level. Many of the speakers repeatedly gave kudos to the ASA staff who helped with issues including assignment of benefits, provider payment, scope of practice expansion, anesthesiologists' assistants licensing, truth and transparency regarding health providers' training, letters to the Office of the Inspector General concerning unfair and potentially illegal employment arrangements. New Jersey also has benefited from their expertise and industriousness. You should read the articles by Lisa Percy Albany, J.D., Ron Szabat, and others in the *ASA NEWSLETTER*.

Remember, two impressive quotes:

"If you don't have a seat at the table, you're probably on the menu."

"If you aren't heard, you won't be heeded."