MD Privacy Cases Making Way Through Courts

BY BRUCE JANCIN

SAN FRANCISCO — You won't believe who's seeking access to your Medicare claims data—and what they want to do with it.

A little-known consumers group aiming to force the Health and Human Services department to provide Medicare billing data with physician identifiers recently was rebuffed by a narrow margin in federal appeals court. Meanwhile, another federal court has ruled in favor of a similar Freedom of Information Act request by another organization, setting the stage for a likely legal showdown with major implications for physicians.

"We might actually see this going to the Supreme Court," Dr. Jack S. Resneck Jr., predicted to a full house at a special "Issues Impacting Your Practice" session held at the annual meeting of the American Academy of Dermatology.

A bit of background: Consumers' Checkbook, a small nonprofit group, sued HHS seeking data on Medicare payments to physicians for the express purpose of reporting on the volume and appropriateness of procedures individual physicians were performing as a guide to quality of care.

In 2007, the group prevailed in U.S. District Court. The American Medical Association then joined HHS in appealing the verdict, with the AAD and other medical organizations filing friend-of-the-court briefs on their behalf. AARP was among the groups that did the same for Consumers' Checkbook.

In late January, the U.S. Court of Appeals for the District of Columbia reversed the lower court decision on a 2-1 vote, awarding victory to HHS and the AMA.

"This was a big surprise, actually, because arguing for physician privacy interests was seen as a pretty big uphill battle," noted Dr. Resneck, a dermatologist at the University of California, San Francisco, and chair of the AAD Council on Government Affairs, Health Policy and Practice.

'Volume is just one tiny piece of measuring physician quality.' The plaintiffs 'have no experience with evidence-based quality measures.'

Consumers' Checkbook is expected to ask for reconsideration of the decision by the full appeals court.

Meanwhile, a similar Freedom of Information Act-based lawsuit filed by Jennifer Alley, owner of a small company called Real Time Medical Data, had a very different outcome. A U.S. District Court in Alabama ruled in her favor and ordered HHS to provide Medicare claims data with physician identifiers for 5 southern states so Real Time Medical Data could sell it to hospitals, insurance companies, and pharmaceutical companies. The HHS and AMA have appealed. Ms. Alley has asked the 11th U.S. Circuit Court of Appeals in Atlanta to hold HHS in contempt for not releasing the data.

The core issue in these two cases is a fundamental conflict between the public's right to know how federal tax dollars are spent as expressed in the Freedom of Information Act versus physicians' right to privacy, including details of their income and the nature of their medical practices. Beyond the legal principles involved, however, Dr. Resneck has an additional practical concern: Using Medicare billing data to characterize quality of care is likely to create a misleading picture.

"Volume is just one tiny piece of measuring physician quality. This is a little scary. These folks [at Consumers' Checkbook] have no experience with evidence-based quality measures, no experience with risk adjustment, and have no access through these claims data to outcome measures," he said.

"Remember, Medicare is a big payer, but it's just one payer. So if you're going to put out how many knee surgeries someone is doing or how many Mohs surgeries someone is doing and you're just basing it on one payer, depending on somebody's patient mix you could miss the vast majority of what they're doing," he said. ■

Dermatopathology Education Lacks Learning Via Computer

BY BRUCE JANCIN

SAN FRANCISCO — A national survey suggests it may be time for dermatopathology education to embrace computer-based learning.

The survey showed that although U.S. dermatology residency programs devote considerable time to teaching dermatopathology—an average of 570 hours—curricular content varies considerably, and some significant inequalities exist, Dr. Phillip T. Hsu reported at the annual meeting of the American Academy of Dermatology.

The survey, billed as one of the first attempts to paint a comprehensive picture of dermatopathology education in the United States, concluded that only 54% of programs employ journal review with faculty and only 38% include problem-based learning as part of their dermatopathology training curriculum, noted Dr. Hsu of the University of Wisconsin, Madison.

Particularly noteworthy was the finding that only one in five programs feature computer-based learning, said Dr. Hsu. "This may be an underutilized teaching modality with high potential."

Five programs did not have access to teaching slide sets for their residents. Six programs did not offer a dermatopathology rotation. Computer technology could readily be harnessed to address these disparities by providing access to virtual slide sets and virtual dermatopathology lectures, according to Dr. Hsu.

The survey of the Association of Professors of Dermatology membership elicited responses from 48% of the nation's 109 dermatology residency programs.

Among these programs, 53% have more than two faculty members teaching dermatopathology; 36% of the instructors are board certified in dermatology, while 23% are board certified in pathology; and 92% of programs use academic board-certified dermatopathologists in teaching residents.

Most programs spent an average of 6 hours monthly on dermatopathology training. But residency programs in the South spent an average of 13 hours monthly on dermatopathology.

Residents interpret their own slides in 73% of training programs, and in 68% of those programs, faculty are present during the interpretation.

Dermatopathology education lacks a dermatologist-oriented textbook that is comprehensive yet less detailed than what is now available, according to respondents. The most widely used primary textbooks nationally are "Lever's Histopathology of the Skin" (David E. Elder, M.D. Philadelphia: Lippincott Williams & Wilkins, 2004) and "Skin Pathology" (David Weedon, M.D. Edinburgh: Churchill Livingstone, 2002). "Practical Dermatopathology" (Ronald Rapini, M.D. Philadelphia: Mosby, 2005) was rated highly by its users. Respondents indicated they would like better guidance as to what aspects of dermatopathology residents need to know.

Most graduates who applied for a dermatopathology fellowship were able to match. Opportunities for dermatology residents to participate in dermatopathology rotations, either inside or outside the residency program and regardless of rotation duration, were identified as a critical factor in inspiring trainees to become dermatopathology fellows, Dr. Hsu said. ■

ABMS Updates Standards to Stress Quality, Patient Safety

BY ALICIA AULT

NEW ORLEANS — The American Board of Medical Specialties has approved standards to its maintenance of certification program, with a growing emphasis on more public disclosure and more evidence-based continuing medical education, said Dr. Richard E. Hawkins, ABMS senior vice president for professional and scientific affairs.

Speaking to the Society of Gynecologic Surgeons, Dr. Hawkins outlined the actions taken by the ABMS Board of Directors in March.

As part of the maintenance of certification (MOC) process, physicians will now have to provide evidence of participation in practice-based assessment and quality improvement every 2 to 5 years. The ABMS is urging physicians to use nationally approved measures such as those endorsed by the National Quality Forum. By 2011, all 24 of the ABMS member boards will have to document that diplomates are meeting these requirements.

At that time, the ABMS will allow the public to see which physicians are participating in the MOC process, most likely through a searchable Web site, Dr. Hawkins said in an interview. Details on how the data will be presented are still being worked out with the 24 member boards, he said.

The ABMS Board of Directors voted to require all physicians to complete a patient safety self-assessment program at least once during each MOC cycle, beginning in 2010. Because ABMS member boards are at different stages of implementing MOC, some may not be equipped to start requiring this of their diplomates, said Dr. Hawkins.The ABMS board dubbed the patient safety program a "developmental standard," which means that it is essentially a pilot that will be reevaluated during the next 5 years.

ABMS will make modifications, if necessary, said Dr. Hawkins. Even so, the ABMS standards require this module to be in place for all diplomates by 2014, he said.

Physicians who provide direct patient care must demonstrate communication skills using patient surveys with the Consumer Assessment of Healthcare Providers and Systems instrument, or an equivalent survey. The goal is for everyone to have the program in place by 2014, he said.

Similarly, the developmental standard on peer surveys will be implemented by member boards at their own pace, but will still be expected by 2014. Both of these survey requirements will be evaluated and updated as necessary during the next 5 years.

Dr. Hawkins said that some of the surgical boards within ABMS have been discussing the creation of a national surgical clinical registry to track surgeons' performance, a development that is "likely to happen."

Since physicians currently have to report quality data and process improvement to various agencies, the ABMS is working on ways to streamline data collection and reporting for MOC, said Dr. Hawkins. ■