

POLICY & PRACTICE

New PQRI Melanoma Measures

The Centers for Medicare and Medicaid Services is seeking voluntary submission of data on 11 new measures under the Physician Quality Reporting Initiative (PQRI), including three new measures related to melanoma. The measures have been adopted by the AQA Alliance, and have CPT II codes that allow claims-based reporting, according to the CMS. Data submission started July 1. Reporting is voluntary; there is no bonus available for these new measures yet. For melanoma, physicians are asked to report on follow-up care given to patients with a new diagnosis; on whether those with an existing diagnosis are called back for a complete exam within a year; and whether a treatment plan is developed for a new melanoma occurrence and communicated to a treating physician within a month. Also new are three ophthalmic measures, two radiology measures, one oncology measure, a measure assessing influenza vaccination for kidney disease patients, and a measure on whether arthritis patients are assessed for use of over-the-counter medications.

Allergan Seeks Eyelash Drug OK

Allergan Inc. reported early last month that it is seeking Food and Drug Administration approval for its drug bimatoprost, to stimulate eyelash growth. Bimatoprost is the active ingredient in Lumigan, the company's glaucoma drug and a synthetic prostaglandin analog. The company said it expects FDA approval some time in 2009, and sales of the eyelash-lengthening product to reach at least \$500 million a year. That would put it on par with Lumigan, which will have an estimated \$450 million in sales in 2008. Allergan said the mascara market produces about \$4 billion a year. The company had not previously disclosed it was developing an eyelash lengthener, but was not shy about suing companies it said infringed on the bimatoprost patent in November. A month later, the FDA seized thousands of tubes of an eyelash-lengthener made by Jan Marini Skin Research. That company stopped selling its eyelash products in January.

FDA Accepts Reloxin Application

Medicis and Ipsen announced that the FDA has accepted their application for approval of Reloxin (type A botulinum toxin). Reloxin is already approved in 23 countries, and Ipsen is seeking approval in additional markets. Medicis is paying Ipsen \$25 million for achieving the FDA acceptance, and will pay an additional \$75 million when the drug is approved. Medicis will market Reloxin in the United States.

MDs Mum on Trial Participation

Nearly 95% of Americans in a recent survey said that their physicians have never spoken to them about participating in a medical research study. The survey results, released by the Society for Women's Health Research, also

found that less than 10% of respondents had ever participated in such a study. Women were less likely than were men to know that research opportunities were available. About 73% of women were aware of research opportunities, compared with 83% of men who were surveyed. Women were also more likely to say that they were too old or too sick to participate in research, according to the study. For example, 7.2% of women said that their age made them hesitant to participate in clinical research, compared with 2.4% of men. "Women 65 and older are among the fastest growing segments of our population, and we have very little health research data on them," Sherry Marts, Ph.D., vice president of scientific affairs for the Society for Women's Health Research, said in a statement. The telephone survey included responses from 2,028 U.S. adults.

Report Casts Doubt on IT Savings

Health information technology, when coupled with other reforms, can help reduce health spending in certain settings, according to a report from the Congressional Budget Office. However, the adoption of health IT alone will not produce significant savings, the report concluded. For example, institutions that have successfully used health IT to lower costs are generally integrated health care systems such as Kaiser Permanente. "Office-based physicians in particular may see no benefit if they purchase [an electronic health record]—and may even suffer financial harm," the CBO report said. Recent studies by the Rand Corporation and the Center for Information Technology Leadership estimate savings from health IT at around \$80 billion annually. However, the CBO takes issue with those estimates because the savings figures are derived by assuming a number of changes to the health care system. However, without changes to the current payment system, providers would not be incentivized to reduce costs to the system. CBO analysts also found that a subsidy to providers could increase adoption but would be costly to the government. On the other hand, a mandate for adoption or a penalty for lack of adoption would be effective but costly for providers. The full report is available online at www.cbo.gov.

Consumer Reports to Grade Hospitals

Consumer Reports has begun grading hospitals and plans to eventually add ratings for other health care providers. The ratings, which include nearly 3,000 hospitals, are available at www.consumerreportshealth.org. The online tool allows consumers to compare hospitals based on their treatment approaches for nine chronic conditions. The comparison includes the time spent in the hospital and average out-of-pocket costs for each condition. The effort is the first project of the newly launched Consumer Reports Health Ratings Center.

—Alicia Ault

MANAGING YOUR
DERMATOLOGY PRACTICE

Employee Lawsuit Coverage

Most physicians have a feeling that they carry too much insurance and that most of their policies are too expensive.

The policies you should have and how much they should cost will be covered in next month's column, but no matter what is in your insurance portfolio now, there is one relatively inexpensive policy—one you probably have never heard of—that you should definitely consider adding.

Recently, I corresponded with a dermatologist in California who experienced every employer's nightmare: He fired an incompetent employee, who promptly sued him for wrongful termination and accused him of sexual harassment to boot.

The charges were completely false, he told me, and the employee's transgressions were well documented, but defending the lawsuit would have been expensive, so his lawyer advised him to settle it for a significant sum of money.

Disasters like this are becoming more common. Plaintiffs' attorneys know all too well that most small businesses, including medical practices, are not protected against such legal actions and usually cannot afford to defend them in court.

Fortunately, there is a relatively inexpensive way to protect yourself: Employee practices liability insurance (EPLI) provides protection against many kinds of employee lawsuits that are not covered by conventional liability insurance. These include wrongful termination, sexual harassment, discrimination, breach of employment contract, negligent hiring or evaluation, failure to promote, wrongful discipline, mismanagement of benefits, and the ever-popular emotional distress.

EPLI would have defended the California dermatologist, had he carried it, against his employee's charges. In fact, there is a better than even chance that the plaintiff's attorney would have dropped the lawsuit entirely once informed that it would be aggressively defended.

As with all insurance, you should shop around for the best price and carefully read the policies on your short list.

All EPLI policies cover claims against your practice and its owners and employees, but some policies cover only claims against full-time employees.

Try to obtain the broadest coverage possible so that part-time, temporary, and seasonal employees, and, if possible, even applicants for employment and former employees also are covered.

You also should look for the most comprehensive policy in terms of coverage. Almost every EPLI policy covers the allega-

tions mentioned above, but some offer a more comprehensive list of covered acts, such as invasion of privacy and defamation of character.

Also be aware of precisely what each policy does not cover. Most contain exclusions for punitive damages and court-imposed fines, as well as for criminal acts, fraud, and other clearly illegal conduct. For example, if it can be proved that you fired an employee because he or she refused to falsify insurance claims, any resulting civil suit against you will not be covered by EPLI, or any other type of insurance.

Depending on where you practice, it may be necessary to ask an employment lawyer to evaluate your individual EPLI needs.

An underwriter cannot anticipate every eventuality for you, particularly if he or she does not live in your area and is not familiar with employment conditions in your community.

Try to get a clause added that permits you to choose your own defense lawyer.

Better still, pick a specific lawyer or firm that you trust and have that counsel named in an endorsement to the policy. Otherwise, the insurance carrier could select a lawyer who may not consider your interests to be a higher priority than those of the insurance company itself.

If you must accept the insurer's choice of counsel, you should find out whether that lawyer is experienced in employment law, which is a very specialized area. And just as with your malpractice policy, you will want to maintain as much control as possible over the settlement of claims. Ideally, no claim should be settled without your expressed permission.

As with any insurance policy you buy, be sure to choose an established carrier with ample EPLI experience and solid financial strength.

A low premium is no bargain if the carrier is new to EPLI, or goes belly up, or decides to cease covering employee practices liability. (As always, I have no financial interest in any company or product I discuss in this column.)

Above all, make sure that you can live with the claims definition and exclusions in the policy you choose and seek advice before you sign on the dotted line if you are unsure what your specific coverage needs are. ■



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'As with any insurance policy you buy, be sure to choose an established carrier with ample EPLI experience and solid financial strength.'

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