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HEALTH LAWYERS NEWS

VOLUME 5 • NUMBER 12 • DECEMBER 2001



FLORIDA LONG TERM CARE TORT REFORM 2001:

The Good, The Bad, & The Ugly

—Page 8

Also

**Physicians, Hospitals Upset over Medicare Cuts
in Fees, Pass-through Payments—Page 14**

Call For Leaders—Page 5

Inside HLD, Now a Magazine Feature—Page 33



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On the Cover

Recent developments in Florida long term care tort reform will significantly impact the long term care community. The feature article, written by Karen L. Goldsmith, managing partner of Goldsmith, Grout & Lewis, PA, explains and analyzes sweeping legislation passed this year in Florida, which attempts to address the rampant negligence litigation that has occurred over the past several years.

Special Feature

- 8 Florida Long Term Care Tort Reform 2001: The Good, The Bad, & The Ugly

Features

- 3 News From Your President
- 4 Executive Notes
- 7 SISLC Corner
- 13 Spotlight on Members
- 23 Ask Health Lawyers
- 27 Professional Opportunities
- 28 Web Sights
- 33 Inside Health Law Digest
- 37 Calendar of Events

News in Health Law

- 14 Physicians, Hospitals Upset over Medicare Cuts in Fees, Pass-through Payments
- 15 CMS Rules on National Coverage Determinations
- 15 Medicare Regulatory Reform Bill Clears Hurdle in House
- 16 GAO Accuses CMS of Reopening Medicaid Loophole
- 16 Healy Quits as Red Cross President After Two Years
- 17 President, Congress Wrestle with How to Thwart Terrorists, Revive Economy
- 18 EEOC Clarifies What Employers Can Ask Workers About Disabilities
- 18 Senate Votes to Expand Mental Health Parity Law
- 19 Roussel Uclaf to Pay \$33 Million Fine for Defrauding FDA
- 19 KPMG Pays \$9 Million to Settle Allegations It Prepared False Cost Reports for HCA
- 19 CT Hospital Pays \$7.5 Million in Last Chapter of Contractor Fraud Case
- 19 Aetna Fined \$1.1 Million for Violating Texas Prompt Pay Law
- 20 Highmark Drops Antitrust Suit Against Pittsburgh Hospital Merger
- 20 Wal-Mart Sued over Contraceptive Coverage for Female Employees
- 20 Ashcroft Tells DEA to Lift Licenses of Oregon Physicians Who Aid Suicides
- 21 D.C. Circuit Sets Back Generic Competition to Taxol
- 21 Medical Societies, Insurers Ask Congress to Delay HIPAA Transactions and Code Sets
- 22 OIG Issues Advice on ASC Joint Venture, Exclusive Ambulance Contract
- 23 Connecticut Approves First-Ever Sale of Nonprofit Hospital to For-Profit Chain
- 23 OIG Recommends Disallowing \$3.5 Million in Intermediary's Expenses
- 23 DOJ Offers Guidance on Nondiscrimination Against Limited English Speakers

Forms

- 5-6 Call For Leaders
- 25 Call For Writers
- 26 Call For SISLC Leaders
- 29 Program Registration & Form —Legal Issues Affecting Academic Medical Centers and Other Teaching Institutions
- Hospitals and Health Systems Law Institute
- 31 Publications & Merchandise Order Form

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Mission Statement

The mission of the American Health Lawyers Association is to provide a forum for interaction and information exchange to enable its members to serve their clients more effectively; to produce the highest quality non-partisan educational programs, products and services concerning health law issues; and to serve as a public resource on selected healthcare legal issues.

American Health Lawyers Association Diversity Statement

In principle and in practice, the American Health Lawyers Association values and seeks diverse and inclusive participation within the Association regardless of gender, race, creed, age, sexual orientation, national origin, or disability. The Association welcomes all members as it leads health law to excellence through education, information and dialogue.

The Quality Imperative

“Quality problems are everywhere, affecting many patients. Between the healthcare we have and the care we could have lies not just a gap but a chasm.” *Crossing the Quality Chasm: A New Health System for the 21st Century*, Institute of Medicine, 2001, p.1.

The quality of the U.S. healthcare system and the safety of patients who utilize it is an issue of utmost importance to each of us, professionally and personally, to the organizations we work for and to our society as a whole. This is an issue that health lawyers and the American Health Lawyers Association should be involved in. Legal solutions will necessarily be part of the scientific and operational solutions.

Vision Statement:
Leading health law to excellence through education, information and dialogue.

Employers, government, accrediting agencies, health plans, hospitals, physicians – and many organizations and associations representing these groups – all have strong views about how to improve quality and

patient safety. New measures, standards and approaches to quality assurance are being developed at a rapid pace. Coordination of this national effort is an obvious challenge. Health lawyers bring to the table the ability to address the complex legal issues involved and to anticipate future legal consequences to proposed laws, regulations and standards. The unique perspective that the American Health Lawyers Association brings is its non-partisan education mission.

In its first report, *To Err is Human: Building a Safer Health System*, which brought to public attention the thousands of unnecessary deaths annually due to medical errors, the IOM called for both mandatory and voluntary reporting of medical errors. Included in its recommendations was a call for federal legislation to extend peer review protections to data related to patient safety and quality improvement. In its second report, *Crossing the Quality Chasm: A New Health System for the 21st Century*, the IOM struck a broader theme, defining quality as healthcare that is not only safe, but also is effective, patient-centered, timely, efficient and equitable. This report included a recommendation for re-examining public and private reimbursement methodologies to enhance quality, such as paying incentives and rewards to providers for quality improvement, as well as a recommendation for re-examining our professional licensure and tort liability systems to find ways to foster and protect quality. Achieving these six aims of safe, effective, patient-centered, timely, efficient and equitable healthcare simultaneously is a tremendous vision – to the

IOM’s credit – but one that will require heretofore unknown levels of cooperation and collaboration among the diverse stakeholders in our healthcare system. Facilitating such cooperation will require, among other contributions, careful legal thinking and non-partisan analysis of the consequences of proposed changes.

To mention just a few obvious points, legal issues will arise – and an appropriate balance will have to be struck – in connection with patient and provider privacy; confidentiality, privilege and immunity; professional liability; accreditation; regulation (e.g., licensure, Medicare Conditions of Participation); and enforcement (e.g., False Claims Act, Civil Money Penalty statute). Health lawyers, individually and collectively, should make a commitment to being part of the solution.

The title of this column is the same as the plenary panel at Health Lawyers’ Annual Meeting in Orlando. On that panel were Ken Kizer, President and CEO of The National Quality Forum; Janet Corrigan, Director, Board on Healthcare Services at the Institute of Medicine; and Howard Burde, Deputy General Counsel, Governors Office of General Counsel for the Commonwealth of Pennsylvania. Each spoke eloquently about the importance and challenge of the quality imperative facing this country at this time. We hope to continue to work with their organizations, as well as others, on the issue of patient safety and healthcare quality. Peter Leibold, EVP/CEO of Health Lawyers, in the September *Health Lawyers News*, wrote about Congressional initiatives regarding quality and medicine in the last Congress. He also stated that: “The Association should look for ways to contribute to this public policy debate. It is one where our membership and our expertise can make a unique and influential contribution.” More recently, the Public Interest Committee of the Association’s Board of Directors has recommended that the next Health Lawyers’ colloquium examine the challenge of minimizing medical errors.

In these ways, and others to follow, Health Lawyers can contribute to the lofty goal of improving patient safety and healthcare quality in America. The challenge is that much greater as the healthcare system works to integrate the quality imperative with bioterrorism preparedness. As you see ways that Health Lawyers can help you serve your clients better in meeting these challenges, or can serve as a non-partisan public resource on these issues, please let us know.



Doug Hastings
Doug Hastings
President