

November 2008 Health Watch USA Newsletter

Three Items are discussed in this Month's Newsletter.

First is a reminder to register for our 2008 Conference on Health Care Transparency and Patient Advocacy – to be held in Lexington on Nov 20. We have an excellent lineup of speakers including Dr Nancy Wilson, Special Advisor to Secretary Mike Leavitt, Lisa McGiffert from Consumer Union (publisher of Consumer Reports) and Ken Connor, who has represented Erin Brochovich in their attempts to recoup Medicare funds paid to nursing homes for Never Events. For more information go to www.healthconference.org .

A recent report from the General Accounting Office has evaluated the public reporting of hospital acquired infections. View report at <http://healthwatchusa.org/downloads/20081003-GAO-Report-d08808.pdf>

The report had concluding observations that the methodology used for data gathering and reporting has been standardized and validated. This negates the argument that facilities will be reporting apples and oranges since there is no standardization for the methodology. (ICP: Infection Control Professional, HAI: Healthcare Associated Infections, NHSN: National Healthcare Safety Network)

“The federal government, and in particular its lead agency for HAIs, CDC, have over the last few decades evolved a role that involved certain discrete activities. These included the development of guidelines that assess and recommend specific clinical practices for reducing HAI. They also include the development and promulgation of procedures and definitions that enable ICPs to determine in a systematic and consistent way which patients have HAIs, and to measure their HAI rates over time. In addition, CDC has initiated and maintained data collection programs, such as NHSN, that provide a mechanism that hospitals can use to both collect information on their own HAIs and compare their experience with that of other hospitals using the same set of clinical definitions and data collection procedures.”

“... it (NHSN) is also available at no cost to the hospitals to use it.”

The major reason not to have public reporting was that hospitals may not reliably report bad results when there are competition pressures from another institution with a good report.

“When the data are released to the public in order to influence consumers to choose hospitals with lower rates of HAIs, hospitals may have an incentive to minimize the number of HAI cases that they identify and report if they believe either that the hospitals with which they compete for patients could be minimizing the number of HAIs they reported or that those hospitals have actually achieved lower rates of HAIs than their own hospital.”

The “Medicare Improvements for Patients and Providers Act of 2008” (HR 6331) was best noted in physician circles for its reversal of the Medicare pay cut. However, it contained many more provisions. One of which was a short section dealing with the Joint Commission (Section 125). This section did two

things. It revoked the Joint Commission's "Unique Deeming Authority" and it eliminated Subsection (a) of Section 1865 of the Social Security Act http://www.ssa.gov/OP_Home/ssact/title18/1865.htm .

In Health Watch USA's analysis it appears that this opens the way for other accrediting agencies. Subsection (a) appears to require, at least in some circumstances, the hospital's permission before a Joint Commission survey result could be released to the Secretary of Health and Human Services. In other words this section allows for competition in accreditation agencies and places it more firmly under the supervision of the US Dept of Health and Human Services.

Below is Subsection (a) of Section 1865 of the Social Security Act:

(a) Except as provided in subsection (b) and the second sentence of section [1863](#), if—

(1) an institution is accredited as a hospital by the Joint Commission on Accreditation of Hospitals, and

(2)

(A) **such institution authorizes the Commission to release to the Secretary** upon his request (or such State agency as the Secretary may designate) a copy of the most current accreditation survey of such institution made by such Commission, together with any other information directly related to the survey as the Secretary may require (including corrective action plans),

(B) such Commission releases such a copy and any such information to the Secretary, **then, such institution shall be deemed to meet the requirements** of the numbered paragraphs of section [1861\(e\)](#); except—

(3) paragraph (6) thereof, and

(4) any standard, promulgated by the Secretary pursuant to paragraph (9) thereof, which is higher than the requirements prescribed for accreditation by such Commission.

If such Commission, as a condition for accreditation of a hospital, requires a utilization review plan (or imposes another requirement which serves substantially the same purpose), requires a discharge planning process (or imposes another requirement which serves substantially the same purpose), or imposes a standard which the Secretary determines is at least equivalent to the standard promulgated by the Secretary as described in paragraph (4) of this subsection, the Secretary is authorized to find that all institutions so accredited by such Commission comply also with clause (A) or (B) of section [1861\(e\)\(6\)](#) or the standard described in such paragraph (4), as the case may be.

The above newsletter is the express opinion of the author and/or Health Watch USA