

# Dateline Washington

*prepared by the Division of Advocacy and Health Policy*

## **Bipartisan tort reform legislation introduced**

A bipartisan group of legislators, including Reps. James Greenwood (R-PA), Christopher Cox (R-CA), John Murtha (D-PA), Charles Stenholm (D-TX), Collin Peterson (D-MN), and James Moran (D-VA), introduced legislation April 25 aimed at reforming the medical liability system. The Help Efficient, Accessible, Low Cost, Timely Health Care Act (HEALTH) of 2002, H.R. 4600, closely follows California's model tort reform law and includes a \$250,000 cap on noneconomic damages. The legislation also imposes a three-year statute of limitations for filing a lawsuit, requires that defendants only be responsible for proportional damages, modifies the collateral source rule, allows for periodic payment of future damages, and limits attorneys' fees.

## **Coalition calls for immediate liability relief**

The Health Care Liability Alliance (HCLA) released the findings of a nationwide study of the American public's perception of the liability crisis during a press conference April 23 at the National Press Club in Washington, DC. The coalition, chaired by a member of the College's Washington Office staff, announced the results and introduced a panel of physicians and hospital administrators who spoke about how mounting problems with increased liability premiums threaten patient access to care. For example, ACS Governor Joseph Thornton, MD, FACS, testified that Nevada's out-of-control liability situation forced him to close his doors three years before he planned to retire.

The HCLA poll of the public showed that by overwhelming margins Americans favor medical liability reform. Four out of five respondents (78%) are concerned that skyrocketing liability costs could limit access to care. More than seven out of 10 Americans (71%) believe that medical liability litigation is one of the primary forces driving the increase in health care costs. By a wide margin (73%), Americans favor a law that would guarantee injured patients full payment for lost wages and medical costs and place reasonable limits on awards for "pain and suffering." Finally, more than three-quarters of those surveyed (76%) favor a law limiting the percentage a trial lawyer can collect in a settlement.

## **ACS comments on HIPAA privacy standards**

The College submitted comments to the Department of Health and Human Services (HHS) on April 26 regarding proposed revisions to the medical records confidentiality standards mandated by the Health Insurance Portability and Accountability Act (HIPAA). HHS's latest revisions modify several key areas of the final privacy rule, including those related to patient consent, "de-identification" of data, research, incidental disclosures, and contractual agreements between covered entities and other parties receiving protected health information.

The College's comments address the regulations both from the standpoint of practicing surgeons and from the research perspective. In particular, they stress the importance of crafting standards that will protect patients' personal health care information while allowing contin-

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ued access to the data necessary to conduct outcomes research and quality improvement efforts. The College's comments are available at <http://www.facs.org/dept/hpa/views/hipaa.html>.

## **College objects to MedPAC assistants at surgery proposal**

The College coordinated and sent a coalition letter April 22 to the Medicare Payment Advisory Commission (MedPAC) to express deep concern about proposed changes to current Medicare payment policies pertaining to assistants at surgery. A total of 42 national organizations representing physicians, nonphysician providers, and group practices signed the letter.

At the time the letter was drafted, the panel was debating whether Medicare reimbursement for assistant at surgery services provided by physicians and others should be "bundled" into either the hospital's or the primary surgeon's payment. The commission subsequently announced at its meeting on April 25 that it was abandoning these proposals. With regard to its response to a request from Congress to evaluate whether surgical technologists should be paid separately when they serve as assistants at surgery, MedPAC intends to recommend that current policies be maintained. The full text of the letter may be retrieved at <http://www.facs.org/dept/hpa/views/assistants.htm>.

## **ACS joins National Quality Forum**

The College joined the National Quality Forum (NQF) to ensure that surgeons are active participants in the development and implementation of proposed clinical quality and outcome measures that would be shared throughout the nation. NQF has a number of prominent members, such as the Leap Frog Group, which have very specific quality recommendations that pose concerns for surgery. On April 18, Thomas R. Russell, MD, FACS, ACS Executive Director, provided comments on the draft consensus report, "Making Healthcare Safer for Patients: Evidence-Based Practices." In his remarks, Dr. Russell noted that the College supports the spirit of this effort and applauds NQF's effort to pull together disparate perspectives into a comprehensive proposal.

However, several areas of the process are of specific concern to the College, including the fact that implementation plans do not include substantial physician involvement. In addition, NQF has adopted the Leap Frog proposal of implementing Computerized Order Systems without considering the expense or the possibility that health care systems could develop other safety mechanisms that work equally well. The College also finds that the report places significant emphasis on directing patients to high-volume institutions. The College's comments cite recent clinical findings that challenge the data upon which the forecasts are based and suggests that the "practice makes perfect" assumption is not based on solid data.