

Last Minute...



BY CHAD C. KARLS

The First 100 Days

In last issue's column, I commented on the potential impact of the presidential election for medical professional liability (MPL) insurers. With the pomp and circumstance surrounding the inauguration having subsided, the nation's attention now turns to speculating on, and evaluating, the new Administration's activities in its first 100 days. To an actuary, this seems like too small a sample for predicting or judging how well President Obama will address the challenges he faces over the course of his term. After all, the first 100 days represents a mere 6.8% of his term, and if recent history is any guide, may ultimately represent only 3.4% of his time in office. Thus, the pundits and talking heads who attempt to judge any President using only the first 100 days' worth of data are faced with a yet-to-be-observed percentage between 93.2% and 96.6%. Translating this into true actuarial parlance, the cumulative development factor for any "first 100 day prediction" is between 14.706 and 29.412, surely a much too leveraged prediction to put much credibility in—right?

While I recognize the variability associated with a prediction that uses only 3.4% to 6.8% of the experience period, I do not have much sympathy for the pundits. While they are attempting to use the first 100 days to judge the ultimate outcome of a four- or eight-year process, I find myself in a similar (though, in my opinion, more daunting) predicament of also using the first 100 days of experience to assess the ultimate outcome of a much longer process.

A little more than two weeks before the inauguration, the 100th day had passed since the CMS ceased providing reimbursement to healthcare providers for certain hospital-acquired conditions not present on admission. These conditions are often referred to as "never events," even though only a few of the identified conditions were originally described as those that are never supposed to happen (e.g., foreign object left after surgery, surgery on the wrong body part, or mismatched blood transfusion).

The enabling legislation for this change is in the Deficit Reduction Act of 2005: CMS was directed to identify any condition that met at least two of the following: (1) represents a high cost or high volume (or both) of payments; (2) is assigned to a higher-cost

category once a secondary diagnosis is made; or (3) can be reasonably prevented through the use of evidence-based guidelines. While the primary thrust was to address the current budgetary issues and looming cash flow shortfalls in Medicare and Medicaid, we can also expect repercussions on the MPL industry.

Consider the third element—the condition can be reasonably prevented through the use of evidence-based guidelines. Even though the debate continues within the medical community as to the clinical integrity of this statement, the fact remains that, as of a little more than 100 days ago, this is now part of CMS's reimbursement model and, as a result, the MPL industry must be prepared to deal with its potential impact. By identifying certain hospital-acquired conditions as "never events," has CMS now, de facto, changed the standard of care? Whether you believe the answer to that question is yes or no, you can be certain that the plaintiff's bar will attempt to use that argument in front of a jury of lay people, after all—the argument will go—this is NEVER supposed to occur; even the government says so! Has CMS now become an expert witness for the plaintiff's bar? Will these issues transcend CMS-based care, as private payers also stop providing reimbursement for certain episodes of care?

With slightly more than 100 days worth of data to evaluate, the ultimate impact of CMS's decision to stop paying for certain types of hospital-acquired conditions is not yet known. The direction of the impact, however, seems clear: The MPL industry will be faced with another claims-management challenge, as claims involving these so-called never events begin to enter the discovery process. ♦PIAA

Author's endnote: For both of you interested readers, my election prediction from last issue's column was correct—Ms. Sharon Martin did win the election for the Washington County, WI Register of Deeds—if I had been wrong, I wouldn't have followed up on it.

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PIAA Data Sharing Advisory Committee (DSAC), chaired by Jim Weidner of Cooperative of American Physicians, Inc. This Committee will provide oversight and guidance in seeking ways to improve the PIAA Data Sharing Project to maximize participation, develop innovative analysis, and learn more about patient safety from the captured data. The DSAC membership

will be drawn from the actuarial, claims, risk management, coding, and general management disciplines.

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