



## Progress Notes

December 2018

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## Hospitals Challenge Payment Neutrality and Public Charge, and Texas Judge Says ACA Unconstitutional

**ACA Court Challenge.** A Texas judge's decision rendered December 14, 2018, deemed the Affordable Care Act (ACA) unconstitutional on the grounds that Congress' removal of the insurance mandate penalty in its 2017 tax reform legislation negates Congress' taxation power. That power to tax, in the form of a penalty for not purchasing insurance, was the central argument upholding the law's constitutionality when the ACA survived a 2012 Supreme Court challenge. Republican governors from 20 states brought the current suit before the Texas court. Already some Democratic states and ACA proponents have vowed to challenge the decision. It will take months for the decision to wind its way through the appeals court process, and there is a good chance the challenge may end up at the Supreme Court. However, for now, the ACA remains the law of the land.

If the Texas court decision is upheld and the entire law is deemed unconstitutional, favorable ACA provisions, such as protections for those with pre-existing conditions, no caps on lifetime limits, and insurance extension to adult children up to the age of 26, would go away. These provisions are popular with Democrats and with many Republicans, as well. The ACA also expanded coverage to some 20 million Americans. Without the law, the rate of uninsured will soar once again.

**Payment Neutrality.** The lawsuit filed earlier in the month by the American Hospital Association challenges the Centers for Medicare and Medicaid Services' (CMS) decision to extend a 40 percent payment cut to basic clinic visits at all hospital-owned outpatient departments starting January 1, 2019. Clinics established after November 2, 2015, were already subject to the 40 percent payment cut, known as the "site neutral" payment reduction because it reimburses hospitals at the same rate as physician offices. Congress specifically exempted from the cut, in language included in the Bipartisan Budget Act of 2015, those hospital-owned clinics that were in operation before the November 2nd date. The AHA suit challenges CMS on the grounds that the rule is an executive overreach and contradicts Congress' intent. The suit also challenges Medicare's own budget neutrality law that requires any reductions in reimbursement to be offset by reinvestments elsewhere in the program. The hospital field strongly opposes equalizing payment rates between hospital-owned clinics and others because nonprofit hospitals have substantial overhead requirements that physician offices do not and have an obligation to meet the needs of communities, including treating uninsured patients. Those accessing outpatient departments for such care are generally poorer and present with more severe and costly chronic conditions compared to those who seek care at independent physician practices. This proposal would result in a negative \$750 million impact to New York's hospitals and health systems over the next decade.

**Public Charge Rule.** The Trump administration's new proposed rule regarding the public charge definition seeks changes to the standard the Department of Homeland Security uses to make public charge determinations. Under current immigration law, individuals who are deemed to become public charges because of their over-reliance on government assistance can be denied admission to the United States or the ability to become a permanent lawful resident. The proposed rule seeks to include Medicaid, Medicare Part D (prescription benefit) subsidy, and the Children's Health Insurance Program as part of the public charge determination. This policy change would likely deter many individuals who are here legally from enrolling in these programs, leading to more uninsured, a greater strain on hospital emergency departments, and postponement of care that leads to more complications and costs for patients and providers. According to the New York State Department of Health, about one million more individuals could end up uninsured.

## Insurance Enrollment Continues at Steady Pace

According to the Department of Health, enrollment numbers for the first four weeks of the current open enrollment season outpaced enrollment numbers during this same time period last year. The New York State of Health marketplace reports that more than 930,000 consumers have enrolled or renewed coverage in a Qualified Health Plan or the Essential Plan for 2019, as of December 5th. New York's health insurance marketplace is open until January 31, 2019.

On Long Island, the Suburban Hospital Alliance regional affiliate the Nassau-Suffolk Hospital Council is one of three state-appointed navigator agencies for the region. The Hospital Council maintains a user-friendly, bilingual website – [www.coverage4healthcare.org](http://www.coverage4healthcare.org) - that lists enrollment sites and dates and other helpful information. Assistance is offered on a first come, first serve basis.

In the Westchester and Hudson Valley area, state-certified navigator agencies are: Community Service Society of New York, Maternal Infant Services Network of Orange, Sullivan and Ulster Counties and the Westchester County and the Rockland County Departments of Health.

Depending on income levels, families and individuals may be eligible for federal tax credits and/or cost sharing assistance. For 2019, monthly premiums for the Essential Plan, an option for adults with modest incomes, remain \$20 a month or at no cost, depending upon an individual's income.

Enrollment in Child Health Plus, Medicaid, and the Essential Plan are available year long. Individuals can shop the marketplace through an online portal on [www.nystateofhealth.ny.gov](http://www.nystateofhealth.ny.gov), by calling the state's customer service number at 855-355-5777, or by meeting with a state-certified navigator.

## News Briefs

**Flu Declared Prevalent, Triggers Flu Mask Regulation** – Flu virus was declared prevalent by the New York State Health Commissioner on December 20, 2018, and hospitals on Long Island and throughout the Hudson Valley are taking additional steps to prevent the spread of flu, including enhanced efforts to vaccinate all employees and distribution of surgical facemasks. Worn by employees, masks offer a physical barrier to flu transmission. This is a comprehensive endeavor to protect patients, visitors, and employees from exposure to the flu virus.

While an annual flu vaccine remains the single best method for preventing the flu, a surgical facemask, worn by employees, provides added protection to patients, employees, and visitors. All hospitals on Long Island and in the Hudson Valley offer the flu vaccine to all employees and also provide employees with surgical facemasks, as required by New York State public health law. Hospital employees that are in contact with patients and the public are required to have the flu vaccine or, if not vaccinated, to wear a protective mask.

"Flu prevention is a priority at all hospitals on Long Island and in the Hudson Valley. Hospital employees work every day to lessen the spread of flu virus by adhering to strict infection control practices and prevention guidelines," said Kevin Dahill, president/CEO of the Suburban Hospital. "Hospitals, nursing homes, and other facilities must also document the number and percentage of personnel vaccinated against the flu to state and federal authorities."

**Hospitals' Community Service Plans** – New York hospitals' 2018 Community Service Plan updates are due to the state by Friday, December 28. The Department of Health is asking hospitals and healthcare systems to provide an update on their work in 2018 under the Prevention Agenda, using the DOH Health Commerce System. For your easy access, HANYS has posted DOH's instructions on its [Community Health web page](#).

Updated templates are to be emailed to [prevention@health.ny.gov](mailto:prevention@health.ny.gov) by the December deadline.

**2017 Schedule H** – HANYS is requesting hospitals email them a copy of their 2017 Internal Revenue Service (IRS) Form 990 Schedule H to [scheduleh@hanys.org](mailto:scheduleh@hanys.org) by December 28, 2018. The community benefit information detailed in the Schedule H is available in the public domain. Full and accurate reporting of community benefit and investment activity is crucial, as public

scrutiny by governmental agencies, the media, and others intensifies. HANYS will use the 2017 schedule Hs for comparative analysis against previous Schedules with the goal of providing each hospital with a review of their Schedule H and helpful feedback.

**Dahill Dose** – Check out the latest posts at [dahilldose.com](http://dahilldose.com). SHANYS President and CEO Kevin Dahill offers informed and insightful commentary about healthcare policy, legislation, and regulation.

## Spotlight on Quality

### CMS Investigates Accrediting Organizations That Provide Consulting Services

*By Kate McCale, Director of Quality and Membership Services, Nassau-Suffolk Hospital Council*

On Tuesday, the Centers for Medicare and Medicaid Services announced that it would be investigating accrediting organizations that provide consulting services to the hospitals they monitor due to concerns over potential conflicts of interest. CMS contracts with accrediting organizations (AOs) like The Joint Commission and DNV to ensure that hospitals meet or exceed the standards required for participation in the Medicare Program. Some of these AOs have affiliated businesses or services lines that also sell consulting services and publications to the same hospitals to help them prepare for accreditation surveys. Consulting services often include assisting leaders in understanding standards for compliance, assessing policies and procedures for compliance, providing technical assistance where needed, and providing mock surveys to help organizations prepare for formal accreditation surveys.

In addition to conducting its own investigation, CMS has released a Request for Information and is seeking public comment on whether revenue generated through consulting services creates a conflict of interest between AOs and the hospitals they monitor in the eyes of stakeholders and the public. CMS administrator Seema Verma has said that the agency is concerned that the “financial relationship involved in this work may undermine the integrity of the accrediting organizations and erode the public’s trust.” Verma went on to say that CMS data shows “that state-level audits of healthcare facilities are uncovering serious issues that AO’s have missed” calling into question the integrity of the AO survey process. The RFI follows an October announcement that CMS would be strengthening its oversight of AOs and posting data on AO performance and hospital safety violations online.

Stakeholders have been asked to address in their comments whether or not AOs should be able to provide consulting services, how well AOs are avoiding conflicts through current practices, what measures AOs could take to avoid potential conflicts in the future, and whether or not CMS should revise its conflict of interest policy as part of the application and renewal process for AOs. Based on the nature of the comments requested, it is likely that CMS will release new or revised regulations in 2019. The comment period ends February 18th.



News from the  
**Hudson Valley**

[Click here for Northern Metropolitan Hospital Association member listing](#)

**Excellent Experience** – Grover M. Hermann Hospital, part of *Catskill Regional Medical Center*, has been named a 2018 Guardian of Excellence Award® winner for Patient Experience in the Emergency Department by Press Ganey. The Guardian of Excellence Award recognizes top-performing healthcare organizations that have achieved the 95th percentile or above of performance in Patient Experience.

**Rehab Reaccreditation** – CARF International has announced that *Helen Hayes Hospital* has once again been accredited for a period of three years. The seventh consecutive three-year accreditation awarded to the specialty physical rehabilitation hospital, the hospital has received accreditation for 12 rehabilitation programs, one of the largest numbers of accredited programs bestowed by CARF to any one organization.

**Medical Village** – *Bon Secours Community Hospital*, a member of the *Westchester Medical Center Health Network*, received the Quality of Life Award at the Orange County Partnership Annual Dinner for its \$40 million Investing in a Healthier Community project. At the center of the project is the development of 43,000 square feet of space into the core of a Port Jervis “medical village” where Bon Secours Community Hospital will collaborate with community partners to provide health, wellness and other community services, such as women’s health, mental health, pediatrics, and overall wellness, in one convenient destination.

*If you have news to share about your hospital’s achievements, please send to Janine Logan at [jlogan@normet.org](mailto:jlogan@normet.org).*



News from  
**Long Island**

[Click here for Nassau-Suffolk Hospital Council member listing](#)

**DEC Environmental Excellence** – *Stony Brook University Hospital* was among an elite group of organizations to receive the Environmental Excellence Award from the New York State Department of Environmental Conservation (DEC), which recognizes innovative programs and outstanding commitment to environmental sustainability, social responsibility, and economic viability.

**Trauma Verification** – *Long Island Community Hospital* has been verified as an Adult Level III Trauma Center by the American College of Surgeon's Committee on Trauma (ACS-COT). This verification, which followed a comprehensive on-site review by a team of ACS trauma experts, confirms the hospital's overall readiness to care for trauma patients from pre-hospitalization through rehabilitation.

**System Partnership** – *South Nassau Communities Hospital* and the Mount Sinai Health System have finalized a partnership, making South Nassau Mount Sinai's flagship hospital on Long Island in a move designed to bring advanced-level health care to the South Shore of Nassau County and to Long Island.

*If you have news to share about your hospital's achievements, please send to Janine Logan at [jlogan@nshc.org](mailto:jlogan@nshc.org)*

## Committee Updates

**Human Resources** – At the December 7 meeting of the Human Resources Committee, Hospital Council staff provided an overview of the mid-term and state election results and discussed the advocacy agenda for 2019. Members were briefed on a recent court decision regarding executive compensation and reminded of increases in exempt salary thresholds. Those in attendance discussed strategies for implementing New York State sexual harassment training laws.

**Long Island Population Health Improvement Program** – The members of the Long Island Health Collaborative convened on December 13 for a look back/look forward at the work of the LIHC. Members had the opportunity to participate in the Collaborative's LGBTQ Health awareness training, presented by LGBTQ Consortium members Mila Madison & Mena Falco from The Transgender Resource Center of Long Island.

## Upcoming Events

### **2019 Trustee Conference: The Power of Governance** September 13 – 15, 2019 | Saratoga Springs, NY

Save the dates: September 13-15, 2019 for Healthcare Trustees of New York State's 39th Annual Trustee Conference—The Power of Governance: Innovate. Inspire. Lead.

We'll offer a full agenda of topics that are critical to the trustee role.

Mark your calendar now and plan to join HANYS in Saratoga Springs! More information to come in 2019.

## **Advanced Executive Leadership for Physicians**

Cornell University, Ithaca, NY

Advanced Executive Leadership for Physicians is an intense, effective, and efficient way to support the career development of physician leaders interested in evaluating and elevating their executive leadership skills. This program combines essential policy and program review, advanced learning, peer interaction and, new in 2019, individual executive coaching connected to a Leadership Action Plan.

Advanced Executive Leadership for Physicians offers a distinctive program designed to enhance and advance an individual's ability to lead self, others, and the organization.

Opening Session: May 5 – 8

Closing Session: June 2 – 8

Seating is limited. [Reserve your seat online](#) for the 2019 program or contact Cathy Oxentine, Office Manager, HANYS Solutions, at (518) 431-7732.