



## STATE UPDATE: Mel Mal Proposals and Nurse Staffing Mandate Concern Hospitals As Session Nears Close

With the 2016 state legislative session set to end June 16, hospitals are eagerly working with lawmakers to find solutions to two major issues: medical malpractice and mandated nurse staffing ratios.

**Medical Malpractice:** Member hospitals of the Suburban Hospital Alliance of New York State remain adamantly opposed to proposed medical malpractice legislation that seeks to convert the current statute of limitations to a *discovery statute*. The legislation seeks to re-set the clock in relation to the timeframe in which a plaintiff can sue for a medical error. Currently, the law allows for two and a half years from the time the error occurred. The proposed statute would set the clock from the date the malpractice action was discovered, which could be many years later, and would allow a lawsuit to be filed up to 10 years after the alleged negligent act. For several years hospitals have been working with the state legislature to find solutions to the exorbitant medical malpractice costs endured by providers in New York State. The discovery statute adds to this cost burden without identifying reasonable solutions or compromises to this very sensitive subject. Another proposal awaiting action by the legislature concerns *contingency fees* for attorneys. This legislation directly harms injured patients by taking money away from the patient solely to increase the legal fees of the attorney representing them.

**Nurse Staffing Ratios:** Member hospitals are equally opposed to any mandated nurse staffing ratios and point to the lack of evidence that proves safer and enhanced quality care due to such mandates. Peer-reviewed studies in California – the only state with mandated ratios – found no direct link between clinical outcomes and statewide staffing ratios. Research shows that the factors that so make a difference are the use of evidence-based protocols, team-based approach to care, and communication. Staffing plans are best handled by each hospital so that decisions reflective of surge needs, experience levels of the staff, and patient acuity can be made on an as-needed and immediate basis.

## FEDERAL UPDATE: Rule Flexibility Sought

Hospitals are asking federal regulators to build in flexibility to the rules that the Centers for Medicare and Medicare Services (CMS) will release this summer pertaining to hospital-based outpatient departments. The Bipartisan Budget Act of 2015 precludes hospitals from receiving the higher outpatient reimbursement rate for off-campus, hospital-owned clinics that opened after November 2, 2015 – the date of enactment of the budget law. The law establishes a “site-neutral” payment policy; that is, care is reimbursed at the same rate regardless of whether the care is delivered in a physician office or hospital-based clinic. This is despite the substantially higher cost of overhead and skilled nursing mix in the hospital setting. The rule restricts patients’ care options. The hospital industry wants CMS to include flexibilities for relocation or rebuilding, change of ownership, needed expansion of services and interpretation of the definition of “on campus” in the rules.

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