Changing Landscape in Health Care

A Hospital Executive’s Perspective

CHANGES IN HEALTH CARE
2002 - 2012

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EVERY HOSPITAL TELLS A STORY

Regardless of whether it serves a small rural setting or a sprawling urban population, an area’s local hospital plays an integral role in shaping and defining its community.
THE CHANGING LANDSCAPE OF THE AMERICAN HOSPITAL SYSTEM

• The trend of multi-hospital systems replacing freestanding community hospitals picked up speed after 1965.

• The five hospital consolidations noted in 1961 ballooned to upwards of 50 per year in the 1970s.

• By the 1980s, an estimated 30% of hospital beds in the United States existed within hospital systems.

• In 2008, the American Hospital Association estimated that almost half of the nearly 6,000 U.S. hospitals belonged to a hospital system.
Today [physicians] who practice privately are subject to the sort of controversy long familiar to management . . . . that involves charges of overpayment and hints of incompetence.

Lay gossip about the physician’s abilities and his fees is harsher than it used to be, and articles in popular magazines are irreverent. . . .

Today, however, the old-fashioned doctor has gone with the old-fashioned family. With new aids to diagnosis, new treatments, and new drugs, any competent physician can accomplish more and quicker cures than he can with any amount of bedside attendance. Under these circumstances patients credit the treatment, not the physician, with keeping him well.”
2002

St. Luke Medical Center, Pasadena
MILESTONES FROM THE PAST

• The 1946 Hospital Survey and Construction Act (Hill Burton Act)

• The 1965 passage of Medicare

• The 1983 introduction of Medicare’s diagnosis-related groups (DRGs)

• The 1986 Emergency Medical Treatment and Active Labor Act (EMTALA)

• The 1994 Northridge Earthquake

• The 1996 Health Insurance Portability and Accountability Act (HIPAA)
FROM THE FEDERAL GOVERNMENT

- HITECH
- The Affordable Care Act
- Accountable Care Organizations
- Stark and Anti-Kickback Laws
- RACs, MACs, MICs and ZPICs
- Value-Based Purchasing Program
FROM CALIFORNIA

- The Medi-Cal Disproportionate Share Program (DSH)
- The Private Hospital Supplemental Fund
- Distressed Hospital Funds
- Construction and Renovation Reimbursement Program
- The Hospital Fee Program
- SB 1953
- California’s Physician Outpatient Referral Act
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Granada Hills Community Hospital, Granada Hills

2003
NAVIGATING THROUGH THE CHANGES -- 1986

“Some argue that as many as 1,000 hospitals will close by the end of this decade, resulting in a decline in the training of needed medical personnel, and the creation of serious problems of care to select populations and communities. They argue, for example, that the hospitals that are especially at risk of closure are the small rural hospitals, many of which are the only providers of medical care to their local communities. . . . In contrast, others argue that rural . . . hospitals . . . through adapting to these changes and through increasing support of their local communities and state governments, will not have to close but, rather, will reshape their mission and continue to provide needed medical care.”

- Health Affairs, Fall 1986
NAVIGATING THROUGH THE CHANGES – 2012

• The DRG system will begin to give way to value-based purchasing.

• CMS will start paying hospitals Medicare “bonuses” based upon overall performance, adherence to quality measures and patient satisfaction.

• This epic change is designed to transform a system that has historically been based on cost into one that focuses primarily on quality and performance.

• Funding for value-based purchasing comes from base operating DRG reductions (1% in 2013, 1.25% in 2014, 1.5% in 2015, 1.75% in 2016, and 2% thereafter).

• Hospitals with poor performance ratings may be excluded from bonus opportunities.
2004

Robert F. Kennedy Medical Center, Hawthorne
Judging from recent media reports, American medicine must be on the verge of utter decay. Government officials complain that we doctors do vast amounts of unnecessary surgery. We are accused of inappropriately hospitalizing too many patients and in discharging them prematurely.

We are being harassed by government and big business for over utilizing sophisticated and expensive medical technology -- while at the same time, the courts hold us liable when we fail to admit a patient who turns out to be sicker than we originally perceived.

And lawyers and patients consider us negligent and irresponsible if we fail to use sophisticated tests which would detect early and curable disease.”
NAVIGATING THROUGH THE CHANGES – THE FUTURE

• A hospital’s chance of survival in Medicare’s new world may ultimately depend on the sophistication and implementation of its core systems (both technical and practical), leaving little room for error.

• In this vein, Medicare’s hospital value-based purchasing program may create a disadvantage for freestanding community hospitals, many of which lack the resources of larger, better funded institutions that are needed to both implement and monitor all of the components established by Medicare to be eligible for reimbursement based on quality and performance.
2005

Brea
Community
Hospital, Brea
HOSPITALS IN CALIFORNIA

- # of Hospitals in California
- Population in California
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2007

King/Drew Medical Center, Watts
CHANGES IN HEALTH CARE COMPLIANCE
YESTERDAY

• Demonstrate a commitment to honest and responsible conduct.

• Increase the likelihood of preventing, identifying and correcting unlawful and unethical behavior at an early stage.

• Encourage employees to report potential problems to allow for appropriate internal inquiry and corrective action.

• Minimize any financial loss to government and taxpayers through early detection and reporting, as well as any corresponding financial loss to the provider.
TODAY

• The Affordable Care Act requires all health care providers to implement formal health care compliance programs as a condition of enrollment in Medicare, Medicaid and the Children’s Health Insurance Program (CHIP).

• These compliance programs must contain certain core principles established by the Federal Government.

• OIG recommends seven elements from the 2010 U.S. Federal Sentencing Guidelines Manual as the basis for these core elements.
Hospitals: Beginning October 2012, hospitals face a 1% reduction overall in Medicare payments under the Inpatient Prospective Payment System (IPPS), designed to calculate performance bonuses. By 2015, hospitals showing poor performance may also face additional reductions.

Physicians: Beginning in 2015, the value-based payment modifier applicable to Medicare Fee for Service applies to all groups of 25 or more eligible professionals (including physicians, practitioners and therapists), followed by a complete phase-in by 2017.
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2008

Century City
Doctors Hospital,
Los Angeles
2009

AMERICAN RECOVERY AND REINVESTMENT ACT
HITECH AND DATA BREACHES

Under HITECH, any covered entity that maintains “unsecured” protected health information (PHI) and discovers a breach of such information must notify each individual whose PHI “has been, or is reasonably believed by the covered entity to have been, accessed, acquired or disclosed as a result of such breach.”

HITECH made most of the HIPAA Security Rule requirements directly applicable to business associates and included direct regulation by the Office of Civil Rights as well as enhanced penalties for HIPAA violations.
Upon discovering a breach, notification must be made:

• By first class mail, or by email in certain instances.

• By telephone, in certain instances.

• If 10 or more individuals are involved, or contact information is insufficient, internet posting or publication through a “prominent media outlet” with concurrent notification to HHS is acceptable.

• If 500 or more individuals are involved, publication through a “prominent media outlet” with concurrent notification to HHS is acceptable.
Notice must include:

- A brief description of the incident.
- A description of the compromised information.
- Steps potential victims should take to protect themselves.
- Efforts taken by the covered entity to minimize disruption and potential harm.
- Additional information (a toll-free phone number, email address, website or postal address).
HITECH Security Breach Penalties

• No prior knowledge that violation occurred – $100 to $50,000.

• HIPAA violation due to reasonable cause or willfully negligent actions – $1,000 to $50,000.

• Cumulative penalties for all violations “of identical requirements or prohibitions during a calendar year” – up to $1,500,000.

• “Intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm” – penalty not to exceed $250,000, imprisonment up to 10 years, or both.
2010

PATIENT PROTECTION AND AFFORDABLE CARE ACT

- Individual Mandate
- Medical Loss Ratio
- Rate Reviews
- Improving Coverage
- Health Insurance Exchanges
- Essential Health Benefits
- ACOs and Bundling
- Value Based Purchasing
- Prevention and Innovation
- Medicaid Expansion
Federal Expectations in the Future

• Define, establish, implement, evaluate and periodically update your process to promote patient engagement.

• Define, establish, implement, evaluate and periodically update your process and infrastructure to support internal reporting on quality and cost metrics. Use these results to improve care and service over time.

• Define, establish, implement, evaluate and periodically update your care coordinate processes.

[ACO Application]
“Patients and doctors often complain that appointments are rushed, but the time that doctors spend with each patient — 16 to 20 minutes, on average — has remained largely unchanged for years.

Instead, patients have gotten sicker and treatments more complex. Half of American citizens have a chronic disease like high blood pressure or diabetes, and a quarter have two or more such conditions. . . . For many of their patients, doctors must increasingly rush through a blizzard of questions and tests, leaving little time for the kind of intimate chit-chat for which doctors and patients alike yearn. Some patients must schedule two or three office visits to have all of their medical issues addressed.”
SUMMARY OF MEDICARE

*Catholic Health Initiatives v. Sebelius, 841 F. Supp. 2d 270 (D.D.C. 2012)*

“Picture a law written by James Joyce\(^1\) and edited by E.E. Cummings. Such is the Medicare statute, which has been described as ‘among the most completely impenetrable texts within the human experience.’”

\(^1\)The Court clarifies, however, that by making this analogy, it is referring not to Joyce’s early work, such as *Dubliners* or *Portrait of the Artist as a Young Man*, but his later period, specifically *Finnegan’s Wake.*"
Fraud and Abuse Laws after Medicare

- The Social Security Amendments
- Medicare-Medicaid Anti-Fraud and Abuse Amendments
- Omnibus Reconciliation Act
- Civil Monetary Penalties Law
- Medicare and Medicaid Patient and Program Protection Act
- Ethics in Patient Referral Act
- Omnibus Budget Reconciliation Act
- The Health Insurance Portability and Accountability Act (HIPAA)
- The Balanced Budget Act
- The Deficit Reduction Act
- The Fraud Enforcement and Recovery Act
- The Patient Protection and Affordable Care Act
SELF-DISCLOSURE AND OVERPAYMENTS

OIG: Hospitals who wish to voluntarily disclose self-discovered evidence of potential fraud to the OIG may do so under the Provider Self-Disclosure Protocol (SDP).

CMS: The Medicare voluntary self-referral disclosure protocol includes a process to enable providers of services and suppliers to self-disclose actual or potential violations of the physician self-referral statute.

FISCAL INTERMEDIARY: Should a hospital identify an overpayment, sending a check to Medicare for the appropriate amount may prevent offsets or delays of future claim payments.
FAIR MARKET VALUE

“Fair market value” refers to the value in “arm’s-length” transactions, consistent with the general market value.

AREAS OF CONCERN:

• Physician employment
• Physician practice acquisition
• Joint venture arrangements
• Call coverage and other personal service agreements
• Management services agreements
• Co-management arrangements
2012

NATIONAL FEDERATION OF INDEPENDENT BUSINESS V. SEBELIUS

- Commerce Clause
- Tax and Spending Clause
- Exhaustion of Remedies
- Medicaid Expansion
- Commandeering
VALUE BASED PURCHASING

Clinical Process of Care Measures:  Acute Myocardial Infarction; Heart Failure; Pneumonia; and Surgical Care Improvement Project

Patient Experience of Care Dimensions:

• Communication with nurses and doctors
• Responsiveness of hospital staff
• Pain management
• Communication about medicines
• Cleanliness and quietness
• Discharge information
• Overall rating of hospital
HOSPITAL READMISSION REDUCTION PROGRAM

Numerator: Adjusted Actual Readmissions

Step 1:

Calculate each patient's predicted probability of readmission

\[
\frac{1}{1 + e^{Z_a}}
\]

\[Z_a = \text{hospital-specific effect} + X\beta\]

intercept + risk-adjustment coefficients

Step 2:

To get the numerator result, add all patients' predicted probabilities of readmission
HOSPITAL READMISSION REDUCTION PROGRAM, continued

Denominator: Expected Readmissions

Step 1:
Calculate each patient’s expected probability of readmission = \( \frac{1}{1 + e^{-\theta}} \)

\[ Z_\theta = \chi\beta \]

intercept + risk-adjustment coefficients

Step 2:
To get the denominator result, add all patients’ expected probabilities of readmission
NAVIGATING THROUGH THE CHANGES – THE FUTURE

• With many hospitals lacking the necessary resources to effectively combat rising health care costs and ever-expanding regulatory oversight, lenders must be savvy in their approach.

• Much like hospitals, lenders should be mindful of our nation’s new reimbursement structure.

• In order to survive, the once iconic institution of health care must find ways to adapt to a constantly evolving system.
“The future influences the present just as much as the past.”

- Friedrich Nietzsche
CRAIG B. GARNER

Craig is an attorney and health care consultant, specializing in issues pertaining to modern American health care and the ways it should be managed in its current climate of reform. Craig is also an adjunct professor of law at Pepperdine University School of Law, where he teaches courses on hospital law and the Affordable Care Act.

Between 2002 and 2011, Craig was the Chief Executive Officer of Coast Plaza Hospital. He was responsible for administration and oversight of this general acute care hospital providing services to the City of Norwalk and surrounding communities in Southeast Los Angeles County.

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