

## Maryland, Virginia Legislatures Slim Budgets with Preferred Drug Lists: District Cuts Psychotherapy Services

In a year when all three WPS jurisdictions faced huge budget deficits, mental health care was among those services placed on the legislative chopping blocks. Preferred drug lists newly instituted in Maryland and Virginia will add to the difficulty psychiatrists have in treating Medicaid patients by limiting the choice of pharmaceuticals available. It appears at press time that the District will reduce the number of psychologists at St. Elizabeths. The consequences of this reduction are unclear. The DC DMH is organizing a task force to review this action. Following is a summary of the significant legislation passed in the states and District.

### Maryland

The Suburban Maryland and Maryland Psychiatric Society legislative committee reviewed 104 bills related to mental health in 2003. Maryland Psychiatry actively participated in 67 of those bills.

**Preferred Drug List** - The Department of Health and Mental Hygiene proposed a PDL for Medicaid as a cost saving measure. The PDL will include two drugs from each class of medication. Excluded from the list are atypical antipsychotics. WPS member Adam Roth, M.D. was among the physicians who testified before the Maryland General Assembly for an exclusion of all

psychiatric medicines. The law allows for physicians to request authorization of a non-listed drug if the physician deems it medically necessary. That request is to be acted on in 24 hours and an emergency 72-hour supply of the drug will be authorized immediately. Maryland Psychiatry lobbied successfully for a hotline that physicians and patients can call to discuss problems with the appeal process. Our speculation is that the appeal process for psychiatric medicines will ultimately cost more than excluding them from the list.

**New Day for BPQA** - The Board of Physician Quality Assurance was due to sunset on July 1, 2003. SB 500 extends the life of BPQA until July 1, 2007. The legislation changes the name of the body to the Board of Physicians, ups the number of members from 15 to 21 (a minimum of 13 physicians). The Board of Physicians will no longer have to contract with MedChi for peer review but will now be free to contract with other non-profit peer review organizations. It changes the standard of evidence from "clear and convincing" to "preponderance of evidence" for bringing charges against a physician in most cases. Clear and convincing evidence will still be needed to convict in standard of care cases. Maryland Psychiatry joined MedChi in sup-

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porting failed amendments to maintain the clear and convincing evidence standard for all actions. We did, however, manage to maintain the stricter level in standard of care cases.

**Medicare/Medicaid Dual Eligibility Rate Increase** - This legislation addresses the heretofore significant drop off rate for psychiatric reimbursements for dual eligible patients. The legislation brings the level of reimbursement up to the Medicaid rate for federally eligible patients.

**Loss Ratio Bill** - Behavioral carveouts must now give information on their medical loss ratios to the Maryland Insurance Commissioner. That information was previously unavailable on a technicality that allowed carveouts to claim "administrator" status rather than being classed as insurers. Information will be available on request from the Commissioner's office.

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# The President's Column

By Catherine S. May, M.D. President



## THE WASHINGTON PSYCHIATRIC SOCIETY News

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## Calendar

### Upcoming Events

May 17-22 APA Meeting San Francisco

June 4 Women's Caucus "Infertility from Both Sides of the Stethoscope, A Guide from a Doctor Who Has Been There"

6:30-9 p.m.

Ristorante Terrazza

Chevy Chase, MD

Roxanne Dryden-Edwards, M.D. presenter

July 17 Psychopharmacologic Interventions for ADHD

TBA

September 20 Interactions of Somatic Medicines with Psychiatric Medicines

7:30 a.m. - 12:30 p.m.

George Washington University Hospital Auditorium

Washington, DC

November 13 WPS Awards Banquet "The Challenges for 21<sup>st</sup> Century American Psychiatry"

Jay Scully, M.D. presenter

Cosmos Club

2121 Massachusetts Ave, NW

Washington, DC

Register for any of these events by calling the WPS office at 202-625-2800 or by email to [whill@wdcpsych.org](mailto:whill@wdcpsych.org)

## **WPS Members Act to Protect Patient Confidentiality- Contribute \$7k to Eist Amicus Brief**

Nearly 60 WPS members contributed financial support to assist the Society in preparing an amicus curiae brief in support of Harold Eist MD, DFAPA's position that a demand for records by the Maryland Board of Physician Quality Assurance does not trump laws and ethical guidelines protecting psychiatric patients from release of their records without consent. Funds contributed in excess of the cost of this brief will go into a special confidentiality litigation fund for future actions to protect the doctor/patient relationship.

Dr. Eist was charged with "failure to cooperate with an investigation" by BPQA when he chose not to release patient records to BPQA on their demand without first seeking permission from his patients. The records were demanded in response to a charge by the spouse and parent of Dr. Eist's patients that Dr. Eist was "over-medicated." The charge was made in the midst of a contested divorce proceeding. None of the three patients

made any complaint about Dr. Eist's treatment of them. The adult patient chose not to give up privilege as did the attorney representing the children. A Maryland administrative law judge found in Dr. Eist's favor. BPQA appealed the decision to itself, overturned the judge's decision, issued a reprimand, reported Dr. Eist to the National Practitioners Data Bank and fined him \$5,000. Dr. Eist has appealed to the Circuit Court for Montgomery County.

The WPS brief, for which we are asking APA, AACAP, Maryland Psychiatric Society, AAPP, and other organizations to support as signatories and financially, was prepared by James Pyles, JD at WPS's request. WPS will submit the brief to the Circuit Court on May 28 when Dr. Eist must file documents in the case. Opening motions will be made in court on July 14 and arguments presented on July 31. After May 28 the brief will be available for your review in the Members Only section of the WPS Website [www.dcpsych.org](http://www.dcpsych.org). ■

## **50 Year Distinguished Life Fellows and Members**

WPS salutes these members on achieving this milestone in their professional lives.

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Harold Meyer Boslow MD  
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Leo P. Hennigan MD  
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Matthew D. Parrish MD  
Gerald Perman MD  
Harold Plotsky MD  
Irving M. Ryckoff MD  
Sydney Salus MD  
Robert D. Sullivan MD

These physicians will receive their certificates/medallions at the Convocation of Fellows on Monday May 19, 2003 at the APA Meeting in San Francisco. ■

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**Emergency Petitions** - This legislation, introduced by NAMI and supported by Maryland Psychiatry lowers the bar from “imminent danger” as the criterion for an emergency petition. The new legislation allows the police to listen to friends or family members about a person’s threats to self or others rather than actually having to see or hear the threat, themselves.

**In Virginia** the WPS Northern Virginia Chapter and the Psychiatric Society of Virginia also saw a General Assembly worried by the size of the budget deficit. PSV/NoVA Grassroots Consultant, Cal Whitehead, prepared this report:

**Mental health system funding was largely maintained**, albeit shifted from state institutions to community-based programs. Legislators restored some cuts to mental health programs that were cut in Governor Warner’s 2002 executive orders and moved nearly \$13 million from Central, Eastern and Western State Hospitals to community services boards. The General Assembly expanded eligibility requirements for FAMIS (the fund for medical services to low income families) and maintained the Office of the Inspector General.

**Community Reinvestment Project** - In 2002, Gov. Warner unveiled his Community Reinvestment Project to redirect nearly \$22 million annually away from state mental health institutions to community services boards. This proposal was partially in response to the Supreme Court’s Olmstead Decision that requires the availability of community-based services. Budget conferees in the General Assembly strengthened language in the proposal to ensure that funds cut from state institutions remain in the same geographic area and to prohibit any unspent money from reverting to Virginia’s General Fund.

**Preferred Drug List** - As in Maryland, Virginia legislators saw Medicaid as a place to cut spending. NoVA and PSV with patient advocates lobbied successfully for a broad carveout for psychotropic medications. The General Assembly provided language in the Appropriations Act which indicates that all

medications used for the treatment of serious mental illnesses bi-polar disorder, schizophrenia, and depression would be excluded from prior-authorization requirements and included on the Department of Mental Health, Mental Retardation and Substance Abuse Services’ PDL. The program will be managed by a Pharmacy and Therapeutics Committee, which will include at least one psychiatrist.

**Board of Medicine Reform** - Inspired by “bad doctor” stories in state newspapers, the General Assembly considered HB 1441, a bill to strengthen the disciplinary tools at the Department of Health Professions. Led by the Medical Society of Virginia, organized medicine fought to ensure that reform measures were reasonable and comparable to other professional standards. HB 1441 changed the standard for disciplinary action by the Board of Medicine from gross negligence to simple negligence. Additionally the legislation creates a “confidential consent agreement” that may be used by a health regulatory board, in lieu of discipline, in cases involving misconduct where there is little or no injury to a patient.

**2003 Elections** - All 140 seats in the General Assembly will be at stake on November 4. This will be the first election under the new districts drawn in 2000. Many incumbents will be challenged by members of their own party in primaries or conventions. Locally, Del. Karen Darner (D-Arlington) announced her retirement.

**The District of Columbia**, like its neighbors, faces budget shortfalls.

**DMH Budget** On April 15 the DC Council’s Human Services Committee marked-up the budget for the Department of Mental Health. The Committee approved a budget of \$216,228,701 for the coming fiscal year. DMH in a cost-cutting step proposed a reduction in force (RIF) of psychotherapists by seven at St. Elizabeths, a move opposed by WPS, allied professionals and patient organizations. WPS testified at the Committee’s March 24 hearing in opposition

to the proposed RIF. Our testimony centered on the value of psychotherapy as a core feature of mental health care and cited APA’s Guidelines for the Treatment of Schizophrenia for evidence-based support of the treatment.

**Universal Health Care**, Insurance Commissioner Lawrence Mirel will bring to Council in coming months the “District of Columbia Health Insurance Availability Act of 2003.” The Act will create in the District a health insurance scheme similar to the Federal Employees Health Benefit Plan. Residents and persons employed in the District will be eligible to select health insurance from one of the participating carriers in the plan. Mr. Mirel told the DC Bar Association that his bill is designed to overcome the disparity between treatment available to people who work for large employers and those working for small employers. Residents and employees will have a menu of options, an open season and an absolute right to take part in the plan. Employers may pay whatever part of the premium they chose. The District’s Mental Health Parity Law is expected to guarantee access to psychiatric care and reimbursement levels on par with somatic care. ■

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# Code Red Conference Asks/Answers “How Will We Respond?”

**U**nder the leadership of Steven Steury, M.D and the DC Department of Mental Health, psychiatrists and other mental health professionals gathered on March 22 to learn from experts how best to prepare for and respond to the psychiatric dimensions of disaster. The conference, co-sponsored by WPS and other organizations filled the George Washington University Hospital Auditorium for the all-day program. The audience heard Robert Ursano, MD discuss the public health response to terrorism. Ann Norwood, MD presented on Anticipating the Psychological Response to Bioterrorism, followed by Assistant Surgeon General Brian Flynn, Ed.D. who discussed planning the community response to terrorism. Other presenters, each with national standing in his/her field discussed terrorism issues related to children and families, historical perspectives on community response to epidemics and integrating psychiatric care with somatic medicine. ■



*Martha Knisley, Director of the DC Dept. of Mental Health welcomes attendees to Code Red Conference. WPS member, Steven Steury, MD, Chief Clinical Officer for DMH, organized the conference and is the leader of DC's preparations to meet the mental health crisis that will result from a terrorist attack or disaster. Dr. Steury and fellow WPS member Howard Hoffman, MD are directing the DC Hospital Association's planning group on disaster response.*



*George Krizek, MD rises to ask a question of Code Red presenter. Dr. Krizek was one of 165 mental health professionals in attendance at the conference.*

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## NEWS *in Brief*

### **CDC Develops Clinicians' Registry for Terrorism Information**

The Centers for Disease Control and Prevention (CDC) is developing a clinicians' registry to provide real-time information to help prepare clinicians to respond to terrorism and emergency situations. Participants will receive regular updates on terrorism and emergency response issues targeted to clinicians. To participate, go to <http://www.bt.cdc.gov> and click on "Clinician Registry for E-mail Updates on Terrorism and Emergency Response" under featured links. You will not be asked to enter your name or other personal information and CDC will not share your e-mail address with anyone else. ■

### **Suspension**

Alan Brody, MD of Potomac, MD was suspended from the American Psychiatric Association and the Washington Psychiatric Society for one year for violation of Section 1, Annotation 1 of the Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry. ■

### **Correction**

Joan Sealy, MD, FAPA was misidentified on the list of new APA Fellows in the March/April issue of WPS News. Our apologies to Dr. Sealy. ■

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# Letters-to-the-Editor



## Medicare's Quirky Codes Must Change - Your Help Needed

Dear Editor:

I am on the Northern Virginia Medicare Carrier Advisory Committee as the WPS representative. They will be looking at psychiatric Medicare regulations regarding physician services at the next meeting, which will be in June. For example, they will be looking at what services are allowed for what diagnoses at what locations, and similar topics.

This is a significant issue for those of us who see Medicare patients, and it's an opportunity to perhaps change some of those illogical quirks, such as what diagnoses you can't use psychotherapy codes for and at what locations. The prime example I have experienced is they will deny any psychotherapy in

a nursing home setting, even if it's a depressed patient who is there for a couple of weeks of physical therapy after a hip replacement.

In any case, I would appreciate any input from WPS members regarding Medicare coding/billing issues that need changing or correction. I am therefore soliciting written (or e-mail) suggestions or complaints that I can present to the Trailblazer Carrier Advisory Committee at the next meeting, which will be in early June.

I need to receive the suggestions before the end of May.

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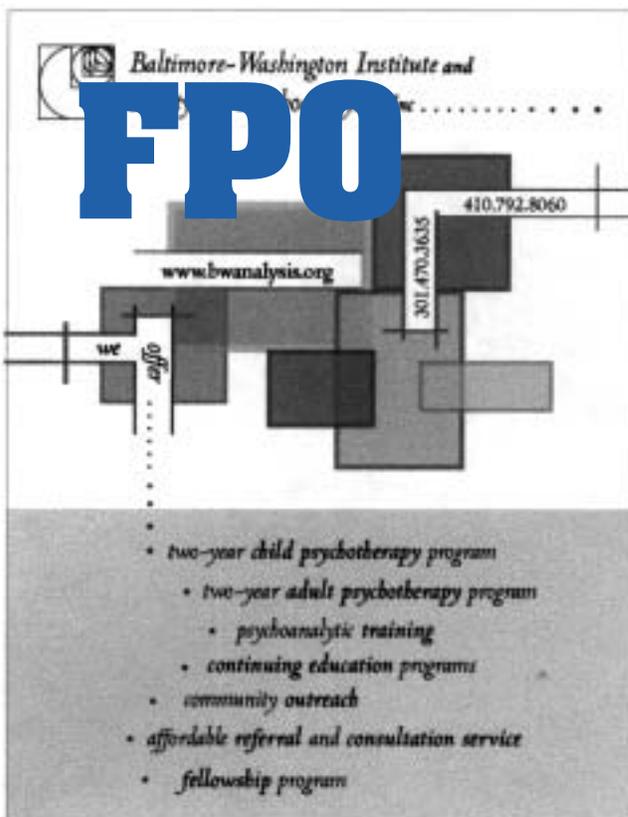
## Never Wrong on Patients' Rights

Dear Editor:

I applaud Dr. May's appeal in the March 2003 newsletter for support for the position of Harold Eist, MD before the Maryland Board of Physician Quality Assurance (BPQA). Dr. May correctly states that your colleague followed "his conscience and the Principles of Medical Ethics." Dr. May could also say that Dr. Eist followed the law.

Cases in Maryland make it clear that a patient has the right to ask the court to quash a subpoena for the patient's records, at which point the court, not the BPQA, makes a determination as to the balancing of the need for the records and the privacy of the patient. Dr. Eist's dereliction, according to BPQA, was giving notice to the patients, who had not complained to the BPQA, of their right to seek to quash the subpoena for their records. Giving the patients that opportunity and indicating that he would be governed by the court if the patients sought to protect their privacy apparently angered BPQA. There were numerous other sources of third party information and court testimony available relevant to the complaint. BPQA chose to spend its resources disciplining Dr. Eist rather than actually reviewing the court records and talking to other witnesses concerning the complaint and the complainant.

Armin U. Kuder, JD  
(Mr. Kuder is Counsel to WPS) ■



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# Positions Available

We are currently looking for a psychiatrist(s) for two different programs at the Fairfax/Falls Church Community Services Board. The first position is for 8 hrs. per week to provide psychiatric treatment for clients in mental health supervised apartments. The second program is for 15-19 hrs. per week to provide treatment for clients with dual diagnoses that are in both residential and outpatient services. These

positions are contract status and paid on an hourly rate based on board certification. For inquiries please call Dr. Colton Hand, Medical Director, Fairfax/Falls Church CSB, 703-207-7831.

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**Medical Directors.** St. Luke's House, Inc., a nationally award winning psychiatric rehabilitation program in Montgomery County, MD is seeking a Board Certified/ Board Eligible Psychiatrist to serve as Medical Director and Chief Psychiatrist. This psychiatrist is responsible for psychiatric services in the Outpatient Mental Health Clinic, Crisis Residential on-call, and consultation to other agency programs. The Medical Director is an integral part of the executive management team responsible for agency wide strategic planning and policy development. Experience working with the severely and persistently mentally ill in community settings is preferred. We offer a competitive salary/benefit package. Please send resume and cover letter to: St. Luke's House Inc., Attn: Clinic Director, 6040 Southport Dr., Bethesda, MD 20814. You may also email: cindy@stlukeshouse.com or fax to: 301-493-6209. EOE.

**Psychiatrist Part time - Mental Health Association of Montgomery County.** 4 hour/week position for a psychiatrist who is interested in treating homeless, mentally ill people. All patients will have case managers from MHA. Duties include evaluations and ongoing management until the patient can get into more routine treatment. Work is done at MHA offices on Twinbrook Parkway in Rockville. Staff is experienced in working with the population and professional. Reply to Marilyn Kresky-Wolf, Director of Homeless Outreach at (301) 424-0656 or mkwolff@mhamc.org. ■

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# Magellan Sails Troubled Waters: WPS Pumps Bilge for Members

## Timeline:

August 2002- Magellan files Form 10-Q with Securities and Exchange Commission (SEC) stating it might not be able to comply with financial covenants of its debt arrangements.

September 2002- Magellan issues public statement "The Company's ability to obtain liquidity required for its operations would be uncertain (if unable to comply with covenants)."

November 2002 - WPS Magellan Task Force meets with Magellan Mid-Atlantic President Mark Santangelo and Medical Director Elizabeth Stanton, M.D. WPS expresses its paramount interest in maintaining continuity of care for patients and timely payment for psychiatrists. Magellan assures WPS that provider contracts are "essential" to the company and will receive top priority.

January 2003 - WPS Task Force meets with Aetna leaders who explain Aetna's (Magellan's largest customer) intensified oversight plan

for Magellan. Aetna says it will continue to pay for psychiatric care for its enrollees no matter the outcome of Magellan's bankruptcy.

January 2003 WPS President Catherine May, MD corresponds with CareFirst CEO William Jews who says CareFirst senior management meets frequently with the management team at Magellan. "In the event that Magellan is not able to continue operations, CareFirst will bring in-house the review procedures currently managed by Magellan, insuring continuity of patient care and continued timely payment for professional services," said David D. Wolf writing on behalf of CareFirst.

January 2003 - Magellan issues press release stating that they are discussing a "restructuring alternative" with lenders and note holders. "this restructuring alternative would reduce significantly the company's approximately \$1 billion indebtedness." The release says further, that if restructuring is agreed to, the company would voluntarily reorganize under Chapter 11 of the bankruptcy code.

March 2002 Magellan's Santangelo telephones WPS office with advance notice that the company is filing for bankruptcy and

tells WPS that Magellan is "operating as usual and has sufficient cash to fund all of its operating obligations...to employees, providers and customers."

Washington Psychiatric Society members are among psychiatrists throughout the nation who are concerned about Magellan's future. WPS continues to advocate vigorously on members' behalf as the future of the largest behavioral carveout company in America is determined. The Society along with the American Psychiatric Association is actively monitoring the status of Magellan and the impact its bankruptcy could have on patient care and psychiatrist reimbursement.

In addition to WPS contacts with Magellan, Aetna and CareFirst, APA has initiated formal contacts with state insurance commissioners to establish what role each commissioner would play in protecting continuity of patient care and psychiatrist reimbursement.

WPS members with concerns or issues about Magellan should contact WPS at 202-625-2800, or [wpsdesk@wdcpsych.org](mailto:wpsdesk@wdcpsych.org) or APA's Office of Healthcare Systems and Finance at 1-800-343-4671 or by email at [hsf@psych.org](mailto:hsf@psych.org). ■



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