

## NYSAFP Advocacy Commission Agenda

September 23, 2010, Via Conference Call

8-9PM

**Participants:** Advocacy Chair Dr. Marc Price and Commission Members Drs. Brilliant, Doucet, Zoghlin, Zinkand, Okonkwo, Krolikowski, and Bob Reid and Marcy Savage of Weingarten, Reid & McNally (WRM).

Absent: Drs. David, Borus, Jenkins, Gallagher, Sidhu-Izzo and Oltman

Meeting called to order by Chairman Dr. Price at 8pm.

I: **Approval of minutes** from August meeting without changes.

II: **Bob Reid and Marcy Savage provided an Albany Update** including an elections update and overview of the NYSAFP 2011 priorities. Dr. Price provided an update on Academy attendees for the upcoming MSSNY Legislative Committee meetings on September 29<sup>th</sup> and October 26<sup>th</sup>.

III: **Old Business**

1. **Stroke Center Designation Issue** requiring every doctor to do 4 hours/year of CME except Neurosurgeon, Neurologists and Internists. With the help of Dr. Ostrander, we confirmed that this is a NYS Department of Health (DOH) statewide requirement. The group discussed composing a letter to DOH to point out that this is unfair, providing background including a comparison of the curriculum and board certification between FPs and Internists and strongly urging that FPs be treated the same as the other specialties who are exempted. Dr. Doucet volunteered to assist WRM with providing the background for the letter.

2. **Medical Marijuana Resolution '10-4.** We are still in need of further clarification which Dr. Price will request at the upcoming Board meeting.

Resolution '10-4: Medical Marijuana

RESOLVED, that the NYSAFP affirms the system of medical scientific research with FDA approval as the method for approving prescription medications, and be it further RESOLVED, that the NYSAFP endorse the current conclusions of the AMA's report on medical marijuana and be it still further RESOLVED, that if medical marijuana should become legal in New York State, that the NYSAFP would suggest it be used only in patients who are in hospice or hospice eligible when all other medications have failed, if at all.

3. **Head Injury Awareness Act.** Dr. Matuszak volunteered in August to put together an outline of draft recommendations to make S.8420/A.11605 a better bill for the Commission's review. We have not seen the outline yet so Dr. Price will follow up with him. View bill text at: [http://www.assembly.state.ny.us/leg/?default\\_fld=%0D%0A&bn=A11605%09%09&Summary=Y&Memo=Y&Text=Y](http://www.assembly.state.ny.us/leg/?default_fld=%0D%0A&bn=A11605%09%09&Summary=Y&Memo=Y&Text=Y)

#### IV: New Business

1. **New Palliative Care Law.** Law and summary provided below in Minutes pages 3-5. Commission members raised questions on enforcement and implementation of the law. Members agreed to further review the law and summary and send questions/concerns and other feedback to WRM within 2 weeks **to be shared with DOH as they move forward in implementing the law.**

2. **Updated MOLST Form.** The MOLST form has been updated to reflect changes as part of the new Family Health Care Decisions Act law. Members had some questions related to the new form including whether the use of MOLST forms is only mandated for hospitals. WRM will look into the form further and provide more details to the Commission to determine next steps on informing the membership of the change.

3. **CT Scans for Children Issue.** Issue was raised that wallet cards recently sent to physicians by DOH to provide to parents to track children's exposure to imaging only reference the child's pediatrician. **The Commission recommended sending a letter to DOH raising this issue as part of our general concern about only referencing Pediatricians in DOH materials/ initiatives related to care provided to children. The goal is to try to prevent such issues in the future. WRM will draft the letter for President Greenwald's review.**

4. Dr. Price discussed an **EMR E-Prescribing Issue** whereby DOH and the State Education Department have issued guidance declaring that agents of prescribers may not send e-scripts. Only the prescriber can do so directly under their login. Members agreed that this is the current practice due to software updates with EMR systems. The group agreed to monitor this issue.

LAWS OF NEW YORK, 2010

CHAPTER 331

AN ACT to amend the public health law, in relation to a patient's right to palliative care information

Became a law August 13, 2010, with the approval of the Governor.  
Passed by a two-thirds vote.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The public health law is amended by adding a new section 2997-c to read as follows:

§ 2997-c. Palliative care patient information. 1. Definitions. As used in this section, the following terms shall have the following meanings, unless the context clearly requires otherwise:

(a) "Appropriate" means consistent with applicable legal, health and professional standards; the patient's clinical and other circumstances; and the patient's reasonably known wishes and beliefs.

(b) "Attending health care practitioner" means a physician or nurse practitioner who has primary responsibility for the care and treatment of the patient. Where more than one physician or nurse practitioner share that responsibility, each of them has responsibility under this section, unless they agree to assign that responsibility to one of them.

(c) "Palliative care" means health care treatment, including interdisciplinary end-of-life care, and consultation with patients and family members, to prevent or relieve pain and suffering and to enhance the patient's quality of life, including hospice care under article forty of this chapter.

(d) "Terminal illness or condition" means an illness or condition which can reasonably be expected to cause death within six months, whether or not treatment is provided.

2. If a patient is diagnosed with a terminal illness or condition, the patient's attending health care practitioner shall offer to provide the patient with information and counseling regarding palliative care and end-of-life options appropriate to the patient, including but not limited to: the range of options appropriate to the patient; the prognosis, risks and benefits of the various options; and the patient's legal rights to comprehensive pain and symptom management at the end of life.

The information and counseling may be provided orally or in writing.

Where the patient lacks capacity to reasonably understand and make informed choices relating to palliative care, the attending health care practitioner shall provide information and counseling under this section to a person with authority to make health care decisions for the patient. The attending health care practitioner may arrange for information and counseling under this section to be provided by another professionally qualified individual.

3. Where the attending health care practitioner is not willing to provide the patient with information and counseling under this section, he or she shall arrange for another physician or nurse practitioner to do so, or shall refer or transfer the patient to another physician or nurse practitioner willing to do so.

§ 2. Paragraph (f) of subdivision 1 of section 207 of the public health law, as added by chapter 573 of the laws of 2008, is relettered paragraph (g) and a new paragraph (h) is added to read as follows:

**(h) Palliative care options for patients with a terminal illness or condition.**

§ 3. The department of health shall consult with the New York state palliative care education and training council, as established in subdivision 6 of section 2807-n of the public health law, in developing educational documents and rules and regulations related to this act.

§ 4. This act shall take effect immediately, provided that section one of this act shall take effect one hundred eighty days after it shall have become a law.

The Legislature of the STATE OF NEW YORK:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

MALCOLM A. SMITH

**Temporary President of the Senate**

SHELDON SILVER

**Speaker of the Assembly**

**Summary of Chapter 331 of the Laws of 2010**  
**Related to Palliative Care Information**  
**Prepared by Weingarten, Reid & McNally, LLC**

**Overview:** Requires attending health care practitioners to offer patients diagnosed with a terminal illness or condition with information and counseling on options for palliative and end-of-life care. This bill was signed into law by Governor Paterson on August 13, 2010.

**Definitions:**

- *Attending health care practitioner:* A physician or nurse practitioner who has primary responsibility for the care and treatment of a patient. Where more than one practitioner share the responsibility, each of them is required to provide the information unless they agree to assign it to one of them.
- *Palliative care:* Health care treatment including interdisciplinary end-of-life care, and consultation with patients and family members, to prevent or relieve pain and suffering and to enhance the patient's quality of life, including hospice care.
- *Terminal illness or condition:* An illness or condition, which can reasonably be expected to cause death within six months, where or not treatment is provided.

## Summary of the Law:

- Requires that if a patient is diagnosed with a terminal illness or condition, the patient's attending health care practitioner shall offer to provide the patient with information and counseling regarding palliative care and end-of-life options appropriate to the patient, including but not limited to:
  - the range of options appropriate to the patient;
  - the prognosis,
  - risks and benefits of the various options; and
  - the patient's legal rights to comprehensive pain and symptom management at the end of life.
- The information and counseling may be provided orally or in writing.
- Where the patient lacks capacity to reasonably understand and make informed choices relating to palliative care, the attending health care practitioner shall provide information and counseling to a person with authority to make health care decisions for the patient.
- The attending health care practitioner may arrange for the information and counseling to be provided by another professionally qualified individual.
- Where the attending health care practitioner is not willing to provide the patient with information and counseling, he or she shall arrange for another physician or nurse practitioner to do so, or shall refer or transfer the patient to another physician or nurse practitioner willing to do so.
- The law adds palliative care options for patients with a terminal illness or condition to list of health care matters for which the Health Care and Wellness Education and Outreach Program within the State Department of Health (DOH) may conduct education and outreach programs for consumers, patients, and health care providers.
- Requires DOH to consult with the New York State Palliative Care Education and Training Council in developing educational documents and rules and regulations related to the law.
- Effective 180 days after it became law (approx. February 13, 2011).