

Volume 3, Issue 4

February 23, 2005

A PUBLICATION OF THE HEALTH LAW  
SECTION OF THE NEW MEXICO STATE BAR



# Health -E- News

## Section Board

**John Bannerman**  
Chair  
505-837-1900  
jab@NMCounsel.com

**Brenda Maloney**  
(Secretary/Chair-Elect)  
505-765-5900  
bmmaloney@rodey.com

**Caralyn Banks**  
Budget Officer  
505-522-7500  
Lglclb@zianet.com

**Francis Barikor**  
505-837-1900  
fb@NMCounsel.com

**Douglas J. Compton**  
505-764-5400  
Dcompton@lrlaw.com

**Charles Gurd**  
505-856-1468  
cgurd@aol.com

**Kay C. Jenkins**  
505-622-6221  
Kjenkins@atwoodmalone.com

**W. Ann Maggioro**  
505-844-0777  
wamaggioro@btblaw.com

**Gabe Parra**  
505-923-6505  
gparra@phs.org

**Barbara Quissell**  
505-816-4224  
Barbara-Quissell@bcbsnm.com

**Susan Sullivan**  
505-265-4285  
NM\_sussull@hotmail.com

**Jennifer Stone**  
(Past Chair)  
(505) 827-2962  
Jenni-  
fer.Stone@doh.state.nm.us

**Robert L. Schwartz**  
(Ex Officio Member)  
505-277-3119  
Schwartz@law.unm.us

Vol. 3, Issue 4

## SECTION NEWS

### Check the Health Law Section Forum:

The Health Law Section Discussion Forum on the State Bar website ([www.NMBar.org](http://www.NMBar.org)) currently has posted certain health related bills introduced in the Legislature, the IBHPC Guidelines, and the proposed federal rule for Electronic Prescriptions.

Regarding E-prescriptions, the Big Three automakers and Michigan's three biggest health care insurers are joining forces to help 17,000 physicians set up electronic systems for issuing prescriptions. The initiative is meant to not only help the automakers save money on health care costs but also eliminate the handwritten prescriptions sometimes blamed for fatal medication mistakes. For more on the private sectors race to catch up with Medicare go to:

[http://news.findlaw.com/ap/f/1310/2-9-2005/20050209030003\\_9.html](http://news.findlaw.com/ap/f/1310/2-9-2005/20050209030003_9.html)

### Next Section CLE

The next brown bag will be held on Thursday, April 21, 2005 at the State Bar beginning at 11:30 at which time there will be an Update provided on the 2005 NM Legislative Session. Those who want CLE credit may apply for it and get a copy of the materials. Those who want to attend and listen are welcome.

### Next Section Board Meeting

The Section's next Board meeting will be March 17, 2005 at 7:30 AM at the State Bar Office. The February 17<sup>th</sup> meeting has been canceled. Please remove the date from your calendar. All Section members are invited to attend Board meetings. The Board will act on recommendations regarding the Section Budget, plan for the April 21<sup>st</sup> Brown Bag session, discuss additional educational opportunities, and handle any other business that may come before the Board.

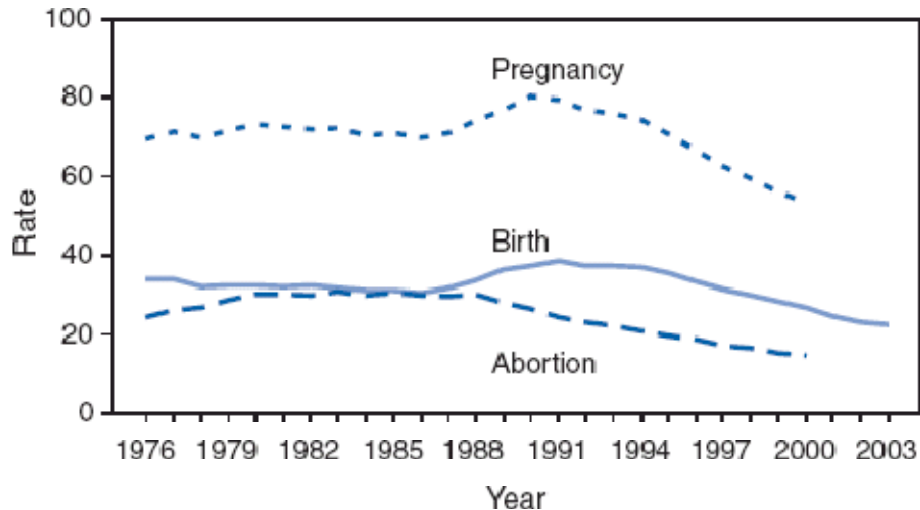
## NEW DEVELOPMENTS IN HEALTH LAW

**QuickStats: Pregnancy, Birth, and Abortion Rates\* for Teenagers Aged 15--17 Years --- United States, 1976--2003**

# QuickStats

FROM THE NATIONAL CENTER FOR HEALTH STATISTICS

## Pregnancy, Birth, and Abortion Rates\* for Teenagers Aged 15–17 Years — United States, 1976–2003



\* Per 1,000 females.

Since 1990, pregnancy rates have declined substantially for teenagers aged 15--17 years. From 1990 to 2000, the pregnancy rate decreased 33%, from 80.3 per 1,000 females to 53.5, a record low. The birth rate declined 42%, from its peak at 38.6 in 1991 to 22.4 in 2003. The induced abortion rate peaked in 1983 at 30.7 and decreased by more than half to 14.5 by 2000.

**SOURCES:** Ventura SJ, Abma JC, Mosher WD, Henshaw S. Estimated pregnancy rates for the United States, 1990--2000: an update; and Hamilton BE, Martin JA, Sutton PD. Births: preliminary data for 2003. These reports and additional information are available at <http://www.cdc.gov/nchs/births.htm>.

### DHHS OIG Approves Cost Savings Sharing Arrangement Between Surgeons And Hospital

In Advisory Opinion No. 05-01 released on February 4, the Department of Health and Human Services (DHHS) Office of Inspector General (OIG) said a proposal by a hospital to share with a group of cardiac surgeons a percentage of the hospital's cost savings arising from the surgeons' implementation of cost reduction measures for certain surgical procedures could potentially generate prohibited remuneration under the Anti-Kickback Statute, but that it would not impose administrative sanctions in connection with the arrangement. The proposed arrangement provides that the hospital will pay the surgeon group a share of the first year cost savings directly attributable to twenty-four specific recommendations for saving money in operating room practices. The proposed arrangement contains several safeguards to protect against an inappropriate reduction in patient services. The hospital will pay the surgeon group 50% of the cost savings that results from the implementation of the recommendations for the first year, and payments will be subject to certain limitations. The OIG noted that the proposed arrangement is designed to create incentives for physicians to save money, but that such arrangements can potentially influence a physician's judgment to the detriment of patient care. The OIG concluded that in general it has concerns about arrangements with physicians and hospitals sharing cost savings, but that in this case the arrangement is designed to minimize any improper payments through the use of appropriate safeguards.

To read the Advisory Opinion, go to [http://www.healthlawyers.org/docs/ask2005/AO\\_0501.pdf](http://www.healthlawyers.org/docs/ask2005/AO_0501.pdf)

## **Study Finds Health Market Trends Have Resulted In Increased Use Of Hospitalists**

A new study by the Center for Studying Health System Change found that there has been a significant increase in the number of physicians specializing in hospital medicine, known as hospitalists, in the last few years. The study, "Health Care Market Trends and the Evolution of Hospitalist Use and Roles," which appears in the February edition of the Journal of General Internal Medicine, examines the trends in healthcare that have led to the increase in hospitalists. According to the study, hospitalists have increased from a few hundred in the mid-1990s to more than 8,000 in 2003 as a result of growing financial pressures on hospitals, increasing problems with patient flows in hospitals, a growing focus on patient safety, and rising medical malpractice costs.

To read about the study, go to  
<http://www.hschange.com/CONTENT/729>

## **Medicare Drug Aid to Cost \$720B 1st Decade**

By MARK SHERMAN Associated Press Writer

WASHINGTON (AP) - Medicare's new prescription drug program will cost taxpayers \$720 billion over its first 10 years, with costs reaching \$100 billion a year by the middle of the next decade, according to a new estimate by the Bush administration.

The new number is far higher than any previous estimate produced by the administration or Congress, but it reflects what lawmakers and health care analysts have known all along: As baby boomers turn 65 and swell Medicare's rolls, the government's tab for their health care is expected to rise substantially.

For more go to:

[http://news.findlaw.com/ap/a/w/1152/2-9-2005/20050209000017\\_03.html](http://news.findlaw.com/ap/a/w/1152/2-9-2005/20050209000017_03.html)

## **Input Sought on Standard MS.1.20**

The Joint Commission is taking comments on standard MS.1.20, which relates to medical staff bylaw requirements. The December issue of Perspectives included an article on MS.1.20 and the Joint Commission has received questions and comments about the requirement, especially the new element of performance #19 (which will not be part of an organization survey until January 2006). Comments will be accepted through February 15, and response to these comments is expected to be released in March 2005. The Joint Commission recommends that organizations make no bylaw changes specifically related to this requirement until after the release of comments in March. Please send all comments about MS.1.20 to John Herringer, associate director, Standards Interpretation Group, at [jherringer@jcaho.org](mailto:jherringer@jcaho.org).

Field review:

<http://www.jcaho.org/accredited+organizations/hospitals/standards/field+reviews/ms.1.20.htm>

## **CMS Reforms Medicare Contracting Process**

CMS announced it is taking the first steps to reform its contracting process as mandated under the Medicare Modernization Act. The reforms are intended to modernize the contracting process. Beginning in Fiscal Year 2005, Medicare will change all of its existing claims-processing contracts, introducing competition and performance incentives for its contractors, said CMS. The reforms were outlined in a report to Congress presented February 7 by Department of Health and Human Services Secretary Michael O. Leavitt. The report, "Medicare Contracting Reform: A Blueprint for a Better Medicare," states that CMS' vision for fee-for-service Medicare "is that of a premier health plan that allows for comprehensive, quality care and world-class beneficiary and provider service." The Budget submitted by President Bush contains \$58.8 million in funds to support Medicare contracting reform, Leavitt noted, but his plan will require significant additional funding in the future.

To read CMS' fact sheet on the reforms, go to  
<http://www.cms.hhs.gov/media/press/release.asp?Counter=1352>

To read the report to Congress, go to  
[http://www.healthlawyers.org/hlh/docs/CMS\\_report\\_to\\_congress\\_Feb2005.pdf](http://www.healthlawyers.org/hlh/docs/CMS_report_to_congress_Feb2005.pdf) (PDF file).

### HEALTH LAW CASES

**VIOLA v. DEPT OF MANAGED HEALTH CARE**, No. B174455 (California Appellate Districts, February 01, 2005)

An employer has the authority to negotiate health care service plans, containing mandatory binding arbitration clauses, on behalf of its employees.

To read the full text of this opinion, go to:  
<http://login.findlaw.com/scripts/callaw?dest=ca/caapp4th/slip/2005/b174455.html>

**EL RIO SANTA CRUZ v. US DEPT. OF HHS**, No. 04-5089 (D.C. Cir. February 08, 2005)  
Defendant-HHS's denial of medical malpractice coverage to plaintiff-medical center was arbitrary and capricious since it failed to address evidence of physicians' separate guarantees of their personal performance.

To read the full text of this opinion, go to:  
<http://caselaw.lp.findlaw.com/data2/circs/dc/045089b.pdf>

***This Email Newsletter is a publication for the members of the Health Law Section of the New Mexico State Bar Association. Its contents may be time dated, and references to Internet sites may change. The Content of this Newsletter does not reflect the opinions of the Members of the Board of Directors of the Health Law Section of the State Bar. This Newsletter is informational only, does not constitute legal advice. Members of the Health Law Section may submit topics for the newsletter by emailing them, or the internet site at which they can be located, to JAB@NMCounsel.com***