

# Conference Summaries

Research & Policy Forum 2010 • January 28, 2009 • Washington, D.C.

## State Legislation Overview

### Carmen Hooker Odom

*Ms. Odom, president of the Milbank Memorial Fund and past legislator in the Massachusetts House of Representatives, reviewed the current status of state legislation regarding shared decision making.*

### Introduction

- Washington State legislators passed legislation in 2007 that acknowledged shared decision making and the benefits of decision aids for the first time.
- In Vermont and Maine legislators currently are considering bills with provisions that include shared decision making.
- Policy makers in six states (Florida, Connecticut, Minnesota, California, Massachusetts, and Oklahoma) currently are considering legislation that includes shared decision making.

### Washington State

- According to Ms. Odom, the 2007 Washington State legislation is significant in several respects:
  - Its passage represents the first time a state legislature formally acknowledged in legislative language shared decision making and the benefits of using decision aids; this inclusion indicates that shared decision making is strongly embedded in policy.
  - It calls for a demonstration project to evaluate use of shared decision making in every day practice; the project is currently underway with Group Health Cooperative in Seattle.
  - The legislation provides legal protection to physicians who choose to engage in shared decision making with patients, which helps address physicians' concerns about liability. Ms Odom noted that the Washington Bar Association was not aggressively opposed to the provision ("It's hard to argue with the desire to provide quality health care through shared decision making."). However, Ms. Odom remarked that such acceptance may not be present in other states.

### Vermont

- The Vermont legislature is contemplating plans for a shared decision making project that is to be integrated with the state's Blueprint for Health initiative. The goal of the state's initiative is to support evidence-based medicine, especially as it affects patient preferences for treatment.
- The purpose of the shared decision making project is to improve communication between patients and health care professionals about equally or more effective treatment options for situations in which patient preference is a determining factor.

### Maine

- The bill under consideration by the Maine legislature holds the Maine Quality Forum Advisory Council accountable for implementing a shared decision making project and reporting back to the legislature regarding project status and results by 2012.
- The proposal originally submitted included language to protect providers who engage in shared decision making; the bill stated that if a patient signs an acknowledgement that he or she participated in shared decision making, this would be considered evidence that the patient provided informed consent, which could be overturned only by clear and convincing evidence to the contrary.

### Elements for success

- Ms. Odom listed several elements that she believes to be critical widespread implementation of shared decision making, including:
  - A platform for bipartisan engagement in the cause;
  - Specification of payment for physician time and counseling;
  - Decision aids that have been certified by a national accreditation entity;
  - Decision aids that are free of conflict of interest;
  - A commitment to training and education of providers;
  - Initial focus on with decisions about preference-sensitive conditions;
  - Selection of demonstration projects for which data and measure outcomes can be tracked;
  - Emphasis on the ethical imperative to do the right thing; and
  - Representation of shared decision making as a perfected form of informed consent.

### Cost effectiveness

- Ms. Odom cautioned shared decision making supporters to avoid listing cost savings as an important rationale for promoting the process on a widespread basis. Rather, the most important rationale for the use of shared decision making is the ethical imperative to do the right thing.
- Notwithstanding the emphasis on the ethical rationale for shared decision making, it is important to convey to policy makers that the process may be associated with cost savings, according to Ms. Odom.
- A Commonwealth Fund report, based on research by the Lewin Group, estimated a projected savings of almost \$74 billion for Medicare and commercial insured populations for the period from 2010 to 2019.

Ms. Odom concluded by listing three key health policy reasons for widespread adoption of shared decision making: the ethical imperative to do the right thing; the fact that it is a perfected form of informed consent; and preliminary evidence that engaging in shared decision making leads to more conservative utilization of surgical interventions.