

# VIRGINIA FAMILY PHYSICIAN

THE OFFICIAL PUBLICATION OF THE VIRGINIA ACADEMY OF FAMILY PHYSICIANS

## 2001 General Assembly Highlights

James L. Gaphery, MD  
Physician Representative

The 2001 Virginia General Assembly was quite active with over 2500 pieces of legislation introduced. Although the main focus centered on the budget and the car tax, there were several pieces of legislation of importance to the Physician Community.

Legislation that passed both The House of Delegates and The Senate and awaiting the Governor's signature include:

HB 1800 - As originally introduced would have allowed OB/GYNs to refer managed care patients anywhere for anything without consultation and authorization from the Primary Care Physician. With the help of the Virginia Association of Health Plans and a very cooperative patron, Delegate Phil Hamilton, the Bill was amended, and restored the necessity of "consultation and authorization by the Primary Care Physician". The Bill simply eliminated the legal requirement that the patient visit the office of the Primary Care Physician prior to referral.

HB 2272 - Extends the time from 24 hours to 72 hours physicians are required to sign verbal orders in a hospital.

HB 1892 - Clarifies that a Provider Panel Contract shall contain a provision permitting the provider to refuse participation in other panels offered by the carrier without jeopardizing his status.

HB 2763 - Will allow the collection of outpatient data from physicians' offices and outpatient surgical clinics. Data to be col-

lected is to be based on the frequency of the procedure and the intensity or probability of risk. This data collection will be performed initially as a pilot project and reviewed by the Joint Commission on Health Care.

HB 2318 - Extends the prescriptive authority of Physician's Assistants. Under a written protocol with the supervising physician, the Physician's Assistant may prescribe controlled substances in Schedule V & VI on or after July 2001 and Schedule IV through VI on or after January 1, 2003.

HB 1773 - Expands the definition of "Health Care Provider" to include a "director, officer, employee, or agent". This allows those such as physician's assistants and radiological technicians to be covered under the Medical Malpractice Cap in the event they are the subject of a medical malpractice suit.

SB 1367 - Allows for direct access to physical therapists for 14 calendar days providing the patient has previously been referred by the physician within the past 2 years for the same condition. The bill also allows Physical Therapists to conduct a one-time evaluation of a patient, and if appropriate, immediately refer such patient to the appropriate practitioner.

SB 1139 - Provides that physician, nurse, physician's assistant, and nurse practitioner scholarship and loan repayment amounts that are awarded and eventually forfeited by recipients remain in the respective scholarship and loan repayment fund rather than reverting to the general fund.

*(cont. on page 4)*

### IN THIS ISSUE

VAFP Leadership

President's Report

Key Contact Program

Members In The News

Wintergreen Highlights

Board Briefs

Letter To The Editor

The Importance Of Organ  
Donation

Privacy Of Patient  
Information

Academy Awards

Tax Update

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# Virginia Family Physician

*Spring  
2001*

## LETTERS TO THE EDITOR

The Virginia Family Physician welcomes reader commentary on each issue, as well as local, state and national topics of interest to Academy members. Letters to the Editor should be addressed to the Virginia Academy of Family Physicians, 2301 N. Parham Road, Ste. 4, Richmond, VA 23229 or faxed to (804) 968-4418. Letters should include the writer's full name, address and day-time phone number, and may be edited for the purposes of clarity or space.

**J. Douglas Smith, MD**  
**VAFP President**

The VAFP completed last month an extremely successful Annual Winter Meeting at Wintergreen.

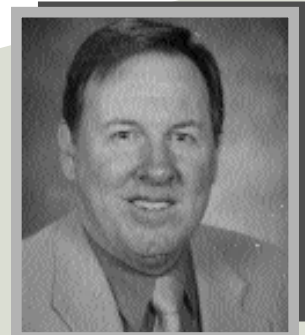
There was a record attendance of more than 250 registrants and by all reports the CME was outstanding (thanks to Dr. Mitch Miller and his CME Committee). Plans are being made to meet again at Wintergreen in February, 2002, so if you desire to attend this super meeting, make your reservations early as lodging was sold out several weeks in advance of this year's deadline. Quite a number of people stayed in Charlottesville and the surrounding areas, driving in for each day's events.

The Virginia General Assembly has finished up its session for 2001. There are a number of bills that will impact you as a physician. Please see the cover article in this newsletter by Dr. Jim Ghaphery for details on these legislative items. The VAFP strives very hard to represent the interests of family physicians at the General Assembly each year. I am impressed by legislators' interests in our viewpoint on issues as we are often viewed as having a broadened view on medical issues; views that extend to the public at large and not just our own self-serving interests.

One of my thrusts as President of the VAFP has been to encourage all family physicians to become Academy members. The Academy is our voice in a number of arenas and carries the message of family medicine very well. There is no question in my mind that

the mission and goals of the VAFP are something that we all embrace in our practice of medicine. If you know of someone who isn't a member—encourage them to join. Just call 1 (800) THE-VAFP for more information. We can have a more effective input on health-care if all of us are pushing in the same direction.

One final note. The VAFP will hold its Annual Scientific Assembly in Virginia Beach, July 19-22. Mark your calendar now as this meeting promises to be a stellar event for CME, fun and networking with your peers.



I am impressed by legislators' interests in our viewpoint on issues as we are often viewed as having a broadened view on medical issues; views that extend to the public at large and not just our own self-serving interests.

## A Special Thank You To Those Who Served

The Virginia Academy of Family Physicians extends a special thank you to the Family Physicians who served as “Family Physician of the Day” during the 2001 session of the General Assembly. The Academy appreciates your time, effort and your willingness to serve.

Margaret Baumgarten, MD  
George Coleman, MD  
Charles Driscoll, MD  
Jennifer Dwyer, MD  
Charles Frazier, MD  
Ronald Goings, MD  
Leroy Graham, MD  
Lisa Gredell, MD  
Ken Heatwole, MD  
Robert Hughes, DO  
Irving Hwang, MD  
Sam Jones, MD  
Jon Kaminer, MD

Syed Kazi, MD  
Don Klingen, MD  
Tony Kuzel, MD  
Jamie Lacey, MD  
Rebecca Layman, MD  
Michael Lin, MD  
Michael Lustig, MD  
Randy Merrick, MD  
Brian Neely, MD  
Martha Scott, MD  
Yates Sealander, MD  
George Smith, MD

### REPORTING CME HOURS IT'S A MUST!

Don't let yourself get caught out on a limb! Rem-ember that all Active members of the Academy are required to report at least 150 hours of CME every three years, of which at least 75 must be Prescribed (AAFP approved) credit and at least 25 of the 150 must be obtained from group activities.

You can now review and report your CME hours online via the AAFP web site. To access your CME record online, first go to the AAFP's website

which you'll find at this address:

<http://www.aafp.org>

and select AAFP Online. Your user name or user ID is your AAFP identification number. Your password is your last name all in caps with no punctuation. then click on “What's New” or “CME” and follow the directions.



### 2001 General Assembly Highlights

*(cont. from cover)*

Legislation introduced and failed included:

HB 1582 - Would have legalized the practice of Lay Mid-Wifery in Virginia.

HB 2350 & SB 1268 - Would have allowed patients to sue HMOs.

SB 1208 - Would have allowed physician's assistants to directly refer patients to physical therapists. HB 1665 and several companion bills would have provided prescription drug assistance to the indigent and elderly. These bills failed because of lack of funding.

HB 2155 and SB 1390 - Would have put forth a plan to deregulate Certificate of Public Need over a 3-year period. Because the plan had a price tag of approximately 137 million dollars for indigent care and medical education, the Bill was not advanced this year.

HB 2118 - Would have disallowed anyone to hold himself out as a specialist unless he is Board Certified or has completed a Fellowship. The Bill was stricken by the patron.

HB 2782 - Would have allowed pharmacists to dispense emergency contraceptive drugs as authorized by a prescriber in accordance with a protocol approved by the Board of Medicine and regulations adopted by the Board of Pharmacy in consultation with the Board of Medicine.

Further information on these and other pieces of legislation may be obtained at:

<http://legis.state.va.us> or by calling VAFP Physician Representative, James L. Ghaphery, MD at the VAFP Headquarters.

# Virginia Academy of Family Physicians Key Contact Program

Family Physicians are encouraged not only to participate in the election process but also to take the opportunity to get to know their legislator.

**T**

This November all 100 seats of the Virginia House of Delegates will be up for election along with that of Governor, Lieutenant Governor and Attorney General.

Family Physicians are encouraged not only to participate in the election process but also to take the opportunity to get to know their legislator. Now is the time to develop a relationship where you can be an advisor to your legislator. They certainly get advice from many other sources with far less insight than family physicians.

Please consider participating in the VAFP Key Contact Program.

## Virginia Academy Of Family Physicians Key Contact Program ~ Key Contact Physician

Name of Legislator: \_\_\_\_\_

Key Contact Physician: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City/St/Zip: \_\_\_\_\_

Home Phone: \_\_\_\_\_

Office Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Please complete and return to:  
VAFP Key Contact Program  
2301 N. Parham Road, Suite 4~ Richmond, Virginia 23229-3163  
Phone: 804-968-5200 ~ Fax: 804-968-4418

## Governor Gilmore Recognizes William G. Jackson, M.D. As Virginia Family Physician Of The Year

**A**s has become tradition at the VAFP, Virginia's Governor recognizes annually the Virginia Family Physician of the Year. This year, Governor James Gilmore recognized **William G. Jackson, M.D.**, Suffolk as the 2000-2001 Virginia Family Physician of the Year. Dr. Jackson was selected and officially recognized as Family Physician of the Year during the 2000 VAFP Annual Scientific Assembly in Virginia Beach. Congratulations again Dr. Jackson.

Dr. Jackson was selected and officially recognized as Family Physician of the Year during the 2000 VAFP Annual Scientific Assembly in Virginia Beach.



*Virginia Governor James Gilmore recognizes William G. Jackson, M.D. as Virginia Family Physician of the Year.*

### VIRGINIA FAMILY PHYSICIAN OF THE YEAR AWARD

#### REQUEST FOR NOMINATION

Please nominate a member of the VAFP for this prestigious award. Nominees should:

1. Provide his/her community with compassionate, comprehensive and caring medical service on a continuing basis.
2. Be directly and effectively involved in community affairs and activities that enhance the quality of life of his/her home area.
3. Provide a credible role model as a healer and human being to his/her community, and as a professional in the science and art of medicine to colleagues, other health professionals and especially, to young physicians in training and to medical students.
4. Be in good standing in his/her medical community.
5. Be a member of the VAFP.

The nomination process is easy. Just complete the nomination form below and mail or fax to the VAFP Headquarters Office with a one or two page letter outlining why you believe the nominee should be selected for the award. Nominating material must be received no later than June 1, 2001. Award recipients will receive a commemorative certificate during the Annual Scientific Assembly, land travel expenses, one night's lodging and a \$100 honorarium to cover additional expenses.

Nominee's Name: \_\_\_\_\_ Nominator's Name: \_\_\_\_\_

Address: \_\_\_\_\_ Address: \_\_\_\_\_

City/St./Zip: \_\_\_\_\_ City/St./Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Phone: \_\_\_\_\_

Send form to: VAFP Headquarters / 2301 N. Parham Rd. Ste. 4 / Richmond, VA 23229 or FAX to: 804-968-4418.

Gene E. Clapsaddle, M.D. was honored as "Family Physician of the Year" by the Blue Ridge Academy of Family Physicians at its March 2001 quarterly meeting. Dr. Clapsaddle practiced in Vinton from 1953 until 1974. Dr. Clapsaddle was the first Program Director for the Roanoke Family Practice Residency Program. The presentation was attended by J. Douglas Smith, M.D., President of the Virginia Academy of Family Physicians.

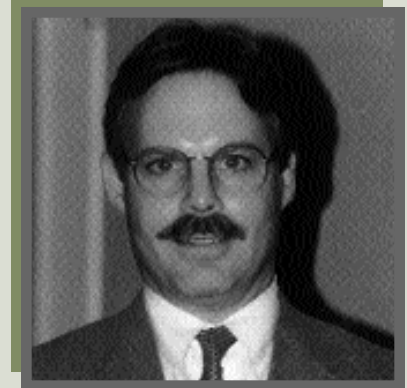


*Dr. and Mrs. Clapsaddle proudly display the Blue Ridge Academy of Family Physicians "Family Physician of the Year" Award.*



*VAFP President J. Douglas Smith, M.D. congratulates Dr. Clapsaddle on his award.*

Dr. Gene E. Clapsaddle was honored as "Family Physician of the Year" by the Blue Ridge Academy of Family Physicians at its quarterly meeting.



*Congratulations to David A. Ellington MD, Lexington, on his appointment by the AAFP Board of Directors to serve on the AAFP Commission on Health Care Services.*



*Congratulations to Mitchell B. Miller MD, Virginia Beach, on his appointment by the AAFP Board of Directors to serve on the AAFP Commission on Finance and Insurance.*

## NEWS BRIEFS

### VAFP Ranks Second Nationally in Highest Percentage Increase in Student Members

The American Academy of Family Physicians has notified the VAFP that during calendar year 2000, the VAFP placed second Nationally in the highest percentage increase in the student membership category for chapters with over 1,000 Active Members. The VAFP will be officially recognized for this accomplishment during the 2001 AAFP Annual Leadership Conference. VAFP President J. Douglas Smith, M.D. will be presented the award during the Award Luncheon.

Editor's note: This is the first time that the VAFP has four representatives serving at the AAFP national level. Other VAFP representatives include Michelle Whitehurst-Cook MD, Highland Springs, AAFP Commission on Membership and Member Services and Cynthia Romero MD, Virginia Beach, AAFP Commission on Continuing Medical Education.

## Winter Family Practice Weekend Largest Ever

The Virginia Academy of Family Physicians Winter Family Practice Weekend held February 2-4, 2001 at Wintergreen Resort in Wintergreen, Virginia was attended by the largest number of family physicians and other health care professionals in the history of the VAFP. Over 250 family physicians, family practice residents, medical students, and other health care professionals attended the conference.

Registrants from 9 states ranked this conference as excellent from a continuing medical education perspective. Comments from registrants on the meeting evaluation form included:

"Great as usual - I really look forward to attending each year."

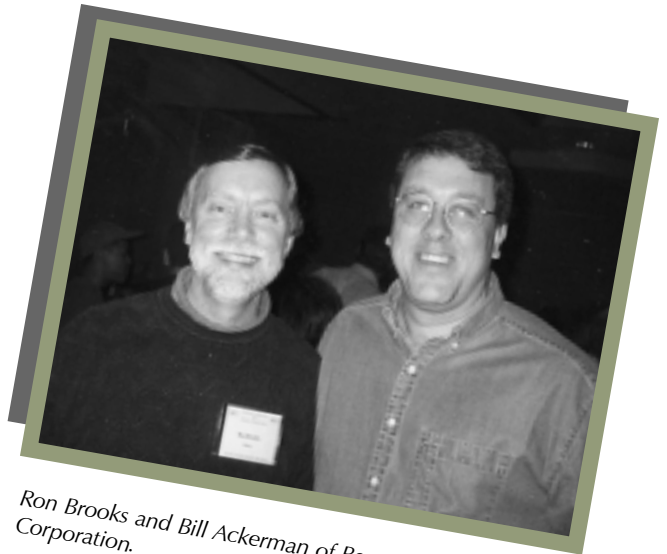
"Excellent-Very Excellent"

"I will return each year. Excellent CME opportunity and chance to network with fellow family doctors."

"Saturday was the best one day collection of speakers and topics I have been to. The selection of topics and speakers was spectacular."

"Very good broad primary care coverage with very effective speakers."

Special thanks are in order to Mitchell B. Miller, M.D., Chair, VAFP CME Committee and his committee for creating such an outstanding program.



*Ron Brooks and Bill Ackerman of Bayer Corporation.*



*Attendees enjoy the Welcome Reception held during the Winter Family Practice Weekend: Drs. John Bryant, Jeff Hawtof, Charles Frazier and David Ellington*



*Mrs. Beth Smith and Mrs. Sherwin Chaphery*

"The selection of topics and speakers was spectacular."

The Virginia Academy of Family Physicians expresses its sincerest appreciation to the following organizations for their generous contributions and support of the VAFP Winter Family Practice Weekend.

American Sleep Apnea Association	Glaxo Wellcome
AstraZeneca Pharmaceuticals	Merck
Aventis Pharmaceuticals	Novartis
Bayer Corporation	Pfizer Parke-Davis
Boehringer Ingelheim Pharmaceuticals	Roche Laboratories
Bristol-Myers Squibb	Schering
Digene	SmithKline Beecham
Doctors Insurance Reciprocal	Wyeth-Ayerst

“Great as usual - I really look forward to attending each year.”

“Very good broad primary care coverage with very effective speakers.”

The Academy expresses its sincerest thanks to the exhibiting organizations at the VAFP Winter Family Practice Weekend. Their support is greatly appreciated.

Abbott Laboratories  
 Alliance for the Prevention and Treatment of Nicotine Addiction  
 AstraZeneca Pharmaceuticals  
 Aventis Pharmaceuticals  
 Bayer Corporation  
 Boehringer Ingelheim Pharmaceuticals  
 Bristol-Myers Squibb  
 Celltech-Medeva  
 Cornerstone Architects  
 Digene Corporation  
 Doctors Insurance Reciprocal  
 Glaxo Wellcome  
 Janssen Eldercare  
 Janssen Pharmaceutica  
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 Roberts Home Medical/Home IV Care  
 Roche Pharmaceuticals  
 Schering/Key  
 Schwarz Pharma  
 SmithKline Beecham Pharmaceuticals  
 Tap Pharmaceuticals  
 Wyeth-Ayerst Laboratories



*Dr. and Mrs. Joe Leming and family*

## Briefs From The VAFP Board Of Directors Meeting Held February 3, 2001

\* Reviewed VAFP Mission and Vision Statement, Strategic Focus and Targeted Objective

\* Heard report from VAFP Continuing Medical Education Committee Chair Mitchell B. Miller, M.D. on the outstanding attendance at the VAFP Winter Family Practice Weekend

\* Heard report from Dr. Miller on the planning and programming for the VAFP Annual Scientific Assembly scheduled July 19-22, 2001 in Virginia Beach

\* Authorized VAFP Executive Vice President Terry Schulte to explore Washington, DC as a potential meeting site for the VAFP 2002 Annual Scientific Assembly

\* Heard comprehensive report from VAFP Physician representative James L. Ghaphery, M.D. on the status of legislation currently being considered by the 2001 Virginia General Assembly

\* Adopted a motion that the VAFP remain neutral on HB2782 which would allow pharmacists to dispense emergency contraceptives in accordance with a protocol developed by the Board of Medicine and regulations adopted by the Board of Pharmacy

\* Received for information a report on the AAFP State Legislative Conference held November 17-18, 2000 in New Orleans

\* Heard report from Past President Mitchell B. Miller, M.D. on the anticipated changes, legal implications, etc. involved in

the Neurological Injured Infant Fund

\* Approved a fiscal note of \$2,500 to support the conference entitled "Advancing Patient Safety in Virginia: Building a multi-disciplinary systems approach" scheduled April 17-18, 2001 in Richmond

\* Received an update from MSV Executive Director Paul Kitchen on current activities being sponsored by the Medical Society of Virginia

\* Heard reports on the projected financial status of the Virginia Academy of Family Physicians including an update on the positive financial position of the Association

\* Approved the 2001 VAFP budget as proposed by the VAFP Finance Committee

\* Received for information a report from VAFP President J. Douglas Smith, M.D. on the status of "z"list potential members and plans for a state wide membership recruitment effort.

\* Heard reports from Charles Driscoll, M.D., Lynchburg Family Practice Residency Director and former AAFP Board Member and Anton J. Kuzel, M.D., Vice Chair, MCV/VCU Department of Family Practice on the AAFP Keystone III Conference held October 4-8, 2000 in Colorado Springs

\* Approved the report of the VAFP Task Force charged with reviewing the AAFP Draft Health Care Coverage proposal and authorized forwarding this document to the AAFP

\* Appointed VAFP Representatives to attend the AAFP Annual Leadership and AAFP National Conference of Special Constituencies scheduled April 26-28, 2001 in Kansas City, Missouri

\* Heard Report on the status of the New Physicians seat on the AAFP Board of Directors and adopted a motion officially nominating VAFP First Vice President Cynthia Romero, M.D. for the position

\* Received report from the VAFP First Vice President Cynthia Romero, M.D., who serves on the AAFP Commission Continuing Medical Education, on the status of the AAFP initiative involving Evidence Based Medicine

\* Considered possible nominees for a series of Awards sponsored by the AAFP

\* Heard report from VAFP Board Member Kurt Elward, M.D. on the activities of the VAFP Quality Task Force and congratulated Dr. Elward on his efforts

\* Received report from VAFP Past President Roger Hofford on anticipated changes in the VAFP Website

\* Received for information a report from both the Resident and Student Board members on the VAFP Board of Directors.

\* Heard report from VAFP Board member Ginger Boyle, M.D. on the status of the Shared Care initiative being considered by the AAFP Commission on Continuing Medical Education

Dear Editor,

I would like to respond to Dr. Herring's letter in the Fall 2000 issue of *The Virginia Family Physician*.

As a pro-life physician, I am thankful that the AAFP and the VAFP stay out of the abortion issue. There is a disagreement that a "legal abortion in the hands of licensed physician is a safer medical procedure than an illegal...abortion." In a perfect world, that may be true, but in our current setting, it is not.

How many women die each year from abortions? How many women are hospitalized? How many women become infertile? How many will develop breast cancer as a result of this procedure? How many will suffer from Post-Abortion Syndrome? I don't know - and now one knows because abortion clinics are not required to report complications. Studies which show adverse effects have been actively squelched and their authors harassed (see "Reading the Data" by Joel Brind, Ph.D., in *Physician Magazine*-[www.family.org/phymag/issue/a0012382.html](http://www.family.org/phymag/issue/a0012382.html)).

My husband's veterinary clinic is more regulated than an abortion clinic is. Any attempt to regulate this industry is fought off as an attempt to "prevent choice." Any attempt to require full informed consent of women seeking abortion, including risks of infertility, breast cancer and psychological distress, are also fought off as an attempt to "prevent choice." And we have been unable to stop partial-birth abortion procedure which is **never** medically indicated.

Are we concerned only about "choice?" I am concerned about a woman in crisis and her unborn child. If we put regulations in effect to provide SAFE abortions, then it will not matter much if it is legal. Women who set out to destroy their own bodies generally succeed, but I do not want to help them do it.

Respectfully,  
Carolyn Sue Seepe, MD  
Cornerstone Complete Care, Inc.  
103 A Piney Forest Road  
Danville, VA 24540  
(804) 793-0700 or (804) 822-1450  
msepe@d-k.com

## The Core Content Review Of Family Medicine

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A convenient new 'rolling admissions' plan allows you to start the Review program in October, November, January, February, April, May, July or August. The eight-month program spans a 12-month period with no monthly editions in March, June, September and December. Registration deadline is 20 days prior to the month in which you choose to begin. At \$4.05 per credit, the program is low-cost and takes no time from your practice. To register, simply complete the form below and mail with a check for the appropriate amount. For further information, call toll free, 1-888-343-CORE or visit our Web Site at [www.corecontent.com](http://www.corecontent.com).

Send this form and your check to:

The Core Content Review of Family Medicine - P.O. Box 30, Bloomfield, CT 06002

(Check one)  Member—\$195  Non-members—\$235

Canadian  
physicians remit in US funds  
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Indicate the month/year in which you wish to begin:

Jan  Feb  Apr  May  Jul  Aug  Oct  Nov  2000 or  2001

Check enclosed  Visa  MasterCard #: \_\_\_\_\_

Exp. date: \_\_\_\_\_ Name: \_\_\_\_\_

Age:  30-40  40-50  50-60  60-70  Over 70

Address: \_\_\_\_\_ City/St/Zip: \_\_\_\_\_

Signature: \_\_\_\_\_ Phone: \_\_\_\_\_

# The Importance Of Organ Donation

**O**n July 1, 1986, the Virginia Transplant Council (VTC) was established by the General Assembly to develop and conduct educational activities to improve understanding and acceptance of organ and tissue donation and transplantation in the Commonwealth of Virginia.

The VTC is comprised of 14 organizations and experts that are directly involved in organ and tissue recovery and transplantation, and became an official program located under the Virginia Department of Health in July 1997.

With the cooperation of other state, public, and private organizations, the VTC has numerous accomplishments to its credit. These include: an unprecedented statewide educational curriculum known as **Donor Power: Organ and Tissue Donor Curriculum Guide** developed in cooperation with the Department of Education; a heart-warming video of donor and recipient families entitled *That's the Spirit* in cooperation with Fox-33/Norfolk, Virginia; an informational brochure placed in all driver's renewal notices in partnership with the Department of Motor Vehicles; the annual Virginia Medal of Life Governor's recognition event for donors and their families; and the soon-to-be implemented statewide Virginia Organ and Tissue Donor Registry.

## How To Be A Donor

• It is possible to transplant about 25 different organs and tissues, including heart,

liver kidneys, pancreas, lungs, small intestine, bone (used in specific surgical procedures), heart valves, cartilage, tendons, skin (as a protective covering for severe burns), and corneas.

• Organ and tissue recovery takes place only after all efforts to save your life have been exhausted and death has been legally declared. The hospital doctors working to save your life are entirely separate from the staff recovering your organs and tissues for transplantation.

• Donation cost nothing to the donor, family or estate. Organ and tissue donations are gifts and acts of charity.

• YOU are a potential organ and tissue donor regardless of your age or medical history (with the exception of those persons with HIV or sexually transmitted diseases). Your medical condition at the time of death will determine what organs and tissues can be donated.

• **DECLARE YOUR DECISION ON YOUR DRIVER'S LICENSE.** The Code of Virginia (§46.2-342) states that the donor designation on the driver's license is sufficient legal authority for procurement of organs and tissues following death, and without additional authority from the donor, his family or estate.

• **SIGN A DONOR CARD.** A donor card serves as a uniform donor document and is sufficient legal authority for recovery following death without additional authority from the donor, his family or estate. You may request a donor card from the Virginia Transplant Council at 1-800-52-DONOR (36667).

• **INFORM YOUR FAMILY OF YOUR DECISION** to be a donor. Make certain your next of kin is aware of your wishes so that they may assist recovery staff in carrying out your wishes. According to the Code of Virginia (§32.1-292) no family member, guardian, or agent shall refuse to honor the donor designation in any way.

It is possible to transplant about 25 different organs and tissues, including heart, liver kidneys, pancreas, lungs, small intestine, bone, heart valves, cartilage, tendons, skin and corneas.



# Privacy Of Patient Information

## What Health Care Providers Must Do To Comply With the U. S. Department of Health and Human Services Final Regulations Protecting Patient Privacy

Mark E. Murray, J.D. and Kenneth D. McArthur, Jr., J.D.

**O**n December 28, 2000, the U.S. Department of Health and Human Services published the final regulations governing patient privacy ("Regulations"). These Regulations were mandated by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), which requires the establishment of privacy and security protections for individually identifiable health information. After spending years developing the Regulations and responding to over 52,000 comments, the Department of Health and Human Services has created a set of rules that a leading health law publication describes as massive and burdensome. The Regulations set forth many specific requirements with which health care providers, health care plans, health care clearinghouses, and other third parties must comply.

### State Versus Federal Law

Although Virginia already has a number of statutes and regulations pertaining to the non-disclosure of medical information, the Regulations will apply to Virginia health care providers. The Regulations create a federal floor of privacy protec-

tion that will supersede state law unless a state law provides greater protection to the confidentiality of health information. Current Virginia statutes and regulations pertaining to patient privacy are not nearly as comprehensive as the Regulations,

nor do they offer the degree of protection provided by the Regulations. Consequently, Virginia health care providers will be required to comply with the federal mandates.

tion that will supersede state law unless a state law provides greater protection to the confidentiality of health information. Current Virginia statutes and regulations pertaining to patient privacy are not nearly as comprehensive as the Regulations,

### Who's Affected By The Regulations?

The HIPAA privacy standard applies to "health plans," "health care clearinghouses," and "health care providers." In addition to the Covered Entities that transmit information in electronic form, the Regulations reach a variety of other entities. For example, health care providers who do not directly submit electronic transactions will be subject to the rule if another entity (such as a practice management company, billing service, or hospital) transmits information on their behalf. From a practical standpoint, the term "health care provider" includes almost every possible health care professional.

Moreover, third parties that receive protected information from a Covered Entity are subject to the rule. According to the Regulations, the disclosure of protected information by a Covered Entity to a noncovered business associate, such as a management company or billing ser-

vice, is conditioned upon the acceptance of certain contractual provisions by the noncovered business associate. If a health care provider enters into an arrangement with a billing service, a man-

agement company, a marketing firm, an accountant or an outside attorney (who would be privy to certain protected information), those business associates would have to be bound by certain contractual provisions set forth by the Regulations before the protected information could be disclosed by the health care provider.

### What's Covered?

The privacy standard applies to individually identifiable health care information electronically maintained or transferred by a Covered Entity as well as other information transmitted or maintained in any other form or medium. Although the proposed regulation applied only to electronically maintained or transmitted information, the final rule has been expanded to encompass all individually identifiable health information transmitted or maintained by a covered entity, regardless of form. Consequently, most, if not all, patient information maintained by a health care provider will be subject to the privacy standard.

The general rule protecting a patient's health care information is that a Covered Entity may not use or disclose an individual's health information, except as otherwise permitted by the Regulations. Although this rule is not very instructive by itself, the Regulations set forth those circumstances in which protected information can be disclosed. Patient information shall not be disclosed by a Covered Entity unless a patient "consents" to disclosure, "authorizes" disclosure, or an exception is applicable. The requirement to obtain a "consent" applies in different circumstances than the requirement to obtain an "authorization." The two terms do not overlap and differ substantially.

A "consent" from a patient allows the use and disclosure of protected health information only for (1) treatment, (2) payment, or (3) health care operations. An "Authorization" allows use and disclosure of protected health information for

*(cont. on page 14)*

## Privacy Of Patient Information

(cont. from page 13)

purposes other than treatment, payment, and health care operations. While a "consent" may be in general terms, an "authorization" must be very specific with respect to the types of disclosures of the protected information a Covered Entity is permitted to make. Disclosures requiring an authorization include: (i) use for marketing of health and non-health items and services by the Covered Entity; (ii) disclosure, prior to an individual's enrollment in a health plan, to the health plan or health care provider for making eligibility or enrollment determinations relating to individual or for underwriting or risk rating determinations; (iii) disclosure to an employer for use in employment determinations; and (iv) use or disclosure for fundraising. As expected, the Regulations require the written forms of "consent" and "authorization" to contain certain prescribed language.

## Complying With The Regulations

The fundamental principle of the Regulations is that an individual has a right to adequate notice of the Covered Entities' policies and procedures with respect to the protected information. As a result, health care providers must provide a written notice to their patients that, among other things: (i) discloses the uses of the individual's information if disclosure is authorized; (ii) advises the individual of his or her ability to restrict disclosure; (iii) notifies the individual of his or her right to inspect and copy the information; and (iv) gives notice of the Covered Entity's policies and procedures to protect the covered information.

Upon request, the Covered Entity must provide the individual with an accounting of all disclosures made of his or her protected information up to six years prior to the date of the request. This rule applies to all disclosures except for those approved by the patient (i.e., treatment, payment, and health care operations). A procedure must be implemented by the Covered Entity to provide

the individual with the date of the disclosure, the name and address of the organization or person to whom the protected information was disclosed, a brief description of the information disclosed (for purposes other than those made at the request of the individual), the purpose for which the information was disclosed, and copies of all requests for disclosure.

## Additionally, All Covered Entities Must:

- ◆ Designate a privacy official who is responsible for the development and implementation of the privacy policies and procedures of the entity;

- ◆ Designate a contact person or office that is responsible for receiving complaints about privacy and an individual who is able to provide further information about an individual's privacy rights and the entities' compliance with the Regulations;

- ◆ Train employees who are likely to have access to protected health information, about its privacy policies and procedures;

- ◆ Implement safeguards to protect health information from intentional or accidental misuse;

- ◆ Provide a means for individuals to lodge complaints about the entity's information practices, and maintain a record of any complaints; and

- ◆ Develop a system of sanctions for members of the workforce who violate the entity's policies.

Business associate agreements are required between the Covered Entity and any entity that provides administrative and support services to the Covered Entity. Each agreement between a Covered Entity and business associate is required to contain a number of detailed provisions that are beyond the scope of this article. Business associate agreements containing these provisions must be entered into between a Covered Entity and its business associate as a prerequisite to disclosing protected information. This requirement is designed to impose the

restrictions of the Regulations on a broad segment of the health care industry not directly covered by HIPAA.

The requirements listed in this section are just a few of the requirements a health care provider must satisfy in order to comply with the Regulations.

## Penalties For Noncompliance

HIPAA grants the secretary of the Department of Health and Human Services the authority to impose civil monetary penalties against Covered Entities that fail to comply with the requirements and standards set forth by HHS. The civil fines are capped at \$25,000 per year for violating a single requirement. Considering the number of requirements a health care provider could potentially violate, the penalties could be extremely significant. Moreover, a knowing violation of the privacy requirements could result in fines as high as \$250,000 and 10 years imprisonment.

In addition to the fines levied by HHS, several state courts have granted individuals a private cause of action to bring a claim against a health care provider for disclosing sensitive medical information. In their current form, the Regulations do not provide a private cause of action for individuals.

## About The Authors

Mark E. Murray, J.D., and Kenneth D. McArthur, Jr., J.D. are attorneys with the law firm of Durette, Irvin & Bradshaw, P.L.C., and are members of the firm's Health Care Practice Group.

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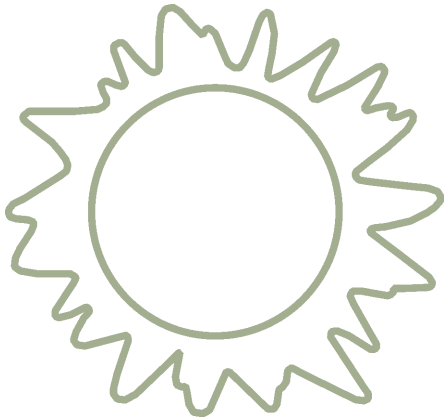
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# The IRS Just Made Life Simpler For You

Life just became easier for millions of Americans with retirement accounts. The IRS recently announced new rules that simplify the way you are required to withdraw your retirement money.

Generally, you must begin withdrawing money from tax-favored retirement plans in the year you turn 70.5. This includes traditional IRAs, qualified retirement plans and annuities. It does not include Roth IRAs and if you're still working at age 70.5, you can wait until you retire to begin taking money from a qualified plan.

If the withdrawal rules apply to you, you can postpone your first withdrawal until April 1 of the year after you turn 70.5. After that, you must withdraw a minimum amount each year by December 31.

## The Old Rules

Under the old rules, you were required to choose a beneficiary and one of several complicated methods to calculate your minimum withdrawal. These two choices had to be made when you made your first required withdrawal. They determined how fast you were required to withdraw money from your retirement accounts. Once you made your initial choices, your decision could not be changed.

## The New Rules

The new rules allow you to change beneficiaries and previous distribution methods. Now you can use one simple chart to calculate your minimum required distributions. And you have more flexibility choosing or changing a beneficiary.

Using the new chart results in a small-

er required distribution for most people. Since you aren't taxed on retirement accounts until money is withdrawn, the less you take out, the less tax you pay. This allows more money to be left in your retirement plan to grow tax-deferred for your future use or for your heirs.

One rule hasn't changed. You can still withdraw more than the required amount from your retirement accounts, but if you fail to take at least the minimum distribution on time, you must pay a 50% excise tax on the amount that should have been withdrawn. Because the old distribution rules were so complex, it was almost impossible for the IRS to enforce this penalty.


## Reporting Requirements

In addition to creating simplified rules for distributions, the IRS has created a new reporting system that will allow them to enforce the rules. Banks, brokers and other holders of retirement accounts will be required to report your minimum distribution to you and to the IRS. This will alert the IRS if you fail to take your distribution on time, so they can charge you the 50% penalty.

These new rules make calculating your distributions simpler, but retirement plan rules remain complex, and they differ for each type of retirement plan.

The IRS recently announced new rules that simplify the way you are required to withdraw your retirement money.



 Note: The information provided in this Tax Tips section was published before the announcement of tax cuts proposed by President Bush.



Before making important financial or business decisions this year, be sure to contact your accountant or tax consultant to discuss these changes and any other tax concerns you may have.

Tax Update information should not be acted upon without further details and/or professional assistance. Tax Update is provided by Wells, Coleman & Co., L.L.P., 3800 Patterson Ave., Richmond, Virginia.

# Is It Time To Rebalance Your Investment Portfolio?

The world didn't end in the year 2000, but investors lost about \$3 trillion in the US stock market. Now might be a good time to review and rebalance your investment portfolio in order to protect and grow your hard-earned money.

All of your investments are subject to risk. Risk refers to the possibility that your investments could decline in value or fail to provide a return greater than the rate of inflation.

## Diversify

The year 2000 reinforced how important it is to diversify your portfolio to minimize your risk. For example, stocks and bonds often react differently in the same economic climate. Asset allocation means choosing investments in several asset classes. While there is no single asset mix appropriate for all investors, most people should have some combination of stocks, bonds and cash in their portfolio.

To select the mix that's right for you, you need to determine the following:

- \* What you are ultimately going to use your money for
- \* How much you will need
- \* When you will need it

If you don't take the time to map out these three items, it can be difficult to make sound investment choices. With well-defined goals, you can place your money in the right mix of investments (diversification) and keep an appropriate balance between risk and return.

## Think Total Picture

Consider assets both inside and outside your retirement plan as you rebalance your portfolio. They are parts of the same picture. To ignore this connection could decrease your diversification and increase your risk.

Be tax-smart with your choices. For example, investments like tax-free municipal bonds and tax-deferred annuities should never be held in retirement accounts. Such investments enjoy a tax-favored treatment that is wasted when you hold them in a 401(k) or IRA. You will ultimately end up paying ordinary income tax on income that otherwise wouldn't have been taxed, or you'll sacrifice earnings for a tax benefit you never receive.

## Remember Taxes

Don't ignore income taxes as you rebalance your portfolio. If you sell assets that you hold outside a retirement plan, the tax man will want his share.

As you decide whether to sell assets, keep in mind the new rates on certain capital gains that became effective this year. The rate on assets held more than five years is now 8% for lower-income taxpayers and 18% for all others. There's a catch though: the 18% rate for taxpayers in the upper brackets only applies to assets purchased *after* 2000 and held for five more years.

## Review Choices

You have many investment choices in creating a balanced portfolio. Low-risk investments include savings accounts and federally insured certificates of deposit. Money market accounts, stocks, bonds, and perhaps real estate round out your choices.

Then, of course, you have to decide whether to invest in mutual funds, where a manager makes the investment choices, or to research and choose individual investments yourself.

There is also a psychological element in a well-balanced portfolio. Never put your money in investments that you don't understand or that create too much stress

for you. Investments with less risk have historically had a lower rate of return. You may have to save more money or save money for a longer period of time to meet your goals, but the reward might be a good night's sleep and less worry.

Many things contribute to a well-balanced portfolio, and your investment decisions today can have a long-term impact on your financial future. So take time now to review your portfolio.

## Mark Your Calendar

April 16

- ✓ 2000 individual tax returns are due
- ✓ 2000 partnership returns are due
- ✓ Deadline for making your 2000 IRA contribution
- ✓ First quarter 2001 individual estimated tax is due

# Installment Ban Ended New Law Provides Relief For Small Business Owners

Congress has repealed the ban on the installment sale method of accounting for accrual-basis taxpayers. In their final session last year, Congress passed the *Installment Tax Correction Act of 2000*.

This is good news for many small businesses. Often businesses and business assets are sold to a buyer who agrees to make payments over time (an installment contract). Under the installment method of accounting for the sale, the seller pays tax on profit in the sale as the proceeds are collected. This allows a business to pay tax each year only on the money received that year.

## Old Law Created Hardship

Many small businesses, particularly those that maintain inventories, are required to use the accrual method of accounting. When the installment method was disallowed for these companies, they were forced to pay all the tax in the year they sold business assets even if the cash was received over several years. This created a severe hardship for some businesses, forcing them to borrow money or to ask the seller for a larger down payment.

Fortunately, Congress recognized what a negative impact this law had on small businesses. Under the new law, the installment sale method is reinstated for accrual-basis taxpayers. A seller can once again pay tax as money is received from the buyer.

*Note: The new law is retroactive to December 17, 1999. Taxpayers who paid taxes up front on a sale on or after that date can file an amended return if they now wish to elect installment sale treatment.*

	<b>2001</b>	<b>2000</b>	
* Standard deduction			
- Single	\$4,550	\$4,400	
- Married, filing jointly	7,600	7,350	
- Married, filing separately	3,800	3,675	
- Head of household	6,650	6,450	
- Additional deduction -			
Single 65 & older/blind	\$1,100	\$1,100	
Married 65 & older/blind	900	850	
* Personal exemption	\$2,900	\$2,800	
* "Kiddie tax" unearned income limit	\$1,500	\$1,400	
* Social security tax wage base	\$80,400	\$76,200	
* Medicare tax wage base	No limit	No limit	
* Personal exemption phase-out (AGI)			
- Single	\$132,950/255,450	\$128,950/251,450	
- Joint returns & surviving spouses	199,450/321,950	193,400/315,900	
- Married filing separately	99,725/160,975	96,700/157,950	
- Head of household	166,200/288,700	161,150/283,650	
* Limit on itemized deductions (AGI)			
- Single/joint/head of household	\$132,950	\$128,950	
- Married filing separately	66,475	64,475	
* Automobile standard mileage rate			
- Business	34.5 c	32.5 c	
- Charitable work	14 c	14 c	
- Medical/moving expense	12 c	10 c	
* 401(k) plan contribution limit	\$10,500	\$10,500	
* IRA deductibility phase-out (AGI)			
- Single/head of household	\$33,000-43,000	\$32,000-42,000	
- Joint returns & surviving spouses	53,000-63,000	52,000-61,000	
- Married filing separately	0-10,000	0-10,000	
- When spouse has company pension	150,000-160,000	150,000-160,000	
* Social security earnings limit			
- Under age 65	\$10,680	\$10,080	
- Age 65 and over	No limit	No limit	
* Top rate on capital gains			
- Assets held over 12 months	20%	20%	
- Certain assets held over 5 years	18%	N/A	
* Business equipment expensing deduction	\$24,000	\$20,000	
* Interest deduction on higher education loans	\$2,500	\$2,000	
* Luxury tax on new cars over \$38,000	4%	5%	
* Prior-year safe harbor % for estimated taxes of higher income individuals	110%	108.6%	
* Threshold at which social security and Medicare taxes must be paid for household workers	\$1,300	\$1,200	
.....			
<b>Tax Rate</b>	<b>Single</b>	<b>Married (Joint) *</b>	<b>Head Of Household</b>
15%	\$ 1-27,050	\$ 1-45,2000	\$ 1-36,250
28%	27,051 - 65,550	45,201 - 109,250	36,251 - 93,650
31%	65,551 - 136,750	109,251 - 166,500	93,651 - 151,650
36%	136,751 - 297,350	166,501 - 297,350	151,651 - 297,350
39.6%	Over 297,350	Over 297,350	Over 297,350
*Married filing separate accounts are 50% of joint amounts.			

## Tax Talk

# Take Tax Shelter In Your Home

Your home can provide tax benefits from the time you buy it until the time you sell it. You can deduct the taxes and interest you pay on your home, and if you conduct business from your home, you may qualify for home office deductions. One of the most valuable benefits you may qualify for is tax-free income when you sell your home.

## Home Sale Rules

You can exclude up to \$250,000 of gain if you own and occupy a home as your principal residence for at least two of the five years preceding its sale. A married couple is entitled to exclude \$500,000 if both spouses used the home as their main residence during this period. There are no age requirements for this exclusion, and you can use it every two years if you otherwise qualify.

Periods of absence don't necessarily prevent you from qualifying for the exclusion. The two-year rule doesn't mean you have to live there continuously, just that you live there for a total of two years within the five-year period.

Even if you don't meet the use and ownership tests, you may still qualify for a partial exclusion provided that you are moving due to a job relocation or for health reasons.

## Your Principal Residence

The term *principal residence* has a broader definition than you might think.

Generally, a principal residence is the dwelling where you spend most of your time. Therefore, your weekend retreat doesn't qualify. But your residence can be a mobile home, a condo, or a houseboat, as long as it is your primary house.

## Pitfalls

Watch out if you claim a home office deduction or if you rent out part of your home. If you use part of your home for business purposes more than three years in the five years prior to its sale, the sale will be treated as two sales, a business portion and a personal portion. You will not be able to exclude any gain on the business portion.

## Opportunities

If you convert your former vacation home, rental property, or business property to your principal residence, you may be able to avoid tax on most of the gain.

You must pay tax on depreciation deductions taken after May 6, 1997. But the rest of the gain can be excluded, up to the allowable limits if you meet the use and ownership tests. So if you know you will be selling, it might be wise to give up that home office for a couple of years.

## Divorce Situations

Special rules apply to divorced taxpayers. As long as your divorce papers specify that your ex-spouse can continue to occupy the house, you may still be able to exclude the gain when the house is sold even though you fail the occupancy test.

Transferring a home as part of a property settlement is not treated as a sale.

## Businesses Overpay AMT

A recent report from the Treasury Inspector General for Tax Administration points out that more than 2,000 small business corporations may have paid the alternative minimum tax on their 1998 tax returns by mistake.

The alternative minimum tax (AMT) is computed using different income and deduction items from the regular income tax. If the AMT is higher, the taxpayer pays it rather than the regular tax.

The Treasury report indicated that many small businesses did not take the exemption from the AMT for which they qualified, and they overpaid their taxes as a result.

The IRS has no system for notifying taxpayers who overpaid their taxes because they overlooked the AMT exemption. If your small business paid the AMT in 1998, a review may be in order.

## New Tax Deposit Rules

About a million small businesses will now be allowed to make their deposits of employment taxes quarterly instead of monthly.

Under IRS rules that became effective January 1, 2001, businesses that owe less than \$2,500 in employment taxes each quarter no longer have to make monthly deposits with an authorized financial institution. Instead, they can pay the taxes due when they file Form 941 with the IRS each quarter.

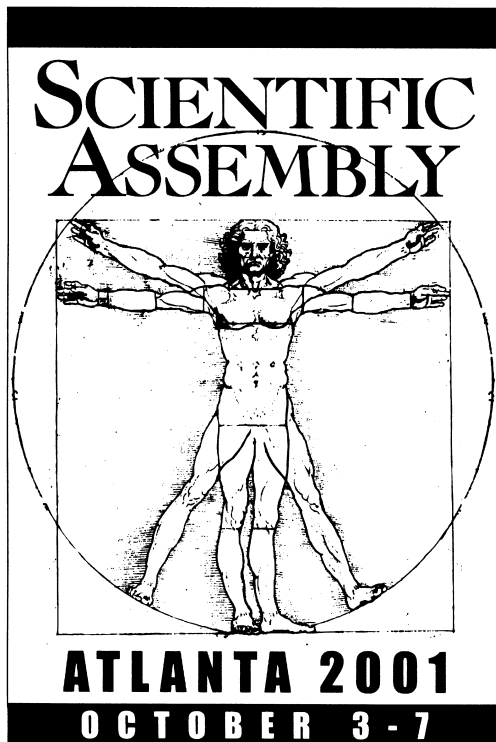
## No Surprise Here

Even the IRS considers tax law complexity a major problem. In his report to Congress, the IRS's taxpayer advocate stated that complexity in the tax code "remains the number one problem facing taxpayers, and is the root cause of many of the other problems on the Top 20 list.

*Inflation adjustments are made to various tax numbers each year, and prior-year tax laws with phase-in provisions cause some numbers to change annually. The numbers for 2000 in the chart apply to your 2000 returns, and the numbers for 2001 should be used in your 2001 tax planning.*



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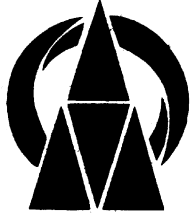
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