

November 19, 2010

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## NEXT WEEK IN WASHINGTON...

- \* Congress has recessed for Thanksgiving and will reconvene the week of November 29.

### 1. SENATE APPROVES ONE-MONTH EXTENSION OF SGR

Late Thursday, November 18, by unanimous consent, the Senate approved the *Veterans', Seniors' and Children's Health Technical Corrections Act* (HR 5712), which defers Medicare physician payment cuts for 30 days until January 1. Payment cuts had been set to begin December 1 and delaying the cuts to the new date is estimated to cost about \$1 billion. The offset to pay for this delay came from new CMS Medicare payment policies for multiple therapy services. The House is slated to vote on the physician payment extension when legislators return from a Thanksgiving break on November 29.

The bill was the product of a bipartisan agreement in the Senate Finance Committee, where leaders said they are continuing to work on a longer-term fix to the payment rates issue. AAFP and other physician groups and seniors' advocates still are urging Congress to work on a year-long fix that would block the payment rate cuts through the end of 2011.

### 2. CMS ADMINISTRATOR BERWICK TESTIFIES

After many requests from Republican senators on the Health, Education, Labor and Pensions Committee, on Wednesday, November 17, the committee held a hearing with the Donald M. Berwick, MD, Administrator of the Centers for Medicare and Medicaid Services. Dr. Berwick was testifying for the first time since his nomination and recess appointment as CMS chief. At the hearing, Dr. Berwick said provisions in the reform law strengthen funding for preventive services and provide CMS with opportunities to experiment with more efficient and coordinated care. He said, "When we raise the quality of care for Medicare beneficiaries, we raise the quality of care for everybody."

### **3. SMALL BUSINESS COMMITTEE TAKES ON FORM 1099 REQUIREMENT**

On Thursday, November 18, the Senate Small Business and Entrepreneurship Committee, chaired by Senator Mary Landrieu (D-LA), held a hearing on the impact of the Form 1099 reporting requirement that takes effect in 2012.

Senators from both sides of the aisle agreed that the Form 1099 reporting required by the new health reform act should be repealed. This agreement came despite GAO findings that companies under-report their revenues 54 percent of the time (while wage earners under-report only 1 percent). While support for repeal of this provision is broad, there is no agreement on the source of offsets. Senators noted that under the current tax law, payments for goods and services do not require a 1099 filing if they are made by credit card.

Among other forthcoming recommendations, the GAO urges the IRS to provide more detailed and informative guidance as to the current 1099 reporting requirements. Committee members generally concurred but suggested that the requirements themselves be made less burdensome. Members believe that a heavy regulatory burden falls disproportionately upon small businesses, which are less able than their larger competitors to spread the costs of regulation.

### **4. REPUBLICAN SENATORS FILE AMICUS BRIEF AGAINST HEALTH REFORM**

Senate Republican Leader Mitch McConnell (R-KY) added 31 other signatures on his amicus brief in the Florida lawsuit against health care reform. He formally filed the brief on Thursday, November 18. The Senators who did not sign include: Senators Scott Brown (R-MA), Lamar Alexander (R-TN), Robert Bennett (R-UT), Lindsey Graham (R-NH), Judd Gregg (R-NH), Richard Lugar (R-IN), Lisa Murkowski (I-AK), Jeff Sessions (R-AL) and George Voinovich (R-OH).

### **5. AAFP CALLS ON CONGRESS TO EXEMPT PHYSICIANS FROM RED FLAG RULE**

On November 18, the AAFP and other organizations wrote to Senators John Thune (R-SD) and Mark Begich (D-AK) in support of their effort to exempt professionals such as physicians, dentists, and veterinarians from the Red Flag Rule imposed on creditors by the *Fair Credit Reporting Act*. On November 9, 2007, the Federal Trade Commission (FTC) issued a final regulation requiring financial institutions and creditors to develop and implement written identity theft programs (Red Flags program). The FTC has determined that health care professionals should be covered under this law and must implement a Red Flags program by January 1, 2011. We are calling for passage of legislation before January 1, to reverse the negative impact this regulation would have on thousands of small health care providers nationwide.

### **6. STATES DIVERT MUCH OF TOBACCO AGREEMENT FUNDS**

A new report finds that state spending on tobacco control through revenues from the 1998 tobacco settlement fund and state tobacco taxes has reached a new low, with only 2 percent of available funds going toward those purposes. The report, titled *A Broken Promise to Our Children: The 1998 State Tobacco Settlement 12 Years Later*, was released by the Campaign for Tobacco-Free Kids, American Heart Association, American Cancer Society Cancer Action Network, American Lung Association and Robert Wood Johnson Foundation. "Among other findings, the report shows that most states are falling far short of meeting recommended funding levels for tobacco prevention programs set by the U.S. Centers for Disease Control and Prevention (CDC). The \$517.9 million the states have budgeted amounts to just 14 percent of the \$3.7 billion the CDC recommends for all the states combined." For a link to the report and related materials: [http://www.rwjf.org/publichealth/product.jsp?id=71454&cid=XEM\\_205604](http://www.rwjf.org/publichealth/product.jsp?id=71454&cid=XEM_205604)

## 7. AAFP STATE LEGISLATIVE CONFERENCE HELD IN NEW ORLEANS

The AAFP Commission on Governmental Advocacy hosted the 2010 State Legislative Conference in New Orleans on November 12-13. This year's meeting included a pre-conference in which experts discussed new demonstration programs on liability, the Medicaid PCMH and Pediatric Accountable Care Organizations. Participants heard about new state programs, including primary care extension programs, health information exchanges, health insurance exchanges, and consumer information and assistance offices. Karen DeSalvo, MD, a professor of medicine and chief of General Internal Medicine and Geriatrics at Tulane University in New Orleans, spoke on rebuilding primary care after flooding from Hurricane Katrina devastated the city and its health care system in 2005. Instead of replacing the previous fragmented health delivery system, the city built infrastructure to promote sustainable, patient-centered, prevention-oriented and community-based care in the form of medical homes.

During the conference, three chapters received the 2010 Leadership in State Government Advocacy Awards for excellence in advocacy programs:

- Tom Banning, Chapter Executive of the Texas Academy of Family Physicians, received the award on behalf of the Texas chapter's work to increase the smokeless tobacco tax to help fund a primary care physician student loan repayment program.
- Mike Munger, MD, who chairs the Board of Directors of the Kansas AFP, accepted the award for the successful efforts of the Kansas chapter to persuade the legislature to pass a statewide indoor smoking ban.
- Meredith Edwards, legislative director of the Indiana chapter, accepted the award for the Indiana chapter's development of a multi-media campaign that alerted state legislators to the family physician workforce crisis.

Chris Koller, Health Commissioner of Health Insurance in Rhode Island, and Craig Jones, MD, Director of the Blueprint for Health in Vermont, explained successes in restoring primary care in their states. Gary Piefer, MD described steps WellMed took to establish itself as a sustainable ACO in Texas, while Washington State Senator Karen Keiser explained how her state enacted legislation to create ACO pilots. Joshua Soven of the U.S. Department of Justice Antitrust Division covered issues concerning antitrust and Accountable Care Organizations. AAFP President-Elect Glen Stream, MD explained how federal health reform legislation would affect family medicine.

Mark McClellan, MD, PhD led a discussion on the future of state implementation of health reform during the closing keynote address. Dr. McClellan currently serves as Director of the Engelberg Center for Health Care Reform and formerly served as the CMS Administrator.

## 8. HEALTH CARE ISSUES IN THE STATES...

- **Louisiana Medicaid Program Cuts Physician Rates**  
to close a \$50 million deficit, the Louisiana Medicaid program announced cuts to payments of 5.8 percent for most providers and 2 percent for primary care physicians, home health providers, hospitals and certain specialists. The state agency also terminated the Primary Care Case Management Program known as CommunityCARE that was to provide a medical home to Medicaid patients.
- **Pennsylvania Governor Vetoes Medical Liability Bill**  
Governor Ed Rendell (D) recently vetoed [SB 1280](#), which would have amended the *Medical Care Availability and Reduction of Error Act of 2002*, or MCare, by freezing primary medical malpractice insurance limits for seven years and by adjusting the formula for determining the assessment by which MCare is funded.