

September 16, 2011

## IN THIS REPORT...

1. AAFP Urges Supercommittee To Repeal Medicare SGR
2. MedPAC Calls for SGR Repeal, Primary Care Pay Freeze, Specialty Pay Cut
3. Congress Proposes Stopgap Spending Bill For First Month of FY 2012
4. Comments Sent Regarding Proposed Consumer Operated and Oriented Plan Program
5. AAFP Opposes Bill to Remove FDA Authority to Regulate Cigars
6. Regulatory Briefs
7. FamMedPAC Has Strong Presence at Congress of Delegates/Assembly
8. Florida Primary Care Wins Injunction in Favor of Physician-Patient Confidentiality

### NEXT WEEK IN WASHINGTON...

\* The next CMS Physician's Open Door Forum is September 20, 2pm-3pm ET. To participate dial 1-800-837-1935 and reference 83521027.

\* The Senate HHS Appropriations Subcommittee scheduled debate on its FY 2012 bill for September 20.

## 1. SUPERCOMMITTEE HOLDS FIRST HEARING

The Joint Select Committee on Deficit Reduction's first hearing on Tuesday, September 13 concerning the drivers of the federal deficit did little to sway legislators or offer a clear path to consensus. The bipartisan, bicameral "supercommittee" heard testimony from Congressional Budget Office Director Douglas Elmendorf who pointed out that the federal government cannot continue its spending and policies with the same level of tax revenues. In prepared testimony, Dr. Elmendorf pointed out that CBO's baseline projections include the drastic cut to Medicare's physicians payments scheduled to take effect on January 1, 2012.

The AAFP has called on the supercommittee to repeal the SGR, increase payments to primary care physician and oppose cuts to Graduate Medical Education. AAFP leadership, members and staff communication with legislators and legislative staff will continue. In addition, the AAFP is supporting an online advocacy campaign ([www.everypatientcounts.org](http://www.everypatientcounts.org)) to allow physicians, patients, health care administrators and concerned citizens tell Congress to enact a permanent fix to the flawed Medicare physician payment formula.

## 2. MEDPAC CALLS FOR SGR REPEAL AND HIGHER PAYMENT FOR PRIMARY CARE

The Medicare Payment Advisory Commission (MedPAC) met to discuss moving forward from the Sustainable Growth Rate system on Thursday, September 15, and has issued a draft proposal to repeal the flawed SGR formula and initiate significant physician payment reforms. The MedPAC draft proposal recommends that physician payment rates be set by statute for the next ten years with a flat update or freeze for primary care doctors and a reduction in the conversion factor of 5.9 percent per year for specialists for three years with a freeze for them for

the following seven years. MedPAC's proposed recommendations are already meeting with strong opposition from specialists groups.

These proposals may be revised before final recommendations are released in early October.

### **3. FISCAL YEAR 2012 WILL BEGIN WITH A STOPGAP FUNDING PACKAGE**

On September 14, the House Appropriations Committee introduced a Continuing Resolution (CR) to keep the government operating past the end of fiscal year 2011 on September 30. The legislation (H.J.Res. 79) continues government operations and gives the Congress until midnight, November 18 to complete the fiscal year 2012 appropriations bills that provide annual funding for Title VII Primary Care Training Grants, the National Health Service Corps (NHSC) and other AAFP priorities. As introduced, the CR allows funding for the federal government to continue at a rate of \$1.043 trillion – or 1.4 percent below the FY 2011 funding level.

The Senate Labor-HHS-Education Appropriations Subcommittee is scheduled to mark up its FY 2012 spending bill on Tuesday, September 20. Senate Appropriations Committee allocated \$157 billion for the Labor-HHS-Education bill, approximately \$300 million below FY 2011. The House Labor-HHS-Education Appropriations debate of its version was scheduled for last Friday but was postponed indefinitely after Republican members of the Subcommittee criticized the allocation for the domestic spending programs as too high. The AAFP supports the higher allocation to prevent drastic cuts to health professions training, NHSC, rural health and the Agency for Healthcare Research and Quality.

### **4. AAFP SENDS COMMENTS TO CMS ON PROPOSED CO-OP REGULATION**

In a comment [letter](#) sent September 15 to the Centers for Medicare & Medicaid Services (CMS), the AAFP responded to the proposed regulation entitled, "Establishment of Consumer Operated and Oriented Plan (CO-OP) Program." As called for in the *Affordable Care Act*, the intent of the CO-OP program is to provide loans to foster the creation of consumer-governed, private, nonprofit health insurance issuers to offer qualified health plans in the Affordable Insurance Exchanges. Overall, the AAFP was supportive of the CMS proposal but urged further consideration and inclusion of patient-centered medical home concepts when evaluating CO-OP grants and applications. The AAFP also urged CMS to work further with the Federal Trade Commission to develop "safe-harbors" for the CO-OP program, similar to efforts underway for the Medicare Accountable Care Organization program. The AAFP concluded by urging that CO-OP boards must utilize primary care physicians in top leadership positions. AAFP staff created a [summary](#) of the proposed CO-OP regulation when it was released earlier this year.

### **5. AAFP OPPOSES HOUSE BILL PERTAINING TO FDA'S ABILITY TO REGULATE CIGARS**

In a coalition [letter](#) sent September 7 to members of the U.S. House of Representatives that support the *Traditional Cigar Manufacturing and Small Business Jobs Preservation Act* (HR 1639), the AAFP and others strongly opposed this legislation which, if signed into law, would remove the Food and Drug Administration's (FDA) authority to regulate many cigars. The FDA received authority to regulate tobacco products when the *Family Smoking Prevention and Tobacco Control Act* was signed into law on June 22, 2009.

### **6. REGULATORY BRIEFS**

- In early September, CMS updated the [Statement of Work](#) document regarding Medicare Recovery Audit Contractors. The revisions clarify several policies and increase CMS oversight of the Medicare RACs. It also establishes a semi-automated review so that RACs may obtain additional information from physicians and hospitals before the RAC makes an automated denial that may be inappropriate.
- On September 9, the U.S. Department of Health & Human Services (HHS) [announced](#) \$700 million in grants from the *Affordable Care Act* to help build, expand, and create jobs

in community health centers. In the release, HHS states that, “community health centers are an integral source of local employment and economic growth in many underserved and low-income communities. In 2010, they employed more than 131,000 staff and new funds made available today will help create thousands of jobs nationwide. ...More than 8,100 service delivery sites around the country deliver care to nearly 20 million patients regardless of their ability to pay.”

- On September 12, HHS proposed the “CLIA program and HIPAA privacy rule; Patients’ access to test reports” [regulation](#) and issued a related [press release](#). This proposal, if finalized in its current form, would require clinical laboratories to release laboratory test results, including results in electronic form, to patients on request and eliminate an existing exception to the HIPAA privacy rule for labs regulated under the *Clinical Laboratory Improvement Amendments of 1988*. The AAFP is analyzing the proposal and will likely submit comments to HHS.
- On September 12, HHS awarded \$8.5 million in *Affordable Care Act* funding to 85 community health centers in 15 of the 17 Beacon Communities across the country. These funds will help support health centers with the adoption of health information technology (HIT).
- On September 13, HHS [announced](#) the [Million Hearts campaign](#) which is designed to be a public-private initiative to prevent one million heart attacks and strokes over the next five years. With cardiovascular diseases currently costing \$444 billion every year in both medical costs and lost productivity, the Million Hearts campaign focuses on two goals:
  - Promoting healthy choices such as preventing tobacco use and reducing sodium and trans fat consumption.
  - Improving care for people who need treatment by encouraging a targeted focus on the “ABCS” – Aspirin for people at risk, Blood pressure control, Cholesterol management and Smoking cessation.
- On September 14, CMS announced that due to existing regulations and changes required by the *Affordable Care Act*, all physicians, suppliers and other providers who are not currently receiving electronic funds transfer (EFT) payments will be identified, and required to submit the CMS 588 EFT form with the Provider Enrollment Revalidation application.
- Also on September 14, CMS released an updated educational [document](#) regarding the Primary Care Incentive Payment Program (PCIP) as it relates to newly enrolled eligible primary care physicians.
- HHS released the final Medicaid Recovery Audit Contractor [regulation](#) on September 14. The *Affordable Care Act* requires state Medicaid agencies to contract with RACs to audit payments to Medicaid providers including physicians. Medicaid RACs are estimated to identify \$2.1 billion in improper payments over the next five years, of which \$900 million will return to the states. The final rule limits Medicaid RACs to a three-year look-back period, prohibits them from auditing claims that they or others have already audited, and requires the RACs to notify providers of overpayment findings within 60 days. States will have the authority to determine limits on medical record requests and are required to employ at least one medical director. Medicaid RAC contingency fees may not exceed the highest Medicare RAC fee. Earlier this year, the AAFP sent [comments](#) to CMS on the proposed Medicaid RAC regulation and signed onto a related [coalition letter](#).
- On September 15, HHS announced information about 2012 Medicare Advantage (Part C) and Prescription Drug Plan (Part D) premiums. On average, Medicare Advantage premiums will decrease by 4 percent in 2012 compared to 2011 and these Part C plans project enrollment to increase by 10. Average Part D premiums will remain virtually unchanged in 2012.
- On September 15, HHS [announced](#) awarding a total of \$10 million to 129 organizations that seek to become community health centers.

## **7. FAMILY PHYSICIANS SUPPORT FAMMEDPAC**

FamMedPAC Board Chair Dr. Jim King spoke before the AAFP Congress of Delegates this week, letting them know how important FamMedPAC is to AAFP's advocacy efforts and thanking them for their strong support. The PAC had a booth outside the Congress meeting and is part of the AAFP Marketplace at Assembly in Orlando this week. Members attending the Congress contributed over \$28,000 during their meeting.

## **8. FLORIDA PRIMARY CARE WINS INJUNCTION AGAINST LAW PROHIBITING PHYSICIAN-PATIENT DISCUSSIONS OF GUN SAFETY**

On Tuesday, September 14, a U.S. District Judge blocked the enforcement of a recently enacted state law that bars health care professionals from asking patients if they own guns and store them properly, questions that are a key element of preventive medicine. The Florida Academy of Family Physicians and Family Physician Dr. Bernd Wollschlaeger—along with the Florida Chapters of the American Academy of Pediatrics, the American College of Physicians, four pediatricians and one internist—filed suit in federal court seeking an immediate injunction and the overturning of the law as unconstitutional.