GOVERNMENT AFFAIRS WEEKLY

AAFP Government Relations — 1133 Connecticut Avenue, NW, Suite 1100 — Washington, DC 20036

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IN THIS REPORT…

NEXT WEEK IN WASHINGTON…

* The 112th Congress House and Senate return on Tuesday, November 13 for a "lame duck" session and will tackle the Medicare SGR, expiring tax cuts and across-the-board budget cuts.

* On Wednesday, November 14, the Oversight and Investigations Subcommittee of the House Energy and Commerce Committee will hold a hearing titled "The Fungal Meningitis Outbreak: Could It Have Been Prevented?" And on Thursday, November 15, the Senate Health, Education, Labor and Pensions (HELP) Committee will hold a hearing on the same topic.

1. ELECTION 2012 – STATUS QUO

President Barack Obama was reelected on Tuesday, November 6, winning 332 Electoral College votes to former Governor Mitt Romney's 206. The popular vote was much closer, with the President winning 50.5 percent to Governor Romney's 48 percent. The partisan control of the House and Senate will remain the same, although the Democrats increased their majority in both chambers. The House Republicans will open the 113th Congress with at least 234 members. The Democrats will have at least 194 members. There are seven races that are either undecided or in dispute, and the Democratic candidate is leading in 6 of them. The Senate ratio is 53 Democrats and two Independents who will caucus with the Democrats compared to 45 Republicans.

The outcome of the election will allow the implementation of the *Patient Protection and Affordable Care Act* to continue. With President Obama winning a second term, and with a Democratic majority in the Senate, most of the provisions of the law will go into effect by January 1, 2014.

2. AAFP LEADERS MEET DECISION MAKERS

On October 31 and November 1, AAFP President Jeff Cain, MD; President-Elect Reid Blackwelder, MD; Board Chair Glen Stream, MD; and EVP Doug Henley, MD were in Washington, DC to meet with Administration leaders, Congressional offices and leaders of health policy organizations. Their meetings dealt with health care costs, primary care research, prescription drug abuse, and rural physician workforce needs.

They met with Debra Whitman, VP for Policy, Strategy and International Relations at the AARP, to maintain the relationship with the AARP's policy development process. Ms. Whitman succeeds John Rother, who was the face of AARP in most of the policy discussions in DC. The Academy just signed a multi-organization letter to Congress drafted by the AARP calling for an SGR fix.

In meetings with staff with responsibility for legislation on the Medicare physician payment for both the House Ways and Means Committee and Senate Finance Committee, AAFP leaders highlighted the need to provide a one to two year extension of the current fee schedule with primary care differential. They also met with Senate Finance Committee staff to discuss Medicare data and information sharing ideas.

Although Gil Kerlikowske, the Director of the White House Office of National Drug Control Policy or "drug czar" has called for mandatory CME to combat prescription drug abuse, the AAFP officers presented the director with our recommendations from a recent position paper on pain management and opioid abuse which make it clear that additional barriers will limit patient access to legitimate pain management.

The AAFP leaders met with Robert A. Petzel, MD, Under Secretary for Health in the Department of Veterans Affairs, to discuss ways the AAFP could continue to support improving healthcare in the veteran community and improving interaction between community physicians and the VA health system.

Carolyn Clancy, MD, Administrator of the Agency for Healthcare Research and Quality (AHRQ), and family physician, David Meyers, MD, Director of AHRQ's Center for Primary Care, Prevention and Clinical Partnerships met with the AAFP leaders to discuss AHRQ's primary care research agenda.

3. AAFP SUMMARY OF FINAL 2013 MEDICARE PHYSICIAN FEE SCHEDULE

On November 1, the Centers for Medicare & Medicaid Services (CMS) released the final 2013 Medicare Physician Fee Schedule (link will change on Nov 16). This regulation addresses changes to the physician fee schedule and other Medicare Part B payment policies and implements certain provisions of the *Affordable Care Act* (ACA). It also discusses the 2013 Physician Quality Reporting System (PQRS), the Electronic Prescribing (eRx) Incentive Program, potentially misvalued codes, additions to the Medicare Telehealth Services, updates to the Physician Compare website, and further implements the Physician Value-Based Payment Modifier and the Physician Feedback Reporting Program.

Particularly notable to family physicians, CMS finalized new Medicare coverage for two transitional care management (TCM) codes. These codes are designed to pay a physician or practitioner to coordinate a patient's care in the 30 days following a hospital or nursing facility stay. According to the CMS press release, "the changes in care coordination payment and other changes in the rule are expected to increase payment to family practitioners by seven percent and other primary care practitioners between three and five percent, if Congress averts the statutorily required reduction in Medicare's physician fee schedule."

When regulatory policy changes to the relative value units (RVUs) cause expenditures to change by more than $20 million, CMS must apply an adjustment to the conversion factor to preserve budget neutrality. The agency then states that "Several changes affect the specialty distribution of Medicare expenditures. This final rule with comment period reflects the Administration's priority to improve payment for primary care services." And then later, "In the absence of a change in the conversion factor, payments to primary care specialties will increase and payments to select other specialties will decrease due to several changes in how we calculate payments for CY 2013."

Of the estimated 7 percent increased payment for family physicians, 2 percent stems from the phased-in use of the Physician Practice Information Survey (PPIS) data, discussed further in the Changes to Relative Value Units section, and the remaining 5 percent is the CMS estimated impact of the new TCM codes.

In a statement after the final rule became available, the AAFP highlighted that the regulation "confirmed that - short of immediate Congressional action - Medicare payment for needed medical care services will be slashed by 26.5 percent. The 2013 schedule once again focuses a bright light on the dysfunctional sustainable growth rate formula on which Medicare payment is based. It re-emphasizes the imperative that Congress needs to permanently change the basis for calculating Medicare physician payment."

Access the AAFP's grassroots website (www.aafp.org/grassroots) today and tell your legislators how this cut will impact your practice and Medicare patients. More information on this important regulation is at the AAFP's dedicated Medicare physician fee schedule website and in the AAFP's summary of the final regulation.

4. MEDICAID RATES RISE TO MEDICARE LEVELS FOR PRIMARY CARE PHYSICIANS

On November 1, 2012, the Centers for Medicare & Medicaid Services (CMS) released the final regulation which implements Section 1202 of the *Affordable Care Act*. This section increases Medicaid payments for specified primary care services to Medicare levels for certain primary care physicians in 2013 and 2014. In a statement released November 1, the AAFP welcomed the final regulation since bringing Medicaid payments up to par with Medicare for primary care and some preventive health services is a step in the right direction.

States will receive an estimated $5.8 billion in 2013 and $6.1 billion in 2014 in new federal funds to bolster their Medicaid primary care delivery systems. However, unless Congress acts to extend and fund this provision permanently, a sudden return to disparate and inadequate payment for primary care services needed by Medicaid patients after only two years will again threaten to restrict their access.

In early May 2012, CMS released the proposed version of this regulation, and in June, the AAFP reacted to the proposal by sending a formal regulatory comment letter. In it, the AAFP generally supported the CMS mechanism to administer this additional payment but disagreed with the agency's proposal to allow subspecialists to qualify, since the inclusion of sub-specialty physicians is not the intent of Section 1202 and would only serve to perpetuate existing disparities in physician payment policies.

In the final rule, CMS largely retained policies as proposed providing for higher payment in both the fee for service and managed care settings for specific primary care services furnished by:

- Practicing physicians who self-attest that they are board certified with a specialty designation of family medicine, general internal medicine and pediatric medicine, or

- Subspecialists related to those specialty categories as recognized by the American Board of Medical Specialties, American Osteopathic Association, or the American Board of Physician Specialties who also self-attest that they are board certified, or
- Physicians who self-attest that at least 60 percent of all Medicaid services they bill or provide in a managed care environment are for the specified Evaluation & Management (E&M) and vaccine administration codes.
- Advanced practice clinicians when the services are furnished under a physician's personal supervision.

The final rule requires state governments to take further action prior to March 31, 2013, to implement this provision. So that low-income, working families and others can immediately benefit from this important provision, the AAFP calls on states to act quickly once CMS issues an anticipated template for a state plan amendment.

In addition to the increases in Medicaid payments, this regulation also updates vaccine administration fee maximums that had not been updated since the Vaccines for Children (VFC) program was established in 1994. CMS will use the Medicare Economic Index (MEI) to update the maximums consistent with inflation.

More information on this important regulation is at the AAFP's dedicated website and in the AAFP's summary of the final regulation.

5. FamMedPAC CANDIDATES VICTORIOUS; FUNDRAISING SETS RECORD

FamMedPAC had a very successful election night, with 90% of supported candidates winning their election. The PAC helped many incumbents return for the next Congress and helped several first-time candidates as well. Notable among the first-time candidates are: Dennis Heck, (D-WA); Michelle Lujan Grisham (D-NM); Tammy Duckworth (D-IL); and Jared Huffman (D-CA). Three physician-candidates the PAC supported are in races too close to call and provisional, military and absentee ballots will determine the outcome: Dr. Ami Bera, (D-CA), Dr. Raul Ruiz (D-CA), and Dr. David Gill, (D-IL). Dr. Bera and Dr. Ruiz are currently leading in their races.

Donations to FamMedPAC set a record in the 2012 election cycle. AAFP member contributed almost $900,000 to the PAC so far, and, with two months left in the year, the PAC will come close to the $1 million goal. The new mechanism to allow members to check-off a PAC contribute on the AAFP dues statement is bringing in new donors and the direct marketing program continues to reach out to a select number of AAFP members.

Three original members of the FamMedPAC Board of Directors, Dr. Jim King, Dr. Michael Fleming and Dr. Dan Heinemann, are stepping down from the Board this year. All three have been invaluable members of the Board. They helped, put FamMedPAC on the path to becoming the largest and most influential healthcare PAC in the country.

Four new members of the PAC Board start their terms on December 1: Dr. Ellen Brull, Dr. Jason Dees, Dr. Dennis Salisbury and Dr. Hugh Taylor. With the resignation of Dr. Wanda Filer, when she was elected to the AAFP Board of Directors, the PAC Board had four vacancies.

6. AAFP MEMBERS URGE CONGRESS TO PREVENT MEDICARE CUTS

In early November, the AAFP issued a Speak Out alert urging Congress to stop both the SGR and sequester cuts. In response, 626 AAFP members have sent 1924 letters or emails to their legislators.

7. AAFP RESPONDS TO SENATOR ON PRESCRIPTION DRUG ABUSE

In early October, Senator John Rockefeller (D-WV) requested information about the steps that the AAFP has taken to educate members about the prescription drug epidemic and recommendation for addressing this challenge, Dr. Glen Stream, AAFP Board Chair, sent a reply and included a copy of our recent paper "Pain Management and Opioid Abuse: A Public Health Concern."

8. AAFP'S 2012 STATE LEGISLATIVE CONFERENCE

On November 2-3, the AAFP's State Legislative Conference convened at the historic Peabody Hotel in Memphis, Tennessee. The conference opening speaker, David Wasserman, from the Cook Political Report, gave attendees incredibly accurate predictions on the state of federal and state elections. After Wasserman, came the Medicaid Expansion panel and the presentation of Leadership in State Governmental Advocacy award winners. In addition, panels included one very popular discussion on preventing pharmaceutical abuse and another on the Tennessee Health Insurance Exchange. Keynote lunch speaker Dr. Vivek Murthy from Doctors for America talked to attendees about joining together from both sides of the political aisle to push for prevention and wellness in their practices and in their advocacy. The day closed with a panel on aging and two breakout sessions on transforming primary care practices to patient centered medical homes and working with the media to promote advocacy efforts.

9. STATE LOCAL ELECTIONS SHOW CHANGE

On election day, 6,034 state lawmakers were chosen for various local offices. A map of the political landscape shows that overall, state governments have shifted slightly to the Democratic party, tempering the Republican sweep in mid-term election 2010. Twelve state legislatures switched party control, while Democrats increased their majorities from 15 to 19 legislatures. However, Republicans remain in control of both chambers in 26 states, and control is split between parties in three states -- the fewest since 1944. New governors were elected in eleven states. Twenty states now have Democratic governors, 29 have Republican governors and one governor is Independent. New Hampshire made history when it elected an all-female Congressional delegation along with a female governor. On the ballot measure front, voters decided on 174 ballot measures, including approving same-sex marriage and legalizing marijuana for medicinal and recreational use.

10. AAFP SENDS COMMENTS TO THE FDA ON DRUG SAFETY AND RISK MANAGEMENT

In a letter sent October 10, the AAFP wrote in advance to a late October meeting of the FDA's Drug Safety and Risk Management Advisory Committee. Included in the letter was a copy of the AAFP's position paper "Pain Management and Opioid Abuse: A Public Health Concern" which outlines our recommendations concerning the use of opioid analgesics for pain control.

11. AAFP SUPPORTS ADMINISTRATIVE SIMPLIFICATION PROVISIONS

In a letter sent October 4 to the Centers for Medicare & Medicaid Services, the AAFP expressed support for the agency's implementation of administrative simplification provisions called for in the *Affordable Care Act*. In particular, this letter focused on the adoption of operating rules for healthcare electronic funds transfers and remittance advice transactions. Specific to this rule, the AAFP was pleased that CMS is adopting these two standards since the use of these standards will modernize and enable meaningful electronic communications between health plans, financial institutions, and family physician practices.

12. REGULATORY BRIEFS

- The Department of Veterans Affairs recently released a toolkit designed to help health care providers treat veterans for mental health concerns.
- On October 11, HHS announced that $229.4 million was invested in the National Health Service Corps "to support more doctors and nurses and increase access to primary

care." These investments included nearly 4,600 loan repayment and scholarship awards to clinicians and students, and grants to 32 states to support state loan repayment programs.

- Beginning November 1, 2012, CMS re-opened the Quality Reporting Communication Support Page which allows individual physicians and CMS-selected group practices the opportunity to request a significant hardship exemption for the 2013 eRx payment adjustment. Significant hardship request should be submitted via the Quality Reporting Communication Support Page (Communication Support Page) on or between November 1, 2012 and January 31, 2013.
- In partnership with Medscape, CMS recently released highlighted articles regarding preventive care.
    - Preventive Services for Children: Getting the Message to Parents and Caregivers
    - Preventive Care, Private Health Plans, and Your Practice
    - Preventive Services for Adults: Are Your Patients Taking Advantage of These Benefits?