GOVERNMENT AFFAIRS WEEKLY

AAFP Division of Government Relations — 2021 Massachusetts Avenue, NW — Washington, DC 20036

April 20, 2012

IN THIS REPORT…

NEXT WEEK IN WASHINGTON…

* April 25 - Senate HELP Committee is scheduled to debate *FDA Safety and Innovation Act*.

* April 26 - House Education and Workforce Committee hearing with HHS Secretary on FY 2013 budget.

1. WAYS & MEANS PANEL MOVES BILLS TO CUT HEALTH SPENDING

On April 18, the House Ways and Means Committee approved several draft reconciliation bills to make $53 billion in spending cuts over 10 years as required by the House-adopted fiscal 2013 budget resolution (H Con Res 112). The first measure, approved by voice vote, would require the recapture of overpayments from federally subsidized health insurance cutting an estimated $44 billion from the *Affordable Care Act's* insurance exchange subsidies. The Committee also approved, by a vote of 22 to 14, a measure to repeal the Social Services Block Grant which funds a number of state-based child and adult health care programs.

Also on April 18, he House Judiciary Committee began consideration of a budget reconciliation measure designed to achieve $39 billion in savings by reforming the medical liability system as called for in HR 5, the medical malpractice bill the House passed earlier this year. According to the Congressional Budget Office that bill would save the federal government $41 billion over 10 years. After the initial discussion, the Committee recessed without completing action on the reconciliation draft.

2. SENATORS HOST DISCUSSION OF FDA ROLE IN PHARMACEUTICAL ABUSE

On April 16, AAFP staff met with health staff to Senators Bob Casey (D-PA) and Lamar Alexander (R-TN) to discuss FDA's role in addressing prescription drug abuse. The Senators are looking for potential gaps in the FDA's authorizing legislation which might be enhanced in the reauthorization process. Sen. Casey, who is working to build a consensus to support amending FDA's authorization, wants to make sure the federal government provides sufficient support to the state agencies that monitor prescriptions for controlled drugs.

3. AAFP AND CMS LEADERSHIP DISCUSS MEDICARE PHYSICIAN PAYMENTS

On Monday April 2, Dr. Stream, Dr. Henley, and AAFP staff met with CMS Deputy Administrator Jonathan Blum to discuss the AAFP's March 12 letter which contains short term payment recommendations for inclusion in the proposed 2013 Medicare physician fee schedule (MPFS). AAFP continues to work with the agency on this important issue and the proposed 2013 MPFS is expected to be released around July.

4. CMS ANNOUNCED COMPREHENSIVE PRIMARY CARE INITIATIVE MARKETS

On April 11, CMS announced the selected seven geographic markets that will participate in the four-year demonstration project. These are:

- Statewide in Arkansas, Colorado, New Jersey, and Oregon.
- New York: Capital District-Hudson Valley Region, which consists of 12 county region encompassing the counties of Albany, Columbia, Duchess, Greene, Orange, Putnam, Rensselaer, Rockland, Schenectady, Sullivan, Ulster, and Westchester.
- Ohio: Cincinnati-Dayton Region, which consists of a 14 county region in southwest Ohio encompassing the counties of Adams, Brown, Butler, Champaign, Clark, Clermont, Clinton, Greene, Hamilton, Highland, Miami, Montgomery, Preble, and Warren.
- Oklahoma: Greater Tulsa, which consists of 25 county region encompassing the counties of Adair, Atoka, Cherokee, Craig, Creek, Delaware, Hughes, Lincoln, Mayes, McIntosh, Muskogee, Noble, Nowata, Okfuskee, Okmulgee, Osage, Pawnee, Payne, Pittsburg, Pushmataha, Rogers, Sequoyah, Tulsa, Wagoner, and Washington.

Following the CMS announcement, the AAFP's CPCI website announced a May 10 webinar entitled, "CPCI Selected Markets: Preparing your Practice for Participation."

5. AAFP URGES CMS TO FIX NURSE DEMONSTRATION FOR PRIMARY CARE

In a letter sent April 4, the AAFP urged CMS to select only Graduate Nurse Education Demonstration participants that exclusively produce advanced practice registered nurses (APRNs) that deliver primary care services. According to CMS demonstration materials, this effort is intended to "increase the base of primary care providers" and "provide APRNs with the clinical skills necessary to provide primary care, preventive care, transitional care, chronic care management, and other services appropriate for Medicare beneficiaries."

To truly structure the Graduate Nurse Education demonstration program so that it meaningfully addresses the current shortage of primary care providers, the AAFP urged CMS to:

- Specify that demonstration participants train APRNs as part of a healthcare team inclusive of physicians and in the context of a patient-centered medical home.
- State that demonstration funds are exclusively allocated to train APRNs dedicated to providing primary care services upon graduation and at least for the following five years.
- Require the five chosen demonstration participants focus on a true primary care curriculum.
- Exclude Certified Registered Nurse Anesthetists, Clinical Nurse Specialists, and Nurse Midwives, since the training they receive and the services they provide are unrelated to the delivery of comprehensive primary care services.

6. COMMENT LETTER SENT ON PROPOSED OVERPAYMENTS REGULATION

The AAFP submitted a formal comment letter to CMS on April 11 regarding the proposed "Reporting and Returning of Overpayments" regulation. As called for in the *Affordable Care Act* and once finalized, CMS will require physicians who receive an overpayment to report and return the overpayment to CMS, the state, or other relevant contractor along with a written explanation of the reason for the overpayment within 60 days. Failure to comply potentially exposes physicians and others to *False Claims Act* lawsuits, civil monetary penalties, and further oversight from Medicare and Medicaid contractors.

In the response, the AAFP recognized that CMS must strive to protect the Medicare trust fund but expressed serious concerns that the proposal confuses the occasional overpayments made by a CMS contractor with malicious or fraudulent activities on the part of Medicare providers and suppliers. The AAFP offered critical feedback including opposing the:

- Ambiguous definition of the term "identification" as it relates to the 60-day compliance time frame.
- Unfunded requirement which could force practices to perpetually self-audit.
- Unrealistic financial burden assumptions used by CMS.
- Agency's decision to impose this requirement only on Parts A and B when the *Affordable Care Act* subjects this to all Medicare programs.
- Manner in which the agency did not address how other CMS program integrity efforts would interact with this new requirement.
- Proposed 10-year look back period.

In addition to the AAFP letter, the AAFP also participated in a coalition letter organized by the AMA and sent to CMS on April 16.

7. AAFP URGES CMS TO SYNCHRONIZE PAYMENT DEADLINES

In a coalition letter sent to CMS on March 28, national and state medical associations expressed concern over the impending storm that would occur due to simultaneous implementation of the value-based modifier, penalties under the electronic prescribing (e-prescribing) program, Physician Quality Reporting System and Electronic Health Record incentive program, along with the transition to ICD-10. The letter urged CMS to use its discretion to develop solutions for synchronizing these programs to minimize burdens to physician practices and to propose these solutions in the physician fee schedule proposed rule for calendar year 2013.

8. REGULATORY BRIEFS:

- On March 22, CMS in partnership with Medscape posted a new and free CME module which provides information about healthcare delivery system reform efforts.
- On March 30, CMS released the 2010 Physician Quality Reporting System (PQRS) and eRx Experience report. It indicates that the 2010 PQRS payments totaled $391,635,495. Approximately 26 percent (268,968) of eligible physicians and other professionals participated in the 2010 PQRS, of which 72 percent (193,666) earned the incentives. Payments for the 2010 eRx incentive program totaled $270,895,540. The CMS report states that 19 percent of physicians and eligible professionals participated in the 2010 eRx program, of which 63 percent earned the incentive. CMS indicates that physician specialties with the highest participation rate were cardiology (35.4 percent), ophthalmology (33.8 percent), and rheumatology (31.7 percent). CMS also stated that, "Emergency physicians, family practitioners, internists and anesthesiologists had the largest numbers of participants in the PQRS across all individual options. Internists and

family practitioners were the most numerous participants in claims-based measures groups and registry submission options under the PQRS."

- On April 2, CMS allocated nearly $46.5 million for the 2012 funding for the 54 State Health Insurance Counseling Programs, which help people with Medicare get more information about their health benefits and choices.
- On April 3, HHS announced an updated plan for collaborating with Canada and Mexico on pandemic flu preparedness and response. According to HHS, the countries will collaborate on actions such as surveillance and early warning systems for disease outbreaks and epidemiological investigations of animal and pandemic flu viruses. The plan also calls for protecting critical infrastructure in a public health emergency and lays the ground work for mutual assistance during a response.
- On April 9, HHS announced a proposed rule that establishes a unique health plan identifier, which has the potential to save health care providers and health plans up to $4.6 billion over the next ten years. The proposed rule also delays required compliance by one year (from Oct. 1, 2013, to Oct. 1, 2014) for use of ICD-10 codes. HHS urges covered entities to use this time to prepare and fully test their systems to ensure a smooth and coordinated transition to these new code sets.
- On April 10, CMS announced 27 Accountable Care Organizations (ACOs) have entered into agreements with the agency and will serve an estimated 375,000 Medicare beneficiaries in 18 states. This brings the total number of organizations participating in the Medicare Shared Savings initiatives to 65, including the 32 Pioneer Model ACOs that were announced in December and the 6 Physician Group Practice Transition Demonstration organizations that started in January 2011. In all, as of April 1, more than 1.1 million beneficiaries are receiving care from providers participating in Medicare shared savings initiatives. CMS announced that five ACOs are participating in the Advance Payment ACO Model beginning April 1. This model provides advance payment of expected shared savings to rural and physician-based ACOs that would benefit from additional start-up resources. These five entities are Coastal Carolina Quality Care, Inc (New Bern, NC), Jackson Purchase Medical Associates, PSC (Paducah, KY), North Country ACO (Littleton, NH), Primary Partners, LLC (Clermont, FL), and RGV ACO Health Providers, LLC (Donna, TX). Organizations participating in the Advance Payment Model beginning July 1, 2012 will be announced in coming months.
- CMS recently reopened the Quality Reporting Communication Support Page to allow physicians the opportunity to request a significant hardship exemption for the 2013 Electronic Prescribing (eRx) payment adjustment. CMS will accept hardship exemption requests through June 30, 2012. CMS recommends their educational article for further details. Read a related *AAFP News Now* article.

9. CHAPTERS' GOVERNMENTAL ADVOCACY ACTIVITIES:

- On April 18, the Mississippi Legislature sent HB 317, a workforce bill that is a top priority of the **Mississippi AFP**, to Governor Phil Bryant (R). The bill aims to establish the Office of Mississippi Physician Workforce. The University of Mississippi Medical Center will house the office, whose responsibilities will include overseeing development of the state's physician workforce. The bill has a strong family medicine focus, reflected in the requirement that the office develop and implement policies and procedures for creating new family medicine residency programs. At a time when other bills seeking new funding are dying, the Legislature approved the measure with over $1.5 million in funding.

- On April 6, the Kansas Supreme Court reversed a lower court decision that temporarily exempted some private clubs from the statewide public smoking ban. The decision reverses a Shawnee County District Court decision that had permitted smoking in 31 private clubs in the state while a lawsuit challenging the constitutionality of the smoking

ban was considered. When legislators first drafted the smoking ban bill in 2009, they exempted private clubs licensed before January 1, 2009. But the ban didn't become law until July 2010. Clubs licensed after the 2009 grandfather date but before the new law became effective cried foul, saying they were being treated unfairly. In addition to certain private clubs exempted by the ban's grandfather clause, the current law exempts gaming floors of state-licensed casinos, smoke shops, a certain percentage of hotel rooms and designated spaces in nursing homes. [From Kansas Health Institute] The **Kansas AFP** strongly supported the Clean Indoor Air Act and won the AAFP 2010 Leadership in State Government Advocacy Award for its efforts.

- On April 13, the **Iowa AFP** renewed its grassroots push in support of its priority legislation, House File 2389, a bill to establish a primary care physician loan repayment program. The bill establishes a forgivable loan program for medical students who agree to practice primary care and underserved areas for four years. The most recent alert through Speak Out generated 44 messages to Iowa senators, as of April 19th.

- On April 19, the **Colorado AFP** asked family physician constituents of members of the Colorado Senate Health and Human Services Committee to contact their senators in support of legislation to modernize peer review and promote patient safety. The bill in question, HB 12-1300, is languishing in committee, despite being passed unanimously by the Colorado House. The legislation has bipartisan support and the backing of a coalition including organized medicine, organized nursing, hospitals and health plans.

  The only things standing in the way of the bill's passage are the legislative calendar and the trial lawyers. The legislature is set to adjourn on May 9. And the trail lawyers are aiming to weaken the bill to their advantage through the amendment process, despite its widespread support in the health care community.

- On April 19, Mayor Greg Ballard (R) signed Proposal 136, a new ordinance, championed by the **Indiana AFP**, expanding the city's clean indoor air law to include bars, bowling alleys, hotel rooms, nursing homes and long-term care facilities. Also banned under the new ordinance are electronic cigarettes. The number of workplaces allowing smoking will decline under the new ordinance from 370 to fewer than 60. The remaining exemptions are for tobacco shops, nonprofit private clubs, veterans' halls (if their members vote to allow smoking) and the downtown gambling facility. Mayor Ballard vetoed an earlier version of a clean indoor air expansion in February. The IN AFP was a founding member of the Smoke Free Indy coalition and provided leadership throughout the process of getting the original and expansion ordinances approved. Proposal 136 goes into effect on June 1.