

August 28, 2014

IN THIS SPECIAL REGULATORY REPORT...

1. AAFP Sends Comments to CMS on 2015 Proposed Medicare Physician Fee Schedule
2. Family Physicians Petition FDA to Regulate E-cigarettes and Other Nicotine Products
3. AAFP Joins Coalition in Letter to FDA on the Marketing of Tobacco Products
4. President Signs VA Reform Legislation into Law
5. Regulatory Briefs

NEXT WEEK IN WASHINGTON...

* The Congress is in recess until September 8.

1. AAFP COMMENTS ON 2015 PROPOSED MEDICARE PHYSICIAN FEE SCHEDULE

On August 26, the AAFP sent detailed [comments](#) to the Centers for Medicare & Medicaid Services (CMS) in response to the [2015 proposed Medicare Physician Fee Schedule](#).

In the response, the AAFP noted with appreciation that CMS proposes short-term payment strategies that recognize primary care and care coordination as critical components in achieving better care for individuals and reduced expenditure growth. However, the AAFP expressed concern that fee schedule includes an estimated 20.9 percent reduction to the conversion factor based on the sustainable growth rate (SGR), the statutory formula used to determine Medicare physician payments, unless Congress intervenes before March 31, 2015. The AAFP encouraged CMS and Congress to work together and avert this devastating cut and replace it with a formula that includes better payment for primary care.

To improve the final 2015 Medicare physician fee schedule rule, in summary the AAFP:

- Urged CMS to create separate primary care E/M codes for office or other outpatient services to new and established patients with correspondingly higher relative value. Primary care E/M codes merit higher relative values since the complexity of the services that primary care physicians must fit into the time available for the typical patient visit is sufficiently distinct.
- Thanked CMS for asserting that Chronic Care Management (CCM) services for beneficiaries with multiple chronic conditions are not adequately reflected in the existing evaluation and management codes. However, the AAFP expressed several concerns with the fee-for-service approach and urged CMS to move quickly and create a risk-adjusted, per-patient per-month (PPPM) care management fee. In addition, the AAFP urged CMS to consider phasing in the required use of an electronic care plan.
- Advocated for bringing more equity in payment across sites of service and encouraged CMS to create incentives for services to be performed in the least costly location. Typically this would be a physician's office compared to the more costly settings, such as the inpatient, outpatient, or ambulatory surgical centers.

- Acknowledged with appreciation CMS' efforts to identify and review potentially misvalued codes. However, the AAFP also discussed concerns that more can be done to ensure that Medicare is paying appropriately for primary care physician services.
- Supported CMS' proposals to improve the valuation and coding of the global surgical package by transforming all 10- and 90-day global codes to 0-day global codes beginning in 2017.
- Fully supported the CMS' proposal to add codes to the list of covered Medicare telehealth services.
- Supported additional transparency and comment opportunity in the valuation of physician services.
- Strongly disagreed with the CMS proposal to delete the "Continuing Education Exclusion" as it relates to the Open Payment/Sunshine Act program.
- Supported the Physician Compare concept though also advised CMS to ensure that what CMS publishes is actually useful to consumers.
- Supported efforts to align measures across quality programs but noted reservations with CMS's proposal to add two cross-cutting measures.
- Appreciated that CMS is holding harmless solo and small group practice physicians in the quality-tiering process since 2017 will be the first year they are subject to the value-based modifier.

2. AAFP MEMBER PETITION SENT TO FDA ON TOBACCO PRODUCT AUTHORITY

In a [letter](#) sent to the Food and Drug Administration (FDA) on August 4, the AAFP presented a petition from practicing over 400 family physicians and others who expressed support for the FDA's assertion of authority over all nicotine-delivery devices. The petition also indicated that tobacco and nicotine products should not be sold to anyone under the age of 18 and urged the FDA to promulgate promptly a final rule and begin in earnest to regulate the manufacture, distribution and safety of e-cigarettes and other nicotine-delivery devices. This AAFP member petition was based on and referenced the AAFP's comment [letter](#) that was sent June 2.

3. DETAILED COALITION LETTER SENT TO FDA ON TOBACCO PRODUCT AUTHORITY

Prepared by the Campaign for Tobacco-Free Kids, the AAFP and other organizations representing over 500,000 healthcare and public health professionals sent a detailed 84-page comment [letter](#) to the FDA on August 8. It also expressed support of the FDA's assertion of authority over all nicotine-delivery devices and discusses the marketing of tobacco products.

4. PRESIDENT SIGNS VA REFORM BILL INTO LAW

On August 7, President Obama signed into law a reform bill giving the Department of Veterans Affairs the necessary resources to improve access and quality of care for the men and women who have served our country. The *Veterans Access, Choice, and Accountability Act* (HR 3230) passed both chambers of Congress in late July. It will allow eligible veterans, who cannot get an appointment at the Veterans Health Administration within 30 days to seek care outside the VA. Family physicians who participate in Medicare will be eligible to execute provider agreements with the VA to help alleviate the backlog. Upon Congressional passage the AAFP released a [statement](#) in support.

5. REGULATORY BRIEFS

- On August 7 HHS [released](#) data indicating more physicians and hospitals are using EHRs than before.
- On August 8 CMS [released](#) statistics showing that enrollment in Medicaid and the Children's Health Insurance Program grew with an additional 602,210 people signing up in June.

- On August 11, CMS added pelvic exams to list of approved stand-alone preventive services for Rural Health Clinics.
- On August 13, the VA [announced](#) expanded access to primary care services through the addition VA's Patient-Centered Community Care (PC3) contracts.
- On August 15, CMS issued [guidance](#) related to the training, certification, and recertification requirements for Navigators, non-Navigator assistance personnel, and certified application counselors (CAC) in Federally-facilitated and State Partnership Marketplace consumer assistance programs. This guidance will help assisters understand the requirements for certification and recertification so they can continue to assist consumers now, as appropriate, and be prepared to assist consumers for the upcoming Open Enrollment period.
- On August 22, the DEA [issued](#) a final rule imposing stricter regulatory controls and sanctions on people who handle or propose to handle hydrocodone combination products (HCP), drugs that contain hydrocodone and specified amounts of other substances. Effective in 45 days, the rule moves HCPs from Schedule III to Schedule II
- On August 22, the Administration [announced](#) two rules related to contraceptive services. The rules, which are in response to recent court decisions attempt to balance a commitment to helping ensure women have continued access to coverage for preventive services important to their health, with the Administration's goal of respecting religious rights.
- On August 26 HRSA [awarded](#) over \$35 million to support patient-centered medical homes in 147 health centers. These awards will support 21 new construction projects and 126 alteration and renovation projects.
- CMS will host the following free educational call, [registration](#) is required:
 - PQRS: How to Avoid 2016 Negative Payment Adjustments for CMS Medicare Quality Reporting Programs on September 17 at 1:30pm ET.