GOVERNMENT AFFAIRS WEEKLY

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NEXT WEEK IN WASHINGTON…

* The Medicare Payment Advisory Commission meets March 6 - 7, 2014.

1. COST OF REPEALING SGR HAS FALLEN

The Congressional Budget Office has issued a revised estimate for the cost of the *SGR Repeal and Medicare Provider Payment Modernization Act* (HR 4015/S 2000), bipartisan, bicameral compromise measure to replace how Medicare pays physicians. In its new estimate, it would cost $138.4 billion for 2014 through 2024. The bill represents the final agreement among three committees — Senate Finance, House Energy and Commerce and House Ways and Means — and has the backing of the AAFP, the AMA and the other physician groups. Lawmakers have only one month before the current "doc fix" patch expires and physicians face a 24-percent cut in their Medicare payment rates beginning April 1.

2. THE AAFP LAUNCHES GRASSROOTS CAMPAIGN TO SUPPORT SGR REPEAL BILL

The AAFP activated a grassroots campaign this week in support of *The SGR Repeal and Medicare Provider Payment Modernization Act* (HR 4015/S 2000), bipartisan legislation that would replace the flawed Medicare physician payment formula and encourage movement towards new models of healthcare delivery, including the patient centered medical home. On Tuesday, February 25, an alert was emailed to active AAFP members asking them to contact their Senators and Representatives to urge their legislators to co-sponsor the bill. The AAFP Products and Services program included the campaign in an email sent to all members. As of February 28, 332 AAFP members sent 1020 messages to Congress.

Please click this link to visit the campaign site and to send a message to your Senators and Representative: Support SGR Repeal

Following the Grassroots launch, on Wednesday, February 26, 49 chapters and the AAFP sent a letter in support of HR 4015/S 2000 to all House and Senate legislative offices.

3. SUBCOMMITTTEE HOLDS HEARING ON COUNTERFEIT DRUGS

On Thursday, February 27, the House Energy and Commerce Subcommittee on Oversight and Investigations held a hearing on the public health threat of counterfeit drugs. The subcommittee invited witnesses from the Food and Drug Administration (FDA), Immigration and Customs Enforcement (ICE), U.S. Government Accountability Office (GAO), Pfizer, Novartis Corporation, Eli Lilly and Pew Charitable Trusts. The subcommittee is attempting to identify how to strengthen U.S. efforts to combat the growing threat of counterfeit drugs to U.S. patients.

Individuals buying pharmaceuticals on the Internet are one target of counterfeiters. Rep. Diana DeGette (D-CO) said that her constituents believe that if they are purchasing their medications through the Internet those drugs must be safe. These counterfeit drug companies spend time and energy making the drugs they are selling resemble the real drug. The drug and the packaging are identical, and if someone orders it on the Internet, it is impossible for the consumer to be confident of the quality. As more and more people turn to discount operations, this will continue to be a serious problem for patients.

4. SENATE COMMITTEE APPROVES VIVEK MURTHY AS SURGEON GENERAL

The Senate Health, Education, Labor and Pensions (HELP) Committee on Thursday, February 27, advanced the nomination of Dr. Vivek Murthy for U.S. surgeon general. The panel backed the nomination in a 13-9 vote, with Senator Mark Kirk (R-IL) siding with Democrats in support of Dr. Murthy.

5. HEALTH INSURANCE MARKETPLACE ENROLLMENT UPDATE

Enrollment in health insurance exchanges continues to increase as the March 31 deadline approaches. On February 25, 2014, Marilyn Travenner of CMS announced that approximately 4 million people have signed up for private insurance through the exchanges. These 4 million enrollees come from the state, partnership, and federal exchanges. These numbers are in addition to the people who have been enrolled through the Medicaid public program.

6. HOUSE COMMITTEE ADVANCES PUBLIC HEALTH BILLS

The House Energy and Commerce Committee Subcommittee on Health on Thursday, February 27, passed by voice vote three health-related bills:

- *Newborn Screening Saves Lives Reauthorization Act* (HR 1281) introduced by Rep. Lucille Roybal-Allard (D-CA), would continue federal activities that assist states in improving their newborn screening programs, supporting parent and provider newborn screening education, and ensuring laboratory quality and surveillance. In addition, the bill would continue research at the National Institutes of Health on newborn screening.
- *Improving Trauma Care Act* (HR 3548) introduced by Rep. Bill Johnson (R-OH), would amend the *Public Health Service Act* to improve the definition of trauma by including injuries caused by thermal, electrical, chemical, or radioactive force. These injuries are commonly treated by burn centers.
- *Trauma Systems and Regionalization of Emergency Care Reauthorization Act* (HR 4080) introduced by Reps. Michael C. Burgess, MD (R-TX) and Gene Greene (D-TX), would reauthorize planning grants for state and rural trauma care systems.

7. FamMedPAC SUPPORTS SENATE CANDIDATE, CONGRESSIONAL LEADERS

FamMedPAC made contributions this week to a Senate candidate and several important leaders in the House and Senate. Conversations at these Washington, D.C. events focused on the proposed legislative fix to the Medicare physician fee schedule as well as the continued need to support primary care physicians as more Americans gain insurance coverage under the *Affordable Care Act*. The PAC supported these candidates and legislators this week:

- **Governor Mike Rounds (R-SD)**, who is running for the Republican nomination for the open Senate seat in South Dakota. Governor Rounds has a strong interest in rural health issues, as well as the Indian Health Service and understands the importance of family physicians in the health care delivery system.
- **Sen. Ron Wyden (D-OR)**, who is the new chair of the Senate Finance Committee. AAFP President-elect Dr. Bob Wergin attended a lunch for Sen. Wyden in Washington, D.C. Sen. Wyden is a strong supporter of family medicine issues.
- **Sen. Pat Roberts (R-KS)** is the senior Republican on the Health Subcommittee of the Senate Finance Committee
- **Sen. Susan Collins (R-ME)** serves on the Senate Appropriations Committee.
- **Rep. Andy Harris, MD (R-MD)** is an anesthesiologist and a member of the Republican Doctors Caucus.
- **Rep. Xavier Becerra (D-CA)** chairs the House Democratic Caucus and is a member of the Ways and Means Committee.
- **Rep. Steny Hoyer (D-MD)** is the Minority Whip of the House.

8. AAFP OPPOSES CHANGES TO MEDICARE PART D FORMULARY

In a February 26 letter to the Centers for Medicare & Medicaid Services, the AAFP expressed strong concerns with unnecessary changes to Medicare's prescription drug program that CMS includes in the proposed rule, entitled ~~"M~~Medicare Program; Contract Year 2015 Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs." The AAFP objected to upending successful formulary protections in place since 2005 for the Medicare Part D program by eliminating antidepressants and antipsychotics from the protected classification in 2015. The AAFP's prescribing policy opposes any actions that limit patients' access to physician-prescribed pharmaceuticals. In the comment letter to CMS, the AAFP also objected to requiring physicians who write prescriptions for covered Part D drugs to be enrolled in Medicare for their prescriptions to be covered under Part D. The AAFP argued that prescribing authority is already tied to the physician having a U.S. Drug Enforcement Administration (DEA) number. Since physicians must already establish a relationship with the federal government through the DEA to prescribe these drugs, the AAFP encouraged CMS to explore closer coordination with the DEA.

Directly related to this proposed regulation, a top CMS official on February 26 defended it at a House Energy and Commerce Health Subcommittee hearing. During the hearing, Rep. Joe Pitts (R-PA), who chairs the subcommittee, said the CMS proposed rule would ~~"d~~ismantle the very features of the program that have made it so popular and successful." He and other Republicans questioned the proposed rule change. CMS Principal Deputy Administrator Jonathan Blum said that while he agreed the program is strong and successful, ~~"w~~e also see many vulnerabilities that can and should be addressed." He noted that the Congressional Budget Office projects that Part D costs will grow significantly faster than other parts of Medicare and will total about $70 billion this year. The proposed rule would save $1.3 billion from 2015-2019 according to the regulation.

9. AAFP RAISES CONCERNS WITH ICD-10 TRANSITION

In a February 25 letter to the U.S. Department of Health and Human Services (HHS), the AAFP raised concerns and suggested important recommendations regarding the upcoming deadline

requiring all physicians to transition to ICD-10-CM by October 1, 2014. The AAFP expressed deep concern that even for those practices that have made the transition; the system will fail due to a lack of appropriate education and end-to-end testing. Despite AAFP's ongoing educational efforts, the AAFP is becoming more convinced that tools and educational efforts are woefully inadequate and focused on hospitals and health systems rather than small and medium sized physician practices. The AAFP urged HHS to again delay implementation for at least an additional year. If a delay is not possible, the AAFP recommends CMS be required to offer end-to-end readiness testing each month for one week over the next 5 months (March to July). At the conclusion of these testing periods, CMS should publish the results of this testing that includes a confidence interval on the effectiveness of the system well ahead of October 1, 2014 implementation deadline. If that confidence interval is less than 95 percent, AAFP urges HHS to immediately delay implementation of ICD-10-CM for all physicians.

However, on Thursday, February 27, CMS Administrator Marilynn Tavenner, speaking at the HIMSS, insisted that the scheduled October 1 deadline providers face for installing the ICD-10 coding system will not be delayed again.

10. AAFP COMMENTS TO HHS ON 2015 DRAFT MARKETPLACE GUIDANCE

In a February 24 letter to CMS, the AAFP responded to the agency's –2015 draft letter to issuers in the federally facilitated marketplaces". The AAFP's comments focused on a section that states CMS is, "…considering whether to require through rulemaking that all plans, or at least one plan at each metal level per issuer, cover three primary care office visits prior to meeting any deductible. We encourage QHP issuers in the FFMs to cover three primary care office visits prior to meeting any deductible."

After expressing appreciation that CMS recognizes the value of primary care services, the AAFP's response urges CMS to require instead of only encourage the three primary care office visits. The AAFP's "Health Care for All" policy states that PCMH benefits should be available with no financial barriers.

11. IMMEDIATE CONCERNS OVER MEANINGFUL USE STAGE 2 EXPRESSED

In a letter sent February 21, the AAFP and other organizations representing physicians and hospitals wrote HHS to immediate concerns confronting our respective members' ability to comply with the Medicare and Medicaid Electronic Health Record (EHR) Incentive Program. The letter expressed fear that the success of the program is in jeopardy and recommended steps to be taken so that so that hospitals and eligible professionals can adopt the 2014 Edition of Certified Electronic Health Record Technology (CEHRT) and meet a higher threshold of Meaningful Use criteria and avoid significant penalties. Since only a fraction of 2011 Edition products are currently certified to 2014 Edition standards, the letter argued that it is clear the pace and scope of change has outstripped the ability of vendors to support providers. The letter said this inhibits the ability of providers to manage the transition to the 2014 Edition CEHRT and Stage 2 in a safe and orderly manner.

For these reasons, the letter strongly recommended that HHS:

- Extend the timelines providers have to implement 2014 Edition Certified EHR software and meet the Program requirements (Stages 1 and 2) through 2015;
- Add flexibility in Meaningful Use requirements to permit as many providers as possible to achieve success in the program.

12. AAFP SENDS CMS RESPONSE ON PROPOSED PLAN COMPLIANCE REGULATION

In a February 21 letter to CMS, the AAFP responded to the –Administrative Simplification: Certification of Compliance for Health Plans" proposed rule. It would require that controlling health plans (CHP) demonstrate compliance with the adopted standards and operating rules for

three electronic transactions: eligibility for a health plan, health care claim status, and health care electronic funds transfers and remittance advice. This proposed rule also would establish penalty fees for a CHP that fails to comply with certification requirements.

The AAFP supported the CMS proposals that outline requirements for plans to demonstrate they are in compliance with these three operating rules. The AAFP also supported the CMS proposals that stipulate penalties the plan(s) would incur for noncompliance. The AAFP appreciated that CMS encourages the development of a consistent testing process so that plans may better achieve and demonstrate compliance.

In closing remarks, the AAFP expressed the belief that administrative simplification represents an industry-wide commitment to reducing health care costs by strengthening the electronic exchange of data and by removing unnecessary burdens throughout the compliance, claims and billing processes.

13. AAFP AND OTHERS URGE COMPREHENSIVE TOBACCO CESSATION BENEFITS

In a February 19 letter, the AAFP and other physician and public health organizations wrote the Department of Health and Human Services (HHS) asking for HHS to clearly define a comprehensive tobacco cessation benefit in the Affordable Care Act coverage regulations or, at the very least, in corresponding guidance documents. This letter quoted the 50th anniversary Surgeon General's report, which found that smoking is even more hazardous and takes an even greater toll on the nation's health than previously reported.

14. AAFP JOINS EFFORT EXPRESSING CONCERN OVER MEDICARE APPEALS

In a February 12 letter, the AAFP and other physician organizations wrote the Chief Administrative Law Judge within the Office of Medicare Hearings and Appeals (OMHA) to express serious concern about the backlog of Medicare appeals and a notice by the OMHA that assignment of requests for Administrative Law Judge hearings may be delayed for up to 28 months. The letter strongly urged OMHA to develop a comprehensive solution to the Medicare appeal backlog problem so that appealed cases may be assigned and adjudicated without delay.

15. MEDICAID EXPANSION

- **Utah:** This week, Governor Gary Herbert (R) finally announced his rejection of the traditional Medicaid expansion model. He did, however, indicate that he will look into an option that would use federal dollars to cover low-income Utahans under private plans. As of his announcement, about 60,000 Utah residents fall within the "coverage gap" where they are not covered by Medicaid or eligible for federal subsidies to pay for private insurance in the state insurance marketplace. The Governor's proposed plan would set up a three-year pilot program, using about $250 million in federal money to buy private insurance to cover those who fall within the gap. His plan also includes a participant cost-sharing model in which participants would have co-pays, and those with slightly higher incomes would be required to direct up to 2 percent of their monthly incomes to paying for their insurance premiums.

- **Arkansas:** The state's House of Representatives delayed plans to vote for a fifth time on the so-called, "private option" to expand the state's Medicaid program. The current state's Medicaid program covers more than 93,000 people, and the expansion option under consideration by the state legislature would use federal funds to purchase private insurance for more low-income residents. Last week, the state Senate voted to reauthorize the current Medicaid program, but the expansion provision has been the stalemate for the legislation on the House side.

16. REGULATORY BRIEFS

- On February 18, CMS announced the agency will pause additional documentation requests by Recovery Audit Contractors (RAC) until new contracts are in place. The pause will begin February 21 for post-payment reviews and February 28 for pre-payment reviews.
- On February 21, CMS announced that, for the first time, five quality measures were added to the Physician Compare website that helps consumers search for information about hundreds of thousands of physicians and other health care professionals. In the first year of the website's operation, 66 group practices and 141 Accountable Care Organizations (ACO) have quality data publicly reported on Physician Compare. The data are reported at the group practice and ACO level. The provider ratings are displayed using stars, which are a graphical representation of performance on a measure. The actual percentage score is also listed to the right of the star display. CMS chose this system to make the information more usable and easy to scan for consumers.
- On February 21, CMS proposed a 3.55-percent cut in Medicare Advantage rates for 2015, which is roughly half of what private insurers expected.