GOVERNMENT AFFAIRS WEEKLY

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

July 8, 2016

IN THIS REPORT…

NEXT WEEK IN WASHINGTON…

* On Tuesday, July 12, the Senate Finance Committee will hold a hearing on current issues with the Stark laws.
* Also on Tuesday, the House Ways and Means Committee will hold a hearing on rising health insurance premiums.
* On Wednesday, July 13:
  - Senate Finance Committee will hold hearing on how to ensure the successful implementation of physician payment reforms
  - House Appropriations Committee meets to consider FY 2017 Labor, HHS, Education bill
  - Health Care Subcommittee of the Senate Finance Committee has scheduled a hearing on how Alzheimer's disease poses a looming problem for Medicare
  - Investigations Subcommittee of the Senate Homeland Security and Governmental Affairs Committee will hold a hearing on combatting opioid abuse

1. CMS ISSUES PROPOSED MEDICARE PHYSICIAN FEE SCHEDULE

On July 7, the Centers for Medicare & Medicaid Services (CMS) released the 2017 proposed Medicare physician fee schedule. Of particular significance to primary care physicians, CMS proposes increased payments for several care management services. Specifically, the regulation includes proposals to pay for:

- Non-face-to-face prolonged evaluation and management services
- Comprehensive assessment and care planning for patients with cognitive impairment
- Primary care practices to use interprofessional care management resources to treat behavioral health conditions
- Resource costs of furnishing visits to patients with mobility-related impairments
- Chronic care management (CCM) for patients with greater more complex conditions

In addition, CMS proposes to reduce the administrative burden associated with the CCM codes to eliminate potential barriers to furnishing and billing for these services. CMS also will revalue existing CPT codes describing face-to-face prolonged services.

For 2017, CMS estimates the conversion factor to be $35.7751, which is slightly lower than the 2016 conversion factor of $35.8043. However, compared to all other specialties, family physicians are projected to receive an estimated 3-percent increase in Medicare allowed charges based on the provisions of the propose rule. This increase is the largest estimated update for a specialty.

CMS also proposes to add several codes to the list of services eligible to be furnished via telehealth, including Advance Care Planning (ACP) services and critical care consultations furnished via telehealth using new Medicare G-codes.

The AAFP is currently analyzing the regulation, preparing a summary, and will provide detailed comments to CMS before the due date of September 6.

2. OPIOID ABUSE LEGISLATION PASSES THE HOUSE

The House voted 407-5 on Friday, July 8, to approve the *Comprehensive Addiction and Recovery Act* (S 524). This bill, which is a compromise between the House and Senate versions, contains a number of provisions that the AAFP supports. The bill includes, for example, the reauthorization of the *National All Schedules Prescription Electronic Reporting* (NASPER) *Act* which provides grants to states to establish, implement, and improve state-based prescription drug monitoring programs. The measure also authorizes the partial fill of Schedule II drugs to reduce the number of opioids being dispensed, and creates a state grant program to increase access to opioid reversal drugs.

However, the bill contains provisions of concern to the AAFP. For example, it would permit nurse practitioners and physician assistants who meet certain criteria to provide Medication-Assisted Treatment (MAT) in an office-based setting to as many as 30 patients in the first year and 100 patients after the first year.

The conference agreement also would allow prescription drug plans in Medicare, including Medicare Part D plans as well as standalone Medicare Advantage Prescription Drug Plans, to develop a safe prescribing and dispensing program for beneficiaries who are at risk of abuse or diversion of drugs that are frequently abused or diverted. The provision allows HHS to work with private drug plan sponsors to facilitate the creation and management of “lock-in” programs to curb identified fraud, abuse, and misuse of prescribed medications while at the same time ensuring that legitimate beneficiary access to needed medications is not impeded.

While the compromise bill that the House approved did not include an increase in the limit of patients for which a physician can provide MAT, the administration has created a waiver that will allow physicians to offer MAT to as many as 275 patients.

3. HOUSE SUBCOMMITTEE APPROVES HHS SPENDING BILL

On Thursday, July 7, the House Labor, Health and Human Services, Education Appropriations Subcommittee voted on party lines to advance the fiscal year 2017 spending bill that includes programs in HHS. The details of the draft bill will be available when the committee considers it next week. Despite years of threatening to eliminate the Agency for Healthcare Research and Quality (AHRQ), the House bill proposes only to cut it to $280 million from the FY 2016 level of $334 million. In comparison, the Senate’s bill (S 3040) would include $324 million for AHRQ.

The House draft proposes over $6 billion for the Health Resources and Services Administration (HRSA), a decrease of $218 million from the current level.

The draft bill includes $390 million in funding dedicated to the Zika response effort and another $300 million to create a new Infectious Diseases Rapid Response Reserve Fund, which will give the CDC quick access to funding to act in future disease outbreaks without waiting for supplemental funding. The separate emergency funding for Zika is still being negotiated.

Reps. Rosa DeLauro (D-CT) and Nita Lowey (D-NY) offered amendments to permit the Centers for Disease Control and Prevention (CDC) to support gun violence research, but those amendments failed on party-line votes. Rep. Lowey also offered an amendment to provide $300 million for Title X family planning grants, which were eliminated in the House measure; however, the Senate's bill would level-fund Title X at $286.5 million.

SAMHSA and CDC would receive more than $600 million for the opioids crisis.

The Senate Appropriations Committee approved its draft in a bipartisan 29-1 vote last month, and the House Committee is scheduled to finalize its version next week. However, it is likely that the final bill will not be completed until after the new fiscal year begins on October 1.

4. HOUSE APPROVES LONG-AWAITED MENTAL HEALTH REFORM BILL

On July 7, the House of Representatives approved the *Helping Families in Mental Health Crisis Act* (HR 2646) by a vote of 422-2. The bill aims to improve current mental health programs, reduce the mental health workforce shortages, promote greater coordination, and increase patient access. To do so, the *Helping Families in Mental Health Crisis Act*:

- Requires states to include primary care integration within its state plan for Community Based Mental Health Services grants
- Clarifies that nothing in the Medicaid statute should prevent the same-day billing of mental health and physical health services
- Requires HHS to clarify patient-privacy requirements of the Health Insurance Portability and Accountability Act to improve coordination between patients and physicians
- Organizes a stakeholders' review meeting to determine if regulations on sharing substance abuse records have affected patient care, privacy, and health outcomes
- Authorizes $9 million over 3 years for child and adolescent tele-psychiatry programs
- Provides $20 million over 5 years for early childhood mental health programs
- Makes child and adolescent psychiatrists eligible to participate in the National Health Service Corps

The Senate also has taken action. The Health, Education, Labor and Pensions Committee approved a companion bill titled, the *Mental Health Reform Act of 2016* (S 2680). Congress is expected to approve a final bill before the end of the year.

5. CMS SHORTENS MEANINGFUL USE REPORTING PERIOD TO 90 DAYS

On Wednesday, July 6, the Centers for Medicare & Medicaid Services (CMS) proposed a modification to the Medicare and Medicaid Electronic Health Record (EHR) Incentive Program, also known as "Meaningful Use." CMS proposed to shorten the reporting period in 2016 for returning participants—from the full calendar year to any continuous 90-day period. Although the 90-day period is only proposed at this point, it is highly likely that CMS will incorporate the change in the final version. Successfully attesting to Meaningful Use in 2016 will allow family physicians and other EPs to avoid a 3-percent negative Medicare payment adjustment in 2018.

6. SENATE PANEL QUESTIONS PROPOSAL TO CURB DRUG COSTS

On Tuesday, June 28, the Senate Finance Committee held a hearing to examine CMS' proposed Medicare Part B Drug demonstration. Legislators expressed concerns about a CMS proposal to modify the payment system for Part B (physician-administered) drugs. Committee Chairman Sen. Orrin Hatch (R-UT) noted that although the proposal is styled as a demonstration, it is mandatory and nationwide in scope. The senior Democratic member, Sen. Ron Wyden (D-OR), concerned about the potential of the demonstration to disrupt patient access to care, also noted that Medicare spending on these drugs has grown from $9.4 billion in 2005 to $22 billion in 2015. Sen. Rob Portman (R-OH) worried that the proposal could exacerbate the national crisis of overprescribing opioids to manage chronic pain.

7. AAFP SUPPORTS BILL TO CLARIFY SUNSHINE ACT RESTRICTIIONS

The AAFP signed a June 29 letter to Senator John Barrasso (R-WY) expressing strong support for the *Protect Continuing Physician Education and Patient Care Act* (S. 2978). This bill would protect the dissemination of independent peer-reviewed journals, medical textbooks, and independent continuing medical education from CMS Open Payment (aka Sunshine Act) reporting requirements.

8. FamMedPAC SUPPORTS MEMBERS, CHALLENGER CANDIDATE

FamMedPAC supported several legislators this week, as well as one former Senator seeking to regain his seat in 2016.

- **Sen. Bob Casey (D-PA)** is a member of both the Senate Finance Committee and the Senate HELP Committee.
- **Rep. Cathy McMorris Rodgers (R-WA)**, a member of the Health Subcommittee of the House Energy and Commerce Committee, chairs the Republican House Conference.
- **Rep. Andy Harris, MD (R-MD)** is a physician who serves on the House Appropriations Subcommittee on Labor, HHS and Education.
- **Russ Feingold (D-WI)** is running against the Senator who defeated him in 2010.

9. KENTUCKY GOVERNOR UNVEILS CONSERVATIVE MEDICAID EXPANSION WAIVER

Kentucky Governor Matt Bevin (R) promised to dismantle the state's Medicaid expansion program and he has now released his plan, Kentucky HEALTH (Helping to Engage and Achieve Long Term Health). The Section 1115 waiver modifies the state's Medicaid expansion program by adding a high-deductible account (funded by the state) to existing capitated managed care coverage, imposing premiums on a sliding scale based on family income, ranging from $1-$15, and requiring Medicaid premium assistance to purchase cost-effective employer sponsored insurance. The waiver would also require up to 20 hours per month of employment activities as a condition of eligibility for most adults. Additionally, it would prohibit beneficiaries who do not renew Medicaid eligibility on time from re-enrolling in coverage for six months. The Kentucky HEALTH proposal estimates $2.2 billion in savings over five years. The proposal is open to public comment through July 22, after which it will be submitted to CMS for approval.

10. TENNCARE EXPANSION DETAILS RELEASED

Tennessee's 3-Star Healthy Task Force, appointed to propose a method for catching Tennesseans in a health care coverage gap, has issued their proposal which would expand TennCare. The proposal would expand Medicaid to individuals with incomes up to 138 percent of federal poverty level in two stages: first to military veterans and individuals with mental illness or substance abuse disorders; then to all individuals. The program features an employment, training and education component. Medicaid beneficiaries would receive additional credits in their health savings accounts for participating in training and education programs or working.

11. TELL THE VA TO KEEP PHYSICIAN-LED HEALTHCARE TEAMS.
The Department of Veterans Affairs recently published a proposed rule which would allow full practice authority for advanced practice registered nurses (APRNs) practicing in VA facilities, without regard for state practice acts. Next week, the AAFP will send a letter opposing these changes and will launch a SpeakOut campaign for members to submit comments to the VA.

12. REGULATORY BRIEF

- On June 24, CMS issued the a proposed rule pertaining to payment policies and rates under the End-Stage Renal Disease (ESRD) Prospective Payment System (PPS) for renal dialysis services furnished to beneficiaries on or after January 1, 2017.
- On June 29, HHS announced the selection of nearly 200 physician group practices and 17 health insurance companies to participate in the Oncology Care Model which includes more than 3,200 oncologists and will cover approximately 155,000 Medicare beneficiaries nationwide. The Oncology Care Model began on July 1, 2016 and will run through June 30, 2021.
- On June 30, CMS posted the Open Payments data for program year 2015, along with newly submitted and updated 2013 and 2014 records. Open Payments (aka the "Sunshine Act") is a national program providing data on the financial relationships between pharmaceutical and medical companies and health care providers. In 2015, health care industry manufacturers reported $7.52 billion in payments and ownership and investment interests to physicians and teaching hospitals.
- On July 1, CMS issued a final rule that allows organizations to be approved as qualified entities to share or sell non-public analyses of Medicare and non- Medicare claims data to authorized users.
- On July 1, CMS posted a list of qualified provider-led entities (PLEs) to the CMS Appropriate Use Criteria website
- On July 6, the VA released a statement on the Commission on Care final report.