

June 6, 2008

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1. SENATE IS SLATED TO BEGIN WORK ON PHYSICIAN PAYMENT

Next week, the Senate will likely begin debate on legislation to prevent the pending 10.6 percent reduction in the Medicare physician payment rate. Unless Congress acts, the formula that determines how much Medicare pays physicians will impose this reduction beginning on July 1, with an additional 5 percent reduction scheduled for January 1, 2009.

Senator Max Baucus (D-MT), who chairs the Senate Finance Committee, has introduced legislation that will increase the update by 1.1 percent on July 1 and extend it through 2009. In addition, the bill would recognize primary care physicians for special attention by expanding and accelerating the Medical Home demonstration program in Medicare. In addition, his bill would limit the physician scarcity bonus payments to primary care physicians only who provide primary care services. The bill contains an increased bonus for reporting quality measures (2 percent, up from the current 1.5 percent) and includes a set of incentives for physicians to use electronic prescribing (coupled with a sliding scale of penalties for those who do not use e-prescribing). The bill that Sen. Baucus has introduced is cosponsored by Sen. Olympia Snowe (R-ME) and is supported by several other Republican senators.

In addition, Sen. Charles Grassley (R-IA), who is the senior Republican on the Finance Committee, has introduced competing legislation that includes many of the same provisions in the Baucus bill, but pays for them differently. The Grassley bill, which has no Democratic Senators as cosponsors, does not contain the primary care provisions of the Baucus bill and it does not increase the payment update to 1.1 percent until January 1, 2009.

The Baucus bill pays for the physician update by reducing the subsidies to Medicare Advantage private fee-for-service plans, which are paid 117 percent more on average than standard Medicare plans. In addition, both bills deal with duplicative payments for Indirect Medical Education that are paid to Medicare Advantage plans and to hospitals. While the Baucus bill reduces the payments to the insurance companies, the Grassley bill reduces the payments to the hospitals.

AAFP Position: While the AAFP has announced its appreciation to Sen. Grassley for his bill to remedy the pending reduction in Medicare payments, the AAFP supports Sen. Baucus's bipartisan bill that improves the payment rate more quickly and includes special recognition of primary care physicians.

2. HOUSE, SENATE PASS BUDGET, APPROPRIATIONS PROCESS SET TO START

The Senate adopted the final version of the fiscal 2009 budget resolution (S Con Res 70) on Wednesday, June 4 largely along party lines, by a vote of 48 to 45. The following day, the House passed the compromise budget on a partisan vote of 214 to 210. The budget resolution lays out aggregate revenue and spending targets. With House and Senate passage of the budget resolution, the annual appropriations process can begin.

The \$3.03 trillion budget resolution allows Congress to appropriate up to \$24.5 billion more than the \$991.6 billion President Bush requested. The Labor-HHS-Education Subcommittee is tentatively scheduled to meet on Thursday, June 19 to prepare the FY 2009 bill. The full Committee could vote on the Labor-HHS bill as early as Wednesday, June 25. The Senate Subcommittee is set to debate its version on June 26.

Despite this flurry of activity, it appears unlikely that Congress will send spending bills to the White House this year. President Bush has said that he would veto bills if Congress exceeds his request. As a result, Congressional Democrats will probably pass a Continuing Resolution that will fund the government agencies at the current level until a new president takes office.

3. FamMedPAC EVENTS FOCUS ON MEDICARE PAYMENT INCREASE

Government Relations staff attended physician community event for **House Minority Whip Roy Blunt (R-MO)**. AAFP discussed the status of Senate action on Medicare physician payment and expressed serious concerns about White House veto threat over Medicare private fee-for-service and IME cuts. The staff discussed the need to plan for the physician workforce.

Rep. Blunt said that House Republicans understood the problem of medical liability but could not bring the Senate along. He pointed to the tax extenders bill which included a tax benefit for trial lawyers with contingency case expenses as evidence that the Democrats see lawyers as a constituency more important to them than doctors.

Government Relations staff attended a physician community event for **Sen. Michael B. Enzi (R-WY)**, who is the senior Republican on the Health, Education, Labor and Pensions Committee. Sen. Enzi acknowledged that Committee's work will suffer from the absence of Senator Ted Kennedy (D-MA), who chairs the Committee, and noted that he has worked closely with Sen. Kennedy on key bills to enact policies which reflect the 80 percent on which they agree. Sen. Enzi described the Medicare physician payment bill as one on which the Senate was in at least 80 percent agreement but he could not say what will happen. He is hopeful that Senate leaders will finalize the Higher Education Act reauthorization and that the Conference Committee will approve the Senate's version of the mental health parity bill.

4. GRASSROOTS SPEAK OUT ON MEDICARE PHYSICIAN PAYMENT

On Thursday, June 5, the AAFP sent an action alert (<http://capitol.aafp.org>) to members urging them to contact their Senators to support Medicare legislation to be introduced by Senator Baucus. The bill would increase the Medicare payment rate to physicians 1.1 percent through 2009. So far, 625 AAFP members have sent 1,895 emails and letters to Congress.

On Friday, June 6, AAFP President Jim King, MD, sent an e-mail to all active members of the AAFP asking them to call their Senators before next Wednesday to convey their support for the

Baucus bill. The chapter presidents in more than a dozen states with a Republican Senator facing re-election this fall have sent e-mails to their members re-enforcing Dr. King's request.

Since February, just over 2,000 members have sent 6,987 messages on Medicare physician payment using Speak Out.

5. INSURANCE COMMISSIONERS LEARN ABOUT MEDICAL HOME

Carolyn Kakutani, MD, former president of the California Academy of Family Physicians and member of the Commission on Governmental Advocacy presented testimony to the National Association of Insurance Commissioners (NAIC) on the Patient Centered Medical Home (PCMH). The hearing on May 31 focused on finding solutions to the growing cost of health care providing regulators with a variety of viewpoints on how to effectively address this important public policy issue. "Much of the 'medical home' conversation before me was focused on chronic care management programs," said Dr. Kakutani. "I was able to present the PCMH model along with asking regulators to look at the Joint Principles and NCQA criteria when presented with insurer definitions of the medical home..."

This marks the first time NAIC has engaged the AAFP on health care issues. The NAIC represents insurance regulators from the 50 states, the District of Columbia and the five U.S. territories, providing a forum for the development of uniform policy when uniformity is appropriate.

6. HOUSE COMMITTEE EXAMINES HEALTH INFORMATION TECHNOLOGY

On June 4, the House Energy and Commerce Subcommittee on Health held a hearing on Health Information Technology and Privacy. The purpose of the hearing was to receive feedback on Committee Chairman John D. Dingell's (D-MI) bipartisan working draft. Witnesses included Jocelyn Elders, former US Surgeon General; Jamie Ferguson, representing Kaiser Permanente; Byron Thames, MD, a family physician representing AARP; Steven J. Stack, MD, representing the AMA; Deven McGraw, with the Health Privacy Project; Deborah Peel, Patient Privacy Rights; Frances Dare representing Cisco Systems; and Mark Reed with Verizon. AHRQ Director Carolyn Clancy testified separately during a second panel.

Dr. Stack indicated in his comments that the AMA supported the establishment in statute for a national coordinator for HIT; greater physician participation in this endeavor; and efforts to strengthen HIPAA. However, he noted that it was extremely difficult for physicians to embrace this technology on currently thin profit margins.

Subcommittee Chairman, Rep. Frank Pallone (D-NJ) stated that he was aware of the financial burden on physicians to establish HIT systems and Thames and Stack quickly agreed. Rep. Michael Burgess (R-TX), an obstetrician, and Rep. Nathan Deal (R-GA) indicated their concern that physicians who had been "early adopters" and had established HIT systems would not receive government grants. The Kaiser representative agreed that these physicians would need to be compensated in some fashion. Dr. Stack also stated that the value of HIT is in transparency, i.e., while we are not certain about the exact cost savings, we need to align incentives and not stifle market efforts. Finally, Rep. Charles Gonzalez (D-TX) stated his concern that physicians not purchase HIT systems that would be obsolete in one year.

According to subcommittee staff, Rep. Dingell would like to finish work on his draft legislation next Tuesday, June 10. The AAFP is in the process of submitting specific comments.

7. FTC HOLDS WORKSHOP ON CLINICAL INTEGRATION IN HEALTH CARE

The day-long public workshop hosted by the Federal Trade Commission (FTC) on Clinical Integration in Health Care on May 29 gave FTC an opportunity to reiterate their conviction that

fighting antitrust is needed to protect consumers. It was clear that the FTC sees physician collective negotiations and refusals to deal as price fixing and illegal. It is unlikely that FTC would be willing to allow physicians to negotiate collectively unless the physician group demonstrates that it does not “unreasonably restrain competition.”

FTC makes an exception for clinical integration to allow collaborations among otherwise independent health care providers to improve quality and contain costs. One of the workshop panels had success stories from representatives from health care provider groups who successfully integrated: Advocate Physician Partners of Chicago, the Greater Rochester Independent Practice Association (GRIPA), United Health Alliance of Bennington, Vermont and Partners Community HealthCare of Boston.

Douglas Emery, Operations Manager for Prometheus Payment Inc., indicated that 70 years of fee-for-service have fragmented health care and that we must add clinical metrics. Emery announced that they have a Robert Wood Johnson Foundation grant for the development of a system designed to reimburse providers based on the quality and efficiency of care.

The panel on research into clinical integration agreed that the evidence on the benefit is thin. Evidence does exist to support physicians practicing at only one hospital rather than several, but the panel could not point to research that clinical integration can contain costs, improve patient access or enhance quality. Harvard Associate Professor of Medicine, Bruce Landon, MD, MBA, MSc, called the term clinical integration “attorney jargon -- not medical speak” and called for getting away from the toxic payment system we have now.

The final panel offered perspectives from antitrust attorneys. A few key comments follow:

- Doctors should set standards for clinical integration – not the FTC. So go ahead and integrate, but ask yourself, is this just a fad? Will it justify the expense and will we be willing to fire the outliers?
- Further “clarification” or new law in this arena will only muddy the waters.
- There is plenty of guidance for physicians who wish to integrate.
- The FTC should be more transparent about how they assess market power.
- Some clinical integration efforts will not yield savings just as some mergers fail.

8. CMS VIOLATED MEDICAID RULE MORATORIUM, CONGRESS MAY RESTORE DELAY

Before Memorial Day, the U.S. District Court ruled that the Centers for Medicare and Medicaid Services (CMS) violated a congressionally imposed, one-year moratorium by attempting to issue the Medicaid Intergovernmental Transfers or IGT rule in final form on May 25, 2007, the same day President Bush signed the moratorium into law. The regulation, which would cut \$5 billion in funding to safety net hospitals, must now be re-issued by CMS.

Both chambers of Congress included a new moratorium on the IGT rule, the GME payment rule and five other CMS rules in the emergency war supplemental spending bill (H.R. 2642). Because the President has threatened to veto the supplemental, House leaders are working to trim it down.

It is likely that some of the Medicaid language would be retained in the final bill to be considered next week. Instead of delaying all seven rules, the bill might block four until April 2009. The four likely to be delayed are the IGT, the rule eliminating federal reimbursement for the salaries of resident doctors at hospitals (GME); the rule to end payments for busing Medicaid-eligible children to school and Medicaid services at schools; and federal rehabilitative therapy caps.

9. HUMAN GENOME RESEARCH INSTITUTE DIRECTOR RESIGNS

Francis S. Collins, M.D., Ph.D., founding director of the National Human Genome Research Institute at the National Institutes of Health (NIH), announced his resignation, effective Aug. 1, 2008. Dr. Collins joined the National Institutes of Health (NIH) in April 1993 to direct the National Center for Human Genome Research, which became an NIH Institute in June 1997. In his resignation statement, Dr. Collins said he plans to explore writing projects and other professional opportunities. Alan E. Guttmacher, M.D., the current deputy director of NHGRI, will be appointed acting director of NHGRI on Aug. 1.

10. COLORADO APPROVES BILLS TO EXPAND ACCESS AND COVERAGE

Colorado Gov. Bill Ritter (D) on Tuesday signed into law 11 health care bills, including measures to expand coverage requirements and increase children's access to care. One of the measures will expand eligibility for Child Health Plan Plus, the state's version of SCHIP, to include children in families with incomes up to 225 percent of the federal poverty level. The bill also will expand mental health benefits for children enrolled in the program. A companion bill also signed into law will remove administrative barriers to applying for Medicaid and Child's Health Plan Plus. The legislation will qualify an additional 50,000 uninsured children for the programs.