

December 17, 2010

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NEXT WEEK IN WASHINGTON...

* The 111th Congress is scheduled to adjourn this weekend or early next week. The 112th Congress is scheduled to convene on January 4.

1. CONGRESS MAY PUNT SPENDING DECISIONS INTO NEXT YEAR

The fiscal year 2011 Health and Human Services Appropriations bill that the Senate was to consider as part of the omnibus fell victim to fierce partisan bickering this week. Senate Republicans refused to permit passage of the \$1.1 trillion omnibus spending bill. As a result, it is likely that the House and Senate will pass another short-term spending bill to prevent a government shut down after the current stopgap funding measure (PL 111-290) expires this Saturday, December 18.

The failed omnibus had sought to provide an additional \$224 million over the fiscal year 2010 level to expand health training programs including an increase of nearly \$44 million above the FY 2010 level of \$38.9 million, for primary care training activities under Title VII, Section 747 for a total of \$82.5 million in FY 2011. It also included \$3 million to fund the National Health Care Workforce Commission as authorized by section 5101 of the *Affordable Care Act*.

2. AAFP URGES CMS TO PROCESS RETROACTIVE MEDICARE PAYMENTS

In a December 10 letter, AAFP in partnership with 107 other state and national associations urged the Centers for Medicare & Medicaid Services (CMS) to immediately reimburse physicians for six payment policy changes that affect 2010 Medicare claims. Required by provisions in the *Affordable Care Act* (ACA) as well as technical corrections made to the final 2010 physician fee schedule, these changes are retroactive back to Jan. 1, 2010 and include:

- Extending the 1.0 work geographic practice cost index (GPCI) floor that expired on December 31, 2009;
- Raising the practice expense GPCIs in low cost areas by reflecting only half the geographic wage and rent cost differences in their calculation;
- Extending the 5 percent add-on payment for specified psychiatry services;
- Increasing payments for bone density tests;
- Extending the therapy cap exception that expired on April 1; and

- Extending a provision allowing independent labs to bill for the technical component of physician pathology services.

3. COMMENTS SENT REGARDING MEDICAID RECOVERY AUDIT CONTRACTORS

AAFP sent formal comments to the Centers for Medicare & Medicaid Services (CMS) regarding the *Medicaid Program; Recovery Audit Contractors (RACs); Proposed Rule*. As required by the *Affordable Care Act*, states must enter into contracts with RACs in 2011 to identify improper payments made through the Medicaid program and recoup overpayments. In the letter, we offered several suggestions but strongly emphasized that the RACs must not review the level of service billed for Evaluation and Management Services and that equal emphasis must be applied to the discovery of underpayments as that applied to overpayments.

4. KANSAS CHAPTER TO LEAD MEDICAL HOME INITIATIVE

The **Kansas Academy of Family Physicians** announced the creation of a patient-centered medical home initiative that will help primary care practices implement the concepts of the PCMH. The three-year project, known as the [Kansas Patient Centered Medical Home Initiative](#), will provide education and information about the medical home model of care, with the goal of encouraging primary care physician practices to move toward adopting the PCMH model as a way to improve clinical outcomes and collectively the health of entire populations of patients. Eight practices will participate in the initiative's pilot project, which is scheduled to begin in mid-2011. The Kansas AAFP will lead the initiative, with assistance from the Kansas Primary Care Coalition, which played a key role in developing 2008 legislation that defined the medical home in the state. The Kansas Health Foundation, the Sunflower Foundation and the United Methodist Health Ministry Fund are awarding grants totaling \$534,576 to implement the initiative. TransforMED will provide technical assistance.

5. COURT RULES LOUISIANA MALPRACTICE CAPS AS UNCONSTITUTIONAL

A Louisiana appeals court [ruled](#) that the state's limit on medical malpractice awards for non-economic damages is unconstitutional, joining Georgia and Illinois whose courts issued similar rulings in the past year. The Louisiana Medical Malpractice Act capped the damages awarded to \$500,000, which the court overruled, allowing the plaintiff to collect \$6.2 million for the severe injuries of a young girl incurred after receiving treatment by a nurse practitioner with a high school education. Although the NP had a statutory duty to consult a physician, the patient never saw a physician during any of her 32 visits in one year. Current state statutes require nurse practitioners to obtain a baccalaureate of science and an MS in nursing but the defendant was included under the grandfathered exception.