

June 18, 2010

## IN THIS REPORT...

1. Senate Fails to Prevent Medicare Physician Pay Cut
2. HHS Announces Patient Safety and Medical Liability Demonstration Projects
3. Preventive Health Council Formed
4. House Republicans Force Vote on Repealing Health Care Law's Individual Mandate
5. Federal Trade Commission to Hold Medical Antitrust Workshop
6. HHS Commits \$250 Million To Primary Care Workforce Development
7. FamMedPAC Brings AAFP Message to Legislators Active in Health Reform
8. Health Care in Several States Affected by Fiscal Issues
9. Maryland Enacts Six Health Care Bills
10. New Hampshire Gets Ready for Federal Health Reform

### NEXT WEEK IN WASHINGTON...

- \* The House is expected to vote on a six-month SGR patch.
- \* On Wednesday, June 23, the Subcommittee on Domestic Policy of the House Oversight and Government Reform Committee will hold a hearing on the Medical Treatment Options for Drug Addiction.

## 1. THE SENATE PASSES SGR BILL, BUT IT IS TOO LATE FOR THE HOUSE

The Senate failed three times this week to close debate on a bill that extended several tax provisions, Unemployment Insurance payments, higher federal Medicaid matching payments to the states, and a temporary payment update for the Medicare physician payment schedule. Then, on Friday, June 18, Senators Max Baucus (D-MT) and Charles Grassley (R-IA) cobbled together a separate bill dealing only with the SGR that would increase the Medicare payment update for six months. The *Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act* (HR 3962) would provide for a 2.2 percent increase in Medicare physician reimbursements through November 30, 2010. The Senate approved passage of the bill by unanimous consent on Friday, June 18. However, the House will not vote until late on Tuesday.

Getting to this agreement was tortuous. On Wednesday, June 16, a motion to cut off debate on a substitute amendment to the House-passed version of the *American Jobs and Closing Tax Loopholes Act* (HR 4213) was defeated on a bipartisan vote of 45-52. That amendment would have afforded a 19-month reprieve from the scheduled Medicare payment cuts by providing a 2.2 percent update for the remainder of 2010 and an additional 1.0 percent update in 2011. On Thursday, June 17 the Senate failed to get the necessary 60 votes to invoke cloture to vote on HR 4213, the whole tax extenders bill, which included the 6-month update of 2.2 percent. The vote was 56-40, with the Republicans joined by Senators Ben Nelson (D-NE) and Joe Lieberman (ID-CT) voting against cloture on the bill.

Because action on temporarily repairing the payment formula came so late, CMS announced that it had ordered its agents to begin paying physicians for services billed after June 1 at the rate reduced by 21.3 percent. Payment at this rate will continue until the House passes the Senate bill and it is signed into law. Because the law is retroactive, after it is signed, CMS will direct its Medicare carriers to pay automatically the difference between the new 2.2 percent increased update and the 21.3 percent reduced rate. Physicians will not have to resubmit claims.

## **2. HHS ANNOUNCES PATIENT SAFETY AND MEDICAL LIABILITY DEMONSTRATIONS**

On Friday, June 11, the Agency for Healthcare Research and Quality (AHRQ) announced grants to support efforts by states and by health systems focused on reducing medical liability costs. The grants are part of the patient safety and medical liability initiative that President Obama announced during a September 9, 2009, address to a joint session of Congress. The HHS Patient Safety and Medical Liability initiative is funded at \$25 million, with \$23 million allocated to grants and \$2 million set aside to evaluate the initiative.

The reforms that are being planned and tested under this initiative address patient safety and the limitations of the current medical liability system—such as costs and administrative burden for doctors. Grants support the creation of a judge-directed negotiation program, the development of "safe harbors" for state-endorsed evidence-based care guidelines, and early disclosure and offers of prompt compensation. The evaluation is designed to develop the evidence base that will inform long-term solutions to increasing medical liability costs.

## **3. THE PRESIDENT FORMS PREVENTION COUNCIL**

President Obama recently signed an executive order that creates a National Prevention, Health Promotion and Public Health Council, which is authorized in the new health reform law. The council will be comprised of Cabinet members and other administration officials.

The council is tasked with generating a national public health strategy that incorporates goals for improving the health of U.S. residents and will recommend strategies and deadlines for achieving the goals. In addition, the council will deliver annual reports on its progress across the next five years.

The executive order also creates an advisory committee for this Council that will consist of experts in preventive health and health promotion. The details of how this advisory committee will be created are pending.

## **4. HOUSE REPUBLICANS LOSE VOTE TO REPEAL HEALTH INSURANCE MANDATE**

On Tuesday, June 15, Ways and Means Committee Ranking Member, Rep. Dave Camp (R-MI) offered a proposal on the House floor to repeal the "individual mandate" requirement that most Americans buy health insurance or pay a penalty. The House rejected the proposal by a mostly party-line vote of 187 to 239.

## **5. FEDERAL TRADE COMMISSION TO HELP DOCS AVOID ANTITRUST VIOLATIONS**

On June 14 at the AMA annual meeting, Federal Trade Commission Chairman Jon Leibowitz announced a workshop to help doctors and hospitals collaborate on patient care without violating antitrust laws. The forum, which will be held later this year, is designed to alleviate the concerns among providers that the move toward integrated provider networks would land them in price-fixing trouble with federal regulators. The AAFP, which is actively involved with the AMA's Antitrust Work Group, will participate in the planned FTC workshop.

## 6. HHS COMMITS \$250 MILLION TO PRIMARY CARE WORKFORCE

On June 16, HHS Secretary Kathleen Sebelius announced that \$250 million in new funding provided by the *Affordable Care Act* will be made available to expand the primary workforce. The new funding – part of the Prevention and Public Health Fund – will help prepare the health system to meet the demand for health care workers in part by creating additional primary care residency slots and encouraging states to plan for and address health care workforce needs.

HHS also highlighted an expanded tax benefits to health professionals working in underserved areas. In addition to incentives provided by the Departments of Labor and Education to pursue a primary care profession, the Treasury Department is responsible for providing tax breaks for the value of student loans that were repaid or forgiven because the individual worked in certain health professions, including primary care. This provision is retroactive to 2009.

## 7. FAMMEDPAC IS RASING AAFP'S PROFILE

With the end of the Federal Election Commission reporting period approaching, FamMedPAC is keeping a high profile at Washington based fundraising events. Staff attended the following events this week:

- **Rep. Elliot Engel (D-NY)**, who serves on the Health Subcommittee of the House Energy and Commerce Committee. Rep. Engel spoke about the need to fix the Medicare payment formula and how he supported the House version, including the differential payment formula for primary care. He thanked AAFP for supporting the health reform legislation and said that his constituents seem to be coming around to the view that the new law will be an improvement over the current system
- **Rep. Steve Driehaus (D-OH)**, a supporter of the health reform legislation. Rep. Driehaus is in his first term and is facing a difficult re-election this cycle, in part because of his support of the health reform legislation. Rep. Driehaus expressed appreciation for AAFP's assistance and talked about his support for primary care.
- **The Tuesday Group**, a Republican political action committee that supports moderate Republican candidates for Congress. Members of the Tuesday Group had tried to reach across the aisle in the initial negotiations on health reform, and have generally been supportive of physician issues.
- **National Republican Congressional Committee**, which supports Republican candidates for the U.S. House. FamMedPAC gives to both the Democratic and Republican campaign committees and this event was for the 2010 renewal for the PAC's NRCC contribution. All the Republican House leadership attended, including Minority Leader John Boehner (OH), Conference Chair Mike Pence (IN), and NRCC Chair Pete Sessions (TX).
- **Rep. John Dingell (D-MI)**, who serves on the Health Subcommittee of the House Energy and Commerce Committee. Highlights of the comments made around the table included the cardiologists' opposition to cuts in payment; the neurologists' desire to receive the 10-percent primary care bonus since they are "really internists;" and the radiologists' concern about imaging cuts, the recent mammography guidelines, etc. AAFP staff and representatives of the Osteopaths spoke favorably of the health care law's implications for primary care. Dingell thanked everyone for their help on health care, said he expected a technical corrections bill at some point, and said that his priority was to make sure that the health care law worked properly. More generally, everyone spoke about the current Medicare payment debacle and Dingell said he understood the problem.
- **Sen. Mitch McConnell (KY)**, the Minority Leader in the Senate. Representatives in attendance included the Neurosurgeons, the Dentists, and the Emergency Physicians. Sen. McConnell felt that the piecemeal solution to the physician payment issue was going to continue for the foreseeable future and that the costs were going to make it

- **Rep. Chris Murphy (D-CT)**, who serves on the Health Subcommittee of the House Energy and Commerce Committee. Rep. Henry Waxman (D-CA), Chair of the Energy and Commerce Committee attended. Chairman Waxman said that right now, they are working on restoring some elements to the tax extenders bill, e.g, the enhanced federal share of Medicaid, and apologized to physicians for "breaking our promise to permanently fix the SGR." Later in the breakfast he said that there would be a lame duck session since the Medicare payment fix was to go only to the end of November. Rep. Murphy made very positive comments about primary care and staff thanked him for his work on the health care bill. He believes that many of the payment demos will lead inevitably to a greater focus on primary care in our health care system.
- **Rep. Kurt Schrader (D-OR)**, another supporter of health reform targeted for support by the FamMedPAC Board. Rep. Schrader knows several family physicians in his district and has heard that the impending Medicare cuts, if allowed to go through, will make it difficult for Medicare beneficiaries to find a physician. His district is very rural, and he knows that primary care doctors are facing difficult times. He favors the House's approach to the SGR fix.
- **Rep. Charlie Wilson (D-OH)**, who supported the health reform legislation and faces a difficult reelection. AAFP thanked the Congressman for his support for health reform and offered to have local family physicians attend his town hall meetings in the future. Rep. Wilson expressed his support for primary care and said he hoped the new law and its emphasis on primary care would encourage medical students to enter family practice. He was dismayed that the Senate was changing the Medicare payment "fix" that the House had passed and was not sure the House would be able to pass the Senate's changes before the cuts take effect.
- **Rep. Sander Levin (D-MI)**, who chairs the House Ways and Means Committee. He noted the difficulty in finding a way to get even a temporary fix to the physician payment formula through the Senate and encouraged physician groups to bring as much pressure to bear as possible on legislators to address the long-term problem of the SGR formula. He noted that the solution should include getting away from a strictly fee-for-service payment. He praised the idea of the physician-led patient-centered medical home and expressed hopes for the Accountable Care Organization model. In his view, Medicare needed to try any reasonable alternative that reduced incentives for volume and increased the incentives for quality.

## 8. STATES CONTINUE TO WORK OUT FISCAL ISSUES

After declaring a fiscal emergency, **Colorado** will delay Medicaid payments to physicians and clinics in the state. When the new fiscal year begins on July 9, the state will send \$38 million in payments to providers. The state is attempting to end the year with 2 percent, about \$132 million, of the total budget in reserve, a requirement the legislature recently lowered from 4 percent.

With a budget more than two months past due and a deficit of \$9.2 billion, **New York** Governor David Paterson (D) is pushing a series of emergency spending plans to fund bare-bones operations while legislators continue budget negotiations. Among the major provisions are cuts of \$72.2 million to state medical assistance programs and the elimination of \$37.4 million in subsidies for graduate medical education. Cuts to the state's Children's Health Insurance Program budget and lower reimbursements to hospitals that have high levels of preventable readmissions were also included. Separate from the budget, the Governor signed [program bill](#)

[no. 278](#), giving the state Insurance Department the authority to review health insurance premium hikes and prevent unnecessary increases.

**Minnesota** Governor Tim Pawlenty (R) and state lawmakers ended the 2010 legislative session by reducing health care and human services spending by \$292 million. This included a 7 percent cut to all Medicaid physician payments except rates for primary care services, a move that will save the state \$6 million in fiscal 2011. The state also reduced rates for Medicaid managed care and MinnesotaCare, a state health insurance program for low-income residents.

## **9. MARYLAND HEALTH CARE LEGISLATION ENACTED**

Governor Martin O'Malley (D) recently signed several health care bills into law, including:

- [HB 435](#) – requires health insurance carriers to pay a bonus to primary care providers for services provided during extended office hours.
- [HB 814](#) – prohibits health insurance carriers from increasing individual health plan premiums more frequently than once every 12 months.
- [HB 1375](#) – allows for the notification of individuals possibly eligible for state medical assistance based on an income tax return.
- [SB 314](#) – prohibits PPOs from refusing to honor an assignment of benefits to a health care provider and imposes billing, disclosure, and payment rate requirements for certain out-of-network providers.
- [SB 700](#) / [HB 1017](#) – requires insurers and nonprofit health service plans to provide, in their child wellness services, all visits for obesity evaluation and management and all visits for and costs of developmental screening.
- [SB 723](#) / [HB 1093](#) – authorizes insurers to enter into contracts with “clinically integrated organizations” to pay for the coordination of covered services and incentives to promote the efficient, medically appropriate delivery of medical services.

## **10. NEW HAMPSHIRE PASSES BILL TO IMPLEMENT FEDERAL HEALTH REFORM**

Governor John Lynch (D) currently is considering a measure ([SB 455](#)) authorizing the state's insurance commissioner to implement the insurance reforms required under the new federal health reform law. This includes establishing a high risk pool in the state, developing a mandatory standard wellness insurance plan, and revising the state's laws regarding dependent coverage. The Governor also recently signed [HB 1537](#), allowing primary care providers to provide preventive oral health services to children up to three years of age under the state Medicaid program.