GOVERNMENT AFFAIRS WEEKLY

AAFP Division of Government Relations — 2021 Massachusetts Avenue, NW — Washington, DC 20036

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IN THIS REPORT…

NEXT WEEK IN WASHINGTON…

* The House and Senate will be in recess for the Presidents' Day Work Period.
* Centers for Medicare & Medicaid Services will hold a free Q&A conference for physician and other providers on February 22 from 2pm -3pm EST, details are in the regulatory summary.

1. HOUSE DEBATES FUNDING FOR THE REST OF THE FISCAL YEAR

The GOP budget proposal for the rest of the current fiscal year, unveiled February 11, cuts discretionary spending for programs that were authorized to receive additional funding in the health reform law, including Titles VII and VIII, community health centers, the National Health Service Corps and the Maternal and Child Health Block Grant program. Community health centers would receive $1.29 billion less than President Obama's fiscal 2011 request, the corps $173.6 million less than requested, and the block grant program $61.1 million less than requested, Republican appropriators said. The proposal (HR 1) would cover the period from March 4, when the current stop-gap spending measure expires, to September 30, the end of the budget year. The House began debating and amending the CR on Tuesday, February 15 and is expected to continue to consider amendments today, Friday, February 18, and complete their work.

On February 15, Senate Appropriations Committee Chairman Sen. Daniel K. Inouye (D-HI) criticized the House's FY 2011 Continuing Resolution. Sen. Inouye described the "impact of HR 1 on the ability of the federal government to perform even some of its most basic functions is, in many instances, severe." The Senate is expected to take up the CR after next week's recess.

2. PRESIDENT RELEASES BUDGET FOR FY 2012

On Monday, February 7, the President released his administration's budget proposal for the federal fiscal year beginning on October 1, 2011. One of the most significant features in the President's proposal is $62.2 billion to hold off mandatory reductions to payment rates for

Medicare providers through the end of 2013. Preventing the rate cuts is a top priority for physician groups, and the current Medicare payment rate expires at the end of 2011.

More than half the price tag for the "doc fix" — $32.3 billion over 10 years — is expected to come from tracking fraud and waste. That includes $18.3 billion from restricting a practice by which states impose taxes on Medicaid providers, increase payments to those providers by equal amounts and then use that additional "spending" to increase their federal match. It also includes $6.1 billion from recovering erroneous payments to insurers in Medicare Advantage and $3.4 billion from requiring states to investigate excessively high rates of drug prescriptions or usage.

The fix would also be paid for with $12.8 billion from increasing the use of generic drugs. One proposal, opposed by the pharmaceutical industry, would change a provision in the health care overhaul that allows pharmaceutical companies to postpone sharing data on biologic drugs for 12 years. The president's budget says modifying the length of that period to facilitate the faster development of generic biologic drugs would save $2.3 billion over 10 years.

The FY 2012 budget proposes to increase Health Resources and Services Administration (HRSA) in FY 2012 to $9 billion, an increase of $977.5 million from FY 2010. Within HRSA's budget, the FY 2012 request for Title VII, Section 747, the Primary Care Training and Enhancement Program is $140 million, an increase of $101 million above the FY 2010 actual level. When asked why the Administration proposes to increase funding for family medicine training, the staff noted that the President is committed to better federal support for primary care and especially family medicine, since family doctors are essential for the health reform's efforts to increase access to quality health care.

The President's budget also proposes to "aggressively reform our medical malpractice system to reduce defensive medicine, promote patient safety, and improve patient outcomes." It has proposed providing $250 million in Justice Department grants to help states change their medical malpractice laws. A summary is attached of the budget proposals for programs of particular interest to AAFP.

3. HOUSE JUDICIARY COMMITTEE APPROVES MEDICAL LIABILITY REFORM BILL

By a party-line vote of 18 to 15, the House Judiciary Committee approved the *Help, Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act* (HR 5) to cap compensatory damages, set a statute of limitations for filing medical malpractice suits and limit attorneys' fees in health care lawsuits on February 16 after a lengthy and contentious debate. Committee Democrats unsuccessfully offered more than a dozen amendments to weaken the bill. However, the committee did adopt, by voice vote, an amendment offered by Rep. Robert C. Scott (D-VA) to eliminate a provision that would allow juries to hear evidence of "collateral source benefits," such as workers' compensation payments or long-term disability insurance payments. The amendment also struck a provision that would prohibit providers of collateral source benefits from recovering any amounts paid after a court award is made to the plaintiff. HR 5 was also referred to the Energy and Commerce Committee which is likely to consider the bill before the House of Representatives debates it.

4. WAYS & MEANS BACKS REPEALING 1099 TAX PROVISION

The House Ways and Means Committee on Thursday, February 17 approved two bills to repeal a controversial reporting requirement in the *Affordable Care Act*. The *Small Business Paperwork Mandate Elimination Act* (HR 4), passed by voice vote, seeks to repeal the 1099 business tax reporting provision contained in the overhaul without an offset. The C*omprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act* (HR 705) would repeal the reporting requirement for businesses as well as owners of rental real estate, and

would be offset by allowing the government to recapture overpayments to consumers receiving health insurance subsidies for the new health exchanges. It passed 24 to15.

5. HOUSE ENERGY & COMMERCE COMMITTEE PASSES ABORTION BILL

The House Energy and Commerce Committee on Tuesday, February 15 advanced the *Protect Life Act* (HR 358) to restrict access to abortion. Two Democratic members of the committee, Reps. Mike Ross (D-AR) and Jim Matheson (D-UT), joined all Republicans in supporting the measure. Although the *Affordable Care Act* requires plans which cover abortion and get federal funds to keep those funds segregated and further mandates that individuals use their own dollars to pay for abortion coverage, supporters of the bill say legislation is needed to ban the use of public funding for abortion save in cases of rape, incest or risks to the life of the woman.

6. COMMENT LETTER SENT ON VALUE-BASED INSURANCE DESIGN

On February 16, the AAFP sent a letter to the Employee Benefits Security Administration, the Center for Consumer Information and Insurance Oversight, and the Internal Revenue Service responding to their request for information regarding value-based insurance design in connection with preventive care. Though supportive of the elimination of cost-sharing for preventive health services, in the letter the AAFP expressed concern over unintended consequences of value-based insurance design since a sudden proliferation of efficiency-based networks could negatively impact an already strained primary care base and threaten the ability of family physicians to provide preventive services to their patients. In addition to addressing a specific question of the prescribing habit of physicians, the AAFP also urged language to be added that clearly states that value is not solely a function of costs.

7. LETTER SENT ON PATIENT SAFETY AND HEALTH INFORMATION TECHNOLOGY

On February 17, the AAFP sent a letter to the Institute of Medicine's Committee on Patient Safety and Health Information Technology in response to their consensus study regarding experiences with health information technology. In the letter, the AAFP expressed support for the use of electronic health record systems, and cited several features that, if properly integrated into the practice, can lead to improvements patient safety. However, the AAFP also recommended the committee study and seek to remove current activities, such as excessive documentation requirements, that are only included to satisfy burdensome and unnecessary billing and coding requirements.

8. MEDICAID RECOVERY AUDIT CONTRACTOR (RAC) WEBPAGE LAUNCHED

On February 16, the Centers for Medicare & Medicaid Services (CMS) posted a new webpage regarding the implementation status of state Medicaid Recovery Audit Contractor (RAC) programs, which must identify improper payments made through the Medicaid program and recoup overpayments. The AAFP sent related formal comments to CMS on December 16 regarding Medicaid RACs. In addition, AAFP joined 80 state and national medical organizations in a comment letter dated January 10, 2011.

9. RECOVERY AUDIT CONTRACTOR MEDICAL RECORD LIMITS RELEASED

The Centers for Medicare & Medicaid Services (CMS) on Monday, February 14, revised the limit of medical records that the Medicare Part B Recovery Audit Contractors may request within a 45-day period when reviewing claims for improper payments. The Medicare RACs will use these records to evaluate billing practices and medical necessity for physician services provided to Medicare patients.

For details, see the CMS notice but in summary the limits are:

Group/Office Size	*Maximum number of requests per 45 days*
50 or more	50 records
25-49	40 records
6-24	25 records
Less than 5	10 records

10. REGULATORY UPDATE

- The U.S. Department of Health and Human Services recently announced new resources for the media, consumer groups, states, and health care providers regarding the Pre-existing Condition Insurance Plan (PCIP), which is a temporary health plan for uninsured Americans with pre-existing conditions created by the *Affordable Care Act*. Access these new resources on PCIP.gov.
- The Centers of Medicare & Medicaid Services recently launched the Medicare Prescription Drug Benefit Dashboard BETA, an electronic tool that offers statistical views of Medicare Prescription Drug Event (PDE) data.
- On February 16, the Centers for Medicare & Medicaid Services issued a press release that relates to the effectiveness of Phase One of the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies competitive bidding program. First implemented on January 1, 2011 in nine different areas of the country, CMS sites that "through supplier competition, the program set new, lower payment rates for certain medical equipment and supplies, such as oxygen equipment, certain power wheelchairs and mail order diabetic supplies." CMS estimates that Medicare and beneficiaries will pay 32 percent less on average for these equipment and supplies.
- The Centers for Medicare & Medicaid Services will hold an outreach conference for physician, nurses and allied health professionals on Tuesday, February 22 from 2pm - 3pm EST. To participate dial 1-800-837-1935 Conference ID 36839807.
- The Centers for Medicare & Medicaid Services will conduct an outreach conference call on February 24 from 1:30-3:00pm EST titled, "Designing A Home Health Value-Based Purchasing Program." To participate, dial 1-800-837-1935 and reference conference 37941789.

11. FamMedPAC PARTICIPATES IN FIRST EVENTS OF 112TH CONGRESS

This week marked the start of the Congressional fundraising season for the 112th Congress. FamMedPAC participated in the following events:

- The physician organizations sponsored a reception for **Rep. Michael Burgess (R-TX)**, a physician and vice-chair of the House Energy and Commerce Health Subcommittee. Many of the specialty societies expressed their concern with the IPAB from the Affordable Care Act. Rep. Burgess would like to see it repealed. He is concerned about finding budget offsets required to repeal it. He is looking at different provisions of the *Affordable Care Act* to see which ones can be repealed, or, more likely, de-funded. On the SGR, Rep. Burgess said the good news is that there is a commitment from the Republican leadership to address the problem this year. The bad news is the cost and the need for offsets.
- The physician organization sponsored a reception for **Rep. Lloyd Doggett (D-TX)**, a member of the House Ways and Means Committee. Rep Doggett's daughter is a family physician and he is sensitive and friendly to family medicine's issues. There was a discussion of AAFP's suggestions for SGR reform and how workforce fortification is a priority. There was also a discussion of the AAFP's GME Modernization proposal.
- AAFP Board Chair Dr. Glen Stream attended a breakfast for the **Democratic Senatorial Campaign Committee**, the political committee for Senate Democrats. **Sen. Mark Udall (D-CO)** and **Sen. Chris Coons (D-DE)** were the featured speakers. The discussion

focused on the current budget battle in Congress, with both legislators saying that the Senate would not agree to the House Republican cuts, but would have to accept the reality that spending will have to be reduced.

- The physician community participated in a reception for the **Democratic Congressional Campaign Committee**, the political committee for House Democrats. **Rep. Frank Pallone (D-NJ)** the senior Democrat on the House Energy and Commerce Health Subcommittee, and **Rep. Pete Stark (D-CA)**, the senior Democrat on the House Ways and Means Health Subcommittee, were the featured guests. Rep. Stark emphasized that physicians should get paid fairly and the SGR should be fixed. Rep. Pallone cautioned that politics will relegate policy development to a secondary consideration in this Congress until the public sends Congress a strong message to get along.
- The physician organizations took part in a reception sponsored by the **National Republican Senatorial Committee**, the political committee for Senate Republicans. **Sen. John Cornyn (R-TX)**, **Sen. Jon Kyl (R-AZ)**, **Sen. Pat Roberts (R-KS)**, and **Sen. Richard Burr (R-NC)** were the featured guests. All emphasized that Republicans plan to try to modify or halt the *Affordable Care Act*. They admitted that they did not have a plan on how to attack the law, and asked the groups present to let them know what specific pieces of the law each group would like to see eliminated or modified. Both Sen. Kyl and Sen. Cornyn have bills to scrap the IPAB provision in the law. They said that, on most aspects of the ACA, the Senate will follow the path the House Republicans take. On the SGR, the Senators said that they feel that the debt created by the previous fixes should not have to be paid for in any final solution to the SGR problem.

12 STATE GOVERNMENT UPDATE

- **Georgia Chapter Has Record High Turn Out at Annual Capitol Event**
  Speaking to legislators about the state budget, tort reform, and other public health issues, over 115 physicians and medical students attended the annual Day at the Capitol event in Atlanta, Georgia on February 10. Joining the **Georgia Academy of Family Physicians** were internists, pediatricians, and ob-gyns to address common legislative priorities. Community Health Commissioner David Cook and Insurance Commissioner Ralph Hudgens also attended the event. Family physicians provided legislators with fact-sheets concerning the lack of funding for providers who accept Medicaid, declining rates of Georgia medical school graduates focusing on family medicine, and how private practice physician offices are significant economic engines.

- **Arizona Medicaid Cuts Not Stopped, but Not Approved Either**
  Arizona's plan to cut at least 250,000 people from its Medicaid program gained momentum since Kathleen Sebelius, the U.S. Health and Human Services Secretary, told Governor Jan Brewer (R) in a letter that the federal government cannot stop the state from making such cuts even though the federal *Patient Protection and Affordable Care Act* specifically bans states from reducing Medicaid enrollment. Secretary Sebelius noted an exemption that allows states to discontinue coverage for non-disabled and non-pregnant adults. However, Arizona voters – not the legislature – set the state's Medicaid enrollment rules in a 2000 ballot initiative, and the state's Constitution prevents lawmakers from changing or repealing voter-approved laws. Governor Brewer acknowledges that lawsuits are likely but says the state cannot continue providing health care to hundreds of thousands of people without the money to do so.

- **HHS Awards Early Innovator Grants for States to Create Exchanges**
  The U.S. Department of Health and Human Services announced the award of seven cooperative agreements to help a group of “Early Innovator” states design and implement the information technology infrastructure needed to operate health insurance

exchanges. “Early Innovator states will play a critical role in developing a consumer-friendly marketplace where insurers must compete to deliver the best deal,” said HHS Secretary Kathleen Sebelius. “These grants ensure that consumers in every state will be able to easily navigate their way through health insurance options.” Starting in 2014, exchanges will help individuals and small employers shop for, select, and enroll in affordable private health plans. All Early Innovator states will develop technology that is reusable and transferable, ensuring that other states will have flexibility ind developing an exchange that best meets the needs of their unique health insurance markets without having to start from scratch. The Early Innovators are:

- **Kansas** Insurance Department, $31,537,465
- **Maryland** Dept of Health and Mental Hygiene, $6,227,454
- **Multi-State Consortia**: University of Massachusetts Medical School, $35,591,333
- **New York** Department of Health, $27,431,432
- **Oklahoma** Health Care Authority, $54,582,269
- **Oregon** Health Authority, $48,096,307
- **Wisconsin** Department of Health Services, $37,757,266

ATTACHMENT
HHS BUDGET SUMMARY

The President submitted his fiscal year 2012 budget request on Monday, February 14. The FY 2012 budget proposes $891.6 billion in outlays for HHS of which $79.9 billion is discretionary budget authority. The fiscal year 2011 continuing resolution (CR) expires on March 4, and the House is considering a CR for the rest of the fiscal year which cuts funds for implementation of the *Affordable Care Act* (ACA) as well as funds newly-authorized by the ACA. The Senate's FY 2011 CR is expected to be more generous to these important programs. Since there will be little time for reconciling these FY 2011 bills, Congress may enact another short-term CR.

MEDICARE PHYSICIAN PAYMENT

The President's budget includes savings proposals to offset the cost of two years of relief from cuts resulting from the Sustainable Growth Rate (SGR) formula, and a commitment to work with Congress to provide longer-term relief. The savings to offset the $62 billion cost of providing physicians two years of relief from scheduled payment cuts under the sustainable growth rate formula (SGR) include increased CMS program integrity activities such as the prepayment review of power wheelchairs, increased enforcement and penalties on drug manufactures for noncompliance with drug rebate agreements, recovery of some payments made to Medicare Advantage insurers and others.

HEALTH RESOURCES AND SERVICES ADMINISTRATION

The request for HRSA in FY 2012 is $9 billion, an increase of $977.5 million from FY 2010. The *Full Year Continuing Appropriations Act, 2011* (HR 1) calls for reducing HRSA to $5.3 billion.

Primary Care Training and Enhancement Program (Title VII, Section 747)

The FY 2012 discretionary request of $140 million is an increase of $101 million above the FY 2010 actual level. The request will support both new and continuation awards to eligible programs for primary care physicians and physician assistants. The *Affordable Care Act* requires grantees be supported for five years rather than the three called for in the prior statute. This budget supports several initiatives to strengthen primary care and innovation in primary care delivery. Three activities proposed to begin in 2012 focus on producing primary care providers. These investments when sustained over five years will produce an additional 2,500 physicians and PAs. These investments will also produce 100 primary care providers through Teaching Health Center Development Grants. The House CR provides $352.8 million for the Title VII and Title VIII programs. This funding level represents a $145 million (29.1 percent) cut below FY10, as the bill reverts to the FY08 level ($350 million).

Health Professions Training for Diversity

The FY 2012 request of $24.6 million is an increase of $52,000 above FY 2010. The request will support competitive grants and the designated health professions schools to facilitate faculty and student research on health issues particularly affecting under-represented minority groups, strengthen programs to enhance the academic performance of under-represented minority students attending the school, and promote faculty development in diversity and cultural competence.

National Health Service Corps

The FY 2012 request of $123.5 million is a reduction of $17.9 million from FY 2010. This request will fund 38 scholarship continuations, 149 new loan repayment awards and 2,093 loan repayment continuations. In addition, the *Affordable Care Act* has appropriated $295 million for the NHSC in FY 2012, which will fund 216 new scholarships and 2,872 new loan repayment awards. The total FY 2012 level for the NHSC will be $418.5 million, which will result in an overall reduction of $13.4

million from the FY 2011 level and an increase of $277 million from the FY 2010 level. The House CR (HR 1) seeks to cut the NHSC by $141.9 million.

Office of Rural Health
The FY 2012 request for the Office of Rural Health Policy of $124.2 million is a reduction of $60.7 million from FY 2010. It would terminate the earmarked Denali Commission and for the Delta Health Initiative. The budget proposes a Rural Training Track Technical Assistance Grant-New Program for Rural Physician Training Grants.

AGENCY FOR HEALTHCARE RESEARCH AND QUALITY
Base funding for AHRQ would decrease by 8 percent under the President's FY 2012 budget, from current level of $397 million to $366 million. However, a $24 million transfer from the Patient Centered Outcomes Research Institute (PCORI) authorized by the *Affordable Care Act* would bring the total FY 2012 budget to $390.4 million. Specifically:

- Patient-Centered Outcomes Research would receive $46 million—including the $24 million PCORI transfer—to support dissemination and build research capacity.
- Health Information Technology would receive $27 million with $14 million to support 46 research and training grants and $13 million in contracts to synthesize and disseminate evidence on meaningful use of health IT.
- Patient Safety would receive $65 million, more than half of which is targeted for projects that will prevent and reduce healthcare-associated infections.
- Prevention and Care Management would receive $23 million for research to improve primary care and clinical outcomes, support clinical decision-making for preventive services, and implement activities that improve care through health system redesign.
- Cross-cutting activities would receive $92 million. This funding will also support the National Healthcare Quality Report and the National Healthcare Disparities Report.
- The Medical Expenditure Panel Survey would receive level funding of $59 million.

The House would cut AHRQ from $397 million to $372 million in the current fiscal year.

CENTERS FOR DISEASE CONTROL & PREVENTION (CDC)
The FY 2012 budget request for the CDC and the Agency for Toxic Substances and Disease Registry is $11.3 billion, an increase of $371 million above FY 2010. This includes $753 million of the $1 billion available from the Prevention and Public Health Fund. The Budget request increases support for the prevention and control of infectious diseases; global polio eradication; the Strategic National Stockpile; injury and chronic disease prevention; and health surveillance and statistics. HR 1 seeks to reduce CDC funding by $850 million from the FY 2010 level.

NATIONAL INSTITUTES OF HEALTH
The budget includes $32.0 billion for the National Institutes of Health (NIH), an increased investment of $745 million over the FY 2010 enacted level. The House CR (HR 1) would cut NIH spending to the FY 2008 level saving $639.5 million from the FY 2010 level.