GOVERNMENT AFFAIRS WEEKLY

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

July 8, 2011

IN THIS REPORT…

1. 2012 Proposed Medicare Physician Fee Schedule Released
2. AAFP Calls for Transparency in Setting Medicaid Payments
3. Family Physicians Tell Congress That Primary Care Helps Health Care Costs
4. Medicare Issues Other 2012 Proposed Payment Regulations
5. Report Highlights American Obesity
6. FamMedPAC Supports Local Events This Week
7. Regulatory Briefs

NEXT WEEK IN WASHINGTON…

* The House Budget Committee has called HHS Secretary Sebelius to testify at a hearing about the Independent Payment Advisory Board (IPAB) on July 12. The Committee also will hold a hearing on entitlement programs with Medicare's chief actuary, Richard Foster, and Social Security's chief actuary, Stephen Gross, on July 13.
* The Senate Homeland Security and Governmental Affairs subcommittee on Federal Financial Management will hold a hearing on Waste and Fraud in Medicare and Medicaid on July 12.
* The House Energy and Commerce Committee will hold a hearing on IPAB on July 13.

1. 2012 PROPOSED MEDICARE PHYSICIAN FEE SCHEDULE RELEASED

On July 1, the Centers for Medicare & Medicaid Services (CMS) issued a proposed rule that would update payment policies and rates for physicians and non-physician practitioners for services paid under the Medicare Physician Fee Schedule (MPFS) in calendar year 2012. The AAFP prepared a summary of this regulation for members.

Key provisions of the proposed regulation include:

- An estimation that the statutory formula used to determine 2012 Medicare physician payments will result in a decrease of 29.5 percent, unless Congress acts to change it.
- A request that the AMA's Specialty Society Relative Value Update Committee (RUC) conduct a comprehensive review of all Evaluation & Management codes.
- A proposal to base both the 2015 PQRS payment penalty and the 2015 value-based modifier on performance in the 2013 calendar year.
- A discussion proposal requiring physicians specializing in internal medicine, family medicine, general practice, or cardiology, in addition to other Physician Quality Reporting System (PQRS) requirements, to report on at least one of seven proposed PQRS core measure that focus on cardiovascular conditions.
- A proposal to incorporate "health risk assessment" evaluation tools into Medicare Annual Wellness Visits.
- A plan to consolidate the formal 5-year review of work and practice expense relative value units (RVUs) with the annual review of potentially misvalued codes.
- The expiration of the work Geographic Practice Cost Indices "floor" at the end of 2011.

- A plan to add two smoking cessation codes to the list of approved Medicare telehealth services.
- The proposed elimination of the PQRS 6-month reporting period.
- A revised definition of "group practice" for PQRS purposes to be a single Tax Identification Number (TIN) with at least 25 eligible professionals, as identified by their individual National Provider Number (NPI), who have reassigned their Medicare billing rights to the TIN.

Comments on the proposed rule are due to CMS no later than August 30, 2011. The AAFP will analyze the proposed regulation extensively and submit a formal response to CMS. The agency is expected to release the final 2012 Medicare physician fee schedule in early November 2011.

2. AAFP COMMENTS ON TRANSPARENCY FOR MEDICAID PAYMENT

On July 5, the AAFP submitted comments to CMS regarding a proposed rule to bring greater transparency to how states set payment rates in Medicaid. CMS aims to create a consistent national approach to analyze and document how payment affects access to Medicaid services while allowing states to formulate their own processes, metrics, and approaches. This is an attempt to clarify the Medicaid statute requiring payment levels be adequate to ensure access to services; this provision has been at the center of several court cases over the years. CMS also seeks to modernize the public notice regulation to bring clarity to when and how states can and should notify the public of upcoming changes in Medicaid payment rates. AAFP voiced its support for the spirit of the proposal and suggested several criteria that may be most helpful in achieving the rule's goals. Additionally, the AAFP urged CMS to require states to notify the public of all Medicaid rate changes, as opposed to only nebulously defined "significant" changes, and also allow physicians and beneficiaries to provide states with feedback.

3. AAFP KEY CONTACTS SEND LETTERS TO CONGRESS

On July 7, Key Contacts were encouraged to reach out to their members of Congress in response to the bi-partisan debt ceiling talks currently taking place. The purpose of the letter is to make sure Congress understands that primary care saves money and that better investment in primary care will significantly restrain the growth of health care costs. We also wanted Congress to know that family physicians are dedicated to restoring economic prosperity by addressing the growing federal deficit, and can serve as a resource on primary care related issues. So far, 30 Congressional lawmakers have received the letter. The alert will be available until July 21.

Based on reports that the deficit-reduction negotiations may include reductions in Medicare funding for Graduate Medical Education (GME), the AAFP and the four academic family medicine organizations have written a letter to the President and Congressional leaders asking that any reductions in GME payments should be structured to preserve primary care training. The reason for preserving primary care is to restrain the growth in health care spending and to provide training for new models of care that will improve health outcomes at reduced costs. In addition to this letter, AAFP will ask targeted Key Contacts and chapters to reinforce the message with their legislators.

4. MEDICARE ISSUES OTHER 2012 PROPOSED PAYMENT REGULATIONS

On July 1 and on July 5, CMS released several proposed 2012 regulations that affect payment policies and rates for several healthcare providers. In summary, CMS is projecting that payment rates in 2012 to:

- Dialysis facilities will increase by 1.8 percent – CMS estimates that federal payments to ESRD facilities in 2012 will total $8.3 billion.

- Outpatient department's fee schedule "increase factor" will increase by 1.5 percent – CMS projects that total payments for services under the Outpatient Prospective Payment System (OPPS) will be approximately $41.9 billion.
- Ambulatory surgical centers (ASC) will increase by 0.9 percent – 2012 payments under the ASC payment system will be approximately $3.61 billion.
- Home health agencies (HHA) will decrease by 3.35 percent – this is an estimate net decrease of $640 million compared to HHA payments in 2011.
- Physicians for services paid under the Medicare Physician Fee Schedule will be reduced by 29.5 percent –- CMS projects that total payments in 2012 will be $80 billion.

5. REPORT HIGHLIGHTS OBESITY RATES

A report issued this week by the Trust for America's Health and the Robert Wood Johnson Foundation found adult obesity rates have increased in 16 states and not dropped anywhere. The report, F As In Fat: How Obesity Threatens America's Future points out that the state with the lowest obesity rate today, Colorado, would have had the highest obesity rate in 1995. The report calls on Congress to protect the Prevention and Public Health Fund in the Affordable Care Act; implement the Healthy, Hunger-Free Kids Act regulating school lunch programs, implement the National Physical Activity Plan; and restore funds cut in the 2011 continuing resolution for nutrition programs.

6. FamMedPAC SUPPORTS LOCAL EVENTS THIS WEEK

FamMedPAC sent two PAC contribution checks to AAFP members this week so they could personally present the contributions to their Congressional legislators.

- **Rep. John Shimkus (R-IL)**, who serves on the House Energy and Commerce Health Subcommittee, met with Dr. Steven Knight at Dr. Knight's clinic. This was the second time Rep. Shimkus has toured Dr. Knight's facility.
- **Rep. Betty McCollum (D-MN)**, who serves on the House Appropriations Committee, attended a fundraising event for her campaign at the home of Dr. Will Nicholson. Members of the Minnesota Academy of Family Physicians as well as other local physicians attended the event. Dr. Nicholson was able to speak to Rep. McCollum about reimbursement and education issues facing family physicians.

7. REGULATORY BRIEFS

- In a letter sent June 28 to the National Association of Insurance Commissioners, the AAFP joined with other national and state organizations representing health care consumers, providers, employers and unions, to express concern over proposed methods to weaken the minimum medical-loss ratio (MLR) provisions of the *Affordable Care Act*.
- On June 30, the Centers for Medicare & Medicaid Services (CMS) announced a final national coverage determination (NCD) for autologous cellular immunotherapy treatment of metastatic prostate cancer. This treatment, known clinically as sipuleucel-T, is marketed in the United States as Provenge, and is the first-of-its-kind treatment approved by the FDA for treating some forms of prostate cancer in seriously ill patients.
- On June 30, CMS issued an interim final rule that begins to implement administrative simplification provisions from the *Affordable Care Act*. This interim final rule defines "operating rules" and adopts two operating rules for electronic health care transactions, making it easier for providers to determine whether a patient is eligible for coverage and the status of a health care claim submitted to a health insurer. By 2013, health plans, health care clearinghouses, and certain health care providers must comply with these operating rules. In the CMS press release, the agency estimates these provisions have the potential to save an estimated $12 billion over the next ten years in eliminating inefficient manual processes. Future administrative simplification rules will address

adoption of standards and operating rules for electronic funds transfer and remittance advice, a standard unique identifier for health plans, a standard for claims attachments, and requirements that health plans certify compliance with all HIPAA standards and operating rules.

- Also on June 30, CMS posted online Medicare data that allows applicants of the Medicare Shared Savings Program to calculate their share of services in each applicable Primary Service Area (PSA).
- In a regulatory comment letter sent to CMS July 1, the AAFP responded to the proposed rule, "Medicaid Program; Methods for Assuring Access to Covered Medicaid Services". In it, the AAFP recommends CMS develop a consistent national approach to measuring access to care through use of specific data elements. The AAFP also joined other physician organizations in a related coalition letter dated July 5.
- On July 5, CMS proposed the rule for "Medicaid Program; Face-to-Face Requirements for Home Health Services." It would revise the Medicaid home health service definition as required by section 6407 of the *Affordable Care Act* to add a requirement that physicians document the existence of a face-to-face encounter (including through the use of telehealth) with the Medicaid eligible individual within 90 days prior to the start of services or 30 days after the start of home health services. This proposal aligns the timeframes with similar regulatory requirements for Medicare home health services. It also proposes to amend home health services regulations to clarify the definitions of included medical supplies, equipment and appliances, and clarify that states may not limit home health services to services delivered in the home, or to services furnished to individuals who are homebound.
- On Thursday, July 21 from 1:30pm – 3:00pm ET, CMS will conduct a conference call titled, "The ABCs of the Initial Preventive Physical Examination (IPPE) and Annual Wellness Visit (AWV)." CMS will discuss basic information about each benefit, when to perform these services, as well as coding and billing requirements. A question and answer session will follow the presentations. Registration for this free call is required. Related to the IPPE and AWV, CMS created a quick reference chart on both preventive services, a chart on just the AWV, and the Guide to Medicare Preventive Services.
- On Tuesday July 26 from 1:30pm – 3:00pm ET, CMS scheduled a conference call on the Physician Quality Reporting System & Electronic Prescribing Incentive Program. Registration for this free call is also required and a slideshow presentation will be made available in advance of the call.