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…
* Monday and Tuesday – AAFP Family Medicine Congressional Conference
* Wednesday –Energy & Commerce Committee Markup of HR 5 Medical Liability Reform Bill
* Thursday – Ways & Means Hearing on SGR

1. CONGRESS CONSIDERES HOW TO SOLVE THE MEDICARE SGR PROBLEM

AAFP President Roland Goertz, MD testified on Thursday, May 5, to the House Energy and Commerce Committee's Subcommittee on Health. He recommended that Congress establish a five year Medicare physician payment transition period with mandated payment updates with a rate 2-percent higher for primary care physicians. Dr. Goertz further recommended that Congress continue and increase of the Primary Care Incentive Payment and continue Medicaid payment parity with Medicare rates for primary care and preventive health services by primary care physicians.

Dr. Goertz' remarks were well received. Energy and Commerce Health Subcommittee members of both parties commented on the need to improve payment for primary care payment and continued to be supportive of correcting the flawed SGR payment formula. While both the House and Senate budget resolutions call for Medicare physician payment reforms, there is no detailed plan. Any changes to the current SGR payment formula will be very costly. Simply maintaining the current system, without any updates to the payment rate, would cost $275.8 billion through 2020, according to Health Subcommittee Chairman Joe Pitts (R-PA).

The testimony from the AAFP and other physicians groups builds on the responses to last March's bipartisan request for ideas from medical organizations. Board Chair Lori Heim, MD signed the AAFP response to the Energy and Commerce Committee's request was sent April 29 and is posted on the website.

Next week, the House Ways and Means Health Subcommittee will hold a hearing to explore new models for delivering and paying for services that physicians furnish to Medicare beneficiaries on Thursday, May 12, 2011, in 1100 Longworth House Office Building at 2:00 P.M.

2. HOUSE PASSES BILLS TO REPEAL ASPECTS OF HEALTH REFORM

As part of the on-going effort to repeal "Obamacare" the House, by largely partisan votes, passed more in a series of bills to strip mandatory funding provisions from the *Affordable Care Act*. On May 3, the House voted 238 to 183 to pass a bill (HR 1213) repealing the federal funding for states to set up health insurance exchanges. On May 4, the House passed a bill (HR 1214) that would repeal mandatory funding under the ACA for school-based health centers by a vote of 235 to 191.

House members later on May 4 passed the *No Taxpayer Funding for Abortion Act* (HR 3) which seeks to codify policy riders that restrict the use of federal money for abortion services. The measure, which won the support of 16 Democrats, would amend the federal tax code to prohibit deducting the cost of abortion care as a medical expense and ban using tax credits in the federal health reform law for health plans that cover abortion.

These bills are unlikely to pass in the Democrat-controlled Senate, which has rejected most of the House-approved measures to repeal or defund the overhaul. The White House also issued a statement stating its opposition to House Republicans' attempts to "erode the important provisions" of the health reform law.

3. REGULATORY BRIEFS

- On April 19, the Centers for Medicare & Medicaid Services (CMS) released a report on the 2009 Physician Quality Reporting System (PQRS) and Electronic Prescribing Incentive Program. CMS issued payments for both programs in the fall of 2010. In 2009, 119,804 physicians and 12,647 practices successfully participated in the PQRS and altogether earned $234 million. The average 2009 PQRS payment was $1,956 per physician and $18,525 per practice. CMS paid $148 million to 48,354 physicians who successfully participated in the 2009 Electronic Prescribing Incentive Program. Average 2009 electronic prescribing payments were over $3,000 per physician and $14,501 per practice.
- On April 20, the Secretaries from the US Departments of Education and Health and Human Services sent letters to college presidents and study body presidents with information about the *Affordable Care Act* provision allowing young adults to remain on their parent's health insurance plan until their 26th birthday.
- In late April, the CMS posted a 1-page report on Medicare Recovery Audit Contractor (RAC) efforts. In it, CMS indicated that the Medicare RACs have collected $313.2 million in overpayments from Medicare hospitals and physicians since October 2009 and identified and paid $52.6 million in underpayments. The CMS report also identifies the top overpayment issues per each RAC region.
- On April 29, the CMS released the *Influenza Vaccination Standard for Certain Medicare and Medicaid Participating Providers and Suppliers* proposed regulation. According to the CMS press release it makes "flu shots available in more of the health care facilities that Medicare beneficiaries are most likely to visit, including hospitals and rural health clinics." The AAFP is analyzing the regulation and will provide formal regulatory comments.
- Also on April 29, the CMS released a proposed regulation titled *Medicaid Program; Methods for Assuring Access to Covered Medicaid Services*. It is designed to encourage a transparent process for state Medicaid agencies to follow to assure physician payments are "consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan." The AAFP is reviewing this regulation and will provide formal comments.

- On May 2, the CMS released the *Medicare and Medicaid Programs: Changes Affecting Hospital and Critical Access Hospital Conditions of Participation: Telemedicine Credentialing and Privileging* final rule. This final rule modifies the conditions of participation for both hospitals and critical access hospitals and revises the currently burdensome credentialing and privileging process for physicians and practitioners that provide telemedicine services. In the rule, CMS indicates that, "these revisions will provide more flexibility to small hospitals and CAHs in rural areas and regions with a limited supply of primary care and specialized providers." The AAFP is analyzing the final rule and will provide formal regulatory comments.
- On May 17 from 1:30 pm to 3:00 pm ET, the CMS will host a nationwide conference call on the 2011 Physician Quality Reporting System & Electronic Prescribing Incentive Program. Registration is required and a slide presentation will be posted on the CMS PQRS website prior to the call.
- On May 26 2:30-3:30 pm ET, CMS will conduct a conference call on the 2011 Physician Quality Reporting System, Electronic Prescribing Incentive Program and ICD-10 Conversion To participate dial 1-800-837-1935 and reference conference ID 44767414

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4. CHALLENGING SESSION FOR IDAHO AFP COMES TO AN END

The Idaho legislature passed a bill (HB 298) to stop the operability of the *Affordable Care Act*'s discretionary provisions. Concerned about the bill's potential impact on the PCMH Collaborative project, the state's residency training programs and the primary care payment increase, the **Idaho Academy of Family Physicians** sent a letter to the Governor, urging him not to sign the bill. Although Governor Butch Otter (R) vetoed the measure, he signed an Executive Order prohibiting state agencies from establishing new programs, promulgating rules, accepting federal funding, or assisting federal agencies in efforts related to implementing federal health reform. The only exception included in the order, not in the legislation, is that the state can move forward with creating a health insurance exchange.

Other measures recently signed by the Governor include:

- HB 2 allows physicians to prescribe controlled substances electronically.
- HB 130 allows the Immunization Assessment Board to make assessments on participating insurers to sufficiently fund the purchase of vaccines that are recommended by the Advisory Committee on Immunization Practices for program-eligible children.
- HB 187 allows a physician to withdraw from care for conscience reasons but requires the physician to arrange for continuing care before withdrawing.
- HB 260 proposes eliminating fee-for-service, moving to an approach focused on improved health outcomes; and cuts $34.5 million in state funds from the state's Medicaid program, resulting in a loss of nearly $90 million in federal matching funds.
- HB 310 limits reimbursement to 95 percent of Medicaid for services provided to medically indigent residents for two years, expected to save the state $1.6 million.
- SB 1070 creates safe harbor provisions for providers who administer appropriate palliative, hospice and end-of-life care.

5. MICHIGAN AFP-SUPPORTED "I'M SORRY" BILL SIGNED BY GOVERNOR

Michigan Governor Rick Snyder (R) signed "I'm Sorry" legislation (SB 53), prohibiting a physician's expression of sympathy or apology from being admissible as evidence of admitting liability in medical malpractice suits. This, however, does not apply to statements of negligence. The **Michigan Academy of Family Physicians** was a strong proponent of the measure, sending Speak Out alerts to encourage members to contact legislators and tracking the bill's progress on the MI AFP's Facebook and Twitter accounts. Family physicians, including Karen Mitchell, MD and Peter T. Graham, MD, attended the bill signing ceremony.

6. GEORGIA AFP URGES GOVERNOR TO LINE-ITEM VETO MEDICAID CUTS IN BUDGET
The Georgia legislature adopted an $18.3 billion budget bill (HB 78), under consideration by Governor Nathan Deal (R). Because the measure includes a .5 percent reduction in payment to physicians under the state's Medicaid program, the **Georgia Academy of Family Physicians** joined other state physician organizations in sending the Governor a letter, urging him to line-item this provision. The request explains that payment to physicians under the program has not changed in 11 years, except for a six percent reduction in FY 2001, equating an overall 37 percent cut when adjusted for a decade's inflation. If approved, the proposed cut will take effect July 2011, making the state's Medicaid rates 43 percent lower than Medicare.

Other bills waiting for action by the Governor include:

- HB 47 authorizes insurers to sell health insurance in Georgia approved in other states.
- HB 117 generates $115 million for the state's Medicaid program by drawing down matching federal funds.
- HB 147 allows patients to inquire if a physician carries medical malpractice insurance.
- HB 214 establishes a state Department of Public Health.
- HB 303 authorizes physician assistants to sign off on certain documents.
- HB 509 replaces the State Medical Education Board with the Georgia Board for Physician Workforce.
- SB 17 establishes a Special Advisory Commission on Mandated Health Insurance Benefits to study the social and financial impact of current and proposed health insurance benefit mandates.
- SB 36 establishes an electronic database to monitor prescription painkiller dispensing.

In an effort to avoid implementing federal health reform, the Governor signed HB 461, authorizing Georgia to join with other states in a health care compact. However, because a compact requires congressional approval, it is unlikely to take effect. Similar measures were introduced in 12 states, and although the Arizona legislature also passed a compact bill, it was vetoed by the Governor. HB 476—a measure supported by the GA AFP—would have established the Georgia Health Exchange Authority, the governance body for the state's health insurance exchange. Although the bill did not pass the legislature prior to adjournment, Governor Deal has indicated he will move forward with forming an exchange Advisory Committee.