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…

* On Wednesday, July 18, the House Appropriations Labor-HHS-Education Subcommittee is set to markup their FY 2013 bill.
* On Wednesday, July 18, the House Energy and Commerce Subcommittee on Health will hold a hearing: "Using Innovation to Reform Medicare Physician Payment."
* On Thursday, July 19, the House Small Business Subcommittee on Investigations, Oversight and Regulations will hold a hearing: "Health Care Realignment and Regulation: The Demise of Small and Solo Medical Practices?" focusing on the ability of small medical practices to recruit newly licensed physicians.

1. CMS ISSUES PROPOSED PHYSICIAN FEE SCHEDULE FOR 2013

On July 6, the Centers for Medicare & Medicaid Services (CMS) released the proposed 2013 Medicare Physician Fee Schedule. This regulation addresses changes to the physician fee schedule and other Medicare Part B payment policies and implements certain provisions of the *Affordable Care Act* (ACA). In this proposal, CMS estimates that the statutory formula used to determine Medicare physician payments will result in a decrease of 27 percent.

Notable for primary care, the related CMS press release under the headline "CMS proposed rule would increase payment to family physicians by 7 percent" stated that the proposal would "…increase payments to family physicians by approximately 7 percent and other practitioners providing primary care services between 3 and 5 percent." Of this 7 percent, 2 percent stems from the phased-in use of the Physician Practice Information Survey data and the remaining 5 percent is a result of a proposed new post-discharge transitional care management code.

The AAFP created an extensive summary of this proposal for members. Comments on the proposed rule are due to CMS no later than September 4. The AAFP will analyze the regulation and submit a formal response. The agency is expected to release the final 2013 Medicare physician fee schedule in early November.

2. AAFP PRESIDENT TELLS SENATORS TO FIX PRIMARY CARE PAYMENTS

On July 11, AAFP president Dr. Glen Stream urged Congress to pay primary care differently and better at a meeting with the Senate Finance Committee. Dr. Stream urged wider use of the patient-centered medical home model, citing evidence that it saves money and improves quality in both the public and private sectors. The other physicians' groups included in the roundtable discussion were the American Medical Association (AMA), the surgeons, cardiologists, and oncologists. And in one of the more startling moments of the discussion, the representative of the American College of Surgeons (ACS) acknowledged that primary care has been significantly undervalued and should be paid better.

The AMA president-elect, Dr. Ardis Hoven, testified that large integrated practices are better positioned than small rural physician practices to participate in alternative delivery systems envisioned by the *Affordable Care Act*. The AMA supports innovative care models, such as Accountable Care Organizations (ACOs), but urges Congress to require the CMS Innovation Center to create more opportunities on a rolling basis. The ACS presented a short-term proposal for expanding existing registries, such as those for cancer, trauma, and the surgery quality improvement registry and a long-term solution replacing the SGR with value-based updates that would align physicians and hospitals. The American College of Cardiology urged the committee to take action that will create stability in the physician payment marketplace and suggested that flexibility be a guiding principle. The American Society of Clinical Oncology promoted rewarding evidence-based care, cognitive services including end-of-life care, the quality oncology practice initiative, and the testing of new models to understand their consequences and effects on patients.

3. FDA ANNOUNCES RISK EVALUATION AND MITIGATION STRATEGIES

The Food and Drug Administration (FDA) announced on July 9 the implementation of its Risk Evaluation and Mitigation Strategies (REMS) for extended-relief and long-lasting (ER/LA) opioid products. Manufacturers of these commonly abused drugs are required to provide unrestricted grants to providers of continuing medical education (CME) to develop education programs to begin March 1, 2013. Although prescriber participation is voluntary, there is considerable Congressional and agency interest in a mandatory program. The FDA Administrator, Margaret Hamburg, MD, and Gil Kerlikowske, the director of the Office of National Drug Control Policy, have indicated that they will work with Congress to craft some form of prescriber education that could be mandatory. The FDA REMS also requires companies to make available patient education materials on the safe use, storage and disposal of ER/LA opioid analgesics.

Also on July 9, President Obama signed the *Food and Drug Administration Safe and Innovation Act* (FDASIA, S 3187). The law reauthorizes a number of FDA user fees, including the Prescription Drug User Fee Act and Medical Device User Fee and Modernization Act, and enhances FDA's ability to provide expedited review and approval of applications for prescription drugs and medical devices. It also authorizes new user fee programs for generic drugs and biosimilar biological products, extends and modifies FDA authority related to drugs intended for use by children, improves the drug approval process, and helps to reduce drug shortages.

4. HOUSE AGAIN VOTES TO REPEAL OF HEALTH CARE LAW

Just two weeks after the Supreme Court handed down a ruling upholding constitutionality of the *Patient Protection and Affordable Care Act* (PPACA), the House passed the *Repeal of Obamacare Act* (HR 6079) by a vote of 244 to 185. No Republicans opposed the bill which drew the support of Democrats: Dan Boren (OK), Mike Ross (AR), Jim Matheson (UT), and Mike McIntyre (NC) and Larry Kissell (NC). The White House pledged to veto the House-passed bill, although, like the earlier repeal bills, it is unlikely that the Senate will even debate it.

5. AAFP URGES CONGRESS TO RESIST FURTHER CUTS TO SPENDING

The AAFP joined nearly 3,000 national, state, and local groups in signing a letter urging Congress to work toward a balanced approach to deficit reduction that does not include further cuts to non-defense discretionary programs including Title VII training grants and other AAFP priorities. The Coalition for Health Funding working with the Committee on Education Funding prepared the letter in the face of 8.4 percent across-the-board cuts scheduled to be imposed on January 2, 2013 on all non-defense discretionary (NDD) programs through a "sequester" called for in the *Budget Control Act* (PL 112-25).

These pending cuts threaten to ravage Title VII primary care grants; rural health programs; and primary care research at the Agency for Healthcare Quality and Research. Further, these cuts will come in addition to any reductions which might be proposed in the FY 2013 annual appropriations bills. Congress can overrule the reductions specified by the *Budget Control Act*, but most of the talk about it has centered on how to protect defense spending. Exempting only defense programs from reductions could place additional burden on HHS programs.

6. FamMedPAC APPROACHES THREE-QUARTERS OF A MILLION DOLLARS

Donations to FamMedPAC for the current election cycle from 2,389 AAFP members total $765,666. The average donation is $320. On the spending side, for this election cycle, the PAC has contributed $556,200 to 104 campaigns and committees. Contributions have gone to both parties: $250,700 to Republicans and $305,500 to Democrats and one Independent. The PAC participated in meetings with the following legislators this week:

- **Rep. Frank Pallone (D-NJ)**, the senior Democrat on the Health Subcommittee of the House Energy and Commerce Committee.
- **Rep. Bill Pascrell (D-NJ)**, a member of the Health Subcommittee of the House Ways and Means Committee.
- **Sen. Harry Reid (D-NV)**, the Majority Leader of the Senate.
- **Rep. Allyson Schwartz (D-PA)**, the lead sponsor of HR 5707, a bill repealing the Medicare SGR formula and providing a higher payment rate for primary care services.
- **Rep. Henry Waxman (D-CA)**, the senior Democrat on the House Energy and Commerce Committee.

7. REGULATORY BRIEFS

- CMS recently announced three CME modules regarding ICD-10 implementation, ICD-10: A Guide for Small and Medium Practices, ICD-10: A Guide for Large Practices, and Transition to ICD-10: Getting Started.
- On July 2, HHS awarded more than $971 in grants to bolster public health disaster preparedness in every state, eight U.S. territories, and four of the largest metropolitan areas. The funding awards included a total of approximately $352 million awarded for the Hospital Preparedness Program (HPP) cooperative agreement and more than $619 million awarded for the Public Health Emergency Preparedness (PHEP) cooperative agreement.
- On June 26, the U.S. Preventive Services Task Force (USPSTF) released their final recommendation statements for screening for and management of obesity in adults and behavioral counseling in primary care to promote a healthy diet in adults at increased risk for cardiovascular disease.
- On July 9, HHS announced 89 Accountable Care Organizations entered into agreements with HHS and will begin responsibility for the quality for care to 1.2 million people with Medicare in 40 states and Washington, D.C. Federal savings from the ACOs could be up to $940 million over four years. These additional ACOs bring the total number of organizations participating in ACOs to 154. In all, as of July 1, more than 2.4 million beneficiaries are receiving care from providers participating in Medicare shared savings (ACO) initiatives.

- On July 9, TRICARE, the health care program for more than 9.7 million Uniformed Service members, issued a press release stating that the Supreme court's ruling on the Affordable Care Act has "no impact on TRICARE."
- On July 10, HHS issued updated statistics on use of preventive services available under the *Affordable Care Act*. So far, over 16 million people with Medicare have received at least one preventive service at no cost to them during the first six months of 2012. This includes 1.35 million who have taken advantage of the Annual Wellness Visit.

8. FORUMS ON HEALTH INSURANCE EXCHANGES TO BE HELD IN DC, IL, CO & GA

On June 29, HHS announced a new funding opportunity to help states implement the Affordable Insurance Exchanges. This opportunity will provide states with 10 additional opportunities to apply for funding to establish a state-based exchange, state partnership exchange, or to prepare state systems for a federally facilitated exchange. Acknowledging that the Supreme Court held that states may choose not to participate in the provision to expand Medicaid, HHS Secretary Sebelius noted that, "decision did not affect other provisions of the law," thus, reassuring states that if they decide not to take the expansion funds, their current Medicaid program funding will not be affected. The Secretary reassured governors that HHS is committed to, "providing states with as much flexibility as we can to achieve successful implementation of the many important opportunities provided by this legislation [i.e., the *Affordable Care Act*]." According to the announcement, upcoming forums are scheduled for July 31 in Washington, D.C.; August 2 in Chicago; August 10 in Denver; and August 15 in Atlanta.

Preceeding the Supreme Court ruling, the governors of California, Colorado, Connecticut, Hawaii, Maryland, Massachusetts, Minnesota, New York, Oregon, Rhode Island, Vermont, and Washington have expressed firm commitment to HHS to establish and operate state-based insurance exchanges. The state exchange blueprints are due by November 16 and will go into effect in 2014. A "blueprint" application from the governor of each state must include an exchange model declaration letter and a description of the state's readiness to implement and perform exchange undertakings and purposes.