

March 2, 2012

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### NEXT WEEK IN WASHINGTON...

- \* HHS Secretary testifies on the FY 2013 Budget at the House Appropriations Subcommittee on Labor-HHS-Education on Tuesday and the Senate Subcommittee on Wednesday.
- \* The Ways & Means Health Subcommittee will hold a hearing on the Independent Payment Advisory Board on Tuesday at 10:00 am.
- \* The Energy & Commerce Committee will debate the *Medicare Decisions Accountability Act* (IPAB repeal, HR 452) Tuesday at 10:00 am.

## 1. HHS SECRETARY DEFENDS PRESIDENT'S BUDGET REQUEST

HHS Secretary Kathleen Sebelius testified about President's FY 2013 budget request for the Department on Tuesday, February 28 before the House Ways and Means Health Subcommittee and Thursday, March 1 to the House Energy and Commerce Health Subcommittee. Both hearings were marked by highly partisan rhetoric.

House Ways and Means Health Subcommittee Chairman Rep. Wally Herger (R-CA) and others on both Subcommittees criticized the President for not proposing to reform Medicare physician payment in order to address the flawed Sustainable Growth Rate (SGR) formula without adding billions to the deficit. Secretary Sebelius replied to Chairman Herger that Congress has made it worse with month to month and week to week patches.

The House Energy and Commerce Health Subcommittee Republicans peppered Secretary Sebelius with concerns about the "government takeover of our nation's health care system exacerbating our nation's record-high debt," and the regulatory uncertainty around health exchanges. Several Republican members on both panels questioned her about the Administration's recent rules on preventive care coverage including contraception. Only Rep. Lois Capps, RN (D-CA) asked about the steps proposed for an appropriate, diverse health workforce and told her colleagues of her intention to circulate a letter in support of nurse training

programs. In spite of the fact that the FY 2013 budget request does not call for appropriated funds the support the National Health Service Corps (NHSC,) the Secretary responded that the Administration has tripled the strength of the NHSC to offer scholarships and loan repayments.

## **2. SENATE VOTES DOWN CONTRACEPTION AMENDMENT**

On Thursday, March 1 the Senate defeated an amendment offered by Sen. Roy Blunt (R-MO) to let employers opt out of providing any health care coverage that they say violates their conscience or religious beliefs on a vote of 51 to 48. The Blunt amendment targeted the new guidelines announced by the Obama Administration to implement Section 2713 of the *Affordable Care Act*, to require most private health plans to cover preventive services for women without charging a co-pay starting on August 1, 2012. These preventive services include well women visits, domestic violence screening, and contraception, and all were recommended to the Secretary of Health and Human Services by the independent Institute of Medicine of the National Academy of Science.

## **3. IPAB REPEAL PASSES HOUSE SUBCOMMITTEE ON BIPARTISAN VOTE**

The House Energy and Commerce Subcommittee on Health approved the *Medicare Decisions Accountability Act* (HR 452) which seeks to abolish the 15-person Independent Payment Advisory Board (IPAB) established by the *Patient Protection and Affordable Care Act* (PL 111-148, PL 111-152). The health reform law charged the board with making cost-cutting recommendations if Medicare spending exceeds a target growth rate.

The Subcommittee passed the repeal by 17 to 5 on February 29. All of the Republicans present joined Subcommittee Ranking Member Rep. Frank Pallone (D-NJ) and Rep. Ed Towns (D-NY) in support of repeal.

## **4. FEDERAL COURT STRIKES FDA TOBACCO LABELING AS UNCONSTITUTIONAL**

A federal district judge has ruled that the [AAFP-supported](#) Food and Drug Administration's tobacco labeling requirements are unconstitutional. HHS released a statement on the ruling which said, "This Administration is determined to do everything we can to warn young people about the dangers of smoking, which remains the leading cause of preventable death in America. This public health initiative will be an effective tool in our efforts to stop teenagers from starting in the first place and taking up this deadly habit. We are confident that efforts to stop these important warnings from going forward will ultimately fail."

## **5. CONGRESSIONAL CONCERN OVER PRESCRIPTION DRUG ABUSE MOUNTS**

The House Energy and Commerce Subcommittee on Commerce, Manufacturing, and Trade, chaired by Rep. Mary Bono Mack (R-CA), held a March 1 hearing on the problems of the abuse of prescription drugs to discuss ways to fight diversion of controlled painkillers. The hearing focused on efforts by the federal government, the states, and the private sector to fight pharmaceutical diversion. Several witnesses noted that the government's best approach would be to provide support for states to set up interoperable prescription drug monitoring programs (PDMPs) which echo the AAFP policy. However, there is considerable interest in requiring physicians who prescribe addictive drugs to take prescribed education programs.

## **6. FAMMEDPAC SUPPORTS DEAN OF THE HOUSE & SENATE MAJORITY LEADER**

FamMedPAC supported two events in Washington, D.C. this week for two of the most influential Congressional legislators. Government Relations staff attended meetings with:

- **Rep. John Dingell (D-MI)**, who is the longest serving member of the House and sits on the Health Subcommittee of the House Energy and Commerce Committee. He is a longtime friend of family medicine.

- **Sen. Harry Reid (D-NV)**, who is the Majority Leader of the U.S. Senate and who determines the issues the Senate will debate. Sen. Reid is a strong advocate for health reform and a strong supporter of primary care.

## 7. AAFP ENCOURAGES CMS TO IMMEDIATELY RELEASE PCIP DATA

In a [letter](#) sent to CMS on February 28, the AAFP urged the prompt release of data on the Primary Care Incentive Program (PCIP). Since the *Affordable Care Act* stipulates that PCIP incentives are distributed quarterly for certain services furnished on or after January 1, 2011 and before January 1, 2016, to date CMS has already issued four separate PCIP payments to qualifying primary care physicians and providers. But despite having over a year to compile and verify data from contractors, all official CMS data from the PCIP remains unavailable.

The AAFP urged CMS to immediately releasing aggregate PCIP data so that the AAFP and others can continue our work with policymakers as we strive to:

- Repeal the fatally flawed Medicare Sustainable Growth Rate (SGR) formula;
- Address the current payment discrepancies between primary care physicians and medical specialists;
- Properly value primary care services performed by primary care physicians.
- Better understand where primary care payments are distributed geographically, what amounts are being paid, and how primary care practices are reinvesting these incentives to improve patient care; and
- Highlight to medical students the favorable *Affordable Care Act* policies impacting primary care physician so they can make more informed decisions as the contemplate medical specialty careers.

## 8. AAFP SUPPORTS REGULATION ON ELECTRONIC FUNDS TRANSFERS

In a [letter](#) sent March 1, the AAFP supported an interim final rule that adopts standards for health care electronic funds transfers (EFTs). All health plans are required to comply with these standards by Jan. 1, 2014. Despite support for this interim final rule, the AAFP strongly encouraged CMS to fully implement Sec. 1104 administrative simplification provisions in an expedited manner in order to modernize and enable meaningful electronic communications between health plans, financial institutions, and family physician practices.

## 9. AAFP URGES CONGRESS TO NOT EXEMPT CIGARS FROM FDA AUTHORITY

In a coalition [letter](#) sent February 23 to the Senate, the AAFP and others strongly opposed legislation which, if signed into law, would remove the Food and Drug Administration's (FDA) authority to regulate many cigars. A similar [letter](#) was sent to the House of Representatives in September of 2011. The FDA received authority to regulate tobacco products when the *Family Smoking Prevention and Tobacco Control Act* was enacted in 2009.

## 10. REGULATORY BRIEFS:

- In response to CMS' proposed Transparency Reports and Reporting of Physician Ownership or Investment Interests, the AAFP sent CMS a regulatory comment [letter](#) on February 8 and also:
  - Participated with 49 other national physician organizations as well as 43 state medical societies in a [coalition letter](#) coordinated by the AMA and
  - Signed onto a [coalition letter](#) coordinated by the Council of Medical Specialty Societies with 33 other organizations that focuses on the proposed rule's impact on Continuing Medical Education.
- On February 16, HHS [announced](#) that the public will soon have access to information about health plans' [medical loss ratios](#). Beginning in 2011, insurers were required to spend at least 80 percent of total premium dollars they collect on medical care and

quality improvement. A proposed consumer notice was made available and HHS seeks comments to ensure the notices are useful transparency tools for consumers. HHS also [released](#) documentation of state requests for MLR adjustments.

- The U.S. Government Accountability Office released a [report](#) titled Medicare Use of Preventive Services Could Be Better Aligned with Clinical Recommendations.
- On February 17, the HHS Secretary [announced](#) new data showing nearly 2,000 hospitals and more than 41,000 doctors have received \$3.1 billion in incentive payments for ensuring meaningful use of HIT.
- On February 21, CMS [announced](#) the formation of seven Consumer Oriented and Operated Plans (CO-OPs), which are nonprofit entities designed to offer competitive health care options in the 8 states (Oregon, New Mexico, Montana, Iowa, Nebraska, Wisconsin, New Jersey, and New York) in which CO-OPs will initially function. CMS is expected to announce additional CO-OPs on a rolling basis. CO-OPs begin offering coverage starting in 2014. The AAFP commented on the proposed CO-OP regulation in a September 2011 [letter](#). The seven non-profits receiving this round of loans include Freelancers CO-OP of Oregon, New Mexico Health Connections, Montana Health Cooperative, Midwest Members Health, Common Ground Healthcare Cooperative, Freelancers CO-OP of New Jersey, and Freelancers Health Service Corporation.
- On February 22, CMS announced the agency identified an error related to the submission of Measure #235 “Hypertension: Plan of Care” for the 2012 Physician Quality Reporting System. This measure was associated with G-codes that were inadvertently inactive due to an error found on the Healthcare Common Procedure Coding System (HCPCS) system tapes. This has resulted in claims containing the G-codes associated with the measure being rejected by the carrier/MACs or denied.
- On February 23, HHS [announced](#) that the Pre-Existing Condition Insurance Plan program is providing insurance to nearly 50,000 people with high-risk pre-existing conditions nationwide. Enrollment in the program saw nearly a 400 percent increase from November 2010 to November 2011. More information on how to apply can be found [online](#) or by calling their center at 1-866-717-5826.
- On February 23, CMS put on display a regulatory [notice](#) that announces an increase by 5 percent to the maximum contingency fee for Medicaid Recovery Audit Contractors (RAC) for the recovery of overpayments only for durable medical equipment claims (DME). This becomes effective 30 days after publication in the Federal Register.
- On February 24, CMS [released](#) a proposed rule describing the Stage 2 criteria for the Medicare and Medicaid Electronic Health Record (EHR) Incentive Programs. The AAFP is reviewing the regulation and will provide formal comments prior to the May 7 deadline.
- Also on February 24, CMS [announced](#) a new [initiative](#) to reduce errors through audits of Medicare Advantage contracts. CMS estimates recouping \$370 million in overpayments for the first audit year.
- On March 1 CMS hosted a call on the Medicare Shared Savings Program and Advance Payment Model Application Process and posted a related [slide presentation](#).
- On March 12 from 12:30 – 2pm ET, CMS will host an educational call on the Stage 2 Requirements for the Medicare and Medicaid EHR Incentive Programs. [Registration](#) will be required though more information about this call is expected.

## 11. STATE GOVERNMENT REPORTS

### State-Federal Affairs

- *CMS Announces Seven CO-OPS to Receive Repayable Loans* -- This week CMS Announced that seven CO-OPs will receive loans to help then establish private non-profit, consumer-governed health insurance companies. According to CMS, the CO-

OPs receiving loans were selected on a competitive basis through external and independent expert objective reviews and approved by CMS officials with private insurance experience. Those receiving loans include: Freelancers CO-OP of Oregon, New Mexico Health Connections, Montana Health Cooperative, Midwest Members Health (Iowa), Common Ground Healthcare Cooperative (Nebraska), Freelancers CO-OP of New Jersey, and Freelancers Health Service Corporation (Wisconsin). With \$3.4 billion appropriated to the program, CMS will conduct several more rounds of loan awards, with quarterly application deadlines.

- *Federal Judge Blocks California Medicaid Payment Cut, Supreme Court Declines to Rule* -- Kicking off a month of legal activity around Medicaid payment, on February 1, a U.S. district judge issued an injunction preventing California from cutting physician payments under Medi-Cal, the state's Medicaid program. The judge found the proposed action a violation of federal law, stating that, "[t]he state's fiscal crisis does not outweigh the serious irreparable injury plaintiffs would suffer absent the issuance of an injunction." Governor Jerry Brown's (D) administration will appeal the ruling.
- On February 22, the US Supreme Court declined to rule on California's Medicaid payment cut, remanding the case to the circuit court. By doing so, the Supreme Court sidestepped the key legal issue: whether patients and/or providers have legal standing to sue the states over Medicaid payment cuts. The Court majority reasoned that recent actions undertaken by the federal and state governments require additional argument and analysis.

## Pharmaceuticals

- *Chapters Engaging on Prescription Drug Abuse Legislation* -- The **Kentucky Academy of Family Physicians** is urging members to contact their legislators in opposition to legislation that would place onerous new requirements on physicians prescribing opioid drugs. [House Bill 4](#), which cleared the House Judiciary Committee on Wednesday, gives the Kentucky Attorney General authority to promulgate regulations that would dictate the conduct of not only the Kentucky Board of Medical Licensure, but also a variety of other licensing and regulatory agencies. [Senate Bill 2](#), while less onerous, contains several troubling provisions, such as requiring prescribers to enter certain data into the PDMP within 24 hours of prescribing a controlled substance; requiring prescribers to query the PDMP in each and every instance they determine a controlled substance is necessary for patient treatment; and requiring physicians to complete three hours of in-person category one substance abuse training every three calendar years.
- The **Vermont AFP** also faces legislation to modify the state's prescription drug monitoring program. [HB 745](#) requires health care providers to search the PDMP prior to prescribing any Schedule II through IV drug. In addition, it expands access to the PDMP and creates a unified pain management system advisory council. The advisory council, of concern to the Vermont AFP, also is tasked with identifying and recommending minimum requirements for the continuing education of all licensed health care providers in the state who treat chronic pain or addiction or prescribe controlled substances in Schedules II through IV.
- *Chapters Work to Control Methamphetamine Production* – On Tuesday, February 27<sup>th</sup>, **West Virginia AFP** member, Dr. Kimberly Becher testified before the West Virginia Senate Finance Committee and urged senators to preserve a provision in [SB 437](#) setting purchase limits for ephedrine, pseudoephedrine and other methamphetamine

precursors. The original bill would have made purchase of more than 3.6 grams of meth precursors per day, or 7.5 grams in 30 days, a misdemeanor. The Finance Committee forwarded, and the Senate unanimously approved, an amended version of the bill that dropped the 3.6 grams per day provision.

- A similar bill, [SB 3](#), supported by the **Kentucky AFP** passed the Senate on Friday, March 2. SB 3 aims to limit purchases of products containing ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers to 3.6 grams in any 30 day period or 15 grams in any one year period. The bill also requires pharmacies to maintain an electronic sales log and would prohibit possession of these products by anyone convicted of meth production offenses for five years. The KY AFP encouraged members to contact senators in support of SB 3 and continues to urge them to contact their representatives in support of the House companion bill, [HB 79](#)
- In Oklahoma, the legislature currently is considering several bills that would require prescriptions for pseudoephedrine-containing products, the **Oklahoma Academy of Family Physicians** joined with the Oklahoma State Medical Association and the Oklahoma Osteopathic Association to urge against adopting such a policy. The three groups are pushing an alternative proposal that would impose a monthly limit on pseudoephedrine purchases and link Oklahoma pharmacies to an emerging nationwide pseudoephedrine registry.

## Workforce

- *Iowa AFP Activates Grassroots in Support of FP Workforce Legislation* -- In its first grassroots alert on workforce, the **Iowa AFP** asked members to urge legislators to support companion bills, [Senate Study Bill 3107](#) and [House Study Bill 595](#). These bills, the IAFP's top priority, will create a consolidated and loan repayment program targeted to increase the primary care workforce. Seventy-three of Iowa's 99 counties are part or entirely designated as federal primary care shortage areas and that Iowa ranks 41st in the US in primary care physicians. Twenty-three members responded to the alert.

## Public Health

- *Florida AFP Moves in Opposition to Elimination of Phys Ed in Middle School* -- The **Florida Academy of Family Physicians** issued a grassroots alert urging members to contact their legislators to oppose [HB 4057](#), a bill that aims to save the state money by eliminating physical education for grades 6 through 8. The bill does retain the requirement for physical education in elementary school. Over 100 members responded to the request, and the House Education Committee voted to temporarily defer the bill.
- *HPV Program Bill, Opposed by Virginia AFP, Dies in the Senate* -- The Virginia Senate killed for the year [HB 1112](#), a bill to remove the Commonwealth's HPV vaccine mandate. The **Virginia AFP** opposed the legislation, which passed the House of Delegates in late January on a 62-34 vote. The bill will carry over to 2013 and may be reconsidered during next year's short session.

## Scope of Practice

- *Oregon AFP Works with Physician Coalition to Defeat NP Pay Parity Legislation* -- The Oregon Legislature effectively killed [HB 4010](#) for the year. The bill aimed to raise payment for nurse practitioner services to equal that of physicians. The **Oregon AFP**

joined with the Oregon Medical Association, the Oregon Psychiatric Association and the Oregon Society of Clinical Social Workers to oppose it. In testimony submitted to the House Health Committee, the OAFP reminded representatives that, “Any dialogue about reforming payment and realigning incentives should occur in tandem with health delivery system reforms and must include input from all physicians and other healthcare providers as the system is redesigned to be meaningful.”

- *Connecticut AFP Testifies against Naturopaths* -- The **Connecticut AFP** [submitted testimony](#) this week urging the state Senate Public Health Committee to oppose [SB 261](#). The measure aims to expand naturopaths scope of practice to include injections of vitamin B12. CT AFP notes that injecting vitamin B-12 has the potential to mask medical conditions that, if not treated, will, in many cases, result in patient harm.

## Liability

- *Pennsylvania Supreme Court Rules against Medicine* -- On February 29, the state Supreme Court handed organized medicine a setback. The court unanimously ruled that the state’s usage of \$800 million from the state’s liability insurance fund (Mcare and the Health Care Provider Retention Account) to help fill a budget gap was permissible. The move overturns a lower court ruling in favor of medicine. The **Pennsylvania AFP** argued that transferring funds raised to stabilize the liability environment to the general fund was illegal.

## Tobacco Control

- *Indiana AFP Continues Push for Clean Indoor Air* -- On Wednesday, February 29, the Indiana Senate passed [HB 1149](#), which started out as a smoke-free workplace bill. As it now stands, the bill will still allow smoking in bars and taverns, casinos, membership clubs, nursing homes and mental health facilities to name a few. The bill even prevents local communities from protecting casino workers from secondhand smoke. If this bill becomes law in its current form, it would be one of the weakest in the nation. The House and Senate will both have to pass the conference committee version of the bill by March 8 for it to advance to the Governor’s desk for signing. Recognizing this is the final chance for a strong clean indoor air act in 2012, the **Indiana AFP** is urging its members to contact their legislators.
- *Minnesota AFP Promotes Tobacco Tax Increase Legislation* -- Minnesota Senator Carla Nelson (R) recently introduced [SF 1916](#), a bill that would raise the price of cigarettes by \$1.29 per pack and increase the tax on non-cigarette tobacco products to 95 percent of their wholesale price. The **Minnesota AFP** has long been a supporter of increasing the tobacco tax, and is a member of the “Raise It for Health” Coalition assisting in this effort.
- *Oklahoma AFP Pushes for Elimination of Local Exemption on Tobacco Control* -- On March 1, the Oklahoma House of Representatives voted 57 to 30 to approve [HB 2267](#), a top priority of the **Oklahoma AFP**. It is a one paragraph bill but a major health care initiative that will allow cities the opportunity to compete for new businesses with healthier workers. Localities in Oklahoma are prohibited from enacting rules related to tobacco if they are more stringent than the current state law, preventing towns and cities from becoming smoke-free communities. The Campaign for Tobacco Free Kids reports that costs for smoking to Oklahoma businesses is over \$1.73 billion a year for health related illness and lost productivity.