

November 16, 2012

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## NEXT WEEK IN WASHINGTON...

- \* Congress will be in recess for Thanksgiving to return on Tuesday, November 27.

### 1. AAFP OFFERS RESOURCES ON MEDICARE AND MEDICAID PAYMENT CHANGES

On November 1, the Centers for Medicare & Medicaid Services released two major regulations that impact physician payments in 2013. To help prepare family physicians about these changes, the AAFP created dedicated websites and summaries of these two regulations:

- The AAFP's Medicare physician fee schedule [website](#) contains several resources including a comprehensive [summary](#) of the 2013 final rule.
- The AAFP's Medicaid Payments for Primary Care Services in Parity with Medicare website which contains an AAFP prepared [summary](#) and shorter [fact sheet](#) on this important regulation.

Further updates and educational resources on these regulations will be made available on these new AAFP dedicated websites.

### 2. HOUSE SUBCOMMITTEE INVESTIGATES FUNGAL MENINGITIS OUTBREAK

The House Energy and Commerce Subcommittee on Investigations and Oversight held a hearing to examine the facts surrounding the deadly outbreak of fungal meningitis linked to contaminated products made and distributed by the New England Compounding Center (NECC) in Framingham, Massachusetts. The November 14 hearing was held because the Centers for Disease Control and Prevention confirmed that 32 people have died and 438 people have been sickened across 19 states after receiving these injectable products as of November 9.

The Subcommittee subpoenaed Mr. Barry Cadden, President, Co-Owner and Director of Pharmacy at NECC but he invoked his 5<sup>th</sup> amendment rights on all questions posed by the Chair of the Subcommittee, Rep. Cliff Stearns (R-FL). Others who testified included Ms. Joyce Lovelace whose husband died after being injected with the fungal contaminated substance, the

current Commissioner of the Food and Drug Administration, Dr. Margaret Hamburg, and Dr. Lauren Smith, Interim Commissioner of the Massachusetts Department of Public Health.

The subcommittee learned that the FDA cited NECC as far back as 2006 for several violations including the company's failure to maintain adequate safeguards for sterile injectable products. Rep. Stearns pressed Dr. Hamburg to explain why the FDA had not shut down the company for the violations. Dr. Hamburg told subcommittee members that the FDA has "fragmented" authority over compounding pharmacies and would welcome a legislative solution to help protect patients.

### **3. SUBCOMMITTEE LOOKS AT FEDERAL PROMOTION OF HEALTH IT**

On November 14, the House Science and Technology Committee's Subcommittee on Technology and Innovation held a [hearing](#) to examine progress on the development and implementation of interoperable technical standards and conformance testing procedures for health information technology (HIT).

The hearing reviewed the activities of the Office of the National Coordinator for Health Information Technology (ONC) and the National Institute of Standards and Technology (NIST) in promoting interoperability through the development of technical standards for HIT, and examined the implementation of the *Health Information Technology for Economic and Clinical Health (HITECH) Act*.

The *HITECH Act*, enacted in 2009, provides mandatory funding through Medicare and Medicaid incentive payments to encourage providers to adopt and "meaningfully use" certified electronic health records.

Although witnesses agreed that there has been progress on electronic health record adoption, significant progress is needed to ensure communication between different health IT systems. Mr. Marc Probst, from Intermountain Healthcare, noted that even today "Heroics are required to share even basic information between systems."

### **4. AAFP SIGNS LETTER REGARDING SMOKELESS TOBACCO**

On November 9, the AAFP signed onto a [letter](#) drafted by the Campaign for Tobacco Free Kids, which was sent to the FDA in response to a comment letter from RJR Tobacco Company. In the company's comments to the FDA on proposed warnings for chewing tobacco products, RJR claimed that the FDA proposed warning that "Smokeless tobacco products are not a safe alternative to smoking" should be tempered to indicate that smokeless tobacco products are less dangerous than smoking. The joint letter strongly disagrees with RJR's position.

### **5. AAFP GRASSROOTS URGE CONGRESS TO PREVENT MEDICARE CUTS**

On November 15, AAFP launched the second wave of its "Lame Duck Congress" campaign, which gives AAFP members an opportunity to tell their legislators to block the looming SGR and sequester cuts. Members can learn about the impact of the cuts at [www.aafp.org/grassroots](http://www.aafp.org/grassroots). This [infographic](#) was also created to illustrate the possible cuts.

### **6. FamMedPAC MEETS WITH REPUBLICAN HOUSE MEMBERS**

This week, AAFP staff met with Reps. Charles Boustany (R-LA) and Rep. Steve Stivers (R-OH). Rep. Boustany is in a run-off election, while Rep. Stivers received more than 60 percent of the vote in his central Ohio district. Both legislators expressed their concern for the potential damage that a failure to avoid the pending tax and spending deadlines would cause the national economy. Both were reasonably sure that the "fiscal cliff" would be avoided at least for several months.

## 7. HOW TO PAY FOR A PATCH TO THE PHYSICIAN PAYMENT FORMULA

Resolving the end-of-the-year impasse over the federal budget will require that revenue or savings to offsets expense items in a final agreement. One of the significant expenses is the cost of extending the Medicare physician payment (SGR) for any period of time. The *National Journal* article below outlines some of the provisions that may be used to pay for the SGR fix.

As negotiations get underway, Medicare and Medicaid will likely be on the table. Many related options that congressional scorekeepers have already analyzed are sitting on the shelf. Some have surfaced in proposals from President Obama, and some were discussed in the 2011 budget talks led by Vice President Joe Biden that included the House Majority Leader, Rep. Eric Cantor (R-VA), among others.

Some of the proposals under discussion --

- **Raising the Medicare eligibility age.** Obama floated this idea during deficit negotiations last year, and labor groups that met with the president this week have already vented their concerns. But the president's reelection actually makes this possibility more likely. The now-protected 2010 *Affordable Care Act* ensures that seniors in the 65-to-67 age bracket will be able to buy private insurance coverage if they don't have it through an employer (although the federal government will still end up paying a portion of that tab). The Congressional Budget Office estimated that raising the Medicare-eligibility age to 67 would save \$125 billion from 2012 to 2021.
- **Means-testing premiums.** Of the many Medicare-reform options being discussed, asking richer seniors to pay more is one of the few that a majority of voters don't hate. And it is consistent with Obama's insistence in the tax debate that the wealthy should pay more than middle-class and poor Americans. It also jibes with current Medicare policy, which already scales premiums according to income. Some Republicans favor the proposal, which was part of Mitt Romney's Medicare-reform plan. Cantor also put it in his proposal. The total savings depend on who is considered rich and how much more they'd be asked to pay. Cantor's version estimated \$38 billion over 10 years.
- **Medigap reform.** About 20 percent of seniors buy supplemental insurance to help pay Medicare's premiums and deductibles—and to protect them from massive medical bills, since Medicare has no out-of-pocket limit. Republicans and Democrats have proposed schemes to wring more money out of the system and require seniors to pay at least some first-dollar coverage. Wonks like the idea of reforming Medigap, but few agree about how to do it. Obama has proposed taxing Medigap plans for an estimated \$2.6 billion, an approach that could scare off Republicans. Cantor floated limits to how much Medigap could cover, for a 10-year savings of up to \$53 billion.
- **Co-pays for skilled-nursing facilities and home health care.** Medicare beneficiaries pay nothing for their first 20 days at a skilled-nursing facility or for home-based care. Cantor proposed adding a co-payment for both, saving \$50 billion over 10 years, but that would certainly be unpopular with liberal Democrats, who don't want seniors to pay more for care.
- **Drug rebates.** This big cost-saver that has been floated for years would require pharmaceutical makers to pay the federal government a rebate on drugs sold to low-income Medicare recipients who also qualify for Medicaid. Manufacturers pay the government a rebate on drugs for other Medicaid enrollees but do not have to for these "dual eligibles." The president included this change in his fiscal 2013 budget; CBO puts the savings at \$137 billion over 10 years.
- **Bad debt, medical-education payments, and rural hospitals.** This catch-all category includes smaller policy tweaks in Medicare payments to hospitals and, in some cases, nursing homes. Congress already reduced the amount that the federal government will reimburse hospitals and nursing homes when Medicare beneficiaries don't pay out-of-pocket costs, but lawmakers could choose to dig deeper. Reducing subsidies to medical-

residency programs has been a recurrent cost-saving idea—it was in the president’s budget for a savings of \$6 billion—but the subsidy has strong defenders in congressional districts with academic medical centers. Finally, rural hospitals are also up for a cut in the subsidies they receive for being categorized as “critical access”; proposals to adjust those payments appeared in the Cantor presentation and in Obama’s budget.

- **State Medicaid taxes.** Many states charge Medicaid providers taxes in an effort to bump up the amount of matching Medicaid funds they get from the federal government. The president’s fiscal 2013 budget would reduce just how much tax states can charge, for a savings of nearly \$50 billion over 10 years. It’s a policy that Republicans have backed in the past. In May, House Speaker John Boehner, R-Ohio, proposed limiting the taxes states can collect from Medicaid providers, albeit at a slower rate than Obama would set, to help cover the cost of stopping student-loan rates from doubling. The GOP proposal would save \$11.3 billion over 10 years.
- **Per capita caps for Medicaid.** Democrats in Congress would never vote for a Medicaid block grant such as the one in the Republican budgets of the past two years. But another Medicaid block-grant proposal making the rounds might be more likely to attract blue-state votes. Under a plan put forward by Rep. Bill Cassidy, R-La., states would get fixed payments on a per capita basis, so they would not be hurt if the economy stalls or if more eligible people move there. But the proposal would be a hard sell among Senate Democrats.