

September 14, 2012

## IN THIS REPORT...

1. House Passes Stop-Gap Spending Bill, Senate Action to Follow
2. AAFP Sends Brief on Physician Payment and Medical Liability Reform to Senate
3. Senate Aging Holds Hearing on Sunshine Act
4. AAFP comment letter supports use of NPPs for home health “face-to-face” requirement
5. AAFP provides input to CMS regarding outpatient status
6. AAFP Grassroots Answer Call to Action
7. FamMedPAC Raises Visibility at Party Conventions, Continues Strong Fundraising
8. Family Medicine Recommends Outcomes Research Methodology Improvements
9. Regulatory Briefs
10. Washington AAFP Office to Move

### NEXT WEEK IN WASHINGTON...

\* The Congress is expected to adjourn late next week until after Election Day, November 6.

## 1. HOUSE PUNTS FY 2013 APPROPRIATIONS DECISIONS TO MARCH 27, 2013

To prevent a government shutdown, the House on Thursday, September 13, passed a stopgap funding measure (H.J.Res. 117) to keep government operating through March 27. The Senate is expected to clear it for the President’s signature next week. The Continuing Resolution (CR) for FY 2013 includes a spending increase of 0.6 percent. However, most programs will not see any increase because of the budget sequestration or across-the-board cuts required by the *Budget Control Act (BCA)*. The White House will release a report on September 14 detailing which programs will be subjected to the automatic spending cuts.

The House also passed the *National Security and Job Protection Act* (HR 6365) to shield defense programs from the BCA sequester. The White House has pledged to veto any sequester delay lacking a balanced approach to reducing the deficit. The lame duck session of Congress which will convene after the elections may act to delay the sequester, to prevent the SGR cut to Medicare physician payment, expiring tax provisions and other unfinished legislation business.

## 2. POLICY BRIEF ON PHYSICIAN PAYMENT AND MEDICAL LIABILITY REFORM

On August 8, AAFP responded to a request of the Senate Finance Committee for more specific and detailed information in follow up to Physician Roundtable conducted in July. Based on robust and growing evidence, which includes a wealth of private sector experience, AAFP developed and sent a [policy brief](#) that outlined short and mid-term resolutions for the problems associated with Medicare physician payment and medical liability.



The brief included the following recommendations:

- Fix the flawed and dysfunctional sustainable growth rate formula and resolve the back debt associated with the SGR
- Provide a positive update for the period and institute a differential payment that reimburses primary care physicians at least 2 percent higher than other professionals
- Institute a risk-adjusted care management payment using data amassed from private sector, ACA and Medicare experience
- Performance enhancement programs (e.g., PQRS) should continue for the short term at the current level; ultimately pay-for-performance programs should be linked to patient management services, population management and reduction in the rate of annual growth of cost of care
- Medicaid/Medicare payment parity for primary care physicians delivering primary care services should be made permanent
- The Primary Care Incentive Payment (PCIP) should be made permanent
- Medical liability reforms should be enacted on the federal level to lower costs related to liability insurance including:
  - a limit on payments on "non-economic damages,"
  - strict limits on attorneys' fees,
  - a statute of limitations for actions of one to three years after injury, with an absolute limit of six years for minors, and
  - a requirement that expert affidavit that must be provided by a specialist who possesses knowledge and expertise and practices in the same medical specialty as the defendant.

### **3. SENATE AGING COMMITTEE HOLDS HEARING ON THE “SUNSHINE” ACT**

On September 12, the Senate Special Aging Committee held a [hearing](#) titled “Let the Sunshine in: Implementing the Physician Payments Sunshine Act.” Participants included former CMS administrator Mark McClellan, CMS staff, the AMA, the Association of Clinical Research Organizations, Pew Charitable Trusts, the American Psychiatric Association, an orthopedic surgery professor from the University of California, and representatives from Eli Lilly and Co. and Edwards Lifesciences.

Senators Herb Kohl and Chuck Grassley asked when CMS will release the final regulation detailing how manufacturers disclose financial relationships with doctors. CMS avoided providing a specific response, though suggested it will be released as soon as possible. The goal is to provide a publicly available database so that patients can see any conflicts of interest their physicians may have in recommending certain treatments.

In late December 2011, several months after missing a statutory deadline, CMS issued the proposed rule and the AAFP responded in a February 8 [letter](#).

### **4. AAFP SUPPORTS CHANGES TO THE “FACE-TO-FACE” REQUIREMENT**

As a condition for payment, the *Affordable Care Act* requires that, prior to certifying a patient’s eligibility for the home health benefit, a physician must document that the physician himself or herself or an allowed nonphysician practitioner (NPP) has had a face-to-face encounter with the patient. Specifically, the law also states that a nurse practitioner, clinical nurse specialist, certified nurse-midwife, or a physician assistant under the supervision of the physician may perform the face to face encounter and inform the certifying physician, who documents the encounter as part of the certification of eligibility.

For patients admitted to home health from an acute or post-acute facility, CMS proposes to modify the regulations to allow an NPP in an acute or post-acute facility to perform the face-to-

face encounter in collaboration with or under the supervision of the physician who has privileges and cared for the patient in the acute or post-acute facility. In a comment [letter](#) sent August 29, the AAFP supported this additional regulatory flexibility as an appropriate use of NPPs.

## **5. AAFP COMMENTS ON OUTPATIENT STATUS**

In a [letter](#) sent to CMS on August 29, the AAFP provided feedback to CMS in response to a solicitation of public comments regarding outpatient status within the 2013 proposed hospital outpatient prospective regulation.

This regulation contains a request for public comments on potential "policy changes" that could be made to improve clarity and consensus among providers, Medicare, and other stakeholders regarding the relationship between admission decisions and appropriate Medicare payment, such as when a Medicare beneficiary is appropriately admitted to the hospital as an inpatient and the cost to hospitals associated with making this decision.

In the response, the AAFP expressed support for efforts to improve clarity and consensus regarding the relationship between admission decisions and appropriate Medicare payment. However, the AAFP also observed that the inpatient versus outpatient distinction is not the material driver of physicians' admission decisions, instead the AAFP argued that what is clinically best for the patient drives the physician's decision.

Therefore, the AAFP urged that if CMS truly wants to address this issue, the AAFP calls on CMS to move beyond simple policy changes and instead work with Congress to modify the law to allow Medicare to reimburse hospitals for services at a consistent rate, whether the patient's status is outpatient or inpatient, and eliminate the distinction for hospital payment purposes. Since CMS and the AAFP both seek clarity around this issue, the AAFP urged CMS to move toward a bright line benchmark, standard, or more definite guidance.

## **6. AAFP GRASSROOTS ANSWER CALL TO ACTION**

21 Key Contacts sent 63 messages to their legislators asking that they support both the *Medicare Physician Payment Innovation Act* (HR 5707) and the *Primary Care Workforce Access Improvement Act* (HR 3667), appropriate \$71 million for the Health Professions Program, and make sure the National Health Service Corps receives at least \$300 million.

## **7. FamMedPAC RAISES VISIBILITY AT PARTY CONVENTIONS**

Thanks to donations by FamMedPAC to the Congressional and National Campaign Committees of both the Republican and Democratic parties, AAFP was able to send representatives to Tampa and Charlotte for both national conventions. AAFP President Dr. Glen Stream, Dr. Anne Montgomery, and FamMedPAC Board member Dr. Tom Hicks attended the Republican Convention in Tampa, Florida; while AAFP Board Chair Dr. Roland Goertz and FamMedPAC Board member Dr. David Carlyle attended the Democratic Convention in Charlotte, North Carolina. Both conventions offered many opportunities to meet with Congressional leaders, as well as representatives of other healthcare and public interest groups. AAFP cosponsored a healthcare reception for Congressional leaders and staff at each convention. Joining the AAFP in cosponsoring the receptions were the American College of Radiology; the American Dental Association; the American Osteopathic Association; the American College of Emergency Physicians; the American Association of Orthopaedic Surgeons; the American Society of Anesthesiologists; and the American Academy of Neurosurgeons. AAFP representatives met with over a dozen legislators during the conventions to promote AAFP's agenda and emphasize the importance of primary care. You can read [first-hand accounts](#) of both conventions from Dr. Stream and Dr. Goertz.

FamMedPAC donations are running at a record pace this election cycle, with over \$811,000 received since January of 2011 from 2,568 AAFP members. The PAC should surpass the total amount raised during the 2008 election cycle, when more than \$819,000 was donated by 2,928 AAFP members, the most since the PAC's formation.

So far this election cycle, the PAC made \$639,200 in campaign contributions to 115 candidates and committees.

FamMedPAC supported the following legislators this week:

- **Rep. Charles Boustany (R-LA)**, a physician and member of the House Ways and Means Committee.
- **Rep. Bill Cassidy (R-LA)**, a physician and member of the Health Subcommittee of the House Energy and Commerce Committee.
- **Del. Donna Christensen (D-VI)**, a family physician.
- **Rep. Lloyd Doggett (D-TX)**, a member of the House Ways and Means Committee. Rep. Doggett's daughter is a family physician
- **Rep. Joe Heck (R-NV)**, a freshman, Rep. Heck is a physician and co-sponsor of the SGR "fix" bill supported by AAFP.
- **Rep. Ron Kind (D-WI)**, a member of the Health Subcommittee of the House Ways and Means Committee. AAFP member Dr. Tim Bartholow attended the event in Washington, D.C.
- **Rep. Steve Stivers (R-OH)**, a cosponsor of the primary care GME bill supported by AAFP.

## **8. CAFM AND AAFP SEND PCORI A LETTER ON METHODOLOGY REPORT**

In a letter sent September 13, the Council of Academic Family Medicine (CAFM), which represents the membership of the Society of Teachers of Family Medicine, the Association of Departments of Family Medicine, the Association of Family Medicine Residency Directors, and the North American Primary Care Research Group, in conjunction with the AAFP provided comments to the Patient-Centered Outcomes Research Institute regarding their draft methodology report.

The letter expressed overall support for PCORI's work but then also expressed concern that patient-centered outcomes research could be overly focused on single diseases. Since primary care physicians often treat patients with multiple conditions, the letter expressed hoped that PCORI does not continue to define patient-centered outcomes research within the context of disease states as the National Institutes of Health currently does.

## **9. REGULATORY BRIEFS**

- On August 24, HHS released a final rule designed to simplify the administrative process for providers by establishing a standard unique health plan identifier (HPID) and an "other entity" identifier (OEID). These identifiers allow medical offices to automate and simplify their processes, and allow entities that are not health plans, health care providers, or individuals, to be identified in standard transactions. HHS estimates this provision has the potential to save the health care industry up to \$6.0 billion over ten years. This rule also established a one-year delay – from Oct. 1, 2013, to Oct.1, 2014 – as the compliance date for use of the International Classification of Diseases, 10th Edition diagnosis and procedure codes (ICD-10). In a [statement](#) released August 24, the AAFP supported this announcement. Additionally, the AAFP supported the proposed version of this regulation in a May 14 [letter](#) to HHS.

- On August 24, CMS [awarded](#) grants to 24 states and territories to support their Consumer Assistance Programs (CAP). These grants are intended to support efforts to help consumers find or answer questions about their healthcare coverage.
- On September 11, HHS released a [statement](#) indicating that medical loss ratio requirements from the Affordable Care Act have saved consumers an estimated \$2.1 billion on health insurance premiums and that the requirements have delivered rebates worth \$1.1 billion to nearly 13 million consumers.
- On September 12, HHS and the Department of Veterans Affairs announced a joint effort to expand health care delivery to veterans living in rural areas. The agreement between the two agencies promotes collaboration between VA facilities and private hospitals and clinics, and is supported by \$983,100 in grants to improve access and coordination of care through telehealth and health information exchanges in rural areas. Three states with the highest density of veteran residents—Virginia, Montana and Alaska—will each receive approximately \$300,000 to implement or upgrade telehealth capabilities for veterans who must otherwise travel long distances to access medical, mental and behavioral health care.

## **10. WASHINGTON OFFICE RELOCATION**

As of October 2, the AAFP Government Relations Division and the Robert Graham Center will be located at 1133 Connecticut Avenue, NW, Suite 1100, Washington, DC 20036.