GOVERNMENT AFFAIRS WEEKLY

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IN THIS REPORT…

NEXT WEEK IN WASHINGTON…

* On July 17, Senate Finance Committee has scheduled a hearing on health IT and quality.
* Also on July 17, the Health Subcommittee of the House Ways and Means Committee will hold a second hearing on the delay of the employer mandate in the *Affordable Care Act.*

1. SENATE COMMITTEE WORKS ON SGR REPEAL

On Wednesday, July 10, the Senate Finance Committee held a hearing on reforming the sustainable growth rate (SGR) formula. The sole witness was the Deputy Administrator of the Centers for Medicare & Medicaid Services (CMS), Jonathan Blum. He testified that payment system reform should begin with a 4 to 5 year period of payment stability during which physicians, patients and payers would continue to develop new delivery models that place more emphasis on primary care. He pointed to the many steps to date that focus on value and could be contributing to the slowing in the rate of growth of Medicare expenditures including increased payment to primary care physicians.

Click here to access the AAFP's current physician payment action alert and urge your Representative to cosponsor the bipartisan *Medicare Physician Payment Innovation Act* (HR 574) and continue to support SGR repeal.

2. CMS RELEASES 2014 PROPOSED MEDICARE PHYSICIAN FEE SCHEDULE

On July 8, the CMS released the proposed 2014 Medicare Physician Fee Schedule (link expires July 19). This proposed rule would revise payment polices under the Medicare Physician Fee Schedule (MPFS) and make other policy changes related to Medicare Part B payments. These changes would be applicable to services furnished in 2014. In addition, this proposed rule includes discussions regarding:

- Misvalued MPFS Codes;
- Telehealth Services;
- Applying Therapy Caps to Outpatient Therapy Services Furnished by Critical Access Hospitals;
- Requiring the Compliance with State law as a Condition of Payment for Services Furnished Incident to Physician and Other Practitioner Services;
- Revising the Medicare Economic Index (MEI);
- Updating the Ambulance Fee Schedule regulations; and
- Updating the
    - Physician Compare Website;
    - Physician Quality Reporting System (PQRS)
    - Electronic Health Record (EHR) Incentive Program;
    - Medicare Shared Savings Program;
- Budget Neutrality for the Chiropractic Services Demonstration; and
- Physician Value-Based Payment Modifier and the Physician Feedback Reporting Program.

CMS estimates a reduction of 24.4 percent to the conversion factor for Medicare payments for physicians' services in 2014, unless Congress acts to prevent it. The actual values used to compute physician payments for 2014 will be based on later data and the final 2014 conversion factor will be published by November 1, 2013 as part of the 2014 MPFS final rule.

Family physicians will receive an estimated increase of one percent (see Table 71). E/M codes are estimated to rise by 3-4 percent. These estimates do not take into account the 24.4-percent reduction in the SGR slated to occur at the end of 2013. In this proposed rule, CMS outlines a separate payment under the Medicare Physician Fee Schedule for complex chronic care management services furnished to patients with multiple complex chronic conditions.

In a statement after the proposed rule became available, the AAFP highlighted favorable steps CMS proposes to make toward meaningful payment reform; however, the AAFP statement also noted that CMS is constrained by the dysfunctional sustainable growth rate (SGR) formula that dictates Medicare physician payment. While these proposals are encouraging, they can go only so far because the pending SGR cuts undermine CMS' efforts.

The AAFP is preparing a summary of the 2014 proposed Medicare physician schedule for members and will submit comments to CMS on the fee schedule before the September 6 deadline for comments.

3. SENATE COMMITTEE VOTES DOWN EFFORTS TO CUT ACA FUNDING

The Senate Appropriations Committee voted 16 to 14 to advance the fiscal year 2014 spending bill for labor, HHS and education agencies and programs on Thursday, July 11. The draft bill would provide $164.3 billion in discretionary funding, which is slightly above FY 2013's $156.5 billion, but nearly 35 percent more than the $121.8 billion that the appropriators in the House of Representatives have allocated.

The bill would increase the funding for Title VII, Sec. 747 primary care training and enhancement programs in FY 2014 to $51 million (which was the President's request). This is $12 million more than the FY 2013 level of $39 million. However, White House budget request called for the increase to be directed toward physician assistant training initiatives and the bill includes language allowing HRSA to use the increased funding to prioritize the training of physician assistants.

The bill also would provide $30 million for the Area Health Education Center program (Title VII, Sec. 751) and $22.9 million for the Centers of Excellence program (Title VII, Sec. 736) to train disadvantaged minority health professionals for service in underserved areas. In addition, the measure would allocate $15 million for the Health Careers Opportunity Program (Title VII, Sec. 739). The Faculty Loan Repayment program would be funded at $1.3 million in FY 2014 for the repayment of education loans for individuals from disadvantaged backgrounds who are health professions students or graduates and who have agreed to serve for at least 2 years as a faculty member of a health professions school. The bill also includes $5 million to create a new loan repayment program for pediatric specialties authorized under Title VII, Sec. 775 as well as $5 million for health professions workforce information and analysis.

The funding for the Agency for Healthcare Quality and Research (AHRQ) is set at $371 million and includes $7 million from the ACA's mandatory Prevention and Public Health Fund to support the U.S. Preventive Services Task Force. Perhaps anticipating a fight with the House which is expected to again propose to eliminate AHRQ, the Senate report describes the agency as "established in 1990 to enhance the quality, appropriateness, and effectiveness of health services, as well as access to such services." The report also states that the Committee strongly supports AHRQ's unique mission within the Department to fund health services research that improves patient safety and promotes the delivery of high-quality healthcare. The bill also level funded the Preventive Health Block Grant which the President proposed to eliminate at $79 million.

During its deliberations over the spending bill, the committee defeated, on party-line votes, several amendments to strip funds from the *Affordable Care Act (*ACA*)*. An amendment offered by Senators Dan Coats (R-IN) and Thad Cochran (R-MS) sought to defund the health insurance exchanges if any single exchange is not able to accept applications on October 1, the first day of enrollment. Senator Jerry Moran (R-KS) offered amendments to strip funds from the ACA in order to repeal the employer and individual mandates. Senator Moran also offered an amendment to defund the health law's Independent Payment Advisory Board in order to increase Children's Hospital Graduate Medical Education (CHGME). The amendment fell in a tie vote of 15 to 15, with Senator Mark Pryor (D-AR) joining the Republicans. Senator Pryor withdrew his own amendment seeking to increase CHGME which the bill would level fund at $267 million which is $88 million above the President's request for FY 2014.

The Chair of the House Appropriations Committee has indicated that the Labor-HHS deliberations could come by the end of July. However, the allocation provided for the many popular domestic programs in the bill is so low that it would require politically painful cuts.

4. SENATE FAILS TO EXTEND LOWER STUDENT LOAN RATE

On Wednesday, July 10, the Senate voted 51 to 49 to debate the *Keep Student Loans Affordable Act* (S. 1238); however, the support did not meet the 60 vote threshold needed to proceed to debate on the bill. The measure would extend for a year the current reduced interest rate for undergraduate Federal Direct Stafford Loans. The measure may be considered later in the session.

5. AAFP SUGGESTS CHANGES TO HHS STUDY ON PHYSICIAN TIME-USE PATTERNS
The AAFP sent a letter on July 10 to HHS in response to a proposed study by the Assistant Secretary for Planning and Evaluation (ASPE) titled "Survey of Physician Time Use Patterns Under the Medicare Fee Schedule." The study is designed to explore time inputs to the fee schedule in order to better understand how clinical services are delivered and the relationship between the clinical time spent by physicians and the time currently part of the fee schedule. ASPE intends to survey 600 physicians in five specialties, including 120 family physicians and 480 specialists practicing in the fields of ophthalmology, orthopedics, radiology, and cardiology.

The AAFP response expressed appreciation that ASPE is conducting this study, since the AAFP continues to believe that it is important to validate the inputs used in the current Relative Based Relative Value Scale (RBRVS). The AAFP letter used this opportunity to reiterate a belief that the complexity of the ambulatory evaluation and management (E/M) services that primary care physicians must offer during the time available for the average patient visit are sufficiently distinct to merit dedicated codes and higher relative values than currently assigned to existing office or other outpatient E/M codes.

6. AAFP NOMINATES TWO FAMILY PHYSICIANS TO RESEARCH COUNCIL
In a letter sent July 3 to the Agency for Healthcare Research and Quality (AHRQ), the AAFP nominated Frank V. deGruy III, MD, MSFM and Wilson D. Pace, MD, FAAFP to fill two of seven vacancies on the National Advisory Council for Healthcare Research and Quality. This council is charged with advising the Department of Health and Human Services and AHRQ on matters related to improving the quality, safety, efficiency, and effectiveness of health care for all Americans.

7. AAFP URGES DEA TO RAISE CAP ON SUBOXONE®
The AAFP on July 5 wrote to the Drug Enforcement Agency (DEA) to convey our opposition to the current limit on the number of patients which physicians licensed to prescribe Suboxone® can treat for opioid addiction. The AAFP letter urged the DEA to raise the limit to 200 patients from the current cap of 100 patients after five years of treating addiction with Suboxone® for the maintenance phase of treatment of opiate dependence.

8. COMMENTS SENT TO FDA IN ADVANCE OF UPCOMING MEETING ON OPIODS
The AAFP responded to a FDA notice of public meeting and request for comments in a letter sent on July 3. Later this month the FDA will hold a two-day meeting titled "Standardization and Evaluation of Risk Evaluation and Mitigation Strategies" and AAFP Medical Director for Continuing Medical Education (CME), Ann Karty, M.D., FAAFP, will represent family physicians as a registered speaker at the public meeting. The FDA is holding the meeting to discuss the issues and challenges associated with the standardization and assessment of risk evaluation and mitigation strategies (REMS) for drug and biological products.

The letter stated that the AAFP shared with the FDA a commitment to making sure that patients continue to have access to appropriate pain medications and that all opioid products are used safely and effectively. After recognizing that family physicians and other primary care clinicians play a vital role in effective pain management, including prescribing opioid analgesics, the letter voiced concerned with any policies that would create additional prescribing barriers for primary care physicians since their professional judgment and clinical experience determine whether there is legitimate need for pain relief.

Among other AAFP efforts, the letter highlighted that the AAFP is developing live, online and self-study CME activities that align with the educational goals set forth by a related FDA blueprint so that AAFP CME offerings are in compliance with relevant accreditation guidelines to ensure validity.

9. PROPOSED OUTPATIENT AND AMBULATORY SURGICAL REGULATION RELEASED
On July 8, CMS released the 2014 Hospital Outpatient Prospective Payment System (OPPS) and Ambulatory Surgical Center (ASC) Payment System Policy Changes and Payment Rates proposed rule (link expires July 19). CMS projects that total 2014 OPPS payments will increase by $4.37 billion or 9.5 percent and total 2014 Medicare payments to ASCs will increase by approximately $133 million or 3.51 percent compared to 2013.

According to CMS, the "2014 OPPS/ASC rule proposes to expand the categories of related items and services packaged into a single payment for a primary service under the OPPS, in order to make the OPPS more of a prospective payment system. In addition to packaging these seven categories, CMS is proposing to create 29 comprehensive APCs to replace 29 existing device-dependent APCs. In an effort to further our goals of using larger payment bundles to maximize hospitals' incentives to provide care in the most efficient manner, discourage upcoding, and continue to set accurate payments, CMS is proposing to streamline the current five levels of outpatient visit codes. CMS is also proposing to continue paying at ASP+6 percent for non-pass-through drugs and biologicals that are covered separately under the OPPS." CMS will accept comments on the proposed rule until September 6, 2013

10. PCORI WEBINAR REVIEWS SURVEY RESULTS ON COMPARATIVE EFFECTIVENESS
The Patient-Centered Outcomes Research Institute (PCORI) released results of a survey conducted on knowledge and attitudes toward Comparative Effectiveness Research (CER) during a webinar held on Tuesday, July 9. Panelists included Marc Boutin, JD Executive Vice President and Chief Operating Officer, National Health Council, Barbara Doty, MD, FAAFP, Physician and Board Member, AAFP, and Susan Rawlins, RN, Director of Education, National Association of Nurse Practitioners in Women's Health (NPWH). The value of the trust based patient/clinician relationship was discussed by the panelists who agreed that conversations regarding this issue are well suited for the primary care setting.

The survey results concluded that physicians knowledge of CER is low, and that while 75 percent of those asked think that CER has a high value, 33 percent of the primary care physicians said that they rarely use CER to give their patients information. Patients who participated in the survey reported that they use the internet to get health and wellness information, but their trust in what they collect is low compared to other sources, like physicians. There was discussion on ways to engage primary care physicians in research and all agreed that money is the chief hurdle that should be addressed.

11. AAFP SENDS LETTER OF SUPPORT FOR END OF LIFE PLANNING LEGISLATION
The AAFP sent a letter of support for the *Personalize Your Care Act* (HR 1173) to Rep. Earl Blumenauer (D-OR) the bill's author. The legislation would provide coverage under Medicare and Medicaid for voluntary consultations between doctors and patients to discuss advance care plans. These plans specify the care that a person wishes to have if he or she becomes unable to make medical decisions and usually includes a living will, durable power of attorney for health care and a "Do Not Resuscitate" order. The bill would also provide grants to states to create or expand programs that assist with advance health planning.

12. AAFP SENDS LETTER OF SUPPORT FOR OBESITY TREATMENT LEGISLATION
The AAFP sent a letter to Senator Tom Carper (D-DE) supporting his bill, the *Treat and Reduce Obesity Act* (S. 1184). This bipartisan measure would increase vital access and reimbursement for obesity screening and counseling services. The bill would allow qualified health practitioners, including family physicians, to be reimbursed for providing intensive behavioral therapy for obesity to Medicare beneficiaries. Under the bill, CMS would distribute information about intensive behavioral therapy for obesity to Medicare recipients and their doctors, so that they are aware of this valuable service. The bill also would reimburse physicians and eligible

providers for pharmacological interventions for chronic obesity management given to those who are obese or overweight and suffer from one or more related conditions.

13. FamMedPAC SUPPORTS NEW MEMBER OF KEY COMMITTEE

FamMedPAC attended a physician-sponsored breakfast this week for a new member of the House Energy and Commerce Health Subcommittee, **Rep. Renee Ellmers (R-NC)**. Rep. Ellmers is married to a general surgeon and is very interested in healthcare issues. She is currently working with the Republican Study Committee on a health reform proposal. Rep. Ellmers has been mentioned as a possible Senate candidate in 2014.

14. REGULATORY BRIEFS

- On June 28, the U.S. Department of Agriculture released a final rule updating nutrition standards for the National School Lunch Program and School Breakfast Program. The AAFP had written a March 28 letter supporting this effort.
- On July 2, HHS released the Health IT Patient Safety Action and Surveillance Plan. It addresses the role of health IT in helping to eliminate medical errors, protect patients and improve the quality and safety of health care. The AAFP had sent a letter on January 30, 2013 in response to the proposed plan.
- On July 2, the U.S. Treasury Department announced it will postpone for one year the requirement that businesses cover their workers under the ACA.
- CMS will hold several free educational conference calls, registration is required for each:
    - Medicare Shared Savings Program Application Process on July 18 at 1 pm ET;
    - Medicare and Medicaid EHR Incentive Program; Reporting Beginning in 2014 on July 23 at 1:30pm ET;
    - Stage 1 and Stage 2 of Meaningful Use for the EHR Incentive Programs on July 24 at 1:30pm ET;
    - CMS Proposals for PQRS and Physician Value-Based Payment Modifier under the Medicare Physician Fee Schedule 2014 Proposed Rule on July 25 at 1:30pm ET; and
    - Choosing Your PQRS Group Reporting Mechanism and Implications for the Value-based Payment Modifier on July 31 at 2:30pm ET.

15. HOUSE SUBCOMMITTEE QUESTIONS DELAY IN ACA'S EMPLOYER MANDATE

On Wednesday, July 10, the Health Subcommittee of the House Ways and Means Committee held a hearing on delay of the ACA employer mandate. The hearing was an opportunity to reiterate long-standing criticisms of the ACA. The employer mandate was condemned for promoting the current employer-based system as opposed to an individual-based system, which could offer more options suited to an individual's unique situation. The hearing also served to highlight the budgetary implications of the delay which could prevent the federal government from collecting $10 billion in revenue in 2014. However, the panel was informed that the Treasury Department has the authority to delay the reporting requirement.