GOVERNMENT AFFAIRS WEEKLY

AAFP Government Relations — 1133 Connecticut Avenue, NW (Suite 1100) — Washington, DC 20036

May 2, 2014

IN THIS REPORT…

NEXT WEEK IN WASHINGTON…

* On May 6, the House Energy & Commerce Committee will host a "21st Century Cures Roundtable" to discuss the state of biomedical research in the United States.
* On May 7, the Senate Labor, HHS Appropriations Subcommittee will hold a hearing on the President's HHS budget with testimony from CDC, CMS, HRSA and ACF.
* On May 7, the House Energy & Commerce Oversight and Investigations Subcommittee will hold a hearing on PPACA Enrollment and the Insurance Industry.
* On May 8, the Senate HELP Committee will hold a confirmation hearing on HHS Secretary Nominee Sylvia Mathews Burwell.

1. HOUSE PASSES ACA EXEMPTIONS FOR EXPAT AMERICANS

On April 29, the House passed the *Expatriate Health Coverage Clarification Act* (HR 4414), a bill to exempt the medical plans of Americans living abroad from *Affordable Care Act* mandates by a vote of 268 to 150. The White House issued a Statement of Administration Policy against the legislation, on the grounds that it would reduce consumer protections and create more loopholes in the tax code. Senate action on the bill is unlikely.

2. HOUSE SUBCOMMITEE EXPLORES THE FUTURE OF TELEMEDICINE

On Thursday, May 1, the House Energy and Commerce Subcommittee on Health held a hearing entitled: "Telehealth to Digital Medicine: How 21st Century Technology Can Benefit Patients." The witnesses were Dr. Rashid Bashshur, Executive Director for eHealth at the University of Michigan Health System; Dr. Ateev Mehrotra, Associate Professor of Health Policy and Medicine, Harvard Medical School; Dr. Tom Beeman, President and CEO of Lancaster General Health; Gary Chard, Delaware State Director of the Parkinson's Action Network; and Kofi Jones, Vice President of Public Affairs at American Well.

Chairman Joe Pitts (R-PA) opened the hearing by announcing that the Subcommittee would release a call for ideas following the hearing, asking stakeholders to submit proposals on how further use of telemedicine could "reduce cost and increase quality". Chairman Pitts entered statements for the record from several physician organizations, including the AAFP. (The AAFP's statement for the Subcommittee compiles the Academy's policy on Telemedicine, its policy on Telemedicine, Licensure and Payment, and its policy on Licensure).

In general members expressed broad support of the promise of telehealth. Rep. Gregg Harper (R-MS), sponsor of a leading bipartisan bill, the *Telehealth Enhancement Act* (HR 3306), said that expanding access to telehealth may realistically be the best hope to solve the challenge of attracting doctors to rural communities. Rep. Michael Burgess (R-TX), a physician, humorously described his disappointment when as a practicing physician he learned that the 99371 code (telephone consult) fell under CMS's list of "codes with no reimbursement," but used the quip to challenge payment limits on non-face-to-face visits. The hearing covered a range of topics touching family practice including:

- **Scope of Telehealth**: There was consensus that telehealth should be defined broadly. Dr. Mehrotra testified that telehealth should be framed as any care delivered that is not face-to-face (generally consistent with AAFP policy). Rep. John Dingell (D-MI) elicited testimony from Dr. Bashshur that Medicare's current exclusion of "store-and-forward technologies that provide for the asynchronous transmission of health care information" should be removed.

- **Patient Safety**: Dr. Mehrotra cautioned that telehealth does not invariably improve care, and in fact can lead to worse outcomes (citing studies of home monitoring). Rep. Burgess spoke on the other hand about safety hazards patients can face when patients cannot easily reach their providers (for example after hours or over the weekend).

- **Cost of Care**: Dr. Beeman discussed how Lancaster General uses telehealth to manage "superutilizers" of care (480 patients connected to $36m in charges in a given year). Dr. Mehrotra stated that telehealth could lower the unit cost of care, but simultaneously drive up the overall cost of care through greater utilization. Dr. Bashshur agreed that expansion of telehealth is not likely to reduce health-care costs.

- **Originating Site**: Several exchanges occurred criticizing Medicare's current restrictions on where an originating site (where the patient receives care) can be. Ranking Member Frank Pallone (D-NJ) suggested that disabled patients such as Mr. Chard who can't easily leave home due to Parkinson's disease, and others with chronic conditions like diabetes, obesity, and heart failure, ought to be able to receive telehealth services in the home. Rep. John Dingell (D-MI) elicited testimony from Dr. Bashshur that Medicare ought to remove the requirement that patient/originating site must be in a rural area.

- **Licensure**: Ms. Jones, whose company American Well designs and manufactures HIPAA-compliant software and tools to facilitate telehealth services, alluded to the current "home field rule" restricting the delivery of services across state lines. Rep. Pallone mentioned HR 3077, the *Tele-MED Act*, to allow physicians licensed in a state to deliver Medicare services to a patient in another state.

3. HOUSE SUBCOMMITTEE INVESTIGATES PRESCRIPTION DRUG ABUSE

On Tuesday, April 29, the House Energy and Commerce Oversight and Investigations Subcommittee held a hearing on "Examining the Growing Problems of Prescription Drug and

Heroin Abuse." The subcommittee heard from representatives from the Drug Enforcement Agency (DEA), the Office of National Drug Control Policy (ONDCP), the Centers for Disease Control and Prevention (CDC), the National Institutes of Health (NIH), and the Substance Abuse and Mental Health Services Administration (SAMHSA) whose written statements can be found here.

Rep. Michael Burgess, MD (R-TX) chaired the hearing in the absence of Chairman Tim Murphy (R-PA) and indicted that further hearings will likely be necessary. Dr. Burgess took issue with the assertion of the ONDCP Acting Director, Michael Botticelli, that the problem of opioid abuse was a result of vast overprescribing by physicians and not enough training and insisted that this was a problem when he was in medical school many years ago. Deputy Assistant Administrator of the Office of Diversion Control at DEA, Joseph Rannazzisi, suggested that pain clinics were responsible for most of the overprescribing, but their numbers were overwhelming state and local law enforcement. Another physician on the panel, Rep. Phil Gingrey, MD (R-GA), suggested that physicians may not be adequately trained on opioid prescribing.

NIDA Director Nora Volkow advised lawmakers that preliminary studies show marijuana could be a potential gateway drug to substances such as heroin. Rep. Morgan Griffith (R-VA) then announced that he has introduced the *Legitimate Use of Medicinal Marijuana Act* (HR 4498) to allow marijuana to be prescribed by a physician for medical use.

4. HOUSE SUBCOMMITTEE EXAMINES MEDICARE PROGRAM INTEGRITY

On Wednesday April 30, the House Ways and Means Subcommittee on Health held a hearing entitled "Ideas to Improve Medicare Oversight to Reduce Waste, Fraud and Abuse." The witnesses were Shantanu Agrawal, MD, Deputy Administrator Director of CMS Center for Program Integrity, Kathleen King of the U.S. Government Accountability Office, and Gloria Jarmon, Deputy Inspector General for Audit Services at the Office of the Inspector General at HHS. Chairman Kevin Brady (R-TX) opened the hearing stating that Medicare misspends $50 billion annually through fraud, waste, and abuse. Many issues arose during the exploratory hearing, including the following that pertain to family physicians:

- **Overprescribing**: The OIG and CMS both mentioned physician overprescribing as a prominent example of abuse within Medicare. Ms. Jarmon of OIG (likely referring to a June 2013 OIG report documenting overprescribing in Medicare Part D) stated that "OIG has uncovered a stream of prescribing patterns by general care physicians." Dr. Agrawal of CMS referred to "dangerous prescribing through pill mills and a host of other schemes." There was no discussion about specific cases or charges arising out of physician overprescribing.

- **Incentive-Payment Arrangements:** Rep. Jim McDermott (D-WA) mentioned HR 1487, the *Improved Health Care at Lower Cost Act*, which the AAFP supports. The bill would establish a legal framework under which hospitals could make incentive payments to physicians who work to lower the cost of care during hospital stays. (Currently such incentive arrangements must be cleared by the HHS OIG on a case-by-case basis.)

- **Transparency**: Rep. Ron Kind (D-WI) asked CMS whether the recent release of 2012 Medicare Part B claims data would help CMS detect fraud. Dr. Agrawal stated that the release is "a very important element of the administration's overall approach to transparency in health-care data" and that the physician community has received the data release positively. Rep. Kind urged CMS to release more data, for example "quality measures," and the "overall success rate on how doctors are practicing medicine." Dr. Agrawal also mentioned the *Physician Payments Sunshine Act* (to be implemented later

this year) as a measure "which will allow more transparency into the financial interactions between industry and physicians."

- **Self-Referral**: Rep. McDermott also mentioned HR 2914, the *Protecting Integrity in Medicare Act*, to narrow the ability for physicians to refer patients to in-office ancillary services from which the physician derives a financial benefit. Ms. King of the GAO stated that "in instances where there is an ownership interest that the utilization is higher and in our view the self-referral is one of the primary driving forces behind the higher utilization." Later in the hearing, Rep. Tom Price (R-GA) said that he knew of studies that indicate no uptick in utilization due to use of in-office ancillary services.

5. AAFP JOINS MEDICAL SPECIALTIES ON SCOPE OF PRACTICE AMICUS BRIEF

This week the AAFP joined the North Carolina Board of Dental Examiners, the American Medical Association, and other professional societies on an amicus brief regarding the North Carolina Board of Dental Examiners v. Federal Trade Commission case being considered this spring by the U.S. Supreme Court. The AAFP joined the brief to fight back against the FTC's increasingly inappropriate interference into medical board and medical professionals' decision making authority under the guise of upholding federal antitrust law. The AAFP believes that the U.S. Fourth Circuit Court of Appeals decision in favor of the FTC allows a federal agency with no particular knowledge of medicine or dentistry to strip authority from experts charged by state legislatures to shield patients from unlawful practice. The brief argues that state regulatory boards are appointed to fulfill the directives of state law, which intend to protect the public health and safety. AAFP and the other co-signers believe that these boards should be immune from antitrust challenges under the state action doctrine, acting on behalf of the state, and should have autonomous decision making rights on public health issues.

6. AAFP SIGNS LETTER TO CONGRESS ON CHIP REAUTHORIZATION

On Monday, April 28, the AAFP joined other members of the Partnership for Medicaid by signing onto an organizational sign-on letter to Congress regarding the reauthorization of the Children's Health Insurance Program (CHIP). The letter, sent to the Senate Finance and House Committee on Energy and Commerce Committees calls on the legislators to reauthorize funding for the CHIP program before it expires on October 1, 2015. CHIP provides health insurance to children of low-income parents who earn too much to qualify for Medicaid, but too little to afford to purchase private health insurance.

7. NEBRASKA SCOPE OF PRACTICE BILL VETOED

On April 22, Gov. Dave Heineman (R) vetoed legislation on the scope of practice for nurse practitioners. The proposed legislation would have removed the provisions that govern integrated practice agreements between physicians and nurse practitioners. The AAFP strongly opposed this legislation. The AAFP submitted a letter opposing the bill in January and the AAFP President-Elect, Dr. Robert Wergin, testified against the bill at a committee hearing in March.

8. STATE MEDICAID EXPANSION UPDATE

- **Utah**: Gov. Gary Herbert met with White House administration officials last week to discuss his state's unconventional approach to Medicaid Expansion. His plan would cover low income Utah residents in the private market. Gov. Herbert is working out the details of his proposed three-year pilot program that would help over 110,000 Utah residents purchase private health insurance. Initial federal cost estimates for the plan have come in around $258 million. Herbert hopes to have a more solid plan by June.
- **Montana**: This fall, Montana could have two Medicaid expansion ballot initiatives. Groups both for and against the Medicaid expansion are gathering signatures for a November ballot measure. The groups have until June 20 to gather the nearly 25,000

signatures in order for the initiatives to be on the ballot. These competing measures could be confusing and impact a tough race for the Montana U.S. Senate seat.

- **Louisiana**: Legislation to expand the state Medicaid program failed to progress when the Louisiana Senate health committee voted 6 to 2 against an expansion on April 23. The bill proposed a constitutional amendment for the voters to decide on, mandating the state implement the Medicaid expansion. The bill's sponsor is looking to a substitute bill that might get more support, which would follow Gov. Bobby Jindal's plan for a global grant approach to Medicaid where states would get a fixed amount and determine how to use it. There is a chance the substitute legislation following Gov. Jindal's plan could be heard this year; otherwise Medicaid expansion is likely dead for 2014.
- **Missouri**: With the Missouri legislative session ending in three weeks, Gov. Jay Nixon presented proposal to use federal money to pay a portion of the private insurance costs for businesses with less than 150 employees and the state aid would be available to those earning less than 138 percent of federal poverty level. Republican legislators quickly spoke out and rejected the plan. The Missouri Legislature has repeatedly rejected plans to expand Medicaid.

9. AAFP ELABORATES ON FTC HEALTH CARE COMPETITION REQUEST

In a letter sent to the Federal Trade Commission (FTC) on April 28, the AAFP provided further comments in response to the "Examining Health Care Competition" request for comment and public hearing that occurred on March 20, 2014. The AAFP's April 28 letter echoes mainly of the same concerns and suggestions that were made in a March 18, 2014 letter.

After initially expressing appreciation that the FTC attempts to balance concerns between patient safety and competition, the AAFP stated the belief that encouraging state legislatures to modify how their state medical boards accredit, credential, and license physicians has the potential to threaten patient care. The letter asserted that applicable professional state and federal regulations already exist and they continue to assure the clinical competency of physicians, and protect the safety of patients receiving health care services.

The AAFP urged the FTC again to focus efforts on exposing the troubling increase in mergers between hospitals and health systems that increase costs, decrease competition, and fuel an uncoordinated race to provide expensive advanced medical technology and high-cost procedures. The AAFP also voiced concerns over shrinking number of commercial insurers and the expanded role of large insurance plans into government health care programs persist. Finally the AAFP discussed concerns with anticompetitive behaviors in the electronic health record industry which can create competitive barriers against physicians and patients.

10. AAFP URGES ONC TO NOT ADD FURTHER COMPLEXITIES TO THE EHR PROGRAM

In a letter sent April 24 to the Office of the National Coordinator (ONC) for Health Information Technology within the U.S. Department of Health and Human Services, the AAFP commented on the "Voluntary 2015 Edition Electronic Health Record (EHR) Certification Criteria; Interoperability Updates and Regulatory Improvements" proposed rule.

This proposed rule first discusses ONC's intent to "more frequent approach to health information technology certification regulations," the proposed rule then outlines 2015 edition EHR certification criteria as voluntary and discusses how EHR technology developers who certified as EHR technology to the 2014 Edition would not need to recertify to the 2015 Edition in order for its customers to participate in the Medicare and Medicaid EHR Incentive Programs.

The AAFP comment letter expressed appreciation that ONC is attempting to establish a process for more frequent, visible and incremental changes to EHR certification criteria since providing EHR developers with advanced notification of future mandatory certification criteria is useful for

developers and physicians alike. However, the AAFP remains concerned that the proposed rule creates potential confusion for family physicians over what level of certification is actually required for their EHR to qualify to attest to Meaningful Use. The AAFP urged ONC not to add another layer of complexity to this program by creating a new and voluntary certification level.

11. AAFP NOMINATES TWO FAMILY PHYSICIANS TO CDC/HRSA COMMITTEE

In a letter sent April 17 to the National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, the AAFP nominated Ronald H. Goldschmidt, MD and Pamela G. Rockwell, D. O. to fill vacancies and serve on the Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment, which advises both the Centers for Disease Control and Prevention (CDC) and Health Resources and Services Administration (HRSA) on these issues.

12. REGULATORY BRIEFS

- HHS will release an interim final rule in the near future to require the use of ICD-10 beginning October 1, 2015. The rule will also require HIPAA covered entities to continue to use ICD-9-CM through September 30, 2015 in accordance with the *Protecting Access to Medicare Act* (P.L. 113-93) enacted on April 1 which said that the Secretary may not adopt ICD-10 prior to October 1, 2015.
- On April 14, CMS announced a proposed rule on the adoption of updated life safety code (LSC) that CMS uses to ensure the health and safety of patients, family, and staff in provider and supplier settings. CMS intends to adopt the National Fire Protection Association's 2012 editions of the (LSC) and the Health Care Facilities Code (HCFC).
- On April 17, the HHS Office of Inspector General released a report that recommends CMS reduce Medicare payment rates under the hospital outpatient prospective payment system for low- and no-risk patients receiving procedures that could be performed in ambulatory surgical centers and further that CMS should seek authority from Congress to exempt the savings from budget neutrality requirements.
- On April 29, CMS released a final rule pertaining to a new payment system for Federally Qualified Health Centers (FQHCs) using a prospective payment system (PPS). Medicare will begin to pay FQHCs a single encounter rate per beneficiary per day for all services provided, with some exceptions. The rate will be adjusted for geographic variation in costs. The rate will also be adjusted for the higher costs associated with furnishing care to a patient that is new to the FQHC and when the FQHC furnishes an initial preventive physical examination or an annual wellness visit to a Medicare beneficiary. The new payment system will be implemented beginning on October 1, 2014. FQHCs will be transitioned to the new payment system throughout Fiscal Year 2015. Portions of the final rule are open for comment and currently the AAFP is assessing the final rule's impact on members.
- On April 30, CMS issued a proposed rule that updates FY 2015 Medicare payment policies and rates for inpatient stays at general acute care and long-term care hospitals (LTCHs). CMS projects the payment rate update to general acute care hospitals will be 1.3 percent. The rate update for long term care hospitals will be 0.8 percent.
- CMS will host several free educational calls, registration is required for each:
    - Individualized Quality Control Plan for CLIA Laboratory Non-Waived Testing on May 19, 2:00p ET.
    - National Partnership to Improve Dementia Care in Nursing Homes on May 20, 1:30pm ET.
    - Review of the New Medicare PPS for Federally Qualified Health Centers, May 21, 12:30p ET.
    - Stage 2 Meaningful Use Requirements, Reporting Options, and Data Submission Processes for Eligible Professionals, May 29, 1:30p ET.

13. AAFP e-ADVOCACY SUPPORTS TITLE VII FUNDING

Members of the U.S. House of Representatives sent a letter to the House Labor, Health and Human Services Appropriations Subcommittee leaders on March 31 that advocated they support the nation's health care workforce by including $280 million for the Title VII health programs in the 2015 budget. More than 50 letters were sent by AAFP members to the Congress, educating Representatives that did not sign onto the letter about the importance of Title VII to family medicine. The hope is these Representatives will be supportive of Title VII in the future. Learn more about Title VII and what the AAFP is doing to ensure continued funding of these important programs.