GOVERNMENT AFFAIRS WEEKLY

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IN THIS REPORT…

NEXT WEEK IN WASHINGTON…

* On November 12, the House and the Senate re-convene for the first time since early October.
* On November 12, the Senate Appropriations Committee will hold a hearing on the federal response to the Ebola outbreak.
* On November 13, the House Veterans' Affairs Committee will hold a hearing "Assessing the Implementation of the *Veterans Access, Choice, and Accountability Act*."

1. MID-TERM ELECTIONS GIVE REPUBLICANS CONTROL OF CONGRESS

While several races have yet to be decided officially (including a run-off election in Louisiana), Republican candidates won at least 7 seats currently occupied by Democratic Senators, giving the presumed Majority Leader, Senator Mitch McConnell (R-KY) a margin of at least 52 to 45. No Republican Senator lost on Election Day.

In the House of Representatives, Speaker John Boehner (R-OH) will have at least 13 Republican Representatives representing districts currently held by Democrats, although that margin will likely grow as the dozen races that are still undecided become finalized. Only two GOP Representatives lost their bids for re-election.

2. FamMedPAC SUPPORTED CANDIDATES HAVE GOOD ELECTION NIGHT

FamMedPAC contributed $543,000 to 107 candidates up for election in 2014. (Other contributions went to Campaign Committees, Representatives who retired, and Senators not up this cycle, and debt retirement for 2012.) Of that amount:

-- $432,000 (79.5 percent) went to 85 (79.4 percent) candidates who won on Tuesday.
-- $30,000 (5.5 percent) went to 5 (4.6 percent) candidates in races too close to call
-- $81,000 (14.9 percent) went to 17 (15.8 percent) candidates who lost

The PAC made two independent expenditures:
-- $25,000 for Rep. Raul Ruiz (D-CA) who won
-- $25,000 for Rep. Ami Bera (D-CA) who's race is too close to call

3. FINAL 2015 MEDICARE PHYSICIAN FEE SCHEDULE RELEASED
On October 31, the Centers for Medicare & Medicaid Services (CMS) issued a final rule (note this link expires on November 11) that updates payment policies and rates for services furnished under the Medicare physician fee schedule beginning January 1, 2015. In a statement released on November 4, the AAFP expressed "disappointment that, once again, current law requires CMS to slash Medicare physician payment by 21.2 percent on April 1, 2015. Without Congressional action to permanently repeal the sustainable growth rate formula that requires this devastating cut, Medicare patients will continue to struggle with insecure access to health care." The current conversion factor through March 31, 2015 is $35.8013. Unless Congress intervenes, starting on April 1, 2015, the conversion factor falls to $28.2239.

The AAFP released a summary of this final rule. Of particular interest, in 2015 CMS will begin paying physicians for managing the care of Medicare patients who have two or more chronic conditions outside of a face-to-face visit. The Medicare allowance for this Chronic Care Management (CCM) service will be $42.60 and the service can be billed no more frequently than once per month per qualified patient.

As part of the final rule's release, CMS issued fact sheets discussing overall payment policy changes, outlining changes to the quality reporting programs, and summarizing policies on the value modifier. The AAFP sent CMS extensive regulatory comments on the proposed 2015 fee schedule in an August 26, 2014 letter on payment issues and in an August 1, 2014 letter on the Continuing Medical Education changes to the Open Payment program.

4. AAFP SIGNS CHIP REAUTHORIZATION LETTER
Last month, the AAFP joined over 1,200 organizations including some of our state chapters, in signing a letter urging Congress to reauthorize the Children's Health Insurance Program (CHIP) before the end of the year. Though funding for CHIP does not expire until October 2015, the letter urges Senate and House Leadership to reauthorize the program for four years during this Congress to give states adequate time to plan and implement the program for another four years, and to alleviate last-minute hurdles that would present if reauthorization delayed.

5. AAFP CALLS ON LAME DUCK TO PREVENT PRIMARY CARE CLIFF CUTS
The AAFP was one of over 100 national groups signing an October 28 letter calling on the Congress to prevent cuts to the National Health Service Corps, the Teaching Health Center Graduate Medical Education program, and community health centers when legislators return for the post-election session. The *Affordable Care Act* (ACA) authorized substantial amounts of mandatory spending, but the authority for these funds will soon expire. The Community Health Center Fund (CHCF), to which the ACA appropriated a total of $11 billion in appropriations over the five-year period FY2011-FY2015, helps to support the health centers program and the National Health Service Corps (NHSC). The ACA also authorized the creation of the Teaching Health Center Graduate Medical Education (THCGME) program and provided $230 million over the same five years. The expiration of the ACA funds at the end of FY 2015 without any appropriated baseline funding to continue these programs will mean the end of the NHSC and THC programs on October 1, 2015 and draconian cuts to CHCs. Together, we are describing the expiration of these funds as a "primary care cliff."

6. GROUP LETTER SENT TO SENATE ARMED SERVICES ON TOBACCO USE ON BASES
In an October 24 letter to the Senate Armed Services Committee, the AAFP and a coalition of other physician and public health organizations urged the rejection of the language currently

included in the House version of the *National Defense Authorization Act* that would prohibit the implementation of new policy to limit, restrict, or ban the sale of any legal consumer product currently sold at commissaries or exchanges. This very broad language regarding the sale of all legal products appears primarily designed to block policies to reduce tobacco use.

7. BILL CLARIFIES EDUCATIONAL MATERIALS AND OPEN PAYMENT REPORTING
In a letter sent October 24, the AAFP and other physician organizations supported the *Expanding Opportunities for Recovery Act* (HR 5339), which clarifies that certain applicable manufacturer transfers of value to support independent medical educational programs and materials are exempt from reporting under the *Physician Payments Sunshine Act*. The letter urged passage of this bill to remedy onerous and burdensome reporting obligations imposed by the CMS that have chilled the dissemination of medical textbooks, peer-reviewed medical reprints and journals, and to avert a similar negative impact on access to independent certified and/or accredited continuing medical education.

8. FAMILY MEDICINE COMMENTS ON PRIMARY CARE QUALITY MEASURES
In a September 29 letter to the Agency for Healthcare Research and Quality (AHRQ), the AAFP and the Council of Academic Family Medicine commented on a project titled, "Care Coordination Quality Measure for Patients in the Primary Care Setting." The letter noted that transforming primary care practices to be effective medical homes for patients should be a key priority and one that can be accomplished only with studies in the primary care environment. The letter also argued that the AHRQ study does not address the significant differences in care coordination as it relates to payment.

9. AAFP EFFORT UNDERWAY TO PREVENT MEDICAID PAYMENTCUT
Medicaid primary care services are currently paid at Medicare levels. This federally funded enhanced payment allows family physicians to serve more Medicaid patients at a higher payment rate. The provision that allows this enhanced payment is set to expire at the end of this year, unless Congress votes to extend it. So far, over 530 letters were sent, but we need more to prevent this payment cut and protect the essential care that family physicians provide. Please send a prewritten email to your senators and representative to urge them to help protect family medicine and the vulnerable Medicaid populations.

10. AAFP PROVIDES NOMINATION TO CDC FOR HEALTHCARE INFECTION COMMITTEE
In a September 25 letter to the Centers for Disease Control and Prevention (CDC), the AAFP nominated Dr. Pamela Rockwell to serve on the Healthcare Infection Control Practices Advisory Committee. This committee provides advice and guidance to the U.S. Department of Health and Human Services (HHS) regarding the practice of infection control and strategies for surveillance, prevention, and control of health care-associated infections.

11. AAFP SENDS HHS CONCERNS OVER MEANINGFUL USE PENALTIES
In a September 23 letter to the CMS and the Office of the National Coordinator for Health Information Technology, the AAFP expressed concerns over the possibility that some physicians may be financially penalized in 2015 if they have not attested to being a Meaningful User by October 1, 2014. Under the final rule published on September 4, 2014, CMS increased flexibility by allowing physicians who are attesting to Meaningful Use for the first time this year to use 2011 edition certified electronic health record technology (CEHRT) to attest to 2013 edition of Stage 1. Previously, physicians were required to use 2014 edition CEHRT to attest to 2014 edition Stage 1. However, the CMS portal by which these physicians were to attest to the 2013 edition of Stage 1 was not upgraded until mid-October. Therefore, due to the lack of an upgraded CMS portal, the letter argued that some family physicians may be improperly penalized in 2015. The AAFP urged CMS to fully operationalize the flexibility offered in the

recent final rule by immediately upgrading the CMS attestation portal or extend the attestation timeframe well beyond October 1 to allow physicians to attest and not be penalized in 2015.

12. COALITION LETTER SENT TO HHS WITH INTEROPERABILITY CONCERNS

In an October 15 letter to HHS, the AAFP, American Medical Association, Medical Group Management Association, National Rural Health Association, Memorial Healthcare System, Mountain States Health Alliance, Premier healthcare alliance, and Summa Health System expressed immediate concerns with the Meaningful Use (MU) program and usability of health information technology and electronic health records. The letter discussed support conceptually but that "collective member experience" shows barriers which require changes and improvements to the MU program. The letter discussed inaccessible data (“lock-in”) due to lack of interoperability and also referenced recent data that less than 14 percent of physicians are able to transmit data successfully. The letter concludes with asking HHS to streamline interoperability rules, foster collaboration by stakeholders, remove restrictive MU policies, and recognize time is needed for compliance.

13. REGULATORY BRIEFS

- On September 22, HHS announced $99 million in grants to improve mental health services for young people by training new mental health providers.
- On September 23, HHS released a new report showing that the Health Insurance Marketplace will have 25 percent (77) more issuers in 2015.
- On September 24, CMS announced the availability of the 2013 PQRS and eRx Incentive Program Feedback Reports.
- On September 25, HHS released a report that projects a $5.7 billion drop in hospitals’ uncompensated care costs because of the ACA. Hospitals in states that have expanded Medicaid will receive about 74 percent of the total savings nationally.
- On September 25, HHS announced nearly $212 million in grants to prevent chronic diseases such as heart disease, stroke and diabetes.
- On September 30, CMS made publicly available the first wave of drug & device company payments to teaching hospitals and physicians. The data contains 4.4 million payments valued at nearly $3.5 billion attributable to 546,000 individual physicians and almost 1,360 teaching hospitals. Future reports will be published annually and will include a full 12 months of payment data, beginning in June 2015.
- On October 7, CMS reopened the submission period for hardship exception applications to avoid the 2015 Medicare payment adjustment for not demonstrating meaningful use of Certified Electronic Health Record Technology (CEHRT). The previous deadline to submit a hardship exception application was April 1, 2014 for eligible hospitals and July 1, 2014 for eligible professionals. The new deadline for submitting a hardship exception application will be November 30, 2014.
- On October 8, CMS released the Pioneer ACO financial and quality results for performance years one and two.
- On October 9, HHS announced that the 2015 Medicare Part B Premiums & Deductible will remain the same as the previous two years. For the approximately 49 million Americans enrolled in Medicare Part B, premiums and deductibles will remain unchanged in 2015 at $104.90 and $147 respectively. HHS also announced that the Medicare Part A premium, which pays for inpatient hospital, skilled nursing facility, and some home health care services, will drop $19 in 2015 to $407. The Medicare Part A deductible that beneficiaries pay when admitted to the hospital will be $1,260 in 2015, an increase of $44 from the 2014 deductible.
- On October 10, CMS published the 2015 star ratings for Medicare Advantage and Prescription Drug Plans.

- Medicare Open Enrollment began on October 15 and ends December 7. Open Enrollment is the time for beneficiaries to review and compare Medicare plans
- On October 15, CMS announced a new Shared Savings Program model. The new ACO Investment Model will build on the experience with the Advance Payment Model by using pre-paid shared savings to encourage ACO formation in rural and underserved areas, as well as encourage existing Shared Savings Program ACOs to transition to higher risk tracks. The new ACO Investment Model is designed to enhance efforts to better coordinate care by providing up to $114 million in upfront investments to up to 75 ACOs across the country, with a focus on rural and underserved areas. The application deadline for organizations that started in the Shared Savings Program in 2012 or 2013 will be December 1, 2014. Applications will be available beginning in the summer of 2015 for ACOs that started in the Shared Savings Program in 2014 or will start in 2016.
- On October 23, HHS announced the Transforming Clinical Practice Initiative which will invest $840 million over the next four years to support 150,000 clinicians develop strategies to share, adapt and further improve the quality of care they provide, while holding down costs. Cooperative agreement funding will be awarded for two network systems under this initiative, Practice Transformation Networks and Support and Alignment Networks.

14. 2014 State Election Report

- **Republicans Win State House Majorities:** Echoing the federal trend, Republicans won at several Democratic-held state chambers in Tuesday's election. The GOP won control of the state Senate in Colorado, Maine, Nevada, and West Virginia, while also picking up state Houses and Assemblies in Minnesota, Nevada, New Hampshire, and West Virginia. The party also reaffirmed majority rule in the Washington and New York state Senates. Still up in the air is a close race for which party will control the Colorado House of Representatives. The GOP held majorities in seven state chambers considered vulnerable - the state Senates of New Hampshire and Wisconsin, along with House chambers in Arkansas, Iowa, and Michigan. Democrats held vulnerable chambers in the Iowa Senate, Kentucky House, and Oregon Senate.
- **GOP Takes Governor Mansions & Lieutenant Governor Races:** Republicans gained ten to eleven (pending results) seats in Governor's Mansions across the country. Most surprising of these pickups were the GOP Governor victories in Massachusetts, Maryland, and Illinois. The GOP was also victorious in three out of four lieutenant governor races in Arkansas, Georgia, and Nevada. Though it was mostly a night for Republican celebration, Democrats picked up a victory in flipping the Pennsylvania Governorship from incumbent Tom Corbett to incoming Democratic Governor Tom Wolf and maintained the Lieutenant Governor slot in Rhode Island.
- **State Ballot Initiatives:** Though Republicans were mostly victorious in state and federal elections, the results of 146 state ballot measures across 46 different states seemed to be victories in favor of left-of-center advocates on many hotly contested issues. Healthcare - Voters in Arizona approved Proposition 303, which allows terminally ill patients to try experimental drugs and devices not yet approved by the Food and Drug Administration. California voters denied passage of both Proposition 45, which would have given the CA insurance commissioner power to block health insurance rate increases, and Proposition 46, which would have raised the medical malpractice lawsuit cap on pain and suffering from $250,000 to almost $1.1 million. Voters in South Dakota passed Measure 17, an Any Willing Provider initiative, which requires insurers to treat any willing and qualified health care provider who meets established conditions for participation in a health insurance plan as "in-network" providers. Abortion - Voters in Colorado and North Dakota voted down more restrictive measures on abortion, while Tennessee voters approved a measure that gives

their state legislators more statutory authority to "enact, amend, or repeal" rules on abortion in the state. Meanwhile, in Illinois, voters passed a non-binding referendum that requires health insurance plans that provide prescription drug coverage to include contraceptives in their covered pharmaceuticals. Marijuana - In Oregon, Alaska, and Washington, DC voters approved ballot measures that allow for adults over the age of 21 to engage in recreational use of marijuana, while voters in Florida didn't garner the same support for a similar measure and it failed to pass. Firearms - Washington state voters approved a measure that requires background checks on all gun sales and transfers (including private transactions), while voting down a measure that would have prohibited state background checks.