

June 5, 2015

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### NEXT WEEK IN WASHINGTON...

- \* On Wednesday, June 10, the Senate Health, Education, Labor and Pensions Committee has scheduled a hearing titled "Health Information Exchange: A Path Towards Improving the Quality and Value of Health Care for Patients."
- \* Also on June 10, the House Ways and Means Committee will hold a hearing on the 2010 health care law implementation and the fiscal 2016 budget request for the Department of Health and Human Services.

## 1. HOUSE PANEL APPROVES RAFT OF HEALTH BILLS

On Tuesday, June 2, the House Committee on Ways and Means approved 10 bills that include health care provisions. These are of particular interest to family medicine and primary care:

- Rep. Phil Roe (R-TN) and Rep. Linda Sanchez (D-CA) sponsored the *Protecting Seniors' Access to Medicare Act* (HR 1190), which would repeal the Medicare Independent Payment Advisory Board (IPAB). IPAB's mandate is to supply backstop legislation to Congress to reduce Medicare expenditures, in the event that Congress does not do so on its own when specific expenditure thresholds are crossed. Although Medicare cost growth remains historically low, thereby preventing the 15-member panel

from being launched in the near future, many stakeholders view IPAB as a looming threat to Medicare payment rates.

- Health Subcommittee Chairman Rep. Kevin Brady (R-TX)'s bill, the *Preservation of Access for Seniors in Medicare Advantage Act* (HR 2581), would add a second open enrollment period for Medicare Advantage (MA) plans between January and March, and establish a demonstration program to allow MA plans to adjust their scope of to incentivize high-value care (for example, by reducing cost sharing for primary care). It also adjusts Medicare's payment methodology for some physician-administered drugs.

The bills are expected to proceed to a vote of the full House of Representatives later this summer.

## **2. AAFP LAUNCHES GRASSROOTS CAMPAIGN TO KEEP CIGARS REGULATED**

The *Traditional Cigar Manufacturing and Small Business Jobs Preservation Act* (HR 662) proposes to exempt cigars from regulation by the Food and Drug Administration (FDA). Currently, the FDA regulates all tobacco products, including cigars. If you have not already, join the 100 others who have already spoken out and told their legislator to oppose HR 662.

More than 2,400 kids under the age of 18 try cigar smoking for the first time every day. As a family physician, [tell your representative](#) that this is not the time to reduce regulation of any tobacco products, including cigars.

## **3. BILL TO REFORM MEDICARE APPEALS PROCESS MOVES FORWARD**

On Wednesday, June 3, the Senate Finance Committee, by voice vote, approved a bipartisan bill to reform the Medicare appeals process—now experiencing a historically high backlog. *The Audit and Appeal Fairness, Integrity, and Reforms in Medicare (AFIRM) Act*, sponsored by Committee Chairman Sen. Orrin Hatch (R-UT) and Ranking Democrat Sen. Ron Wyden (D-OR) would increase resources for the Office of Medicare Hearings and the Departmental Appeals Board, establish expedited procedures for appropriate cases, consolidate appeals for administrative efficiency, and establish a cadre of “Medicare magistrates” to review low-dollar cases (between \$150 and \$1,460), among other improvements. The bill would also require the Centers for Medicare and Medicaid Services (CMS) to install an independent provider and supplier ombudsman for reviews and appeals.

## **4. FUNDING BILL SUPPORTS DRUG MONITORING, PROTECTS MEDICAL MARIJUANA**

The House approved the Fiscal Year 2016 Commerce, Justice, Science Appropriations bill ([HR 2578](#)) by a vote of 242 to 183 on June 3. The bill funds the Departments of Commerce and Justice, the National Aeronautics and Space Administration, the National Science Foundation and other agencies. It includes \$11 million for grants to support state Prescription Drug Monitoring Programs. During floor debate, the House voted 242 to 186 to prevent the federal government from interfering in state-legalized medical marijuana programs. The House also cut a total of \$23 million from the Drug Enforcement Administration (DEA), ending the DEA's bulk data collection programs. The White House on June 1 issued a [veto threat](#) against the bill urging Congress to reverse budget sequestration and citing Constitutional concerns.

## **5. HOUSE SUBCOMMITTEE DISCUSSES FDA'S PROPOSED MENU LABELING RULE**

On June 6, the House Energy and Commerce's Health Subcommittee held a [hearing](#) to discuss the *Common Sense Nutrition Disclosure Act* (HR 2017). The legislation would exempt certain retail establishments from providing calorie content as required by the Food and Drug Administration's (FDA) menu labeling standards. Food establishments such as chain pizza stores, movie theaters and others are working to delay or weaken the policy, which is expected to go into effect December 2015.

Menu labeling policies have emerged in response to the growing obesity crisis in America. Over two-thirds of adults, children and adolescents are overweight and obese. In 2010, the AAFP [supported](#) the FDA's proposed menu labeling rule and commented on the importance improving patients' knowledge of nutritional choices.

## **6. TWO MAJOR MENTAL HEALTH BILLS INTRODUCED IN CONGRESS**

On June 3, Rep. Rosa DeLauro (D-CT) and Sen. Patty Murray (D-WA) introduced the *Children's Recovery from Trauma Act* (HR 2632/S 1494) to reauthorize the National Child Traumatic Stress Initiative program and help ensure the nation's health care system is better prepared to provide support to children and families following traumatic events.

On June 4, Rep. Tim Murphy (R-PA) introduced the *Helping Families in Mental Health Crisis Act* (H.R. 2646). The [legislation](#) is focused on improving federal support for and coordination of mental health services, most notably those within the jurisdiction of the Substance Abuse and Mental Health Services Administration (SAMHSA). The legislation includes child and adolescent psychiatrists in the National Health Service Corps. It supports health information technology access aimed at increasing greater levels of integration between primary care and mental health.

## **7. 2015 STATE LEGISLATIVE CONFERENCE SCHEDULED**

The 2015 State Legislative Conference will be on November 6-7 2015, at the W Hotel-Foshay in Minneapolis, Minnesota. The conference provides members and state chapters an opportunity to discuss important health policy issues trending across the nation. The meeting will feature speakers on a variety of topics including prescription drug abuse, Medicaid, state and national perspectives, workforce, and other matters affecting AAFP members across the nation.

## **8. FamMedPAC SUPPORTS THREE LEGISLATORS THIS WEEK**

FamMedPAC participated in three events in Washington, D.C. this week for leaders in both the House and Senate. As June 30 marks the end of a key reporting period for campaigns, the remainder of the month is packed with events. Thanks to excellent fundraising success in the first half of this year, AAFP is hosting and attending physician-focused events with important legislators all month long. FamMedPAC supported the following candidates and committees:

- **Rep. Nancy Pelosi (D-CA)**, the Minority Leader in the House of Representatives.
- **Rep. Morgan Griffith (R-VA)**, a member of the Health Subcommittee of the House Energy and Commerce Committee.
- **Democratic Senatorial Campaign Committee (DSCC)**, the campaign committee for Senate Democrats. Attending the event were **Sen. Ron Wyden (OR)**, the senior Democrat of the Senate Finance Committee, **Sen. John Tester (MT)**, the Chair of the DSCC, **Sen. Tom Carper (DE)**, on the Senate Finance Committee, and **Sen. Chris Murphy (CT)**, on the Senate Appropriations Committee.

## **9. SENATE MODIFIES VETERAN CARE PROGRAM**

On May 26, the Senate approved the *Construction Authorization and Choice Improvement Act* (HR 2496) that changes the Veterans' Choice program. This new law expands factors that could help veterans qualify for non-VA care, including environmental factors, such as unpassable roads or hazardous weather, or a medical condition that makes it hard to travel.

## **10. AAFP COMMENTS ON HIT PROPOSED RULES**

In a [letter](#) sent May 26 to CMS, the AAFP commented on the proposed rule titled, "Stage 3; 2015 Edition Health Information Technology (Health IT) Certification Criteria, 2015 Edition Base Electronic Health Record (EHR) Definition, and ONC Health IT Certification Program

Modifications.” After acknowledging efforts to both improve healthcare and the way electronic health information is shared and that the AAFP continues to encourage members to adopt electronic health records, the AAFP reiterated longstanding concerns with the increasingly challenging Meaningful Use requirements. The AAFP strongly urged the agency to revise the approach to the Meaningful Use program so that more physicians are able to achieve these objectives. The letter also discussed grave concerns that the timing of Meaningful Use Stage 3, in relation to the Merit-based Incentive Payment System (MIPS) will compete and potentially interfere with practices’ transformation to value-based payment. The AAFP strongly urged CMS to delay Meaningful Use Stage 3 until:

- The regulations of MIPS are known and implemented
- Meaningful Use Stage 3 requirements are completely harmonized with the requirements of MIPS; and
- The certified health IT has the needed interoperability and functionality to support the value-based payment needs of practices.

In a subsequent [letter](#) on May 28, the AAFP responded to a proposed rule titled, “2015 Edition Health Information Technology (Health IT) Certification Criteria, 2015 Edition Base Electronic Health Record (EHR) Definition, and ONC Health IT Certification Program Modifications.” The letter reiterated how longstanding concerns persist with Meaningful Use requirements.

#### **11. JOINT EFFORT OPPOSES HOUSE BILL THAT THREATENS FDA AUTHORITY**

In a [letter](#) sent May 26 to the U.S. House of Representatives, a coalition including the AAFP expressed opposition to the *FDA Deeming Authority Clarification Act* (HR 2058), a bill to exempt many tobacco products from the requirements for Food and Drug Administration (FDA) review. The bill would undermine FDA’s ability to protect the public’s health from cigars (including little cigars and cigarillos), e-cigarettes, and other tobacco products that are on the market but are not yet under FDA’s jurisdiction.

#### **12. AAFP URGES CMS AND CONGRESS TO COVER ACIP VACCINES**

In May 28 letters to [Congress](#) and to [CMS](#), the AAFP asked that coverage under Medicare Part B be extended for the cost of the shingles vaccine and the recommended one-time dose of tetanus, diphtheria, and acellular pertussis (Tdap) plus their administration in family physicians’ offices. The AAFP believes the zoster vaccine, the Tdap booster, and all vaccines that the Advisory Committee on Immunization Practices (ACIP) recommends should be covered and paid under Medicare Part B, and this payment should be retroactive to the time of the ACIP recommendation.

#### **13. SUPPORT SENT FOR BILL ON TEXTBOOKS WITHIN THE OPEN PAYMENT PROGRAM**

In a coalition [letter](#) sent May 29 to Rep. Michael Burgess (R-TX), national and state physician organizations expressed strong support for HR 293, a bill to clarify 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* (*Sunshine Act*). The letter argued that passage of this bill is urgently needed to remedy burdensome reporting obligations of CMS that have chilled the dissemination of medical textbooks, peer-reviewed medical reprints and journals, and to avert a similar effect on access to independent certified or accredited continuing medical education.

#### **14. AAFP INSISTS DEA PROMPTLY CHANGE ELECTRONIC PRESCRIBING RULES**

On June 3, the AAFP sent the Drug Enforcement Administration (DEA) a [letter](#) that insists the agency promptly change the current rules for electronic prescribing of controlled substances so that the electronic prescriptions can be sent more easily to the pharmacy in a safe and secure manner. The AAFP called on the DEA to promote electronic prescribing of controlled substances on a national level so that states are not forced to impose patchwork requirements.

## **15. COMMENTS SENT ON MEDICAID, CHIP, MANAGED CARE ON MENTAL HEALTH**

In a [letter](#) sent June 3, the AAFP responded to a proposed rule titled, “Medicaid and Children’s Health Insurance Programs; Mental Health Parity and Addiction Equity Act of 2008; the Application of Mental Health Parity Requirements to Coverage Offered by Medicaid Managed Care Organizations, the Children’s Health Insurance Program (CHIP), and Alternative Benefit Plans.” In supporting the proposed rule, the AAFP encourages parity of health insurance coverage for patients, regardless of medical or mental health diagnosis. The AAFP argued that payment mechanisms should recognize the importance of family physicians in the treatment of mental illness as well as the significant issues of co-morbidity that require non-psychiatric care. The AAFP is dismayed that many state Medicaid programs and Medicaid Managed Care Organizations have reverted to payment rates for primary care services that are lower than Medicare’s rates. These reductions threaten access for millions of patients by dramatically cutting Medicaid payments for eligible primary care physicians. The reductions in payment threaten access to mental health and substance abuse services, because they are typically billed as primary care office visits. Thus, the AAFP strongly urges CMS, Congress, and state Medicaid agencies to address this threat by maintaining Medicaid payments for primary care services at Medicare levels for primary care physicians.

## **16. FAMILY PHYSICIAN NOMINATED TO CHILDHOOD VACCINE COMMISSION**

In a letter sent June 3 to HRSA, the AAFP nominated James C. Loehr, MD, FAAFP to serve on the Advisory Commission of Childhood Vaccines which advises HHS on issues related to implementation of the National Vaccine Injury Compensation Program (VICP). Dr. Loehr is a family physician and liaison for the AAFP to the Advisory Committee on Immunization Practices. He practices in Ithaca, NY and wrote *The Vaccine Answer Book: 200 Essential Answers to Help You Make the Right Decisions for Your Child* in 2009.

## **17. CMS ISSUES ANOTHER ACCOUNTABLE CARE ORGANIZATION FINAL RULE**

On June 4, CMS released a [final rule](#) titled, “Medicare Program; Medicare Shared Savings Program: Accountable Care Organizations.” The final rule is intended to reduce administrative burden and improve program function and transparency. Of interest to family physicians and primary care providers, and as advocated by the AAFP, the final rule revises the beneficiary assignment algorithm by:

- Adding TCM codes (CPT codes 99495 and 99496) and the CCM code (CPT code 99490) in the definition of primary care services.
- Modifying the treatment of claims submitted by certain physician specialties, NP, PAs, and CNSs in the assignment algorithm by using primary care services furnished by primary care physicians, NPs, PAs, and CNSs under step 1 of the assignment process
- Finalizing a policy that would exclude certain services provided by certain physician specialties from step 2 of the assignment process.
- Clarifying how primary care services furnished in federally qualified health centers (FQHCs) and rural health clinics (RHCs) are considered in the assignment process.

Among several policies to encourage greater ACO participation in risk-based models, CMS will offer an alternative performance-based risk model referred to as Track 3. It would allow ACOs to participate under a two-sided risk model that would incorporate a higher sharing rate (75 percent), prospective assignment of beneficiaries, and the opportunity to apply for a programmatic waiver of the 3-day Skilled Nursing Facility (SNF) rule to permit payment for otherwise-covered SNF services when a prospectively assigned beneficiary is admitted to a SNF without a prior 3-day inpatient stay. The AAFP continues to review this final rule and had sent comments to the agency in a February 4 [letter](#).



## 18. AAFP EXPRESSES DEEP CONCERN TO FTC ON HEALTH CARE MERGERS

In a [letter](#) sent June 4 to the Federal Trade Commission, the AAFP discussed that there has been suggestions in the public media of one or more potential mergers among national health insurance companies. The AAFP expressed deep concerns about the potential merger of any of the nation's largest health insurance companies and the impact such actions would have on access and affordability of health care for consumers across the nation. The letter urged the FTC and the Department of Justice's Anti-Trust Division to carefully evaluate any potential merger in the health insurance industry.

## 19. REGULATORY BRIEFS

- On May 20, the Government Accountability Office appointed one new member and five existing members to three-year terms on the Medicare Payment Advisory Commission.
- On May 26 HHS [awarded](#) \$112 million to help 5,000 primary care professionals in 12 states to improve the heart health of their nearly 8 million patients.
- On May 29, HHS [announced](#) the Million Hearts® Cardiovascular Disease (CVD) Risk Reduction model which will use a data-driven, widely accepted predictive modelling approach to generate personalized risk scores and modification plans for patients. The Million Hearts® CVD Risk Reduction model will operate for five years and aims to enroll over 300,000 Medicare beneficiaries and 720 diverse practices, varying in size and patient case mix; and including providers in general/family practice, general internal medicine, geriatric medicine, multi-specialty care, or cardiovascular care.
- On June 1 CMS issued a proposed rule for Medicaid, CHIP managed care plans to align them with existing commercial, Marketplace and Medicare Advantage regulations. Comments are due July 27 and the AAFP is preparing comments.
- On June 1, CMS released new Medicare data on [hospital](#) and [physician](#) utilization. The Medicare hospital utilization and payment data consists of information for 2013 about the average amount a hospital bills for services that may be provided in an inpatient stay or outpatient visit. The hospital data includes payment and utilization information for services that may be provided in connection with the 100 most common Medicare inpatient stays and 30 selected outpatient procedures at over 3,000 hospitals in all 50 states and the District of Columbia. The top 100 inpatient stays represented in the hospital inpatient data are associated with approximately \$62 billion in Medicare payments and over 7 million hospital discharges. The Medicare Part B physician, practitioner, and other supplier utilization and payment data consists of information on services and procedures provided to Medicare beneficiaries by physicians and other healthcare professionals. The data also shows payment and submitted charges, or bills, for those services and procedures by provider. It allows for comparisons by physician, specialty, location, types of medical services and procedures delivered, Medicare payment, and submitted charges. The new 2013 dataset has information for over 950,000 distinct health care providers who collectively received \$90 billion in Medicare payments.
- On June 2, CMS announced a new policy that for the first time will allow innovators and entrepreneurs to access CMS data, such as Medicare claims. Innovators and entrepreneurs will be able to access data via the CMS Virtual Research Data Center (VRDC), which provides access to granular CMS program data, including Medicare fee-for-service claims data, in an efficient and cost effective manner.
- On June 2, CMS released a data snapshot providing a detailed look at how many consumers paid their premiums in 2015 and had effectuated coverage in March 2015. During Open Enrollment for 2015 Marketplace coverage, through February 22, about 11.7 million Americans selected plans through the Marketplaces. On March 31, 2015, about 10.2 million consumers had effectuated coverage, which means those individuals paid for Marketplace coverage and still have an active policy on that date. Nearly 8.7

million (85 percent) consumers nationwide and 6.4 million consumers in the 34 states with Federally-facilitated Marketplaces received an average premium tax credit of \$272 per month to make their premiums more affordable throughout the year. About 6.3 million consumers were enrolled in health coverage through the Marketplaces and had paid their premiums on December 31, 2014.

- CMS will host the following free educational calls, [registration](#) is required:
  - National Partnership to Improve Dementia Care and QAPI, June 16, 1:30pm ET
  - Hospice Quality and Hospice Item Set Manual V1.02, June 17, 1:30pm ET
  - ICD-10: Preparing for Implementation and New ICD-10-PCS Section X, June 18, 1:30pm ET
  - Hospital Compare Overall Star Ratings Methodology, June 24, 1:30pm ET
  - ESRD QIP: Reviewing Facility PY 2016 Performance Data, July 9, 2:00pm ET
  - ESRD QIP: Proposed Rule for Payment Year 2019, July 29, 2:00pm ET