GOVERNMENT AFFAIRS WEEKLY

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IN THIS REPORT…

NEXT WEEK IN WASHINGTON…

* The House Energy and Commerce Subcommittee on Health has announced a hearing for May 17 to focus on a recent proposed rule from CMS on its Part B Drug Payment Model.

1. SEVERAL BILLS ADDRESSING OPIOID ABUSE PASS IN THE HOUSE

On Tuesday, May 10, the House by voice vote passed three measures that attempt to address specific issues related to prescription drug abuse:

- *The Responsible Opioid Management and Incorporating Scientific Expertise Act* or the *Jason Simcakoski PROMISE Act* (HR 4063) would direct the Department of Veterans Affairs (VA) and the Department of Defense (DOD) to jointly update the VA/DOD Clinical Practice Guideline for Management of Opioid Therapy for Chronic Pain.
- *The Good Samaritan Assessment Act* (HR 5048) would require a report about state and local Good Samaritan laws that exempt from criminal or civil liability anyone who administers an opioid overdose reversal drug or device or who contacts emergency services providers in response to an overdose.
- *The Opioid Program Evaluation (OPEN) Act* (HR 5052) directs the Attorney General and the Secretary of HHS to evaluate the effectiveness of grant programs for assistance in addressing opioid abuse.

The House on Wednesday, May 11, voted on several other measures concerning prescription opioid drug abuse. The first bill (HR 4641) would establish an inter-agency task force to review and update best practices for pain management and prescribing pain medication. The most contentious item was debated on Thursday, when the House considered the *Comprehensive Opioid Abuse Reduction Act* (HR 5046). It which authorizes $103 million in grants each year for five years for opioid abuse prevention and treatment and the management of controlled substances. However, funding for these grants will have to be approved by the appropriations committee.

2. HOUSE PANEL EXAMINES MACRA IMPLEMENTATION

On Wednesday, May 11, the House Ways and Means Subcommittee on Health held a hearing on the implementation of the *Medicare Access & CHIP Reauthorization Act* (MACRA). The witness at the hearing was the Acting Administrator of the Centers for Medicare and Medicaid Services (CMS), Andy Slavitt. Most of the discussion centered on the proposed rule, which it released on April 27.

The hearing built on several recurring themes, including the reporting burdens placed on small and rural practices. Reps. Sam Johnson (R-TX) and Tom Price (R-GA) in particular referred to an impact table in the rule that predicts that 87 percent of solo practices will experience lower payment under MIPS. Mr. Slavitt consistently defended the proposed system as one that small practices can succeed in. He replied that small practices, "so long as they report, can do just as well as those in larger sized practices." He added: "We know that the burden is on us to make the reporting as easy as possible." He explained that CMS had met with many groups of physicians while preparing the rule, (including the AAFP), and told the subcommittee that "one of their key requests" is to not require physicians to report data twice.

Another prominent theme was asking whether CMS and participating physicians would be ready in time. Rep. Kenny Marchant (R-TX) asked whether CMS had enough time and resources to meet all its deadlines, which Mr. Slavitt answered in the affirmative. Rep. Mike Thompson (D-CA) asked him what physicians needed to do to prepare, to which he responded that CMS is doing everything possible to ensure that physicians "focus on patients—don't worry about scorekeeping."

3. FDA EXPANDS ITS AUTHORITY TO REGULATE TOBACCO PRODUCTS

On May 6, the Food and Drug Administration announced that it would use its authority to prevent the sale and use of products like cigars and electronic cigarettes (e-cigarettes) to those under 18. Specifically, the FDA asserted the authority to establish product standards for deemed tobacco products, which allow the agency to restrict, limit or ban ingredients in the these products or constituents in tobacco smoke.

The AAFP has been a consistent advocate for strong FDA authority and praised the agency for its long-awaited decision. In addition, 17 Senate Democrats sent a letter to the agency supporting the decision but urging the agency to bold steps to protect public health. The letter pushed the FDA to act quickly help reduce risks to young people such as advertisements targeted adolescent audiences and to ban use of fruit and candy flavoring marketed to attract new and younger users.

4. THE SENATE SCHEDULES DEBATE ON ZIKA FUNDING

On May 13, the AAFP joined 37 medical and health organizations in an organizational letter to members of the U.S. Senate urging immediate action to provide emergency funding for the Zika virus preparedness activities. The letter states the importance of taking action before mosquito season begins. In April, advocates also urged Congress to provide emergency funds needed for surveillance, vector control, and services for affected pregnant women and children.

5. HOUSE SUBCOMMITTEE REVIEWS CONCUSSIONS RESEARCH AND PREVENTION

On May 13, the House Energy and Commerce's Subcommittee on Oversight and Investigations held a hearing on the research into youth sports concussions and how to prevent them. Rep. Tim Murphy (R-PA), who chairs the subcommittee, discussed the need to examine sports and safety guidelines to reduce the risk of injuries to the 30 million children who participate in sports. The hearing focused improving surveillance, public health awareness, and research.

6. FamMedPAC FUNDRAISING SUCCESS CONTINUES

FamMedPAC received a record level of support at the recent ACLF-NCCL meeting in Kansas City. Participants contributed $33,368 to the PAC over the two-day meeting. The PAC is on pace to set a record for the election cycle, and our $1 million goal is well within reach. This strong support has allowed the PAC to contribute over $721,000 in the current cycle to 128 candidates and committees. FamMedPAC is on pace to make more campaign contributions in this cycle than in any prior election cycle. The PAC supported the following legislators this week:

- **Rep. Xavier Becerra (D-CA)** Chair of the House Democratic Caucus and a member of the Health Subcommittee of the House Ways and Means Committee.
- **Sen. Ron Wyden (D-OR)**, senior Democrat on the Senate Finance Committee.
- **Rep. Pat Meehan (R-PA)**, a member of the House Ways & Means Committee.
- **Rep. Allen Lowenthal (D-CA)**, a psychologist and member of the House Primary Care Caucus whose wife is a family physician and member of AAFP.
- **Rep. Jim Clyburn (D-SC)**, the Assistant Minority Leader of the House.

7. AAFP COMMENTS ON MEDICARE PART B DRUG PAYMENT PROPOSED RULE

In a letter sent to CMS on May 9, the AAFP commented on a proposed rule titled, "Medicare Program; Part B Drug Payment Model." The letter welcomed the opportunity to improve methods by which CMS pays for Medicare Part B medications that patients receive in physician offices or hospital outpatient departments. The AAFP called for all physicians to be paid accurately for the clinical services they provide and that delivery systems should not favor certain drugs or medical devices over others.

8. VA IS URGED TO PARTICIPATE IN STATE DRUG MONITORING PROGRAMS

The AAFP sent the U.S. Department of Veterans Affairs (VA) a letter on May 5 urging that all VA prescribers participate in the state prescription drug monitoring programs (PDMPs). The letter discussed the AAFP's deep concern that the abuse of prescription opioid painkillers is having a devastating effect on public health and safety. However, the effectiveness of PDMPs to prevent "doctor shopping" for opioids and other drugs is undercut when VA prescribers do not participate.

9. STATE LEGISLATIVE BILLS OF INTEREST

- **Anti-Trust**—The Federal Trade commission submitted comments opposing Alabama SB 243 which would allow an authority from a public university operating a medical school to be exempt from federal or state antitrust laws. The FTC commented that this bill "would prevent antitrust authorities from scrutinizing, moderating, or preventing anticompetitive mergers and conduct that would seriously harm Alabama consumers." This measure has passed both chambers.
- **Children's Health Insurance Program**—Arizona Governor Doug Ducey (R) signed SB 1457 into law last week which requires the Arizona Health Care Cost Containment System (AHCCCS) to submit a state plan amendment to the Centers for Medicare and Medicaid Services (CMS) to resume enrollment in the Children's Health Insurance Program (CHIP). Enrollment into KidsCare has been largely frozen since 2010.
- **Direct Primary Care**—Nebraska, Tennessee, and Wyoming enacted direct primary care legislation this year.
- **Medicaid Waiver**—New York Governor Andrew Cuomo (D) plans to seek federal approval to provide Medicaid coverage to incarcerated individuals with serious behavioral and physical health conditions prior to release. The authority for this initiative was included in the FY 2016-2017 budget. New York is the first state to create a coordinated continuum of care to ensure individuals have access to the health coverage they need from release through re-entry. This is a part of New York's efforts to reduce rates of incarceration and recidivism.

- **Tobacco**—California Governor Jerry Brown (D) signed legislation into law last week regulating tobacco. SB 7 makes California the second state to raise the smoking age to 21. SB 5 requires electronic cigarettes to be regulated under the same rules as tobacco products. AB 7 expands tobacco-free workplace rules. AB 10, which would have allowed counties to impose a tax on cigarettes and tobacco products, was vetoed by the Governor. The California AFP was a part of a coalition that advocated for these bills.

10. REGULATORY BRIEFS

- On April 21, CMS sent the AAFP a letter regarding the affordability of prescription drugs.
- On May 5, CMS announced the third annual release of the Physician and Other Supplier Utilization and Payment public use data. This data contains summarized information on Part B services and procedures provided to Medicare beneficiaries by physicians and other healthcare professionals. The updated 2014 dataset has information for over 986,000 distinct health care providers (up from 950,000 in 2013) who collectively received $91 billion in Medicare payments (compared to $90 billion in 2013).
- On May 9 HHS announced a challenge to redesign the medical bill for patients.
- On May 10 CMS released guidance on annual eligibility redeterminations and re-enrollments for Marketplace coverage for 2017.
- On May 11 CMS officials gave a speech regarding keeping mothers healthy through Medicaid programs.
- On May 12, nearly 500 days after 2014 ended, CMS released the 2014 PQRS Experience Report which provides data and trends on participation. The report found:
    - Participation increased by 11 percent in 2014 from 2013.
    - In 2014, a total of 822,810 (63 percent) EPs successfully participated through at least one reporting mechanism compared to 642,114 (51 percent) EPs who successfully participated in 2013.
    - Participation via Electronic Health Record (EHR) more than doubled in number since 2013.
    - Based on 2014 PQRS reporting, 558,885 EPs are subject to a reduction of 2 percent of their 2016 Part B Medicare Physician Fee Schedule allowed charges.
    - Of those professionals subject to the adjustment, 466,351 were non-participants (those EPs who did not attempt to participate) and 92,534 were participants who were unsuccessful in meeting the reporting requirements to avoid being subject to the PQRS negative payment adjustment in individual or group practices.
    - The 2014 PQRS incentive payments paid equaled $224,088,411. The average incentive was $383 per EP and $4,950 per group practice, with 585,037 EPs and 45,273 group practices receiving incentive payments.
    - 60,113 family physicians were eligible to participate; 14,278 did so.
    - On May 12 CMS published a fact sheet that details the flexibility and support available to small practices and practices in rural or health professional shortage areas in the MACRA proposed rule.
    - On May 13, HHS released a final rule to advance health equity and reduce health care disparities. Under the rule, individuals are protected from discrimination in health care on the basis of race, color, national origin, age, disability and sex, including discrimination based on pregnancy, gender identity and sex stereotyping. The AAFP had supported these changes in comment letter but noted language assistance for people with limited English proficiency is a financial burden to small practices. HHS calculates costs to small entities associated with the final rule amount to an average of $739 each year.
    - CMS will host the following free educational call, registration is required:
        - 2015 Mid-Year QRURs Webcast on May 19 at 1:30pm ET