



ADVOCACY UPDATE

February 1, 2010

Senate votes for partial PAYGO exemption for SGR repeal

On January 28, the Senate passed H.J. Res. 45, a resolution to raise the federal debt limit. Included in the resolution was a provision that reinstitutes pay-as-you-go, or PAYGO, rules for new federal spending. Under PAYGO terms, any new spending or tax cuts passed by Congress would have to be offset by corresponding spending cuts or tax increases. Importantly, several limited exemptions were made to the PAYGO rule, including one for addressing the Medicare physician payment cuts being produced by the sustainable growth rate (SGR) formula.

Some have characterized the SGR exemption as a five-year freeze. While the exemption reflects the amount that could be used to fund a five-year freeze with larger cuts and a higher cost for repealing the formula in the out years, the actual exemption does not implement new Medicare physician payment policy. Instead, this action means that up to \$82 billion spent for an SGR fix would not have to be offset by other revenue or cuts. The House is expected to take up H.J. Res. 45 this week.

The House of Representative is expected to pass H.J. Res. 45 with the PAYGO and SGR provisions. Congress must still enact separate legislation to stop the SGR cuts prior to March 1. To obtain permanent repeal of the flawed payment formula, the PAYGO exception must be accompanied by an additional \$130 billion in budget offsets.

AMA position: The AMA continues to insist that Congress pass legislation to permanently repeal the SGR.

AMA participates in HHS-DOJ Health Care Fraud Summit

On January 28, AMA Chair-elect Ardis Hoven, MD, represented the AMA at the "National Summit on Health Care Fraud" held jointly by the Department of Health and Human Services (HHS) and Department of Justice (DOJ). Both HHS Secretary Kathleen Sebelius and U.S. Attorney General Eric Holder convened the Summit and emphasized that preventing and prosecuting health care fraud is one of the highest priorities of the Obama Administration.

The invitation-only Summit was attended by over 300 individuals from federal and state government; health insurers; law enforcement; and the beneficiary, hospital, and physician communities to discuss how to better collaborate moving forward on innovative ways to eliminate fraud and abuse in the health care system. Secretary Sebelius

announced that the Obama Administration will request \$1.7 billion in its FY2011 Budget for fraud prevention and detection, an 80 percent increase from previous funding levels.

Dr. Hoven offered recommendations on immediate actions the Administration should take to prevent fraud, and said that the AMA wants to work with the agencies in this effort. Dr. Hoven offered to partner with HHS and DOJ to target fraud where it actually occurs without adding unnecessary regulatory burdens to physicians' offices that take time away from patient care. She also urged the Administration to increase resources for outreach and education to the medical community on Medicare and Medicaid policies as well as anti-fraud initiatives. Participants in the Summit agreed that this meeting was the first step in an important ongoing dialog.

AMA advocacy on consultations policy continues

Despite vigorous opposition from the AMA, the Centers for Medicare and Medicaid Services (CMS) finalized a new policy, effective January 1, which eliminates Medicare payment for CPT consultation codes. Physicians who perform consultations must bill Medicare using hospital, office, or nursing care codes instead. CMS has issued very little guidance on how the new policy should be implemented and has relied heavily on Medicare contractors to instruct physicians on how to bill. The AMA continues to urge CMS to provide greater clarification on certain technical issues such as how the lowest level inpatient consultation codes should be billed. CMS has informed the AMA that they plan on releasing more information in the near future. The AMA will widely distribute this information once it becomes available. In the meantime, the AMA has posted a CPT article to our website at www.ama-assn.org/go/regrelief under the section on "2010 Medicare Physician Payment Schedule/ Consultations." The AMA continues to convey to both the Administration and Congress our opposition to this policy.

Advanced imaging accrediting bodies designated

To continue providing advanced imaging services to Medicare patients, physicians and other suppliers must obtain accreditation from one of three national organizations by January 1, 2012. The three accrediting bodies recently designated by CMS are American College of Radiology (ACR), the Intersocietal Accreditation Commission (IAC), and The Joint Commission (TJC). The accreditation requirement, imposed by the Medicare Improvements for Patients and Providers Act of 2008, will apply only to the suppliers furnishing the imaging services, and not to the physician's interpretation of the images. It covers MRI, CT and nuclear medicine furnished by physicians and non-physician practitioners who are paid for providing the technical component of advanced imaging services under the Medicare Physician Fee Schedule. Factors to be covered in the accreditation process include qualifications of physicians and non-physician personnel, safety procedures and accuracy of interpretation. The AMA is seeking additional details regarding CMS's expectations of the newly-designated accrediting bodies and will monitor implementation of the new requirement.

AMA continues to post information on EHR incentive program

CMS published a proposed rule on the Medicare and Medicaid electronic health record (EHR) incentive programs on December 30th with a comment deadline of March 13. The AMA has developed a series of fact sheets on the new Medicare / Medicaid EHR Incentive programs that summarize the proposed requirements. The AMA is working closely with the state and medical specialty societies to solicit input and concerns in

preparation for a comment letter. Information on the programs and the proposed requirements can be found by going to www.ama-assn.org/go/regrelief and selecting "Health IT/EHR Incentives." This website also provides physicians information regarding our free webinar series on the new incentive programs. The next webinar is scheduled for February 4 at 1pm ET.

Health professionals petition FTC for relief from Red Flags Rule

The AMA joined the American Dental Association, American Osteopathic Association, and the American Veterinary Medical Association to reiterate our call to the Federal Trade Commission (FTC) to exclude health professionals from the controversial regulation. In response to a suit brought by the American Bar Association (ABA), the U.S. District Court for the District of Columbia ruled that lawyers should be excluded from the requirements imposed by the red flags rule. In a letter to the FTC, the four organizations maintain that the court ruling sends a clear signal that the FTC should re-evaluate the broad application of the Red Flags Rule. The FTC has delayed the effective date until June 1, 2010.

New AMA Resource on Physician Practice Arrangements

The AMA has completed a new resource on physician practice arrangements. *The Practice Arrangements of Patient Care Physicians, 2007-2008: An Analysis by Age Cohort and Gender* provides the latest data on physician ownership and employment, the size of physician practices, and the settings in which physicians deliver most of their patient care. The report finds that physicians over the age of 55 are significantly more likely to be practice owners (69%) than are physicians under age 40 (47%). The report can be accessed on AMA's website at <http://www.ama-assn.org/ama1/pub/upload/mm/363/prp-200906-phys-prac-arrange.pdf>.

New analysis of medical liability insurance premium data

The AMA has completed a new analysis of medical professional liability insurance premiums from the *2009 Medical Liability Monitor survey*. *Medical Professional Liability Insurance Premiums: Changes and Levels, 2004-2009*, concludes, while the medical liability climate has improved compared to the liability crisis in the early part of the decade, decreases in premiums of recent years are starting to level off. Most premium levels reported in 2009 did not change and of those that fell, the majority of the decreases were relatively small. Thus, given the magnitude of increases from earlier in the decade, premiums remain high in many states—some more than three times larger than they were prior to the liability crisis. The report is available online at <http://www.ama-assn.org/ama1/x-ama/upload/mm/363/prp-200905-mlm-summary.pdf>.

AMA, state medical associations support AHRQ grant proposals

Grant proposals were due to the Agency for Healthcare Research and Quality (AHRQ) on Jan. 20, 2010, for AHRQ's medical liability and patient safety grant program. While state agencies and health systems are the primary applicants for these grants, several state medical associations are heavily involved with the proposals as well. The AMA wrote letters of support for grant proposals in Illinois, Rhode Island, Utah and Virginia at the request of the respective state medical associations. Several other state medical associations are playing key roles in grant proposals as well, including those of Massachusetts, New York and Washington. The proposals include a wide array of strategies to address medical liability and patient safety, with the most common approach being an early disclosure and compensation model. AHRQ will now review the grant

proposals and determine which ones will be funded. AHRQ will announce the selected grants later this year. For more information, please contact Mike Glasstetter at michael.glasstetter@ama-assn.org or (312) 464-5033, or Carol Vargo at carol.vargo@ama-assn.org or (202) 789-7492.

AMA urges immediate action on National Health Plan Identifier

The AMA is furthering advocacy efforts to ensure implementation of the National Health Plan Identifier (NHPI) by presenting at the January 2010 X-12 meeting in Seattle. X-12 is the ANSI body responsible for maintaining standards for the HIPAA electronic transactions. Presentations were given to the Provider Caucus as well as the X-12 835 Workgroup. The AMA also continues to hold conversations with the Centers for Medicare and Medicaid Services.

The NHPI is viewed by many as a crucial step toward one-stop, automated billing. To achieve this goal, the NHPI must provide for the clear identification of all entities involved in the claims payment process. The AMA recommends considering using the IRS health plan identifier (Employer Identification Number [EIN] followed by three-digit plan type) or other applicable IRS identifier, similar to the employer identifier standard, for each of the following entities:

1. the entity with primary financial responsibility for paying the claim;
2. the entity responsible for administering the claim;
3. the entity that has the direct contract with the health care provider;
4. the specific fee schedule that applies to the claim;
5. the specific plan/product type;
6. the location where the claim is to be sent; and
7. any secondary or tertiary payers.

Visit www.ama-assn.org/go/simplify to download the AMA's proposal.

Register for AMPAC 2010 Campaign School

AMPAC will conduct its annual Campaign School April 21-25, 2010, in Pentagon City, for AMA members who wish to become involved in the political process as advocates and volunteers for medicine-friendly candidates. The School is organized around a simulated congressional campaign, where participants are put on campaign "staff" teams and attend daily lectures on campaign strategy, media advertising and political fundraising. Each team participates in nightly exercises such as creating a campaign strategy, taping a radio commercial, and writing a political fundraising letter.

All costs for AMA members, except transportation to the Washington, DC metro area, are borne by AMPAC. For more information on these programs or an application, please contact Jim Wilson, Political Education Programs Manager, at 202-789-7465 or jim.wilson@ama-assn.org