



# ADVOCACY UPDATE

April 6, 2011

## **Congress passes repeal of IRS 1099 reporting requirement**

On April, 5 the Senate passed H.R. 4, the "Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011," which eliminates a provision of the Patient Protection and Affordable Care Act (ACA) that requires businesses, including physician offices, to file IRS form 1099 for any payments totaling \$600 or more in a year that are made to another business in exchange for goods and services. The legislation passed by a bipartisan vote 87-12, and will now be sent to the White House for the President's signature into law.

Elimination of the 1099 reporting requirements is one of the ACA improvements sought by the AMA.

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## **ACO regs are released**

The Administration issued its long awaited Medicare Shared Savings/Accountable Care Organization (ACO) regulation on Mar. 31. The Medicare ACO program is a voluntary, three-year program to further develop the ACO model of health care delivery reform. The Centers for Medicare and Medicaid Services (CMS) issued the proposed regulation and comments are due on June 6. Prior to the release, CMS Administrator Don Berwick, MD, reached out to AMA leadership to emphasize the Administration's interest in our comments. CMS and the Office of the Inspector General (OIG) also issued a joint solicitation of comments on proposed waivers for Medicare ACOs from the self-referral, anti-kickback, and civil monetary penalties statutes. The Federal Trade Commission (FTC) and the Department of Justice (DOJ) issued a proposed policy statement on antitrust and ACOs, and the Internal Revenue Service (IRS) issued a notice pertaining to tax-exempt entities, as well. All these agencies are providing opportunities for the public to comment. The AMA is reviewing the hundreds of pages of these documents in-depth and will be working with the Federation in developing comments. The documents can be viewed at:

- CMS proposed rule on ACOs: [http://www.ofr.gov/OFRUpload/OFRData/2011-07880\\_PI.pdf](http://www.ofr.gov/OFRUpload/OFRData/2011-07880_PI.pdf)
- CMS/ OIG notice on waiver designs: [http://www.ofr.gov/OFRUpload/OFRData/2011-07884\\_PI.pdf](http://www.ofr.gov/OFRUpload/OFRData/2011-07884_PI.pdf)
- FTC/ DOJ notice on antitrust enforcement policy and ACOs: <http://www.ftc.gov/os/fedreg/2011/03/110331acofrn.pdf>
- IRS notice on ACO participation by tax-exempt organizations: <http://www.irs.gov/pub/irs-drop/n-11-20.pdf>

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## **AMA advocacy secures win on lab test physician signature requirement**

The AMA has been urging CMS to rescind a provision in the 2011 Medicare Physician Fee Schedule Final Rule that requires physicians to sign every requisition for clinical diagnostic laboratory tests. This policy departs significantly from current practice and would require major changes in workflow. It was scheduled to take effect on Jan. 1, but the AMA persuaded CMS to announce a short delay to Apr. 1, while continuing efforts to have the policy rescinded.

In response to this aggressive advocacy, CMS has informed the AMA that it is placing a moratorium on enforcement of this new policy while it provides an opportunity for public comment on a proposal to rescind the requirement altogether. It is not yet clear what regulatory vehicle CMS will use to propose this policy rescission. There will be no formal announcement of the moratorium on enforcement prior to the new rulemaking process. The AMA thanked the CMS leadership for the agency's responsiveness to medicine's concerns about this new regulatory burden.

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## **CMS implements new home health face-to-face visit requirement Apr. 1**

CMS has decided to move forward with a new requirement for physicians to conduct a face-to-face patient visit within 90 days before or 30 days after the start of home health services. The AMA successfully secured a three-month extension of the original Jan. 1 enforcement date, arguing that implementation of this Affordable Care Act (ACA) provision following its Nov. 2010 publication in the Final Physician Fee Schedule Rule allowed too little time to notify physicians. As a result of AMA advocacy, CMS recently announced that physicians will not be required to use a specific form when fulfilling the face-to-face visit requirement; all that is required is documentation that supports the need for the patient to receive home health services. This documentation could be cut and pasted from the medical record or discharge summary and attached to the certification for home health. A new FAQ was posted to the CMS website that addresses this issue, which can be found at:

[http://questions.cms.hhs.gov/app/answers/detail/a\\_id/10482/kw/home%20health%20face-to-face](http://questions.cms.hhs.gov/app/answers/detail/a_id/10482/kw/home%20health%20face-to-face).

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## **AMA secures placing physicians in lowest tier for program integrity screening requirements**

The ACA included several program integrity provisions, among them, increased screening requirements for providers and suppliers enrolling in Medicare. Due to AMA advocacy, CMS agreed that physicians pose a low risk to the integrity of the Medicare program and elected to place them in the lowest risk tier category, which requires the fewest screening requirements among all providers who enroll. Providers in the middle and high risk tiers will be subjected in some cases to fingerprinting and background checks. The AMA is also pleased that CMS agreed that physicians who are victims of identity theft should not be subjected to higher scrutiny or placed in a higher risk tier. The AMA, however, is extremely disappointed that CMS elected to include physicians who are also durable medical equipment suppliers (DME) in the highest risk category. In some cases this will mean physician suppliers may experience unscheduled site visits, criminal background checks, and fingerprinting. Some will also be required to pay an enrollment fee of \$505

for 2011. The AMA continues to strongly oppose any additional screening requirements and fees for physician DME suppliers, believing that these physicians also pose very little risk to the Medicare program. The AMA's comment letter can be found at:

<http://www.ama-assn.org/resources/doc/washington/medicare-medicaid-schip-comment-letter-30march2011.pdf>

and a fact sheet outlining the provisions included in the final rule can be found at:

<http://www.ama-assn.org/resources/doc/washington/aca-integrity-provisions-summary.pdf>.

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## **HHS releases National Quality Strategy**

On Mar. 21, the Department of Health and Human Services (HHS) released its National Strategy for Quality Improvement in Health Care. The strategy, which was mandated by the ACA, creates three national aims and six priorities to guide local, state, and national efforts to improve the quality of health care in the U.S. It is designed to be an evolving guide to help the health care community move forward with its efforts to measure and improve quality. To read the National Quality Strategy, visit

<http://www.healthcare.gov/center/reports/quality03212011a.html>.

The AMA submitted comments during the development of the National Quality Strategy, which are available at [www.ama-assn.org/go/acaregs](http://www.ama-assn.org/go/acaregs).

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## **CMS flags FDA's decision for states**

CMS wants states to be aware of a Mar. 30 Food and Drug Administration (FDA) news release on the status of compounded hydroxyprogesterone caproate, which is located at <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm249025.htm>.

FDA announced that it does not intend to take enforcement action against pharmacies that compound hydroxyprogesterone caproate based on a valid prescription for an individually identified patient unless the compounded products are unsafe, of substandard quality, or are not compounded in accordance with appropriate standards.

As a result of this announcement, CMS wants states to be aware that they can choose to pay for the extemporaneously compounded hydroxyprogesterone caproate as an active pharmaceutical ingredient (API), and that this can be covered under the "medical supplies, equipment and appliances suitable for use in the home" portion of home health rules. Because CMS does not require states to list all of the items they cover under this section in the Medicaid state plan, hydroxyprogesterone caproate can be covered under their current state plans without any amendments submitted. Questions can be sent to the Medicaid Drug Policy email box at [RxDRUGPolicy@cms.hhs.gov](mailto:RxDRUGPolicy@cms.hhs.gov).

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## **House committee requests input on Medicare physician payment reform**

On Mar. 28, House Energy and Commerce Committee chair Fred Upton (R-MI) and ranking member Henry Waxman (D-CA) sent a letter to AMA and 50 other medical and health care associations requesting input on ways to improve the Medicare physician payment system before a hearing is convened in early May. The letter specified that the committee is "committed to working together to implement a permanent, sustainable solution this year that lessens taxpayers' burden and ensures providers have the resources they need to provide quality care to patients." The AMA has been engaged in ongoing conversations with committee and leadership staff about the need to eliminate

Medicare's sustainable growth rate (SGR) formula and establish a path to new Medicare physician payment systems.

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### **Psychologist prescribing bill defeated in Montana**

The Montana House and Human Services Committee voted on Mar. 23 to table Senate Bill (S.B.) 272, the psychologist prescribing bill. The vote was 13 to 1. This success was the direct result of extensive lobbying by the Montana Medical Association, support from the American Psychiatric Association and American Medical Association, numerous letters from medical associations, and widespread involvement of physician members.

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### **AMA helps NMMS defeat chiropractic prescription bill and push for preservation of medical liability cap**

With the recent adjournment of the New Mexico state legislature, the New Mexico Medical Society (NMMS) earned a key victory as a chiropractic prescriptive authority bill did not advance to the governor. The bill would have provided chiropractors the authority to prescribe and administer any drug or controlled substance—subject only to the chiropractic board's approval. In addition, the bill sought to add the terms, “diagnosis and treatment,” to chiropractic scope of practice. It also sought to add the term “chiropractic medicine” to chiropractors' statutory definition. The AMA provided background, research developed through the AMA's state legislative listserv and other legal research. For more information, please contact NMMS Executive Director G. Randy Marshall at [RMarshall@nmms.org](mailto:RMarshall@nmms.org) or Daniel Blaney-Koen, JD, Legislative Attorney, Advocacy Resource Center, at [daniel.blaney-koen@ama-assn.org](mailto:daniel.blaney-koen@ama-assn.org) or (312) 464-4126.

On the medical liability front, the New Mexico legislature passed Senate Bill 333/House Bill 267, which would help to preserve New Mexico's cap on total damages. The cap has been threatened in previous legislative sessions, and these bills should provide a framework for maintaining the cap at a reasonable level into the future. While the cap will increase from \$600,000 to \$1 million, it continues to cover total damages—not just non-economic damages. Further, the bills will provide protection to physician practices by including them under the cap as well as the individual physicians. The bills will also allow settlements to remain confidential. The AMA wrote **a letter** to New Mexico Governor Susana Martinez to support NMMS' advocacy efforts on the bills and to urge Governor Martinez to sign the legislation in order to maintain New Mexico's stable liability climate for both patients and physicians. For more information on state medical liability reform activities, please visit the **AMA Advocacy Resource Center Web site**.

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### **AMA, OSMA call for medical liability reform in Oklahoma**

The AMA joined the Oklahoma State Medical Association (OSMA) in calling on the Oklahoma Legislature to enact medical liability reform (MLR) legislation. The Oklahoma House of Representatives recently passed House Bill (H.B.) 2128, which includes a \$350,000 cap on non-economic damages and other MLR provisions. The AMA wrote a letter to the Oklahoma House Leadership, the Oklahoma Senate and the Oklahoma Governor urging them to enact this bill. Oklahoma previously passed legislation that was enacted in 2009, which included a cap on non-economic damages. However, the cap does not become effective until the state establishes a patient indemnity fund—which has not happened to date. Visit the **AMA Advocacy Resource Center Web site** for more information.

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## **AMA study finds physicians support 4 million jobs and \$1.4 trillion in sales revenue**

In March, the AMA released a study on the economic impact of office-based physicians on local and state economies and the national economy. The report proves that in addition to supporting the health of their communities, physicians also play a vital role in their economies by supporting jobs, purchasing goods, and generating state and local tax revenue. In fact, at the national level, office-based physicians support 4 million jobs and generate \$1.4 trillion in output or sales revenue. The study, which was prepared by The Lewin Group, includes a series of state-level reports and a national report. As a result of excellent collaboration between the AMA and state medical associations, the study has been widely featured in print and broadcast media, as well as covered in several health blogs. If you have not yet issued a press release in your state—it's not too late. The AMA has provided state medical associations with a handout, backgrounder and press release template about the study and is creating additional supporting resources, including ads for state medical association journals, a webinar about the study and a Q&A document. Visit [www.ama-assn.org/go/eis](http://www.ama-assn.org/go/eis) to view the national report and summaries of state-level data. Please contact Kimberly Horvath, JD, Legislative Attorney, Advocacy Resource Center at [kimberly.horvath@ama-assn.org](mailto:kimberly.horvath@ama-assn.org) for more information about the study.

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## **Register now for 2011 AMPAC Campaign School**

On April 13-17, 2011, AMPAC will conduct its annual Campaign School, in Pentagon City, Virginia, 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. Graduates have gone to become advisers and strategists for political campaigns across the country

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