



ADVOCACY UPDATE

March 22, 2011

Medical Practice Freedom Act introduced

Rep. Tom Price, MD (R-GA) introduced H.R. 969, the “Medical Practice Freedom Act of 2011.” This legislation would insure that physicians are not required to participate in any health plan as a condition of licensure in any state. It is premised on the belief that licensure laws should only relate to requirements for admission to the practice of medicine and to assuring the continuing competence of physicians. If physicians were to lose their license as a result of choosing not to participate in a particular public or private insurance plan, they would be forced to stop practicing or leave the state, having a detrimental impact on access to care. The bill has been referred to the House Committee on Energy and Commerce.

AMA Position: The AMA sent Dr. Price a letter of support for H.R. 969 and will work to secure passage of the legislation.

MedPAC proposes 2012 Medicare update

Unless Congress intervenes, Medicare actuaries now predict that Medicare payments to physicians will fall by 29.5 percent in 2012. The projection is contained in a letter to the Medicare Payment Advisory Commission (MedPAC), which instead recommends increasing payments for physician services by 1 percent increase next year. In a report released March 15, the Commission noted that although permanently fixing the sustainable growth rate (SGR) formula carries a very high budget score, there is another “cost related to the current SGR—namely, mounting frustration in the provider community stemming from the uncertainty of future Medicare payments, with looming payment cuts in the balance.” The report suggests MedPAC will explore alternatives to the SGR and consider additional “levers’ for enhancing beneficiaries’ access to high-quality primary care.”

Between 2006 and 2011, the report notes that payments for primary care services increased by 22.5 percent, but further actions may be needed. These actions could possibly include “an expansion of nurses’ scope of practice in primary care” and reimbursement for “patient-clinician communication when it avoids the need for office visits.”

The AMA played a key role in making Commissioners aware of the problems associated with the multiple temporary SGR fixes in 2010 and the need for a permanent solution.

Interaction will continue as the Commission sorts through the pros and cons of various alternatives. The full report is available on MedPAC's web site, at www.medpac.gov.

AMA and 130 physician groups call for bipartisan SGR solution

A Mar. 10 letter from the AMA and 130 state and specialty societies to the U.S. House of Representatives and the U.S. Senate calls for a permanent solution this year to Medicare's broken physician payment formula. The letter was sent the same day the Centers for Medicare & Medicaid Services (CMS) estimated that the Medicare physician payment cut in 2012 will be 29.5 percent—the highest ever scheduled. Noting that Congress and the Administration worked together to develop offsets and pass legislation last January to halt cuts scheduled for 2011, the letter calls on Congress to again work in a bipartisan manner to end the cycle of temporary patches and develop a long-term, meaningful solution to the problem. An AMA news release and the letters can be viewed at <http://www.ama-assn.org/ama/pub/news/news/bipartisan-solution-medicare.shtml>.

Appeals court halts Red Flag Rule implementation

A federal appeals court issued a decision March 4 that further validates the AMA's long-standing argument to the Federal Trade Commission (FTC) that physicians who bill after rendering services are not creditors and so are not subject to the Red Flag Rule. The U.S. Court of Appeals for the District of Columbia Circuit found the present regulations of the FTC invalid following passage last December of the Red Flag Program Clarification Act of 2010. The court issued the judgment in a lawsuit filed by the American Bar Association challenging the application of the red flags rule to attorneys. The AMA has worked closely with FTC officials and Congress and is engaged in a lawsuit with other physician groups to challenge the FTC's efforts to extend the red flags rule to physicians. The lawsuit, filed by the Litigation Center of the AMA and the State Medical Societies, the American Osteopathic Association and the Medical Society of the District of Columbia and joined by 26 national medical specialty societies, will now formally end. Visit <http://www.ama-assn.org/ama/pub/news/news/ama-welcomes-clarification-red-flags-rule.shtml> for more details in an AMA news release.

AMA continues to press Administration on e-Rx penalty

In November, CMS announced in the Final Physician Fee Schedule that in order to avoid a penalty in 2012, physicians must participate in the e-prescribing program during the first six months of 2011. The AMA has been stressing to the Administration that the vast majority of physicians are unaware of this requirement. In addition, there are inconsistencies between the e-prescribing and the electronic health records incentive programs. AMA President Cecil Wilson, MD, recently discussed the matter with Dr. Donald Berwick, CMS Administrator, and Dr. David Blumenthal, Director of the Office of National Coordinator. Dr. Wilson urged Drs. Berwick and Blumenthal to follow the President's January 18 Executive Order to reduce regulatory burden and significantly ease the e-prescribing penalty policy.

AMA meets with HHS Office of Inspector General

AMA Trustee David Barbe, MD, and AMA staff met with senior officials in the Department of Health and Human Services (HHS) Office of Inspector General (OIG) officials to

discuss fraud and abuse and issues of importance to physicians. Topics discussed included:

- 1) physician identity theft and the AMA's request to establish an HHS Ombudsman's office to assist physicians who have been victims of identity theft
- 2) CMS's anticipated proposed rule on compliance plans, pursuant to the Affordable Care Act, and AMA's request to limit burdensome compliance plan requirements for physicians
- 3) efforts by the government to eliminate "waste" in health care and the need to avoid unintended consequences for patients and physicians
- 4) the importance of ongoing education and outreach to physicians on fraud and abuse initiatives
- 5) the AMA's request for safe harbors from certain fraud and abuse provisions, such as the anti-kickback and self-referral laws, to enable the development of physician-led Medicare Accountable Care Organizations

The OIG staff committed to working with the AMA and physicians on an ongoing basis on these important issues.

AMA Submits Comments on Proposed Medicaid HAC program

On February 17, 2011, the Centers for Medicare and Medicaid Services (CMS) issued a proposed regulation implementing section 2702 of the Affordable Care Act (ACA). This provision directs the Secretary of Health and Human Services to issue Medicaid regulations effective as of July 1, 2011 prohibiting Federal payments to states under section 1903 of the Social Security Act for any amounts expended for providing medical assistance for health care-acquired conditions. It also proposes to authorize states to identify other provider-preventable conditions for which Medicaid payment would be prohibited. To read the complete proposed regulation, please visit <http://edocket.access.gpo.gov/2011/pdf/2011-3548.pdf>.

In a formal comment letter to the agency, the AMA communicated its strong concerns about the existing inpatient hospital-acquired conditions (HAC) policy, outlining our concerns about simply extending this policy, as is, as a floor for the Medicaid program. The letter also expressed concerns about states extending the existing HAC policy beyond the conditions currently included in the Medicare HAC list, especially without resolving existing issues with the Medicare HAC policy or conducting any in-depth study of the impact of the policy on patient access and total cost to the health care system. The AMA also expressed serious concerns about CMS' proposal that states extend the HAC policy to other provider settings.

AMA pushes for time to comply with new home health face-to-face visits

The AMA was able to secure a three-month extension of the Jan. 1 enforcement date for new requirements that call for physicians to have a face-to-face visit within 90 days prior or 30 days after the start of home health services. Last November, CMS announced the new policy in the Final Physician Fee Schedule Rule, allowing little time to notify physicians. Furthermore, the documentation requirements associated with the new mandate were unclear, causing confusion among physicians and home health agencies. The AMA has advocated for reducing the paperwork burden associated with this new requirement. As a result, CMS recently announced that physicians will not be required to use a specific form when they conduct the required face-to-face encounter. The only

requirement will be documentation that supports the patient's need for home health services, which can be cut and pasted from the medical record or discharge summary and attached to the certification for home health. A new FAQ posted to the CMS website that addresses this issue can be found at:

http://questions.cms.hhs.gov/app/answers/detail/a_id/10482/kw/home%20health%20face-to-face. The AMA continues to push for extending the compliance date to July 1.

5010 Test Education Week free webinar registration now open

Physicians have less than a year left to prepare for the HIPAA Version 5010 electronic transaction set change on Jan. 1, 2012. To assist with compliance, the AMA is supporting an education effort, Get Ready for 5010, which will sponsor a second set of free webinars Apr. 4-8, 2011. All physicians should be planning to test soon if they expect to meet the end-of-year compliance deadline. The webinars will feature speakers from CMS, provider and payer organizations, and will offer practical information and early lessons learned on: Testing for Practices and Facilities; How to Test with Medicare Fee-for-Service; and Testing with Commercial Payers and Clearinghouses. For more information and to register for these webinars go to the Get Ready 5010 website at www.getready5010.org.

Utah Medical Association coalition effort defeats psychology prescribing bill

The powerful combination of Utah Medical Association's (UMA) on-the-ground advocacy and timely resources along with advocacy support from the American Psychiatric Association and American Medical Association (AMA) helped defeat a psychology prescribing bill in committee earlier this month. The bill would have authorized psychologists to prescribe for mental, behavioral, emotional, pain and other disorders.

The UMA coalition also included Psychologists Against Prescribing, Intermountain Health Care, the Utah chapter of the National Alliance on Mental Illness, and the state's physician assistants, PharmDs and advance practice psychiatric nurses.

The AMA wrote to the committee that physicians (medical doctors and doctors of osteopathic medicine) have more than 10,000 hours and seven-to-eleven years of clinical education and training to enable them to correctly diagnose, treat and manage patients' health care needs. Psychologists are only required to have one year of patient care experience during their training. For more details how UMA defeated the bill, please contact UMA Executive Vice President and CEO Michelle McOmber at michelle@utahmed.org or (801) 747-3500.

NCOIL adopts powerful consumer transparency bill

On Mar. 5, 2011, the National Conference of Insurance Legislators (NCOIL) passed the "Healthcare Balance Billing Disclosure Model Act," model legislation that promotes transparency of out-of-network health care costs. The purpose of the Model Act is to provide patients with transparency, accountability and disclosure. Health care facilities, facility-based physicians and other health care providers, and health insurers must provide information regarding billing practices, notice of out-of-network benefits and financial responsibilities in the delivery of non-emergency medical care. Leading rigorous advocacy efforts against an outright prohibition of balance billing, the AMA worked hand-in-hand with NCOIL to instead adopt a model bill that requires health insurers, health care

facilities and facility-based physicians to disclose to patients that they may receive a bill for medical services they receive that are not paid for by their health insurance companies. The AMA's extensive two-year advocacy effort on this issue was in conjunction with the American College of Emergency Physicians, American College of Radiology, American Society of Anesthesiologists, College of American Pathologists and the Texas Medical Association. Please contact Liz Schumacher, Legislative Attorney, at elizabeth.schumacher@ama-assn.org for more information.

AMA joins MSSNY in fight for medical liability reform in New York

On Mar. 16, the AMA sent a **letter** to New York Governor Andrew Cuomo, urging him to continue his efforts to reform New York's medical liability system. Governor Cuomo included a medical liability reform (MLR) package in his budget proposal, which includes a \$250,000 cap on non-economic damages and a medical indemnity fund for neurologically impaired infants. There is a window of opportunity on this issue in New York as both legislative chambers work through their budget proposals. Governor Cuomo has tied MLR to his efforts to redesign New York's Medicaid system, but the MLR provisions would apply to all New York physicians. This is a critical time for New York physicians and patients, and the AMA is committed to collaborating with the Medical Society of the State of New York (MSSNY) and other members of the Federation to see a positive legislative outcome. For more information on state-level MLR activities, please visit the **AMA Advocacy Resource Center Web site**.

AMA submits comments to HHS on the new CO-OP program

On Mar.4, 2011, the AMA submitted a comprehensive response to the Department of Health and Human Services' (HHS) request for comments concerning the CO-OP program that was created by section 1322 of the Patient Protection and Affordable Care Act (ACA). Under section 1322, the ACA makes \$6 billion available in federal grants and loans for the formation and operation of nonprofit health insurance companies. A health insurer, or a "related entity" of a health insurer that existed prior to July 16, 2009, is not eligible for federal assistance under section 1322. Section 1322 presents an opportunity for physicians and other health care providers to take an essential role in the development and operation of health insurance with the advantage of federal financial assistance. In its comments, the AMA noted that private health insurance markets are not competitive and accordingly argued that it is imperative for HHS to interpret section 1322 in a flexible manner that will maximize physicians' ability to play a leading role in the formation of section 1322 nonprofit health insurers, thereby increasing the likelihood of successful new entrants into the health insurance marketplace. The AMA is helping several state medical associations and physicians explore the possibility of applying for federal assistance under section 1322. Parties interested in applying for federal funds should consider doing so in the fall of this year. For further information, please contact Wes Cleveland at wes.cleveland@ama-assn.org or (312) 464-4503.

Humana institutes narrow network in Florida

Starting on May 1, 2011, Humana announced its intention to institute a narrow network of dermatologists in Florida for its Medicare Advantage (MA) HMO patients. Under this plan, MA HMO patients in most areas of Florida will be required to use only dermatology practices affiliated with one specific dermatology group. Both the AMA and the American Academy of Dermatology Association (AADA) staff have had discussions with Humana protesting the use of this narrow network of physicians, which would leave thousands of senior citizens with little or no choice of a physician and require them to face drives often

longer than an hour to see any dermatologist. The AADA and AMA have partnered with the Florida Medical Association to write a letter formally protesting this limited access to dermatologists for some of our most fragile patients while continuing efforts with Humana to negotiate some relief for these patients.

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