



# ADVOCACY UPDATE

March 9, 2011

## House passes bill to eliminate 1099 reporting

On March 3, the U.S. House of Representatives passed H.R. 4, which would eliminate the unnecessary and burdensome IRS 1099 reporting requirement for businesses, including physician practices, by a bi-partisan vote of 314-112. The bill is offset by amending provisions of the Patient Protection and Affordable Care Act (ACA) involving health insurance premium subsidies paid to individuals and families with incomes over 400 percent of the federal poverty level. Recently, the Senate passed a similar measure as an amendment to the Federal Aviation Administration reauthorization bill (S. 223), using a different financial offset than that contained in H.R. 4. It is unclear whether the Senate will take up H.R. 4 or similar legislation (S. 359) introduced by Sen. Mike Johanns (R-NE).

**AMA Position:** The AMA supports eliminating the IRS 1099 reporting requirement and urges the U.S. House and Senate to resolve their differences and agree on a funding mechanism with bipartisan support so that a law can be signed before this provision takes effect in 2012.

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## AMA and specialty societies urge changes to health IT program

The AMA and 37 specialty societies sent a strong letter to the Obama Administration to modify its policy and provide more flexibility for the next stages of Medicare's electronic health records (EHRs) incentive program. The Administration recently sought input on draft recommendations for Stages 2-3 of the EHR incentive program. The pending draft recommendations would significantly expand the Stage 1 requirements, and add new requirements calling for bi-directional data exchange and measures that would require physicians to rely on others to meet. The AMA sought extensive input from the Federation on these aggressive new requirements. Subsequently, the AMA and specialty societies called for greater flexibility in meeting requirements and ensuring that what is required is appropriate for the individual specialist, rather than using a one-size-fits-all approach. The comment letter can be found at: <http://www.ama-assn.org/ama1/pub/upload/mm/399/comments-hitpc-proposed-measures-25feb2011.pdf>. The AMA will continue to seek input from both the state and specialty societies on meaningful use of EHRs and advocate for reasonable requirements.

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## President supports in state innovation waiver legislation

In a speech this week before the National Governors' Association, President Obama discussed his support for proposed legislation introduced by Senators Ron Wyden (D-OR) and Scott Brown (R-MA) which would allow states to apply for waivers from many of

the Affordable Care Act's (ACA) health insurance reforms starting in 2014, three years ahead of schedule. HHS and the Treasury Department will issue proposed regulations in the next few months outlining the process and standards for applying for a State Innovation Waiver. The ACA requires states applying for innovation waivers to certify that insurance coverage: (1) is as comprehensive as the coverage offered through the exchanges; (2) is as affordable as it would have been through the exchanges; (3) is provided to as many residents as would have been covered under the ACA; and (4) does not increase the federal deficit. The ACA also allows states to submit a single application that includes Medicaid waiver requests. The Secretaries of HHS and Treasury are responsible for evaluating state innovation waiver requests.

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### **AMA urges CMS to uphold confidentiality of QIO Data**

In comments to the Centers for Medicare and Medicaid Services (CMS), the AMA is strongly advocating to uphold the confidentiality of patient-, physician-, and other provider-specific information acquired by Quality Improvement Organizations (QIOs). Under existing law, Congress makes clear that QIOs are not federal agencies for purposes of the Freedom of Information Act (FOIA) and that QIO-acquired data shall be held in confidence and not be disclosed to any person. CMS has upheld the QIO confidentiality requirement since 1985. Yet, in the Hospital Inpatient Value-Based Purchasing Program proposed rule, CMS is using its discretionary authority (granted by Congress) to propose lifting the QIO confidentiality restrictions, paving the way for this information to be disclosed to CMS and so be publicly available under FOIA. The AMA is aggressively urging CMS not to implement this proposal. The availability of this information to CMS and the public will disregard Congressional intent, undermine the QIO program, and could result in serious unintended adverse consequences for patients, physicians, and other providers. It would also derail the trust of confidentiality built into the QIO program and discourage disclosure and open communication with QIOs, which would adversely impact their ability to effectively carry out quality improvement activities. The AMA will continue its aggressive advocacy efforts to ensure that QIO data remain confidential, as Congress intended.

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### **AMA comments on proposed Medicare Advantage RAC program**

CMS recently sought public comments on how Medicare's Recovery Audit Contractors (RACs) could best be employed in connection with the Medicare Advantage (MA) and Part D prescription drug plans. In a comment letter submitted Feb. 25, the AMA called for CMS to have the RACs identify areas where plans receive federal payments and collect premiums from patients but create hurdles to accessing medically necessary care. The AMA letter noted that plan policies that create barriers to and denial of medically necessary care represent overpayments to the MA and Part D plans, and are a hidden long-term cost to the Medicare Trust Fund. As an example, the letter cited a recent JAMA study reported in Bloomberg News that "[m]ore than one in three older patients" with rheumatoid arthritis covered by "some privately managed Medicare plans aren't getting medicines that lessen the severity of the debilitating condition." Specifically, the AMA recommended that MA and Part D RACs focus on the following issues: 1) the accuracy of plan marketing and enrollment materials and activities; 2) whether plans pay physicians' claims in a timely manner; and 3) whether plans are placing inappropriate hurdles in the way of needed physician services, hospital care, drugs, lab tests, and imaging studies. Citing past experience with these MA audits, the letter reiterated the AMA's call for CMS to require Medicare Parts C and D plans to compensate physicians for the office staff time

and other costs involved in pulling, reviewing, copying, and re-filing medical records. The full letter can be viewed at <http://www.ama-assn.org/ama1/pub/upload/mm/399/recovery-audit-contractor-letter-25feb2011.pdf>.

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### **Bill introduced to repeal Medicare 3 percent withhold**

The Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) enacted a provision requiring federal, state and local government entities to withhold 3 percent of all payments made for services or property, including payments under the Medicare program. The intent of this provision is to offset otherwise unreported tax revenues. Yet, the provision will be extraordinarily costly and administratively burdensome to implement, and government agencies, physicians, and other health providers will all bear the brunt of these costs and administrative burdens, which will far outweigh any possible benefit of the withholding requirement. The AMA strongly opposes this “Medicare 3 percent withhold.” It provision was inserted into the TIPRA conference report at the last minute, and there was no opportunity for Congress or affected parties to appropriately discuss the policy implications of this provision. Although it was initially scheduled to become effective January 1, 2011, the AMA, working with other stakeholders, was successful in delaying the effective date until January 1, 2012. The AMA has expressed its support for H.R. 674, introduced by Representatives Herger (R-CA) and Blumenauer (D-OR), which would repeal the three percent withhold provision enacted under TIPRA.

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### **Submit complete UnitedHealth Group UCR settlement claims now**

Physicians who requested a report from the United Health Group UCR Settlement Claims Administrator prior to the Oct. 5 claims filing deadline were assigned a claim number, and their claims should be considered as timely filed. Once physicians receive their data reports from the Settlement Claims Administrator, the AMA encourages them to file their claims and the appropriate supporting documentation as soon as possible.

Visit the AMA Web site to access a **new step-by-step resource** that helps physicians file their claims once they have received the requested data report. Physicians who requested a report but have not yet received it should contact the Settlement Claims Administrator:

- Toll-free phone: (800) 443-1073
  - Fax: (516) 222-0271
  - E-mail: [unitedhealthcare@berdonclaimsllc.com](mailto:unitedhealthcare@berdonclaimsllc.com)
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### **AMA urges HHS to protect medical loss ratio dollars for patients**

The AMA continues to advocate to protect premium dollars for direct medical care. In October 2010, the National Association of Insurance Commissioners (NAIC) excluded agent and broker fees and commissions from the definition of “quality improvement” in its recommendations to the Department of Health and Human Services (HHS). The AMA has argued that these expenses are administrative and should be accounted for as such. The agent and broker industry has been strongly advocating for a possible increase in patient premiums to cover their fees and commissions, resulting in higher patient costs. In response, the AMA sent a letter to HHS Secretary Kathleen Sebelius on Feb. 28, urging her to exclude these fees and commissions from the medical loss ratio. The AMA will attend the March 2011 NAIC spring meeting and continues to participate in weekly calls with the NAIC to ensure maximum dollars for patient care. Please contact Liz

Schumacher, Legislative Attorney, at [elizabeth.schumacher@ama-assn](mailto:elizabeth.schumacher@ama-assn) for a copy of the letter or for more information.

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### **Colorado Medical Society advocacy and AMA resources lead to scope of practice victory**

With help from AMA advocacy resources, the Colorado Medical Society (CMS) recently defeated a bill that would have licensed naturopaths and given them a broad scope of practice, including the ability to conduct physical exams and order clinical, laboratory and radiological diagnostic procedures for the purpose of diagnosing and evaluating injuries, diseases and conditions in the human body. To become a licensed “naturopathic doctor,” the bill required licensure applicants to be at least 18 years of age, have a bachelor’s degree, and have at least 1,200 hours of clinical training. Colorado is one of nearly 20 states facing naturopathic scope of practice legislation this year. For questions about the Colorado effort, please contact Diana Protopapa at [diana\\_protopapa@cms.org](mailto:diana_protopapa@cms.org).

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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)