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Congress Convenes Hearing on Proposal to Overhaul Medicare Physician Reimbursement, Implement Pay-for-Performance

The House Ways and Means Health Subcommittee held a hearing September 29 to examine legislation to overhaul the Medicare program's physician reimbursement system through a pay-for-performance (P4P) initiative. The issue had seen little action in Congress since the end of July when House Ways and Means Health Subcommittee Chair Nancy Johnson (R-CT) introduced the "Medicare Value-Based Purchasing for Physician's Services Act of 2005" (H.R. 3617). The bill, which is supported by more than 70 medical specialty societies, would implement a phased-in P4P component into Medicare, and also repeal the flawed Sustainable Growth Rate (SGR) formula that will result in an approximate 4.3 percent payment reduction in Medicare reimbursement for physicians beginning January 1, 2006.

Centers for Medicare and Medicaid Services (CMS) Administrator Mark McClellan was among the list of five speakers at the hearing, and announced that the agency may be prepared to initiate a voluntary Medicare physician quality reporting initiative as early as the beginning of 2006. This reporting system would be an initial step toward implementing a more complete P4P system linking physician reimbursement to greater performance. McClellan stated that the Agency is collaborating with some specialty societies, "to implement quality measures that reflect important aspects to measure the quality of specialists and sub-specialists." The program will likely utilize Medicare claims forms to report data.

The Congressional Budget office has not assigned a cost estimate to H.R. 3617; however, CMS estimates that replacing the current Medicare physician reimbursement system based on the SGR would cost approximately \$183 billion over ten years. Recently, lawmakers have discussed consideration of a one or two year "fix" to avoid the scheduled 4.3 percent cut in physician payments for 2006, a move that has been repeated in past years. Additionally, some members of Congress have urged CMS to remove drug expenditures from the formula, which may reduce the legislative cost of a fix by about \$110 billion. CMS is currently examining its legal authority to remove the drug costs from the formula.

MedPAC Initiates Review of Physician Reimbursement System

The Medicare Payment Advisory Commission (MedPAC), an independent federal body established to advise Congress on issues affecting the Medicare program, announced September 8 that it will closely examine the American Medical Association's (AMA) Resource Based Relative Value Scale Update Committee (RUC), citing several concerns.

The RUC comprises specialty medical groups and is responsible for reviewing physician work relative value units to determine appropriate Medicare reimbursement. The RUC plays an important role in the congressionally mandated Five-Year Review Process, which requires CMS to review relative values in the physician fee schedule every five years. RUC recommendations for these values are sent to CMS for consideration. The agency typically accepts more than 90 percent of the RUC's recommendations.

The Five-Year Review process has concerned MedPAC officials for some time. Most recently, the commission wished to examine possible inaccurate payments associated with the growth in volume of physician services. MedPAC has also scrutinized the RUC for a potential bias towards raising rates for undervalued physician services, but failing to examine overvalued services. This may have implications for reimbursement to primary care physicians; budget neutrality requirements dictate a finite pool of funding. Consistently raising undervalued codes can result in lower payment rates for codes such as evaluation and management (E/M) codes, which are most often used by endocrinologists. Those in primary care specialties and subspecialties have long argued that E/M codes have been undervalued for as many as ten years.

MedPAC will release a report in June 2006 after its analysis. Meanwhile, the CMS Five-Year Review is well underway. The Endocrine Society has been closely involved with a coalition composed of internal medicine specialty groups to evaluate the E/M codes and submit recommendations to the RUC for altered work relative values. The RUC held a meeting at the end of September and will submit recommendations to CMS on October 31. The final rule for the physician fee schedule is expected in the fall of 2006; the new relative value units will be implemented January 1, 2007.

Congress Passes Continuing Resolution to Fund Government

On Friday, September 30, Congress passed a Continuing Resolution (CR) that will provide funding through November 18 for federal agencies and programs for which appropriations bills have not yet been approved. To date, only two of the 11 appropriations bills for Fiscal Year 2006 have been approved. Without passage of the CR, the government faced a potential shutdown as the new fiscal year started on October 1.

According to the terms of the CR, government activities will be funded at the lowest of the following three funding levels for all appropriations bills to date: the House passed appropriations level, the Senate passed appropriations level, or last year's funding level. In addition, all agencies are prohibited from engaging in new projects or programs.

Congressional leaders are hoping to adjourn the first session of Congress before Thanksgiving and return in January 2006. Before leaving town, Congress will have to either pass the outstanding appropriations bills or pass a new continuing resolution following the November 18 expiration of this CR.

Senate Approves Amendment to Ban Research Institutions from Purchasing Animals from Class B Dealers

On September 20, the U.S. Senate approved an amendment, introduced by Sen. Daniel Akaka (D-HI), to the Agriculture, Rural Development, Food and Drug Administration, Appropriations Act of 2006, which would prohibit funding to biomedical research facilities that lawfully purchase animals from Class B dealers as designated under the Animal Welfare Act. Class B dealers are licensed and regulated by the U.S. Department of Agriculture (USDA). They acquire animals, random source dogs and cats, which would otherwise be euthanized, from pounds, shelters, or pet owners who give up their pets, and sell these animals to research facilities.

The original intent of the amendment was to prevent the theft of pets. Occasionally pets will be stolen and sold to Class B dealers, who then resell the pets as suitable research animals. While laudable, the amendment is unnecessary and overly broad. Pet theft is already an illegal act and, furthermore, the Animal Welfare Act prohibits Class B dealers from obtaining pets who were stolen. These provisions specify that research institutions can only purchase random source dogs and cats from United States Department of Agriculture (USDA)-licensed dealers and inspected Class B dealers. These licensed Class B dealers must keep identification records on each random source animal regarding its original owner and how it was obtained. Furthermore, these identification records must be transferred to the research facility with the animal.

The impact of the amendment is far greater than the original intent. As written, the amendment would halt all USDA funding to any institution that purchases any USDA-regulated species (guinea pigs, hamsters, rabbits, dogs, cats, non-human primates, and farm animals used in biomedical research) from a dealer with a USDA Class B license.

The Endocrine Society will be working with coalition partners, such as FASEB and the National Association of Biomedical Research, to strip the Akaka amendment from the appropriations bill.

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