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Physicians Face Medicare Reimbursement Cuts for 2007 Despite E/M Increases

Despite the unprecedented proposed increases in CPT code values for E/M services as part of the Five-Year Review, all work relative value units (RVU) may still decrease by about 10 percent in 2007. This is due to a combination of factors contained in CMS' Proposed Rule (and expected in an upcoming second proposed rule), including changes to the current practice expense methodology, a requisite budget neutrality adjustment, and a forecasted 4.6 percent across-the-board cut due to the flawed sustainable growth rate formula (SGR).

CMS is required to maintain budget neutrality for change in RVUs exceeding \$20 million. The changes contained in the proposed rule would increase total Medicare expenditures by about \$4 billion, which is why CMS also proposed a budget neutrality adjustment that would reduce work RVUs by about 10 percent. While endocrinology will likely receive an average 6 percent increase in payments even after the budget neutrality adjustment is factored into overall payment, it still faces an across-the-board cut of 4.6 percent due to the SGR formula. *Part B News* forecasted that of the 2,972 codes assigned RVUs by CMS, fees for 72 percent would drop, representing an average 1.8 percent decrease for all codes tied to physician office fees in 2007. The good news is that 13 percent of those codes used in the physician office would still see payment increases in 2007 even after every adjustment is taken in account when calculating payment in the fee schedule, including established patient visit codes 99213 (\$52.68, nat., par., office) and 99214 (\$82.62), which would pay \$56.69 and \$85.97, respectively.

Endocrinologists who perform imaging services in their offices may face significant drops in reimbursement. The CMS Proposed Rule contains cuts in payment for dual energy X-ray absorptiometry (DXA; CPT code 76075) and vertebral fracture assessment (VFA; CPT code 76077). The full impact of these cuts alone would result in a reimbursement reduction of 71 percent for DXA and 37 percent for VFA by 2010. The cuts contained in the Deficit Reduction Act of 2005 (DRA), compounded with the cuts included in the CMS Proposed Rule, would profoundly impact patient access to this and other types of imaging procedures.

The Endocrine Society has communicated its concerns about the imaging cuts to the American Medical Association. The Society's position will also be reflected in comments to be submitted to CMS.

Society Experts Tapped by Major Media for Input into Tour de France Controversy

With the allegations that Tour de France winner Floyd Landis illegally used testosterone during his recent victory, the press has been eager to contact experts about the validity of the testing procedures and about the effects of testosterone on performance.

An article in the New York Times on July 28, 2006, entitled, “Testing Benefits and Levels of Testosterone is Difficult,” cites three Society members—Drs. Shalender Bhasin, John Amory, and John McKinlay. Dr. Bhasin stated that no existing studies show definitively that testosterone boosts endurance or leads to more intense training and aggressiveness. Dr. Amory stressed the importance of the chain of custody in cases such as the Landis case, and the ease with which a urine sample can be spiked with added testosterone. And Dr. McKinlay commented on the error-prone nature of the tests themselves.

Also on July 28, an NPR piece entitled “Testing for Testosterone” included quotes from Society member Dr. Linn Goldberg about “normal” testosterone levels, what can have an effect on the levels, and the testing process. Dr. Goldberg described the testosterone/epitestosterone ratio, the variance of the ratio from individual to individual, and the relative constancy of the ratio within an individual over time. The full story can be viewed at <http://www.npr.org/templates/story/story.php?storyId=5590786>.

While unfortunate for professional cycling, the recent allegations and controversy highlight the need for standardization of hormone assays. The Endocrine Society is in the process of developing a paper on this topic and released preliminary recommendations from the paper during ENDO 2006.

Efforts to Halt Impending Medicare Cuts Gain Momentum

The medical community is diligently advocating for Congress to avert cuts in Medicare reimbursements that are scheduled to take place January 1, 2007. Due to a flaw in the current sustainable growth rate (SGR) formula, which links physician payment to several factors including gross domestic product, most medical specialties face an across-the-board cut of 4.6 percent. The flawed formula has resulted in negative payment updates for the past several years, during which Congress has stepped in at the eleventh hour to enact a temporary fix (a freeze in payment levels or slight increase).

The situation is more urgent this year because Congress plans to adjourn early so that legislators can hit the campaign trail. However, momentum is growing not only to avert the scheduled cuts for 2007, but also to find a permanent solution.

On July 17, 2006, 80 senators co-signed a letter to Senate Majority Leader Bill Frist (R-TN) and Minority Leader Harry Reid (D-NV) urging the congressional leaders to ensure that the impending cuts are addressed before Congress adjourns in October. House Ways and Means Health Subcommittee Chairwoman Nancy Johnson (R-CT) and Trade Subcommittee ranking member Benjamin Cardin (D-MD) began circulating a similar letter to House Speaker Dennis Hastert (R-IL) and Minority Leader Nancy Pelosi (D-CA) urging action.

On July 24, 2006, Rep. Michael Burgess (R-TX) introduced the Medicare Physician Payment Reform and Quality Improvement Act of 2006 (HR 5866). The bill is designed to halt the impending 4.6 percent across-the-board cut to Medicare reimbursement, and to reform the

system to ensure that physician reimbursement will be adjusted appropriately each year to reflect inflation. The bill would also delay cuts to Medicare imaging reimbursement for a period of one year in order to complete an in-depth study of the factors contributing to increased utilization of imaging by physicians.

HR 5866 calls for a change in the system of calculating updates for physician reimbursement. The current system takes into account three factors: the sustainable growth rate (SGR), which is a target for Medicare spending growth for physician reimbursement; the Medicare economic index (MEI), which measures inflation in practice input costs; and a conversion factor designed to reconcile the SGR with the MEI. The SGR is invariably low in comparison to actual physician services. It is the combination of the low SGR and the SGR-MEI conversion factor that results in yearly proposed cuts in reimbursement for physician services. Although, the impending cuts have historically been halted, no legislation has been introduced to address the underlying defect in the calculation until now. HR 5866 calls for replacing the flawed system of three conversion factors with a system using only one conversion factor, calculated as MEI minus 1 percent. Under this calculation, Rep. Burgess argues, physicians will be fairly reimbursed for services rendered, and reimbursement will reflect changes in inflationary practice cost input.

The bill also calls for a one-year delay in Medicare adjustments for imaging services enacted in the Deficit Reduction Act. The delay period would be used for a study by the Institute of Medicine to determine the appropriateness of imaging services performed by physicians. The specific factors to be examined in the study are:

- The role of medical malpractice in the increase in imaging services.
- The impact of the utilization of imaging services on the subsequent delivery of services.
- The contribution of increased disease incidence to the increase in imaging services.
- A delineation of factors in utilization and appropriateness by site of service, modality, and specialty.

House Energy and Commerce Ranking Member John Dingell (D-MI) introduced a separate piece of legislation that would enact a two-year fix while providing increases of between 2 percent and 3 percent in 2007 and 2008. The Congressional Budget Office estimates that a two-year fix with a 1.5 percent increase would cost \$26 billion over five years. Freezing physician payments at their current rate for one year (which Congress did at the beginning of 2006) would cost approximately \$11 billion over five years.

The SGR was a topic for discussion at a recent House Energy and Commerce Health Subcommittee hearing. Chairman Joe Barton (R-TX), who had previously expressed that the issue would not be taken up by Congress until a lame-duck session, made the following comments at the hearing: "I think it is possible to fix the system, and I think it's possible to fix it in this Congress, which means, in the next two months."

Recent figures released by the Centers for Medicare and Medicaid Services in a new budget estimate of Medicare costs further exacerbate the situation, showing that Medicare spending for physician services increased 11 percent in 2005—largely driven by the volume and

intensity of services provided by physicians. In particular, evaluation and management services, imaging, physician-administered drugs, dermatology services, and minor procedures were major factors in spending growth.

Figures such as these are largely driving groups, such as the American Medical Association, to advocate reversing the scheduled reimbursement cuts and ensuring that future physician payments are tied to actual practice costs.

Society Awarded \$50,000 Grant to Increase Minority Involvement in Clinical Trials

In June, the Society was awarded a \$50,000 grant from the Robert Wood Johnson Foundation to develop a white paper that outlines policy recommendations for increasing participation of minority populations in clinical trials. The project is being spearheaded by the Society's Government Relations Committee (GRC).

Minority groups and new immigrant populations are chronically underrepresented in clinical research trials in the U.S., and a growing body of evidence shows that this under-inclusion phenomenon negatively affects the care of patients. A recent study led by researchers in the Department of Clinical Bioethics at NIH debunked the myth that minorities are unwilling to participate in clinical research. Rather, the study showed that minorities are less likely to be recruited by investigators who conduct clinical research.

The Society's project will focus on five main areas of concern:

- 1) The issues surrounding the prevention of obesity and its adverse consequences on health (diabetes, cardiovascular disease and cancer); finding effective ways to prevent further escalation of the problem of obesity in both the adult and the pediatric community.
- 2) The need for more effective involvement in clinical research activities of the communities (African Americans, Mexican and non-Mexican Hispanics, Native Americans) most affected by obesity and its adverse consequences—insulin resistance, diabetes, cardiovascular disease, end-stage renal disease, and certain cancers.
- 3) The need for increasing the awareness of researchers about the very real issues that make it imperative (not just altruistic) to recruit diverse populations to clinical trials, and, concurrently, making the case to potential minority volunteers that their participation is required to ensure that data gathered in current research studies really applies across race. Specifically the Society will present data to illustrate the fact that risk markers for disease progression and therapeutic response to certain drugs differ across race.
- 4) The need for greater attention to the wisdom of community stakeholders regarding the "infrastructural" issues that impede successful recruitment and retention of minorities to clinical trials, outlining specific steps to be taken to change the process of recruitment.
- 5) The issues (e.g., current modes of access, transportation, child care, child-care reimbursement, and the need to reexamine current practices to facilitate change) that

impede academic and commercial research organizations from successfully recruiting and retaining minorities in clinical trials.

This project was kicked off at ENDO 2006 with a forum that included presentations from various speakers who have successfully conducted trials that included diverse populations. The Society is in the process of creating a task force that will oversee the project, in cooperation with the GRC. The task force will develop the final white paper that will address the aforementioned concerns.

Senate Appropriations Committee Passes Labor/HHS Spending Bill

On July 20, the Senate Appropriations Committee approved the Labor, Health and Human Services, Education, and Related Agencies (L/HHS) 2007 appropriations bill. The bill provides the National Institutes of Health (NIH) with a total of \$28.459 billion for FY'07. This would be an increase of \$220 million, or less than a 1 percent increase, over the FY'06 appropriation for NIH. Both the Administration's budget and House L/HHS appropriations bill call for flat-funding NIH in FY'07.

During the Committee markup of the spending bill L/HHS Subcommittee Chairman Arlen Specter (R-PA) expressed frustration that his subcommittee was not being allocated the appropriate funds to adequately support the agencies he is charged with funding. Specifically, he mentioned that the NIH budget is \$3.7 billion below its FY'05 funding level when adjusted for inflation.

Included in the appropriations bill was language that questioned NIH's budget justification materials. Specifically, the language states "In recent years...the content of the NIH justification has become less informative, often failing to provide clear, concise, and detailed information." The language goes on to suggest that, for FY '08, the committee expects to develop a more consistent reporting format to increase the transparency of the NIH budget to provide greater accountability.

The measure must now be voted on by the full Senate. Senator Specter has stated that he will push for an amendment seeking an additional \$2 billion for the spending measure. It seems unlikely that the Senate will vote on this spending measure before the election recess. The House Appropriations Committee passed its version of the L/HHS bill in June but, to date, it has not been brought to the House floor for a vote.

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