ADVOCACY UPDATE

December 6, 2010

31-day delay in Medicare payment cuts enacted

On November 30, the President signed into law H.R. 5712, the Physician Payment and Therapy Relief Act, which provides a 31-day reprieve from the 23 percent Medicare physician payment cut that had been scheduled to take effect December 1. The House approved the measure on November 29.

The next cut of 25 percent is scheduled for January 1, 2011. Bipartisan discussions are continuing between the House, Senate and White House on a sustainable growth rate (SGR) relief package that would avert any cuts in 2011. There is broad bipartisan agreement that a 12-month extension is the most prudent course of action; the focus of the negotiations is on finding acceptable budgetary offsets before the lame-duck congressional session ends in mid-December.

AMA Position: The AMA strongly supports enacting legislation to stabilize Medicare physician payments for at least 12 months to avoid the disruptions that occurred in 2010, and to allow time for the physician community and lawmakers to develop a long-term solution to the SGR problem.

Fiscal commission report addresses the SGR and liability reform

The National Commission on Fiscal Responsibility and Reform released its revised and final report on December 1. The report was assembled by the Commission's co-chairs, former White House Chief of Staff Erskine Bowles and former Senator Alan Simpson (R-WY). Subsequently, on December 3, 11 of the 18 Commissioners voted to support the final recommendations. Pursuant to the executive order that established the Commission, 14 members needed to approve the report for it to be sent to Congress for its consideration. However, given pressures to rein in spending and reduce the federal deficit, it is likely that many proposals in the report will be viewed as relevant in the 112th Congress.

For several months, the AMA has engaged in discussions with Commission members and staff about the importance of addressing the shortfalls of Medicare's SGR formula in the final report. In fact, the proposal dedicates almost $250 billion toward addressing the SGR while achieving nearly $4 trillion in deficit reductions, which may provide momentum in the next Congress for enacting a long-term solution. However, to offset the budgetary costs of SGR reform and to rein in health care spending generally, the report includes a number of controversial provisions. Some of these proposals, such as medical liability

reform, will be supported by physicians. Other recommendations, such as enacting an extended freeze and a reduction in Medicare physician payments, strengthening the Independent Payment Advisory Board, and reducing Medicare financial support for graduate medical education, will not be supportable.

With respect to the SGR, the report recommends the following:

- Freeze Medicare physician payments through 2013.
- Implement a 1 percent payment reduction for physician services in 2014.
- Implement comprehensive physician payment reforms to be developed by the Centers for Medicare and Medicaid Services (CMS) in 2015.
- If CMS is unable to meet the deadline for implementing a new payment system, reinstate the SGR in 2015, using 2014 spending as the base year.

With respect to medical liability reform, the Commission recommends pursuing series of tort reforms including: (1) modifying the collateral source rule; (2) imposing a statute of limitations (perhaps one to three years) on medical malpractice lawsuits; (3) replacing joint and several liability with a fair-share rule; (4) creating health courts; and (5) allowing safe haven rules for physicians and providers who follow best practices of care. Savings in this proposal are estimated at $18 billion through 2020. While the Commission eliminated its preliminary recommendation to impose caps on non-economic damages, it did recommend that Congress "consider this approach and evaluate its impact."

Senate approves legislation to clarify the Red Flags Rule

On November 30, the Senate unanimously passed S. 3987, the "Red Flag Program Clarification Act of 2010." The legislation, which was introduced by Senators John Thune (R-SD) and Mark Begich (D-AK), would limit the type of "creditor" that must comply with the Red Flags Rule.

The Red Flags Rule requires creditors to develop identity theft prevention and detection programs, and was originally scheduled to take effect on November 1, 2008. According to the Federal Trade Commission (FTC), physicians who do not accept payment from their patients at the time of service are creditors and must comply with the Rule by developing and implementing written identity theft prevention and detection programs in their practices. As a result of continued discussions with FTC's Chairman Jon Leibowitz and an aggressive congressional advocacy campaign, AMA efforts prompted the agency to delay the November 1, 2008 compliance deadline on multiple occasions, up through December 31, 2010. On May 21, 2010, the AMA Litigation Center, along with the American Osteopathic Association (AOA) and the Medical Society of the District of Columbia (MSDC), filed a lawsuit in federal court seeking to block FTC enforcement of the Red Flags Rule on physicians. On June 25, 2010, the FTC entered into a stipulation with the AMA agreeing not to enforce its Red Flags Rule until the D.C. Circuit Court issues a decision in the pending challenge brought by the American Bar Association (ABA) to block the FTC from applying the Red Flags Rule to attorneys.

To further clarify protection for physicians from misguided federal regulation, Senators Thune, Begich, and Christopher Dodd (D-CT) inserted a colloquy into the Congressional Record in support of S. 3987, stating that its purpose is to clarify that physicians should no longer be classified as "creditors" for the purposes of the Red Flags Rule.

Efforts are under way to secure House consideration and passage prior the adjournment of the 111th Congress.

AMA Position: The AMA strongly believes that physicians are not creditors and should not be subject to the Red Flags rule.

House Judiciary Committee holds hearing on antitrust issues

The House Judiciary Subcommittee on Courts and Competition Policy held a hearing on December 1 entitled "Antitrust Laws and Their Effects on Healthcare Providers, Insurers, and Patients." Full Committee Chairman John Conyers (D-MI), Subcommittee Chairman Hank Johnson (D-GA), Rep. Charles Gonzalez (D-TX), Ranking Member Howard Coble (R-NC), and Rep. Bob Goodlatte (R-VA) expressed concerns about the high level of health insurer consolidation (citing AMA statistics) and the need to update current FTC/ Department of Justice (DOJ) health policy antitrust guidelines. They urged that the FTC and DOJ provide clarity and flexibility with respect to forthcoming regulations governing accountable care organizations (ACOs) so that physician participation is not impeded by antitrust barriers. Further, Committee members pushed the FTC and DOJ to be more timely and responsive to physician requests for guidance on possible plans to collaborate.

The FTC and DOJ witnesses argued that the 1996 health policy antitrust guidelines do not need to be updated at this time. However, they expressed willingness to provide some flexibility with respect to how current antitrust guidelines intersect with future regulations governing the formation of ACOs.

AMA Position: The AMA submitted a statement highlighting the high levels of health insurer market concentration and the historic imbalance in the enforcement of antitrust law against insurers and physicians. The statement also advocated for removing current antitrust enforcement barriers to physician leadership in the formation of ACOs.

CMS postpones claims denial for referring physicians not in PECOS

In direct response to ongoing AMA advocacy, CMS confirmed that it will not adhere to its early 2011 deadline for denying claims that include the names of ordering physicians who are not in the PECOS enrollment system. The AMA been working extensively with CMS on this issue and, as a result, CMS is reviewing the enrollment process and has committed to implement the necessary changes for improvements.

AMA submits comments on how CMS should structure physician-led ACOs

The AMA responded to a CMS Request for Information and submitted detailed comments on how Medicare should structure physician-led and patient-centered ACOs **http://www.ama-assn.org/ama1/pub/upload/mm/399/cms-aco-comment-letter-2dec2010.pdf**. The recommendations were submitted on December 2 in response to a specific request for comments by the agency on ways to ensure that solo and small group practices may actively participate in the Medicare ACO program. After the comments were submitted, AMA President Cecil Wilson, MD said, "The physician-led ACO model injects competition into the market by eliminating the need for consolidation under a

hospital system. Competition fosters innovation, which ultimately helps patients receive efficient high-quality care. Care coordination is vital, and physicians can work together with a health care team to keep patients healthy and out of the hospital while maintaining independent medical practices. CMS should adopt policies that facilitate physician-led ACOs and do not inadvertently bias participation in favor of large health systems and hospitals."

"Our goal is to ensure that new models of care benefit patients and for this to happen physicians must be able to successfully participate in and lead ACOs," said Dr. Wilson For more information on AMA Advocacy efforts on ACOs, go to **www.ama-assn.org/go/paymentpathways.**

AMA submits comments on Physician Compare Web Site

On November 30, the AMA submitted comments to CMS regarding its efforts to establish a Physician Compare Web Site, as mandated by Section 10331 of the Patient Protection and Affordable care Act of 2010 (ACA). The statement urges CMS to be judicious in its development of a Physician Compare Web Site, specifically balancing its statutory directives with current methodological limitations associated with physician profiling. To minimize unintended consequences, the initial phases of public reporting should also be limited to group or organizational level reporting. To read the full statement, please visit **http://www.ama-assn.org/ama1/pub/upload/mm/399/ppaca-section-10331-statement.pdf.**

Medicine increases pressure on HHS for retroactive pay increases

There are a number of retroactive Medicare payment adjustments that CMS failed to make for physicians in 2010. Most of the changes were the result of provisions in the ACA calling for CMS to reimburse physicians on various policy changes retroactively to January 1, 2010. For some time, the AMA has been urging CMS to reimburse physicians for these retroactive payment adjustments. Working with the states and specialty societies, the AMA is urging the Secretary of the Department of Health and Human Services (HHS) to ensure that these retroactive payments are made.

AMA opposes CMS' new e-prescribing penalty policy for 2012 and 2013

Despite strong AMA opposition, CMS has finalized its proposal to use reports from the first six months of 2011 as the basis for imposing e-prescribing penalties in 2012 (entire 2011 calendar year reports apply to the 2013 penalty program). To avoid penalties in 2012, CMS is requiring eligible physicians to report the relevant G-code for e-prescribing, G8553, at least 10 times for applicable Medicare office visits and services during the first half of 2011. The AMA, along with multiple specialty and state medical societies, are strongly urging HHS Secretary Sebelius and CMS Administrator Dr. Donald Berwick to revise the 2012 penalty criteria immediately. The law that established the Medicare e-prescribing incentive program requires a penalty phase for eligible physicians who do not e-prescribe to start in 2012. CMS' decision to use 2011 data to apply penalties in 2012 conflicts with the intent of the law, which clearly supports delaying penalties until 2012. In addition, CMS has failed to synchronize the various, overlapping Medicare incentive programs so that, for example, eligible physicians who receive Medicare electronic health record (EHR) incentives in 2011 or 2012 will be exempt from the Medicare e-prescribing penalties. The AMA will be hosting a webinar in the coming weeks on the e-prescribing

incentive and penalty programs. Please log onto **www.ama-assn.org/go/hit** for additional information.

AMA participates in ONC panel discussion on personal health records

On December 3, the AMA's Institute for Ethics Director, Dr. Matthew Wynia, took part in panel discussions sponsored by the Office of National Coordinator (ONC) on personal health records (PHRs) and shared preliminary results from a survey conducted by the AMA and the Markle Foundation on physician and patient views of PHRs. Dr. Wynia indicated that the basic lesson from the survey findings is that the data in PHRs need to be of good quality, secure, and in a format that is useful. It is also critical that PHRs not be simply a data repository, unchecked, with mounds of information that the doctor and patient are accountable for sorting through. If PHRs evolve to include multiple applications with direct clinical use, then PHRs will serve as important tools for improving quality health care.

New update to "Competition in Health Insurance" study

The AMA has produced the 2010 Update to "Competition in health insurance: A comprehensive study of U.S. markets." The study found that most health insurance markets across the U.S. are highly concentrated and concluded that insurers are exercising market power in many parts of the country. The report will be used to help AMA advocacy efforts with antitrust issues before the Department of Justice and the Federal Trade Commission and oppose health insurer consolidation in markets with high concentration. Two copies of 2010 analysis have been distributed to each state medical association. The 2010 update to the study is available on AMA's website **https://catalog.ama-assn.org/Catalog/product/product_detail.jsp?productId=prod1720002** for $150 per copy, but is free to AMA members.

AMA Practice Management Alerts community is 3,000 strong—join the rapidly growing community

An empowering resource that helps physician practices save time and money, the AMA's **free Practice Management Alerts** online community has nearly tripled in size in 2010, reaching more than 3,000 physicians and practice staff around the country. Subscribers to the community can:

- Increase efficiency and ensure accurate payment by staying on top of problematic payer practices, as well as the appropriate, effective ways physician practices can address these problems
- Save time and money with AMA practice management resources that can help streamline the physician practice's internal claims process
- Share practice management experiences and easily invite friends within the profession to join the online community

Anyone can join for free: An unlimited number of physicians and staff from a practice can subscribe to the free AMA Practice Management Alerts online community. Physicians can save time and paper—instead of printing an alert to give to a member of their practice staff (such as a manager, biller or coder), they can invite them to sign up and receive the alerts directly to their inbox. Visit **www.ama-assn.org/go/pmalerts** to join the AMA's free

Practice Management Alerts. Please encourage your physician members and their practice staff to join this rapidly growing community today.

AMA, organized medicine help Pennsylvania enact photo ID law

A new Pennsylvania law requires employees in health care facilities to wear a photo ID in all patient encounters to help patients know who is providing their health care. House Bill 1482, which was signed by Pennsylvania Governor Edward Rendell on Nov. 24, 2010, also requires that the ID name the type of license of the practitioner. For example, medical doctors and doctors of osteopathic medicine will be referred to as "physician," and registered nurses will be referred to as "registered nurse."

The new law was supported by a grant to the Pennsylvania Academy of Dermatologists by the Scope of Practice Partnership, and additional support was provided by the Pennsylvania Medical Society, several other medical societies, and AMA Advocacy Resource Center staff throughout the process.

The AMA's Truth in Advertising campaign uses the language in House Bill 1482 in its model legislation. The model legislation also contains provisions to prohibit deceptive or misleading health care advertising. Please visit **www.ama-assn.org/go/tia** to learn more about the Truth in Advertising campaign.

Are you prepared for 5010 and ICD-10? Archived webinar can help

As the year draws to a close, now is an ideal time for physicians to participate in the **AMA's "Heal the Claims Process"™ campaign** by evaluating their practice's preparedness for the approaching deadlines for new code set compliance. To avoid disruptions in cash flow and transaction processing, physician practices must be ready to send and receive only the updated version of Health Insurance Portability and Accountability Act (HIPAA) electronic transactions, commonly known as "5010," beginning Jan. 1, 2012. To meet this deadline, physicians will need to begin testing the upgraded electronic administrative transactions with their trading partners in 2011. In addition to the 5010 transactions, the ICD-10-CM code set must be used for all services provided beginning Oct. 1, 2013.

The Centers for Medicare and Medicaid Services, which oversees compliance of the HIPAA standard transactions and code sets, has made it clear that the compliance deadlines will not be extended. In fact, Medicare expects to begin testing the 5010 transactions with physicians and other health care providers in 2011. With these deadlines approaching fast, the AMA has prepared various resources to help physician practices implement the 5010 standard transactions and ICD-10 code sets. Visit the AMA's Web site at **www.ama-assn.org/go/5010** and **www.ama-assn.org/go/icd-10** to access these resources and view a free archived webinar to help physicians prepare for these approaching deadlines.

AMPAC announces 2011 political education programs

On February 18-20, 2011 AMPAC (the AMA's Political Action Committee) will host the annual Candidate Workshop in Pentagon City, Virginia. The Workshop is designed for AMA members and their spouses who are considering a run for public office, and includes training on campaign strategy and media advertising, as well as hands-on sessions in public speaking and fundraising.

AMPAC will conduct its annual Campaign School April 13-17, 2011, also in Pentagon City, 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. For both programs, all costs for AMA members, except transportation to the Washington, DC metro area, are borne by AMPAC. For more information on these programs or an application, please see AMPAC's new online registration form at **http://www.ampaconline.org/apply** or contact Jim Wilson, Political Education Programs Manager, at **jim.wilson@ama-assn.org**