ADVOCACY UPDATE

May 18, 2011

Medical liability reform legislation continues to advance

On May 11, the House Energy and Commerce Committee approved H.R. 5, the Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act, by a vote of 30 to 20. The bill, introduced by Rep. Phil Gingrey, MD (R-GA), is based on comprehensive medical liability reforms, including caps on non-economic damages and attorneys' fees, which have proven to be effective in stabilizing medical liability markets in states like California and Texas. According to the Congressional Budget Office, the legislation as introduced would reduce federal spending by $62 billion over 10 years. H.R. 5 was approved by the House Judiciary Committee on Feb. 15. It is not yet known when the full House will consider the bill.

A print advertisement was placed in Capitol Hill publications urging Congress to pass H.R. 5. See at: **http://www.ama-assn.org/go/mlr-ad.**

AMA Position: The AMA strongly supports H.R. 5. The AMA launched an ad campaign prior to the mark-up, and has sent letters of support for the bill. Earlier in the year, the AMA testified before the House Judiciary Committee in favor of the bill and submitted a statement for the record to the House Energy and Commerce Committee. All of these documents can be found at **http://www.ama-assn.org/ama/pub/advocacy/current-topics-advocacy/practice-management/medical-liability-reform/federal-legislative-activities.page.**

AMA supports bills to repeal limits on physician-owned hospitals

The AMA sent letters of support for provisions in two House bills—H.R. 1186, which was introduced by Rep. Sam Johnson (R-TX), and H.R. 1159, which was introduced by Representative Doc Hastings (R-WA)—that would repeal limits to the whole hospital exception of the Stark physician self-referral law. Current law essentially bans physician ownership of new hospitals and places serious restrictions on expansion of already existing physician-owned hospitals. The bills have been referred to both the Energy and Commerce and Ways and Means Committees.

AMA Position: The AMA opposes provisions in current law that would restrict the ability of physicians to own and operate hospitals and effectively eliminate the competitiveness of those already in existence. The AMA supports leveling the playing field, allowing physician-owned hospitals to remain competitive and continue their solid record of providing high-quality health care to patients.

AMA urges Innovation Center to help small practices

AMA President Cecil Wilson, MD, recently met with the Acting Director of the new Center for Medicare and Medicaid Innovation, Dr. Richard Gilfillan, urging him to quickly establish programs to help small physician practices become involved in payment and delivery reforms. Dr. Wilson discussed several specific initiatives that the AMA thinks merit the Innovation Center's consideration:

- A mentoring approach to help physicians translate research into practice by assisting practices that are working with others to gain new capabilities;
- Transitional payment reform models such as partial capitation, which is a form of an accountable care organization (ACO) that receives a capitation payment for a portion but not all Medicare services;
- Loan and loan guarantee programs to help small practices with the start-up costs;
- Work with the AMA in its creation of a Standardized Physician Data Reporting Format to move toward a more uniform system of providing actionable data for physicians from multiple sources; and
- Support registries and more robust quality measurement development and testing.

The AMA will be continuing to follow-up with the Innovation Center leadership on these programs.

AMA convenes ACO rule discussions

The AMA has convened several recent forums to allow specialty and state medical society staff to ask questions of, and interact with, key Administration officials involved in the Medicare Shared Savings Programs regulations. Questions and concerns were raised about the proposed rule for ACOs that the AMA will be addressing in its comments. Some of the key issues raised include the following:

- Objections to the requirement that ACOs repay a share of "losses" in addition to receiving a share of savings they generate for Medicare;
- Concerns about the requirement that all ACOs report on the same 65 quality measures;
- Questions about the inclusion of hospital-acquired conditions in these quality measures and whether that establishes a *de facto* requirement for an ACO to include a hospital;
- Concerns about the beneficiary assignment process, including both the retrospective assignment procedure and how to account for non-primary care specialists who provide primary care services to some of their patients;
- Issues involving the structure for paying ACOs, including the uncertainty of recouping initial investments and whether partial capitation and other models may be authorized; and
- Questions about the antitrust safe harbors for ACOs, including the use of "primary service areas" and the thresholds for the safety zones.

The AMA is developing comments on the proposed rule and plans to share them with the Federation well before the June 6 deadline for comments.

CMS Innovation Center announces new initiatives on ACOs

On May 17, the Center for Medicare and Medicaid Innovation (CMI) announced three new initiatives to augment the Medicare ACO Shared Savings program:

1. A "Pioneer" Program" request for applications (RFA) -- CMI will select up to 30 "ACO ready" organizations that already have at least one contract with a private payer around incentives for care coordination to contract directly with CMS and Medicare. The target audience for this RFA is organizations such as those who participate in the Physician Group Practice (PGP) Demonstration project who already have significant experience with the accountable care model.

2. A Request for Comment on an "Advanced Payment Initiative" for ACOs entering the Medicare Shared Savings Program. Eligible organizations could receive an advance of the shared savings they are expected to earn as a monthly payment for each aligned Medicare beneficiary. ACOs would need to provide a plan for use of these funds to build care coordination capabilities, and meet other organizational criteria. Advanced payments would be recouped through the ACO's earned shared savings. Comments on the proposal are due June 17th.

3. A series of four accelerated development sessions that will provide organizational "executives" (up to four individuals from each organization, including one with clinical responsibility) with the opportunity to learn the core functions of an ACO and ways to build their organization's capacity to succeed as an ACO. The first of these sessions will be three days and is already scheduled for June 20-22 in Minneapolis.

The details of these three proposals, including registration information for the June Development Session, can be found at:
https://www.cms.gov/apps/media/press/release.asp?Counter=3957&intNumPerPage=10&checkDate=&checkKey=&srchType=1&numDays=3500&srchOpt=0&srchData=&keywordType=All&chkNewsType=1%2C+2%2C+3%2C+4%2C+5&intPage=&showAll=&pYear=&year=&desc=&cboOrder=date

The AMA has been urging the CMI to adopt strategies to assist physicians in small practices in transitioning to ACOs through technical assistance and the provision of up front capital. The Advanced Payment Initiative is one specific program in this direction. The AMA will comment on the Request for Comments on the Advanced Payment Initiative and will continue to suggest other initiatives, such as Small Business Administration-backed loans. The AMA also has urged CMI to provide mentoring and technical assistance directly to physicians through grants to entities such as state and specialty societies, to provide ongoing, local training.

HHS establishes Partnership for Patients

Last month, the Department of Health and Human Services (HHS) launched a new patient safety initiative entitled, “Partnership for Patients: Better Care, Lower Costs.” This initiative seeks to accelerate the reduction of hospital-acquired conditions and decrease preventable hospital readmissions within 30 days of discharge. The Community-Based

Care Transitions Program (CCTP), mandated by the ACA, provides funding to test models for improving care transitions for high-risk Medicare beneficiaries. This program is the primary funding source for taking action on decreasing preventable hospital readmissions under the "Partnership for Patients" patient safety initiative.

On May 5, CMS announced it is now accepting applications for participation in CCTP. The goals of the CCTP are to improve transitions of beneficiaries from the inpatient hospital setting to other care settings, to improve quality of care, to reduce readmissions for high risk beneficiaries, and to document measureable savings to the Medicare program. To read more about the CCTP, as well as review the requirement for participation, please visit **http://www.cms.gov/DemoProjectsEvalRpts/MD/itemdetail.asp?itemID=CMS1239313**

AMA working to promote physician voice in CER

The AMA recently convened the Washington specialty society representatives to discuss ongoing activities around comparative effectiveness research (CER) and opportunities for the physician community to weigh in with both the Agency for Healthcare Research and Quality (AHRQ) and the Patient Centered Outcomes Research Institute (PCORI) regarding all four elements of the CER: priority setting, research, practice guideline development, and distribution/uptake.

Specifically, the AMA is in the process of collecting feedback on potential CER priority areas for 2011 and 2012 from the specialties. The AMA will review the feedback collected and develop a comprehensive document to share with the PCORI Board of Directors at its July meeting in Washington, DC. In addition, the AMA will help facilitate meetings between the specialties and the Director of AHRQ and a representative of the PCORI Board to further discuss the role of practicing physicians in the CER.

CMS Announces HIPAA Version 5010 Testing Day

Physicians who submit claims and other HIPAA health care transactions electronically should note that the deadline to comply with the next version of HIPAA transactions, Version 5010, is less than eight months away. On the compliance date of Jan. 1, 2012, these physicians (or the clearinghouses they use) will be expected to send and receive their health care transactions according to the updated standards. To help physicians and others in the industry prepare, CMS, in conjunction with the Medicare fee-for-service contractors, announced a national testing on Wednesday, June 15. National 5010 Testing Day is an opportunity for physicians and others to come together and test compliance efforts that are already underway with the added benefit of real-time help desk support and direct and immediate access to Medicare Administrative Contractors. CMS encourages all physicians and those with whom they do business electronically (clearinghouses, vendors, Medicare contractors) to participate so that transaction problems can be identified early. It can also help physicians avoid serious cash flow interruptions after Jan. 1, 2012. More details concerning the transactions to be tested are forthcoming from each Medicare contractor. There are several State Medicaid Agencies that will also be participating in the National 5010 testing day and more details will follow from them as well. For more information on HIPAA Version 5010, please visit **http://www.CMS.gov/Versions5010andD0**, or the AMA's website at **www.ama-**

assn.org/go/5010. Even if a physician is using a clearinghouse to send transactions to payers there are still changes that will impact their practice.

Physicians appointed to work with FAIR Health to ensure accurate UCR data

On May 11, the AMA met with FAIR Health and the newly appointed FAIR Health Provider Advisory Group in New York City. FAIR Health, an independent not-for-profit organization that was created to establish and maintain a new database for "usual, customary and reasonable" charges, recently introduced a Web site (**www.fairhealthconsumer.org**) that now enables consumers to look up the average costs for dental services according to the region in which they live. This Web site will be expanded on Aug. 1 to include medical care. The AMA worked closely with national medical specialty societies to appoint physicians representing 14 specialties to the Health Provider Advisory Group. This group will advise FAIR Health on its new system for collecting and analyzing health care charge data. The group will also assist FAIR Health in ensuring that the information published on its Web site accurately reflects physician charges and otherwise provides consumers with correct, clinically appropriate information.

Prompt pay legislation signed into law in Georgia

Georgia's Governor Nathan Deal signed into law House Bill 167, which extends the state's prompt pay standards to third-party administrators. The AMA worked with the Medical Association of Georgia to advance this measure for several years through meetings with the state Department of Insurance and by assisting with strategies to help avoid ERISA preemption problems. Now that payment timeliness standards are extended to the administrators of self-insured health benefit plans, Georgia physicians should experience significant relief from delayed payments for services rendered to patients enrolled in these plans. This is a significant victory and establishes a much-needed precedent for the AMA Advocacy Resource Center to advance its "full enforcement" agenda in other states.

Enroll in AMA Grassroots Program

Physicians with personal relationships with members of Congress (or their staff members) can join the AMA's Very Influential Physicians (VIP) program. Link: is at: (**http://www.ama-assn.org/apps/go/vip**).

For those physicians that don't have a relationship with a member of Congress (or a congressional staff member), please join the Physicians' Grassroots Network (PGN) and Patients' Action Network (PAN) to take action on legislative priorities and receive grassroots advocacy updates. You will find the link at: **http://www.ama-assn.org/ama/pub/advocacy/get-involved.page.**