

# Dateline|Washington

prepared by the Division of Advocacy and Health Policy

## **Legislation introduced to fix Medicare update system**

Rep. Nancy Johnson (R-CT), chair of the House Ways and Means Health Subcommittee, introduced HR 3882, the Preserving Patient Access to Physicians Act, on March 6. The bill would implement recommendations made by the Medicare Payment Advisory Commission in its March report to Congress. More specifically, the Johnson bill would repeal the sustainable growth rate (SGR) system on which annual Medicare fee schedule updates are based and that has caused physician payments to fluctuate unpredictably in recent years. It would also set the Medicare fee schedule update at 2.5 percent in 2003, and tie future fee schedule updates to an improved Medicare Economic Index, which measures input cost changes for physicians. Because the SGR is tied to growth in the economy, payments do not reflect the true cost of providing care to patients.

## **CMS predicts more physician pay cuts**

In testimony presented to the House Energy and Commerce Subcommittee on Health on February 14, Thomas A. Scully, Administrator of the Centers for Medicare & Medicaid Services (CMS), projected additional steep Medicare payment reductions for physicians. While explaining to subcommittee members why the physician payment update formula produced a 5.4 percent across-the-board reduction in Medicare payments for 2002, Mr. Scully presented data showing that pay cuts also are predicted for 2003, 2004, and 2005. If these estimates hold true, the fee schedule conversion factor in 2005 will be slightly above \$31, down from over \$38 just last year.

The College and other medical and surgical specialty societies are pursuing a legislative remedy that would restore the 2002 pay cut, and replace the fee schedule update mechanism with one that is more similar to those used for other Medicare provider groups. Surgeons who want to express their concerns to Congress are encouraged to contact their legislators using the College's Web-based Legislative Action Center, at: <http://capwiz.com/facs/home/>.

## **Liability crisis in spotlight in Nevada**

In response to the severe professional liability crisis in Nevada, the Commissioner of Insurance sponsored a public hearing relating to the availability of medical malpractice insurance. Media reports and over 6,000 comments from patients, physicians, professional liability insurance companies, and others were instrumental in convincing state government officials that a crisis exists, and testimony during the hearing reiterated this point.

Stephen Daniel McBride, MD, FACS, President of the College's Nevada Chapter, was the first witness to testify. He addressed the problems that surgeons are having with the availability and affordability of professional liability insurance, noting that many surgeons and high-risk specialists are experiencing premium increases of 300-400 percent. As a result, Dr. McBride noted that 10 percent of general surgeons have left practice in southern Nevada.

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## **ACS Fellow nominated to be the next Surgeon General**

Also, coverage for the Level I trauma center in Las Vegas has become more difficult since two of the 12 trauma surgeons have already resigned, and one more is expected to leave in the next few weeks because they cannot obtain malpractice coverage. Information about this hearing is available through the Nevada Department of Insurance Web site at <http://doi.state.nv.us/P&C/MedMal/IndexMedMal.htm>.

Richard Carmona, MD, FACS, a general and trauma surgeon from Tucson, AZ, has been nominated to be the next Surgeon General of the U.S. President George W. Bush announced his nomination at a news conference held at the White House on March 26, 2002. President Bush highlighted Dr. Carmona's experience as a hospital administrator, law enforcement official, and public health and bioterrorism expert as some of the major factors that make him an ideal candidate to lead the country's public health and education efforts. Dr. Carmona's nomination must be confirmed by the U.S. Senate before he can assume the position of Surgeon General, which has been vacant since Dr. David Satcher's term ended in early February of this year. Thomas R. Russell, MD, FACS, Executive Director of the College, attended the event at the White House as a guest of Dr. Carmona. The College provided its strong support for Dr. Carmona's appointment in a February 29 letter to White House Chief of Staff Andrew Card.

## **College identifies regulatory burden to government**

Last December, the Department of Health and Human Services announced that it had appointed an Advisory Committee on Regulatory Reform to suggest streamlining requirements set by the Food and Drug Administration and the CMS. The committee requested and received written comments identifying burdensome regulations and will be holding four public hearings to gather more information before making its recommendations.

In his letter to the committee, Dr. Russell requested that minor modifications be made to two Medicare regulatory requirements that are especially burdensome to surgeons. One is to clarify whether it is necessary for the surgeon to obtain an advance beneficiary notice (ABN) from a patient who is being referred to another physician for a face-to-face service. (The ABN ensures the second physician will be paid by transferring financial responsibility to the patient in the event that Medicare finds the service not to be medically necessary.)

The second issue relates to the 23 national coverage decisions on clinical laboratory test(s) that will become effective this November. Only four of the decisions recognize "preoperative testing" as a reason for doing the tests. For the remaining tests, the surgeon must look up a definitive ICD-9-CM diagnosis code. The College requested that the coverage decisions be clarified to indicate that the preoperative testing is recognized wherever it is appropriate.