

Dateline Washington

prepared by the Division of Advocacy and Health Policy

CMS proposes changes for 2003 fee schedule

On June 27, the Centers for Medicare & Medicaid Services (CMS) announced proposed changes to the Medicare physician fee schedule for 2003. By far the most important change would involve recalculating the Medicare Economic Index (MEI)—one of the key elements used in determining the annual update to the fee schedule conversion factor. CMS proposes to revise and decrease the “productivity adjustment” that is applied to the MEI, a suggestion that the College and other specialty organizations have long advocated. Using the old productivity adjustment, the annual update under current law is projected to be minus 5.5 percent next year. The proposed revisions would result in an update of minus 4.4 percent instead.

Unfortunately, the proposed rule did not contain revisions to the data or methodology involved in calculating malpractice relative values. It was hoped that meaningful changes would be proposed in order to more fairly compensate specialists experiencing rapidly escalating malpractice premiums at the same time that their overall payments continue to decline.

House acts on Medicare payment proposal

Early in the morning of June 28, the House of Representatives adopted H.R. 4954, the Medicare Modernization and Prescription Drug Act of 2002, by a vote largely along party lines of 221 to 208. This bill includes provisions that would address flaws in the current fee schedule update system, which threaten to slash physician reimbursement by an additional 15 to 20 percent over the next four years.

As a result of this proposed provision, the conversion factor will increase by 2 percent in 2003, as opposed to the 4.4 percent decrease estimated in the fee schedule proposed rule recently issued by CMS. Updates of roughly the same amount would also be granted in 2004 and 2005.

There is broad support in Congress for addressing the Medicare physician payment issue, but it is not at all clear whether an agreement will ultimately be reached on a new prescription drug benefit. If agreement cannot be reached on prescription drugs and other larger issues, the physician payment relief provisions must be incorporated into another bill that is destined to pass.

ACS comments on proposed EMTALA revisions

On May 9, CMS issued a proposed rule on the hospital prospective payment system that includes provisions that would ease burdens imposed on surgeons and other physicians by the Emergency Medical Treatment and Active Labor Act (EMTALA) regulations. Subsequently, the agency issued two program memoranda answering some of the most frequently asked questions about hospital responsibilities under EMTALA, including on-call issues.

On July 8, the College submitted comments in response to the proposed rule, detailing surgery’s concerns about the on-call issues and touching on other provisions of the CMS proposal that would affect

Liability reform efforts continue in Congress

surgeons and their patients. More specifically, the College's letter states the following:

- CMS should state explicitly that hospitals are prohibited from requiring physicians to be on continuous call.
- The College supports CMS's change of policy that will allow on-call physicians to provide simultaneous coverage at several hospitals.
- CMS should clarify that on-call physicians should not be required to respond to emergent cases or to perform procedures for which they do not hold hospital privileges.
- CMS should clarify that physicians are allowed to perform elective services at their own discretion while on call.
- CMS should establish a clear policy stating that once patients are admitted to the hospital on an inpatient basis, EMTALA no longer applies.
- The College supports the revision of CMS policy on the applicability of EMTALA to off-campus hospital departments and the clarification that it does not apply to on-campus provider-based entities.
- CMS should clarify that the movement of a patient with an emergency medical condition from the main hospital building to another on-campus entity does not constitute a "transfer" if done in order to provide that patient with an EMTALA-mandated service.

More than 40 Fellows submitted individual comments on the EMTALA rule in response to an alert published in the College's weekly electronic newsletter, *NewsScope*. The full text of the College's comments may be viewed on the Web site, at <http://www.facs.org/dept/hpa/views/emtala.html#1>.

The College continues to encourage congressional passage of medical liability reform. Earlier this year, the College announced its support for the HEALTH Act of 2002 (H.R. 4600), which was introduced by Rep. Jim Greenwood (R-PA). This legislation is modeled after medical liability reform laws passed in California in the 1970s.

The House Judiciary Subcommittee on Commercial and Administrative Law held a June hearing on health care litigation reform to explore whether limitless litigation restricts access to health care. The College submitted testimony to the committee that focused on the problems surgeons are facing with increased liability insurance costs. The House Energy and Commerce Committee is scheduled to hold hearings on the liability crisis in July.

Sen. John Ensign (R-NV) has announced plans to introduce the HEALTH Act in the Senate once he finds appropriate cosponsors. Surgeons are urged to go to the ACS Legislative Action Center (<http://capwiz.com/facs/issues/bills/?bill=152865>) to send letters to their senators and representatives asking for their support of the HEALTH Act.