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prepared by the Division of Advocacy and Health Policy

CMS outlines plans for payment update

In a January 6 letter to Bill Thomas (R-CA), Chair of the House Ways and Means Committee, the Centers for Medicare & Medicaid Services (CMS) outlined steps for implementing a new fee schedule update for 2006, if and when Congress takes final action on the Deficit Reduction Act. That legislation, which did not obtain final passage before Congress adjourned for the holidays in December 2005, includes a proposal to replace the current 4.4 percent payment reduction with a freeze at 2005 payment levels.

According to CMS, Medicare contractors should be able to process claims at the higher 2005 rates starting within two days of enactment of legislation. In addition, Medicare contractors will be instructed to automatically reprocess claims already paid under the -4.4 percent update that took effect January 1. Because of the potentially large backlog of claims that will require reprocessing, CMS anticipates that this procedure may take until July 1 to complete.

Because patient deductibles and copayments also would be affected by a change in the update, CMS consulted with the Office of the Inspector General (OIG) about potential implications of federal fraud and abuse laws related to improper beneficiary inducements if physicians waive additional cost-sharing amounts resulting from a retroactively applied payment increase. The OIG determined that such waivers should not pose a problem. Finally, CMS announced a second 45-day enrollment period following enactment of legislation to allow physicians to reconsider their Medicare participation status for 2006.

At press time, it was anticipated that Congress would reconsider the massive Deficit Reduction Act after reconvening January 31.

Physicians still welcome Medicare patients

Despite a payment cut followed by largely flat Medicare reimbursement rates, the proportion of U.S. physicians willing to treat Medicare patients stabilized in 2004-2005. Moreover, nearly three-quarters of the nation's physicians reported that their practices were open to all new Medicare patients, according to a national study conducted by the Center for Studying Health System Change (HSC).

More specifically, the HSC reports that in 2004-2005, 72.9 percent of physicians said they accepted all new Medicare patients, a statistically insignificant increase from 71.1 percent in 2000-2001. Physicians' willingness to treat Medicare patients remained high, despite a 5.4 percent payment cut in 2002 that was not fully offset by smaller increases in subsequent years. Only 3.4 percent of physicians reported that their practices were completely closed to new Medicare patients in 2004-2005, also statistically unchanged from 2000-2001. The proportion of primary care physicians accepting new Medicare patients increased from 61.7 percent in 2000-2001 to 65.3 percent in 2004-2005; surgeons' numbers remained unchanged at approximately 73 percent in both years. Of those physicians who turned away new Medicare patients in 2004-2005, 69.2 percent cited inadequate reimbursement as a moderately or very important reason. For details, please view the report, Physician Acceptance of New Medicare Patients Stabilizes in 2004-05, online at <http://www.hschange.org/CONTENT/811/>.

Members of Congress call for surgeon on MedPAC

In late December 2005, Reps. Charles Boustany, MD, FACS (R-LA), and Mike Thompson (D-CA) sent a letter to David Walker, the Comptroller General and head of the Government Accountability Office (GAO), asking him to appoint a surgeon to the Medicare Payment Advisory Commission (MedPAC). Only two surgeons have served on MedPAC since its inception in 1997, and no surgeon has had a seat on the commission since 2002. MedPAC studies Medicare payment issues and makes recommendations to Congress regarding legislative solutions to problems. A total of 31 other members of the House of Representatives signed the letter.

The Comptroller General will announce his appointments for 2006 this spring. Given the many challenges facing surgeons under Medicare and the unique nature of surgery relative to other physician services, the College is working with members of Congress, the GAO, and the surgical specialty societies to ensure that surgery's perspective is both represented on and understood by MedPAC. For a copy of the letter, please contact Shawn Friesen, Division of Advocacy and Health Policy, at sfriesen@facs.org.

Georgia General Assembly to consider CON amendment

The Georgia General Assembly is poised to consider legislation during its 2006 legislative session that would amend the state's certificate of need (CON) law. Under the current statute, general surgery is defined as a multispecialty and, as such, is ineligible for an exemption that single specialties have from obtaining a CON when building ambulatory surgery centers.

For years, the College and the Georgia Chapter have disputed this aspect of the law through the courts and regulatory channels, filing amicus briefs, contacting elected state officials, and testifying at state hearings. In October 2005, Thomas Gadacz, MD, FACS, Georgia ACS Governor, testified before the state's Study Commission on the Efficacy of the CON Program, and the College followed up with letters to every commissioner emphasizing the single-specialty definition of general surgery. A copy of this testimony is available at <http://www.facs.org/ahp/testimony/state.html>.

As part of its continuing advocacy efforts in this area, the ACS notified the governor and the state chamber of commerce that "it would be inappropriate for the College to consider Georgia as a location for any future meetings until this egregious policy is changed. If the State of Georgia cannot support surgery in this regard, then surgery simply cannot support bringing business into the state." In addition, the College and the Georgia Chapter strongly support legislative efforts to amend the CON law to correctly define general surgery as a single specialty. Throughout the next few months, all Georgia surgeons will be asked to contact their state legislators through the Surgery State Legislative Action Center to support this legislation, which had not yet been introduced at press time. For more information, contact jsutton@facs.org.