

Dateline|Washington

prepared by the Division of Advocacy and Health Policy

MedPAC supports 1.1 percent pay increase

On January 10, the Medicare Payment Advisory Commission (MedPAC) recommended a 1.1 percent increase in Medicare physician payments for 2009. MedPAC arrived at this figure by subtracting the expected growth in productivity (1.5%) from the expected acceleration in price inputs (2.6%). The recommendation also calls for Congress to pass legislation allowing Medicare to confidentially report back to physicians about their resource use. For more information, go to <http://www.medpac.gov>.

At this point, because of the stopgap measure that Congress passed late last year, Medicare physician payments are 0.5 percent higher in 2008 than in 2007. However, without further congressional action, Medicare payments to physicians will be reduced by approximately 10.6 percent beginning July 1. For details about the stopgap legislation, which President Bush signed on December 29, 2007, see "Dateline: Washington" in the February 2008 issue of the *Bulletin* (page 6).

CMS delays anti-markup rule

On December 28, 2007, the Centers for Medicare & Medicaid Services (CMS) announced that it will delay implementation of the expansive "anti-markup rule" until January 1, 2009. The anti-markup rule, promulgated in the 2008 Medicare physician fee schedule, prohibits physicians from billing for any diagnostic test performed outside of the office where the patient received most of his or her related care. More specifically, the rule limits the payment a physician can receive for technical and professional services purchased from outside suppliers.

In response to harsh criticism from physician groups, CMS indicated it had decided to study the issues further and delay the effective date of the anti-markup provisions. During this delay period, CMS intends to issue clarifying guidance as to what constitutes the office of the billing physician or other supplier, propose additional rulemaking, or both. Surgeons should be aware that the delayed effectiveness of the anti-markup rule does not apply to anatomic pathology diagnostic testing services furnished in a location that meets the following conditions: it is used by a group practice as a "centralized building" for purposes of complying with the Stark rules and does not qualify as a "same building" under the Stark rules. For more information, visit <http://a257.g.akamaitech.net/7/257/2422/01jan20081800/edocket.access.gpo.gov/2008/pdf/07-6280.pdf>.

Part B claims must include NPI

CMS has announced that effective March 1, Medicare Part B fee-for-service claims must include a National Provider Identifier (NPI) in the primary provider fields. These fields pertain to the billing, pay-to provider, and rendering physician's information. Surgeons may continue to submit NPI/legacy pairs or only their NPI. Secondary providers (that is, referring, ordering, and supervising physicians) may continue to include only their legacy numbers, if they choose. Failure to submit a NPI in the primary provider fields will result in claims rejection beginning March 1. For more information, go to <http://www.trailblazerhealth.com/>.

CMS attempts to limit identity theft

To better protect Medicare beneficiaries' personal information and prevent fraud, CMS is instructing contractors to omit the Health Insurance Claim Number (HICN) from Medicare Summary Notices (MSNs). Since January 7, contractors have been told to replace the first five numbers of the HICN with Xs on all MSNs. If Medicare eligibility cannot be established, administrative contractors and carriers are to return the claim to the provider as "unprocessable," using reason code 140, and not mail a MSN.

According to CMS, MSNs enable identity theft and fraudulent claims. More specifically, the agency says that when a beneficiary's name and HICN do not match on a claim, the contractor denies payment and sends a MSN to the beneficiary. These MSNs may also include personally identifiable information and, if they arrive in the wrong hands, open the door to identity theft and fraud. To read the transmittal (1399), go to <http://www.cms.hhs.gov/transmittals/downloads/R1399CP.pdf>.

Georgia hospitals sue surgeons

On December 31, the Georgia Alliance of Community Hospitals and the Georgia Hospital Association filed a lawsuit against the Georgia Board of Community Health and Albany Surgical PC. The hospital groups filed the complaint soon after the state's Board of Community Health officially adopted rules amending Georgia's Certificate of Need (CON) requirements for ambulatory surgical centers. Under the adjusted language, general surgery is recognized as a single specialty for purposes of applying for an exemption from the CON process. The board's decision culminated months of comment, including a public hearing featuring extensive testimony from the Georgia Chapter of the ACS, the College, and other surgical and medical organizations. The amendment had also gained the support of the state's governor.

The fact that Albany Surgical PC is named in the lawsuit is essentially viewed as an attack on Georgia surgeons for the regulatory actions of a government body. With considerable political antagonism and hostility surrounding the entire CON process, it is likely that the state legislature will need to get involved during the 2008 session. For more information, contact Jon Sutton at jsutton@facs.org.

College launches advocacy newsletter

In February, College members with access to e-mail should have received the first two editions of *Advocacy in Action*, a new electronic newsletter. This monthly publication is designed to provide brief overviews of the activities in Washington, DC, carried out by the College's Division of Advocacy and Health Policy, the organization's leadership, and the American College of Surgeons Professional Association. The inaugural issue encapsulated advocacy efforts in 2007, and the first regular edition summarized activities that occurred at the beginning of this year. Typically, *Advocacy in Action* will be published on the third Monday of each month. Because this e-newsletter will provide ACS members with the most up-to-date information about College-related activities in Washington, beginning in April, the "Dateline: Washington" column in the *Bulletin* will be reduced to one page. For more information on *Advocacy in Action*, contact the Division of Advocacy and Health Policy at ahp@facs.org.