

# Dateline Washington

prepared by the Division of Advocacy and Health Policy

## ACS Fellows appointed to MedPAC

Karen R. Borman, MD, FACS, a general surgeon from Jackson, MS, has been appointed to the Medicare Payment Advisory Commission (MedPAC). On May 5, the General Accountability Office announced the appointment of four new members, including Dr. Borman, and the reappointment of two current members to the panel. Dr. Borman, who had been nominated for MedPAC by the College, is the immediate-past-co-chair of the *Current Procedural Terminology* editorial panel and a member of the College's General Surgery Coding and Reimbursement Committee. Her nomination to MedPAC received broad congressional support and was endorsed by a range of surgical specialty societies and medical organizations, including the American Board of Surgery, the American Medical Association, and the Association of American Medical Colleges.

Another surgeon, urologist Ronald D. Castellanos, MD, FACS, from Cape Coral, FL, also was appointed to MedPAC. Dr. Castellanos is the immediate-past-chair of the Practicing Physicians Advisory Council, which advises the Secretary of the U.S. Department of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on proposed changes in Medicare regulations and carrier instructions.

MedPAC advises Congress on Medicare payment systems for hospitals, physicians, and other providers, and conducts analyses on access and quality of care. Additional information about the commission can be found at [www.medpac.gov](http://www.medpac.gov).

## Two liability bills defeated in Senate

Two medical liability bills fell short of the 60 votes necessary for passage in the Senate on May 8. The Senate vote on the more comprehensive of the two bills, the Medical Care Access Protection Act of 2006 (S. 22), was 48–42. That legislation sought to improve patient access to medical services by reducing liability burdens on all health care professionals and institutions. S. 22 would have followed the Texas model for flexible noneconomic damage awards. More specifically, S. 22 would have allowed for the following: Final judgments against individual health care professionals would have been capped at \$250,000; final judgments against individual institutions would have been limited to \$250,000; and final judgments against multiple institutions would have been capped at \$250,000 per facility or \$500,000 for all defendant facilities. Existing and future state laws would have superseded these federal limits.

S. 22 also included the following provisions: A requirement that lawsuits be filed within three years of the date of injury, except for minors injured before age six; a provision for full recovery of necessary medical expenses and lost wages; punitive damages set at twice the amount of economic damages, or \$250,000; limits on attorneys' contingency fees; standards for expert witnesses; a mandate that outlays from collateral sources be deducted from final awards; and a requirement that each defendant only be held liable for damages attributable to them.

The Senate vote on the targeted medical liability reform bill, S. 23, the Healthy Mothers and Healthy Babies Access to Care Act,

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## **Medicare trustees release 2006 report**

was 49–44. This legislation included the same provisions as S. 22 but would have applied them only to providers of obstetric and gynecologic services. For more information about the bills and the College's position, please contact [cshalgian@facs.org](mailto:cshalgian@facs.org).

On May 1, the Medicare trustees released their 2006 report on the program's financial outlook. Of particular concern to surgeons, the trustees project that Medicare physician payments will be cut 4.7 percent in 2007 and between 4.7 and 5.1 percent annually through 2015. These reductions will result from use of the flawed sustainable growth rate formula to calculate reimbursement. The College is working with Congress to develop legislation that would eliminate the reductions and is calling on lawmakers to pass measures that would base Medicare physician payment on the rising costs of practicing medicine.

In addition, the trustees' report indicates that in 2012, general Medicare revenues will exceed 45 percent of the dollars used to pay benefits. The 2012 date is significant because the 2003 Medicare Prescription Drug, Improvement, and Modernization Act requires the President to submit a proposal to preserve the program's solvency when two consecutive reports project that general revenues will exceed 45 percent of Medicare spending within seven years. The 2006 report marks the first time the trustees have made this prediction. If their 2007 report includes a similar estimate, the President must submit a plan for resolution to Congress. CMS Administrator Mark McClellan, MD, PhD, has stated that the Administration is already proposing measures to limit Medicare spending, including limited payment increases to health care providers and increased premiums for higher income Medicare beneficiaries. More information on the report can be found at <http://www.cms.hhs.gov/ReportsTrustFunds/>.

## **EMTALA TAG recommendations in proposed rule**

The Emergency Medical Treatment and Labor Act (EMTALA) technical advisory group (TAG) met early in May to discuss issues related to emergency care. Four Fellows of the College—pediatric surgeon David Tuggle, MD, FACS, Oklahoma City, OK; general surgeon Richard Perry, MD, FACS, Phoenix, AZ; orthopaedic trauma surgeon James Nepola, MD, FACS, Iowa City, IA; and neurosurgeon John Kusske, MD, FACS, Orange, CA—are members of the TAG.

During the meeting, the CMS announced that it has accepted the following recommendations from the group and has included them in an April 25 proposed rule: (1) permit certified nurse-midwives and other qualified medical personnel to certify false labor, and (2) require hospitals with specialized capabilities but without dedicated emergency departments (EDs) to take equal responsibility for appropriate transfers as facilities with dedicated EDs. Other issues discussed during the meeting include physician response time to emergency call, selective call, and follow-up expectations. The TAG also circulated two draft reports on EMTALA's effects on liability and reimbursement. For more information, contact [aroberts@facs.org](mailto:aroberts@facs.org).