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prepared by the Division of Advocacy and Health Policy

GAO reports on medical liability crisis

In July, the General Accounting Office (GAO) released a report titled *Medical Malpractice Insurance: Multiple Factors Have Contributed to Increased Premium Rates*. While the report indicated that a variety of factors have contributed to increasing premium rates around the nation, the GAO found that “losses on medical malpractice claims—which make up the largest part of insurers’ costs—appear to be the primary driver of rate increases in the long run.”

In March, the House of Representatives passed medical liability reform legislation, while the Senate voted against considering a similar bill in July. Surgeons are urged to contact their senators using the College’s Web-based Legislative Action Center at <http://capwiz.com/facs.home/>, to request their support for medical liability reform. Surgeons are also encouraged to review and use the information provided in the College’s Medical Liability Reform Action Guide, at <http://www.facs.org/ahp/proliability.html>, as an aid in their communications with legislators.

Senate committee approves patient safety legislation

On July 23, the Senate Health, Education, Labor, and Pensions Committee unanimously approved S. 720, the Patient Safety and Quality Improvement Act of 2003. Similar to legislation that the House passed earlier this year, S. 720 would create a confidential, voluntary reporting system through which physicians could report information on errors to patient safety organizations (PSOs). The PSOs, in turn, would analyze these data and inform physicians and other providers about system changes that could prevent future harm to patients.

Recognizing that most errors result from systems failures rather than individual mistakes, the legislation is intended to change the current culture of blame. By allowing providers to report medical errors without the threat of lawsuits, it is anticipated that system failures can be identified and new protocols developed to prevent future mistakes. However, these new legal protections for patient safety data would not limit access to information currently available from other sources under existing law.

The full Senate is expected to consider the legislation when it reconvenes in September. To view the College’s letter endorsing S. 720, visit <http://www.facs.org/ahp/views/patsafety.html>.

CMS announces 2004 payment rate hikes

Medicare recently issued three regulations that provide payment increases for inpatient hospital, skilled nursing facility (SNF), and rehabilitation center care effective October 1, 2003. The Centers for Medicare & Medicaid Services (CMS) also issued a proposed notice predicting that hospital outpatient departments will be awarded a 3.8 percent increase in payments effective January 1, 2004. Details on the definite increases include:

- Hospital inpatient care payment rates will increase by 3.4 percent, or \$4.1 billion, with total payments reaching \$98 billion in fiscal year (FY) 2003. Medicare estimates that about \$1.8 billion of the hike is due to the payment increase and other policy changes; the remain-

College advises on quality measurement efforts

ing \$2.3 billion is due to increases in the case mix and inpatient services. Disregarding the outlier overpayments, urban hospitals will experience a 2.8 percent increase in payments and rural hospitals will receive a 5.4 percent hike.

- SNF care will receive a 3 percent annual update to its payment rate, along with an additional 3.26 percent increase to adjust for past underestimations of cumulative market basket forces. This increase in the market basket, or the cost of goods used in SNF care, has been underestimated since its inception in 1989. The two adjustments account for an estimated \$850 million more in payments for SNF stays.

- Inpatient rehabilitation hospitals will receive a 3.2 percent increase in payments, for a total increase of \$187.3 million.

These payment increases stand in stark comparison to predicted 2004 payments for physician services, which will experience an estimated 4.2 percent reduction in 2004 if current policies remain unchanged. Medicare reform legislation that the House passed would change this to a positive 1.5 percent update for both 2004 and 2005. The Senate Medicare reform bill, however, does not contain this language. Surgeons are encouraged to contact their legislators through the College's Legislative Action Center (<http://capwiz.com/facs/home/>) and urge them to stop the scheduled payment cuts and ensure a positive update for 2004.

To read more about the planned payment increases for these facility providers go to <http://www.cms.hhs.gov> to view the applicable press releases.

Aaron Fink, MD, FACS, of Atlanta, GA, has been nominated to represent the College on the Data Integrity Committee of the National Quality Forum (NQF). He joins another College representative, Alfred Cohen, MD, FACS, who represents surgery in the discussions about the best way to measure and report the quality of cancer care.

The NQF brings together organizations representing the interests of consumers, purchasers, researchers, providers, and health plans to identify and determine which quality measures are appropriate for improving and reporting on the value of patient care. To date, the NQF has developed indicators of hospital and nursing home quality and has issued guidelines on safe practices, diabetes care, and serious reportable events. A number of these measures are being tested to determine if they could be used in developing quality-based "pay for performance" systems for physicians and hospitals.

The College continues to emphasize to regulators and payors the need to use risk-adjusted, evidence-based outcomes measures to evaluate quality of care.