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prepared by the Division of Advocacy and Health Policy

CMS delays publication of 2003 fee schedule

On November 1, the statutory deadline for publishing final regulations to implement the 2003 Medicare physician fee schedule, the Centers for Medicare & Medicaid Services (CMS) issued a notice of delay in the *Federal Register*. According to the notice, the delay in issuing the fee schedule stems from concerns about data used to establish payments and the need to further assess the accuracy of the data.

Reportedly, the data in question pertain to new relative values that were calculated for anesthesia services. Concerns about the validity of the figures used to determine the fee schedule conversion factor were not addressed despite repeated attempts to call attention to the problem.

According to CMS sources, a 4.4 percent reduction in the conversion factor will still take place in 2003, since Congress failed to pass legislation before the end of the year to fix problems with the formula used to calculate the annual payment updates. However, implementation of the payment reduction will be delayed at least until February 1. At press time, publication of the final regulation was expected to occur in early December.

Republicans regain control of Congress

As a result of this year's congressional elections, Republicans regained control of the U.S. Senate and strengthened their hold on the House of Representatives. When the 108th Congress convenes in January, the Senate will consist of 51 Republicans, 47 Democrats, and one Independent. (The remaining seat will be filled following a December 2002 runoff election in Louisiana.) As chair of the National Republican Senatorial Committee, thoracic surgeon Bill Frist, MD, FACS (R-TN), oversaw this change in Senate party leadership, which is unprecedented in a midterm election.

The House will be composed of 228 Republicans, 206 Democrats, and one Independent, representing a net gain of four seats for the Republicans. Rep. Dennis Hastert (R-IL) is expected to retain his post as Speaker of the House. However, Rep. Richard Gephardt (D-MO) stepped down as Minority Leader immediately after the election.

The congressional committees with health care jurisdiction will have new Senate committee chairs, while the House committee chairs are expected to remain the same. The Senate Finance Committee, which has jurisdiction over the Medicare program, will be chaired by Sen. Charles Grassley (R-IA), while the Health, Education, Labor and Pensions Committee will be chaired by Sen. Judd Greg (R-NH). Reps. Bill Thomas (R-CA) and Billy Tauzin (R-LA) are expected to remain as chairs of the House Ways and Means Committee and House Energy and Commerce Committee, respectively.

Finally, two physicians have been newly elected to the House. Obstetrician-gynecologists Phil Gingrey, MD (R-GA), and Michael Burgess, MD (R-TX), were successful in their bids to represent new districts. Unfortunately, two House members who are Fellows of the College—plastic surgeon Greg Ganske, MD, FACS (R-IA), and ophthalmologist John Cooksey, MD, FACS (R-LA)—were unsuccessful in their efforts to unseat incumbent senators.

IOM to release next study on medical errors

In late October, the Institute of Medicine (IOM) of the National Academy of Sciences announced the release of a draft report, *Leadership by Example: Coordinating Government Roles in Improving Health Care Quality*. This will be the third in a series of IOM reports on the quality and safety of health care in the U.S.

After examining the quality enhancement process in six federal programs, the IOM is suggesting that the federal government establish standard measures of quality, assess the performance of individual health care providers, and publish comparative data for consumer use. Moreover, the IOM is proposing that the federal government link pay to performance as a means of encouraging exemplary levels of performance.

Copies of the report will be available this winter from the National Academies Press. Meanwhile, the manuscript can be viewed on the Web at <http://www4.nationalacademies.org/news.nsf/isbn/0309086163?OpenDocument>.

Justice department announces health antitrust hearings

The Department of Justice announced November 7 that its Antitrust Division will hold hearings on health care competition law and policy beginning in February 2003. The hearings, to be cohosted with the Federal Trade Commission (FTC), will be only the second set ever held by the Antitrust Division. The first hearings took place earlier this year and centered on the relationship of antitrust law and intellectual property law. Those hearings were cohosted with the FTC.

Topics expected to be covered include hospital mergers, the significance of hospitals' not-for-profit status, vertical arrangements, quality and efficiency, and the adequacy of existing remedies for anticompetitive conduct. With respect to health plans, information will be sought on such questions as whether plan consolidation is likely to give rise to market power, whether plans coordinate either tacitly or explicitly in ways that raise antitrust concerns, the costs of and impediments to entry into health plan markets, and the conditions under which plans might obtain and exercise monopsony power against providers.

The specific dates and topics of the hearings will be published in the *Federal Register*. It is anticipated that a public report based on the presentations made and submissions received during the hearings will be prepared at the conclusion of the hearings.

Medicaid enrollment growth rate doubled in 2001

Medicaid enrollment rose 3.3 million from December 2000 to December 2001, according to a survey released by the Kaiser Commission on Medicaid and the Uninsured. The 2001 enrollment growth rate of 9.8 percent exactly doubled the 4.9 percent growth rate in 2000.

For families, children, and pregnant women, the rate of growth increased from 7 percent in 2000 to 14.1 percent in 2001. This increase was driven by two opposing trends—welfare reform on the one hand, and efforts to expand enrollment in the State Children's Health Insurance Program on the other. The rate of enrollment growth for the aged and disabled in Medicaid, a generally more costly category of enrollees, was 3 percent in 2001, compared to 2.2 percent in 2000. The entire report may be found at <http://www.kff.org/content/2002/4067>.