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Medicare and liability solutions elude the Senate

Throughout the summer, the U.S. Senate debated Medicare prescription drug coverage. A variety of proposals were considered, but none garnered the 60 votes needed to pass. One amendment that was offered, not specific to the drug benefit issue, was a medical liability reform proposal. Authored by Sen. Mitch McConnell (R-KY), the amendment contained all the medical liability reforms the College and other specialty societies support, except for a cap on noneconomic damages. Unfortunately, the proposal failed when it was tabled by a vote of 57-42. The College continues to advocate for the passage of the comprehensive medical liability reforms contained in the HEALTH Act that was introduced by Rep. Jim Greenwood (R-PA) as H.R. 4600 and by Sen. John Ensign (R-NV) as S. 2793.

Although the Senate did not follow the House and pass a prescription drug bill that included at least an interim solution to the crisis in Medicare physician reimbursement, leaders vowed to renew their efforts when Congress returns from its August recess after Labor Day.

Tort reform moves in Nevada

In response to the severe professional liability crisis in Nevada, the governor called a special session of the legislature to pass tort reform. Following the session, which ran from July 29 to August 1, the governor signed a bill that:

- Caps noneconomic damages at \$350,000, except in cases of gross malpractice or where the court finds there is clear and convincing evidence that the award should exceed the cap because of exceptional circumstances.
- Implements expert witness standards.
- Makes a defendant severally liable for economic damages.
- Extends to physicians in all trauma centers and emergency rooms a cap on civil damages of \$50,000 for care of a traumatic injury demanding immediate medical attention.

In addition, medical facilities will be required to report sentinel events to the state repository for health care quality assurance. Such information will be inadmissible as evidence in any administrative or legal proceeding. Surgeons interested in the text of the legislation should visit the Nevada legislature's Web site at http://www.leg.state.nv.us/18thSpecial/bills/AB/AB1_EN.pdf.

Senate approves \$5 million for trauma systems

On July 18, the Senate Appropriations Committee approved \$5 million for the Health Resources and Services Administration's (HRSA's) Trauma-Emergency Medical Services program for fiscal year (FY) 2003. This program provides federal grants to assist states in planning, developing, and implementing statewide trauma care systems. The funding was included as part of the annual spending bill for the Departments of Labor, Health and Human Services, and Education. The House has yet to act on its version of the appropriations bill. For FY 2002, Congress provided \$3.5 million for the trauma program, which has now been distributed.

In addition, the College is working with the 107th Congress to reauthorize the program for an additional four years and to emphasize the needs of trauma care systems as the nation addresses its ability to respond to acts of bioterrorism. In June, President Bush signed H.R. 3448, the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, which includes a provision that authorizes increased funding to “develop and implement the trauma care component of the State plan for the provision of emergency medical services.”

Carmona confirmed as Surgeon General

The Senate confirmed general surgeon Richard H. Carmona, MD, FACS, as U.S. Surgeon General without opposition or debate on July 23. This confirmation cleared the way for Dr. Carmona to assume the position vacated by David Satcher, MD, in February.

EMTALA requirement clarified

Since the enactment of the Emergency Medical Treatment and Active Labor Act (EMTALA), there has been a great deal of confusion about its applicability to various locations on and off the hospital campus. In the final 2003 Prospective Payment System (PPS) rule released on August 1, the Centers for Medicare & Medicaid Services (CMS) clarified that EMTALA applies only to those provider-based departments that are located on the main campus, and that EMTALA does not apply to provider-based entities, such as rural health clinics, that are on the hospital campus. CMS also announced that it needs more time to review the 600 comments it received on the issue, so other changes to EMTALA that were published in the May 9 proposed PPS rule will be addressed in a separate *Federal Register* notice. For more information, visit: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002_register&docid=page+50081-50130, and scroll down to page 50090.