



ADVOCACY UPDATE

February 21, 2011

House Judiciary Committee approves medical liability bill

The House Judiciary Committee completed its two-day mark-up of H.R. 5, the "Help Efficient, Accessible, Low-cost Timely Health Care Act" (HEALTH Act), on Feb. 16. Votes on amendments were along party lines, with Democrats offering amendments to weaken the \$250,000 cap on noneconomic damage awards that were defeated. The mark-up became contentious when a minority of Republicans agreed with Democrats that medical malpractice reform is traditionally regulated by the states and that the federal government should not pass a bill that allows for the preemption of state law. H.R. 5, as introduced, would institute a \$250,000 cap on non-economic damages in states without caps. However, state laws that provide for higher or lower damage caps on non-economic damages would not be preempted. The committee was unable to complete mark-up in one day because work needed to be completed on amendments addressing preservation of states rights, indexing the damage cap to inflation, and exempting intentional torts from the damage cap. However, during the second day of the mark-up, all amendments were defeated with the exception of one offered by Rep. Bobby Scott (D-VA) to repeal the collateral source provision, which passed by voice vote. With regard to the states rights concerns, Chairman Lamar Smith (R-TX) said he is working on an amendment to empower states that will be available for review three days before House floor action.

The bill was approved by the Committee by a vote of 18 to 15, and now awaits consideration by the Energy and Commerce Committee before it will be sent to the House floor.

AMA Position: The AMA sent a letter of support for H.R. 5 as introduced, and sent a letter to Senator Ensign in support of the Senate version of the HEALTH Act, S. 218. See the letters at: <http://www.ama-assn.org/ama1/pub/upload/mm/399/ama-letter-support-health-act.pdf>, <http://www.ama-assn.org/ama1/pub/upload/mm/399/health-act-letter-16feb2011.pdf>.

Efforts to eliminate form 1099 reporting requirements advance

On Feb. 17, the House Ways and Means Committee considered legislation (H.R. 4 and H.R. 705) to eliminate a provision in the Affordable Care Act (ACA) that requires businesses to file an IRS form 1099 for all goods and services they receive that are valued over \$600. H.R. 4, introduced by Rep. Dan Lungren (R-CA), eliminates the requirement without a financial offset, and the committee passed it on a voice vote. H.R.

705, similar legislation introduced by Ways and Means Committee Chair Dave Camp (R-MI), would: 1) eliminate the 1099 reporting requirement for goods and services; 2) repeal a similar 1099 requirement for individuals owning rental property; and 3) offset these two changes in the law by amending an ACA provision regarding the health insurance premium subsidy for certain individuals and families. The Committee passed H.R. 705 by a party-line vote of 21-15. The House Rules Committee must now consider both H.R. 4 and H.R. 705 before a proposal will be brought to the House floor.

Previously, the Senate approved an amendment on Feb. 2 offered by Sen. Debbie Stabenow (D-MI) to eliminate the 1099 requirement on a bipartisan vote of 81-17. The amendment was offset through a rescission of unobligated, discretionary funds. The amendment was offered successfully to S. 223, a bill to reauthorize the Federal Aviation Administration, which later passed by the Senate on Feb. 17. Additionally, on Feb. 16, Sen. Mike Johanns introduced companion legislation to the Camp bill as S. 359.

The pathway for final passage of legislation to eliminate the 1099 reporting requirement is not yet clear.

The AMA has urged the IRS to exempt physician practices from the 1099 reporting requirement, and there were several attempts in the 111th Congress to eliminate this section of the ACA. Those efforts were unsuccessful largely due to the need to find a politically viable budgetary offset. During his State of the Union Address, President Obama also cited this provision as one he wanted addressed.

AMA Position: The AMA strongly supports the repeal of the 1099 reporting requirement for goods and services and sent a letter in support of H.R. 4 to Chairman Dave Camp (R-MI). The letter can be accessed at <http://www.ama-assn.org/ama1/pub/upload/mm/399/hr4-1099-repeal-letter-15feb2011.pdf>.

CMS to pull requirement for physician signatures on lab orders

The AMA has learned that the Centers for Medicare and Medicaid Services (CMS) is pulling the controversial new requirement for physician signatures on lab requisitions. The requirement was included in the Final Physician Fee Schedule Rule published in early Nov. 2010, and was originally scheduled to go into effect on Jan. 1.

The AMA worked closely with our colleagues in the lab community to successfully secure a delay in implementation of the policy until Apr. 1, while continuing to urge CMS to reverse its position. We are pleased the agency listened to the significant concerns we expressed about this policy, and will forward the official CMS announcement to the Federation when it is released.

CMS limits RAC documentation requests

In response to AMA advocacy, RACs are now limited to requesting 10 medical records in 45 days from offices with 5 or fewer physicians and non-physician practitioners. This is a significant improvement over prior CMS proposals to base Additional Documentation Request (ADR) limits on a percentage of annual claims submitted, a methodology the AMA strongly advocated against. The new ADR limits will be based on the servicing physician or nonphysician practitioner's billing Tax Identification Number (TIN) as well as

location. For examples and additional information please view CMS's publication <https://www.cms.gov/RAC/Downloads/PhyADR.pdf>.

GAO calls on CMS to address inconsistencies in Erx and EHR programs

The Government Accountability Office (GAO) issued a report identifying inconsistencies in the requirements for the electronic prescribing (Erx) and electronic health record (EHR) incentive programs. GAO found that these inconsistencies may limit the programs' effectiveness in encouraging the use of health information technologies. GAO recommended that CMS expedite efforts to remove the overlap in reporting requirements for physicians who may be eligible for incentive payments or subject to penalties under both the Erx and EHR programs. The AMA has been urging the Administration to align the programs. In particular, we have been aggressively advocating that the Administration should withdraw the requirement to implement a penalty in 2012 if a physician does not participate in the Erx program during the first 6 months of 2011. The GAO report may prove helpful in our advocacy efforts.

AMA opposes EMTALA expansion

The AMA recently submitted comments on CMS's Advanced Notice of Proposed Rulemaking (ANPRM) regarding the Emergency Medical Treatment and Labor Act (EMTALA). The ANPRM asked whether CMS should revisit its existing policy on the application of EMTALA to inpatients and to hospitals with specialized capabilities. Previously, CMS concluded in a 2003 rule that EMTALA does not apply to any inpatient. Further, CMS concluded in a 2008 rule that a hospital with specialized capabilities does not have an EMTALA obligation to accept an appropriate transfer of an individual who has been admitted in good faith as an inpatient at a first hospital. AMA advocacy opposes expansion of EMTALA generally, and, specifically, opposes the application of EMTALA to inpatients. The ANPRM may be viewed at <http://www.gpo.gov/fdsys/pkg/FR-2010-12-23/pdf/2010-32267.pdf>.

AMA urges transparency in rate review

The AMA submitted comments on the Department of Health and Human Services (HHS) proposed rulemaking on health insurance rate increase disclosure and review. The proposed regulations, which implement the rules on the disclosure and review of unreasonable premiums increases under the ACA, would establish a rate review program to ensure that all increases meeting or exceeding an established threshold are reviewed by a state or HHS to determine whether they are unreasonable. In its comments, the AMA urged HHS and/or the states to use the rate review and disclosure process to ensure that health insurance issuers calculate health insurance premiums fairly, that different health insurance products are priced proportionately to their actuarial value, and that there is as much transparency as possible in the process.

AMA raises physicians' claim transaction transparency concerns to X12N

The AMA's "Heal the Claims Process"TM campaign calls for transparency, streamlining and standardization in the claims management process. The AMA took another step toward reaching that goal through a presentation to the X12N electronic eligibility response and electronic remittance advice standard transaction workgroups. The AMA

advocated to this key organization for the development of electronic standards that such transactions provide complete transparency of the organizations that play one or more of the health plan roles: the claims administrator, the fiduciary or organization taking on the medical risk, and the organization that holds the contract with the physician. The AMA also advocated that transactions provide both the specific fee schedule identifier and the specific health insurance product applicable to the patient. As a result of these efforts, the next version of the electronic health care standard transactions will provide full transparency of all health insurer intermediaries—this will finally make it possible for physicians to handle eligibility and claims issues without having to pick up the phone or be put on hold.

Visit www.ama-assn.org/go/simplify to access the AMA's administrative simplification white papers, which summarize the AMA's recommendations to eliminate significant administrative waste from the health care system by simplifying and standardizing the current health care billing and payment process.

Federation helps achieve positive changes, extended deadline for new UnitedHealthcare rating program

The AMA coordinates a series of Federation/UnitedHealthcare (UHC) workgroups that discuss various aspects of UHC's interactions with physicians. The Physician Profiling Workgroup recently reviewed a demonstration of the newly released version of UHC's Premium Designation Program (PDP), which continues to award physicians one star for meeting UHC's quality standards and two stars for meeting both quality and cost-efficiency standards. The workgroup has worked closely with UHC on this PDP and, though the PDP is still far from perfect, the workgroup has been successful in convincing UHC to institute many physician-friendly changes to the program. This new version of the PDP and its physician ratings are currently being conveyed to physicians for their review before being made public. Just a sampling of the resulting positive changes in the program include:

- physicians are designated based on being statistically different from a benchmark instead of designated against set benchmarks;
- the confidence interval used for physician ratings has been increased to 98 percent;
- cost adjustments are applied to physicians practicing in academic medical centers; and
- physicians disputing their rating can request a face-to-face or telephonic conference with a UHC physician.

Additionally, numerous Federation reports that many physicians had not received or experienced delays in receiving their PDP results caused the AMA to raise the issue with UHC. As a result of this discussion, UHC investigated the delays and has agreed to extend the deadline for all physicians to appeal their individual PDP results from Feb. 12 to Feb. 28. This is another example of the strength of the Federation and AMA working together.

AMA advocacy resources help defeat Mississippi nurse practitioner bill

With help from advocacy resources, such as the AMA GeoMapping Initiative, and a strong emphasis on the benefits of teamwork and the need to protect patient safety, the Mississippi State Medical Association (MSMA) defeated a bill in committee that would

have eliminated the requirement for a signed collaborative agreement between nurse practitioners and physicians. The AMA GeoMapping Initiative map of Mississippi compared the practice locations for physicians and nurse practitioners and found that the two professions largely practice in the same urban and rural areas—this helped debunk the myth that removing the collaborative agreement requirement would increase access to care. Contact MSMA's **Chris Espy** at CEspy@MSMAonline.com for more information about Mississippi's success. Visit www.ama-assn.org/go/geomaps to learn more about the AMA GeoMapping Initiative.

Take advantage of the Blue Cross Blue Shield settlement agreement before it expires May 31, 2011

One way organized medicine has addressed unfair payer practices has been settlements with major commercial health insurers. A key settlement still in effect is the **Blue Cross Blue Shield settlement**. Make sure your members are benefiting from the physician protections this settlement offers before the settlement expires on May 31, 2011.

Visit the AMA's Web site at www.ama-assn.org/go/settlements to access numerous resources on the Blue Cross Blue Shield settlement, including an **archived webinar** explaining how the settlement agreement helps physician practices and how to file a compliance dispute, a summary of the key business practices mandated in the settlement, and an interactive map that lets physicians determine which Blue Cross Blue Shield plans and subsidiaries in their state have settled. Because contracts provided by Blue Cross Blue Shield to physicians in its provider network must conform to the settlement agreement, physicians should be sure to review their contracts to ensure they are receiving all the protections the settlement provides.

Physician survey can help develop standard format for electronic payer contracted fee schedules

The AMA is advocating for a standard format for payer contracted price/fee schedules to enhance accuracy and transparency in the claims process. Please share the following invitation with your members, which will help us learn from their experiences with this part of practice management. The survey will close Mar. 1, 2011. If you have any questions, please contact Gail Ogden at gail.ogden@ama-assn.org or (312) 464-4632.

The AMA would like to learn from your knowledge and expertise in the physician practice. Please take a few minutes to provide your feedback on a survey that will help facilitate the development of a standardized format for electronic payer contracted price/fee schedules, which could be uploaded into any practice management system. The AMA is committed to helping physicians take charge of the business side of their practice, and the data collected from the survey will help us in our efforts to help you. Please visit the following Web page to begin the survey:

http://survey.qualtrics.com/SE/?SID=SV_9KTQUCBSpi5ivHK

AMPAC and the 112th Congress

The AMA Political Affairs team, working with AMA lobbyists, hit the ground running as the 112th Congress began. With a focus on building relationships with the more than 100 new Members and helping old friends, AMPAC has initiated dozens of debt reduction fundraising events, check presentations and meet-and-greet receptions. Some events

were also coordinated with National Advocacy Conference. The events, mostly held since November, are great opportunities for physicians, state staff and AMA staff to interact with Members of Congress. The proximity of AMA's Washington office to Capitol Hill makes it a convenient and ideal location for these events and we plan to continue this program to maintain a high level of visibility and accessibility.

Register now for 2011 AMPAC Campaign School

On Apr. 13-17, AMPAC will conduct its annual Campaign School, in Pentagon City, Virginia, for AMA members who wish to become involved in the political process as advocates and volunteers for medicine-friendly candidates. The School is organized around a simulated congressional campaign, where participants are put on campaign "staff" teams and attend daily lectures on campaign strategy, media advertising and political fundraising. Each team participates in nightly exercises such as creating a campaign strategy, taping a radio commercial, and writing a political fundraising letter. Graduates have gone to become advisers and strategists for political campaigns across the country

All costs for AMA members, except transportation to the Washington, DC metro area, are borne by AMPAC. For more information on the Campaign School or an application, please contact Jim Wilson, Political Education Programs Manager, at 202-789-7465 or jim.wilson@ama-assn.org