



ADVOCACY UPDATE

January 18, 2011

AMA testifies on medical liability reform; HEALTH Act reintroduced

On Jan. 20, Ardis D. Hoven, MD, Chair of the AMA Board of Trustees, testified at a House Judiciary Committee hearing entitled, "Medical Liability Reform: Cutting Costs, Spurring Investments, Creating Jobs." The hearing focused on the need for comprehensive reform, including caps on non-economic damages at the federal level, based on California's successful MICRA law. Dr. Hoven's testimony reiterated that the current liability system is broken, citing new data showing that 64 percent of medical liability claims closed in 2009 were dropped or dismissed. Additionally, she noted that 61 percent of physicians over the age of 55 have been sued, while 50 percent of obstetrician-gynecologists have been sued before they reach the age of 40. She said the current liability system fosters the practice of defensive medicine at an estimated cost of \$76 to \$126 billion annually, which is money that is not being spent on patient care or investments in physician practices. Dr. Hoven pointed to the success of reforms in California and Texas as solutions that can work in concert with patient safety initiatives to decrease medical liability costs.

Rep. Phil Gingrey, MD (R-GA), House Judiciary Committee Chairman Lamar Smith (R-TX), and Rep. David Scott (D-GA) introduced the "Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act of 2011," H.R. 5, on Jan. 24. That bill would provide for a \$250,000 cap on non-economic damages while preserving current state liability reform laws. The House Judiciary Committee plans to mark-up H.R. 5 early in the 112th Congress.

AMA Position: AMA policy strongly supports a cap of \$250,000 on non-economic damages. The AMA sent letter of support to the bill's sponsors and organized a sign-on letter from the physician community.

House passes health reform repeal, SGR amendment

On Jan. 19, the U.S. House of Representatives passed H.R. 2, a bill to repeal the Patient Protection and Affordable Care Act (ACA), by a largely party-line vote of 245-189. The following day, the House passed H.Res. 9, a resolution instructing the House committees of jurisdiction to develop legislation to replace ACA. During debate on H.Res. 9, Rep. Jim Matheson (D-UT) offered an amendment to include permanent reform to the sustainable growth rate (SGR) formula in legislation to replace ACA. The Matheson Amendment passed by a vote of 428-1. H.R. 2 is unlikely to pass in the Senate. However, there is much discussion among Senators on possible action to bring that bill up for a vote or to consider other proposals to repeal certain provisions of the ACA.

AMA Position: The AMA does not support repeal of the ACA but continues to advocate for important improvements and changes to the law. The AMA has developed a document (available at: <http://www.ama-assn.org/ama1/pub/upload/mm/399/aca-advocating-for-improvements.pdf>) summarizing ACA provisions that are consistent with its policy and others that need to be amended, as well as important issues not considered in the ACA or that need clarification in the regulatory process.

President Obama issues Executive Order on reducing regulatory burdens

The President issued an Executive Order on Jan. 18 calling on all government agencies to improve the balance between projected benefits and costs of federal regulations. Agencies are also directed to identify and consider regulatory approaches that reduce administrative burdens and maintain flexibility and freedom of choice. Within four months of the order, agencies are to undertake a retrospective review with the aim of streamlining regulations. The AMA plans to provide significant input as this review moves forward. Physicians attending the 2011 National Advocacy Conference will have an opportunity to hear first-hand from senior Medicare officials about their plans to undertake this review, and to provide feedback to them on the regulations that should be streamlined. The Executive Order is available at <http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order>.

AMA continues educational efforts on payment and delivery reforms

On Jan. 21, the AMA worked with the West Virginia State Medical Association to organize an educational program on accountable care organizations (ACOs) and health care delivery reforms for physicians attending its annual White Coat Day. Harold Miller, executive director of the Center for Healthcare Quality and Payment Reform, discussed how physicians can offer warranties, improve care coordination and quality, and lead the movement to improve health care delivery systems. West Virginia Insurance Commissioner and National Association of Insurance Commissioners President Jane Cline then discussed the interaction between the health insurance market reforms included in the ACA and these payment and delivery reforms. Physicians who want to learn more about ACOs and similar reforms from Harold Miller and other experts can register for the AMA Payment Pathways educational seminar to be held on Feb. 16 in Oregon. More information is available at www.ama-assn.org/go/paymentpathways. Mr. Miller will also make a presentation at the AMA's 2011 National Advocacy Conference.

New CMS screening rule unveiled

The Centers for Medicare and Medicaid Services (CMS) on Jan. 24 published a final rule with comment period on new screening and enforcement measures to combat health care fraud. The AMA was successful in securing positive changes in the final rule, such as: including physicians in the lowest risk category for enrollment screening, shorter suspension periods, and more targeted criteria for risk tier reassignment. However, contrary to AMA advocacy, CMS stated in the final rule that physician office-based durable medical equipment prosthetics, orthotics, and supplies (DMEPOS) suppliers will be assigned to higher category of risk. DMEPOS suppliers will now be subject to heightened screening requirements and a \$500 enrollment fee. The AMA will continue to

advocate for this and other provisions to be changed. The rule is posted at http://www.ofr.gov/OFRUpload/OFRData/2011-01686_PI.pdf CMS also released the annual Health Care Fraud and Abuse Control Program report, which is posted at <http://oig.hhs.gov/publications/hcfac.asp>.

Healthcare Truth and Transparency Act is reintroduced

Rep. John Sullivan (R-OK) and Rep. David Scott (D-GA) introduced H.R. 451, the "Healthcare Truth and Transparency Act of 2011," on Jan. 26. The purpose of the legislation is to ensure that patients receive accurate health care information by prohibiting misleading and deceptive advertising or representation in providing health care services. The bill was referred to Committee on Energy and Commerce.

AMA Position: The AMA strongly supports this legislation and sent a letter of support to the sponsors. The AMA will work to generate additional support in Congress.

Truth in Advertising patient survey results provide new advocacy resource

A new Truth in Advertising survey finds that patients prefer a physician to lead their care, but confusion remains about the qualifications of health care professionals. More than two-thirds of patients incorrectly said that a dentist or podiatrist is a medical doctor; more than half incorrectly said an optometrist is a medical doctor; and more than one-third incorrectly said a Doctor of Nursing Practice is a medical doctor. The patient survey also found that:

- 90 percent of respondents believed a physician's additional years of medical education and training (compared to a nurse practitioner) are vital to optimal patient care, especially in the event of a complication or medical emergency;
- 86 percent of respondents said that patients with one or more chronic diseases benefit when a physician leads the primary health care team; and
- 83 percent of respondents said that they prefer a physician to have primary responsibility for the diagnosis and management of their health care.

Medical associations can use these survey results to support their advocacy efforts. Visit www.ama-assn.org/go/tiasurvey to view the full survey results. For more Truth in Advertising resources, visit www.ama-assn.org/go/tia or contact Daniel Blaney-Koen, JD, Legislative Attorney at daniel.blaney-koen@ama-assn.org or (312) 464-4126.

Slots remaining for AMPAC 2011 Candidate Workshop

On February 18-20, 2011 AMPAC (the AMA's Political Action Committee) will host the annual Candidate Workshop in Pentagon City, Virginia. The Workshop is designed for AMA members and their spouses who are considering a run for public office, and includes training on campaign strategy and media advertising, as well as hands-on sessions in public speaking and fundraising. Graduates of the Workshop have been elected to public office across the country, including the U.S. Congress.

All costs for AMA members, except transportation to the Washington, DC metro area, are borne by AMPAC. For more information on this program or an application, please see AMPAC's new online registration form at <http://www.ampaconline.org/apply> or contact Jim Wilson, Political Education Programs Manager, at jim.wilson@ama-assn.org