November 4, 2005

Medicare Payments to Physicians
On November 4, by a vote of 52-47, the Senate approved its version of the budget implementation legislation (S. 1932). The final measure included the Finance Committee’s value-based purchasing (or pay-for-performance) provision and a one-year, 1.0 percent update in the conversion factor for the Medicare Physician Fee Schedule (MPFS). This mandated one-year increase would cost $10.8 billion. The passage was timely, because on November 2, the Centers for Medicare and Medicaid Services (CMS) formally published the Medicare payment rate that will go into effect on January 1, 2006, unless Congress acts to change it before then. As predicted, that rate is 4.4 percent lower than the current year’s.

The Senate’s version of value-based purchasing for health care services would start in 2007 and includes a graduated reduction of eventually 2 percent in the conversion factor for those who do not report quality data to CMS. Opposed by AAFP, AMA and most of the other physician organizations, the provision will be considered by the conference committee that will have to iron out differences between the House and Senate versions, if and when the House passes a bill – which is not certain.

To complicate the process even further, the White House has advised the Senate that the President might veto the budget bill if it contains a provision to phase out a fund created in the Medicare Modernization Act to encourage insurers to offer prescription drug coverage under the new Medicare prescription drug benefit. The elimination of the fund would save about $5.4 billion and those funds are a significant part of the increased Medicare payments to physicians.

Meanwhile, CMS has announced a voluntary physician quality reporting initiative that will begin January 1, 2006. In announcing the program, CMS administrator Mark McClellan stressed the voluntary nature of the initiative, indicated that the CMS-adopted “G” codes would facilitate reporting of the information, and that it was intended to get physicians used to reporting data related to quality in preparation for pay-for-performance in the Medicare program. However, he also stressed that pay-for-performance in the Medicare program will require Congressional action. This is contrary to an intention expressed by CMS medical officer Dr. Trent Haywood in a September meeting in which he indicated CMS would be moving into pay-for-performance with or without legislation.

Medicaid
The 2006 federal budget resolution calls for reductions of $10 billion over five years in health care spending. The implementation legislation that has passed the House Energy and Commerce Committee, and which may be considered by the House during the week of November 7, would take these savings entirely from Medicaid by increasing cost-sharing with beneficiaries and allowing reduced benefits.

The Senate-approved budget reconciliation bill, in contrast, would divide these cost reductions between Medicaid and Medicare. The bill that passed the Senate on November 3 would reduce Medicaid expenditures by some $4.6 billion and those
savings would be achieved through administrative actions, not by changes in eligibility requirements or benefits. The Senate agreed to an amendment, offered by Sen. Jeff Bingaman (D-NM), which would prevent the federal matching rate for Medicaid payments in Fiscal Year 2006 from falling more than specified percentage amounts in various states that were facing serious formula-driven reductions.

In addition, the Senate adopted by voice vote an amendment offered by Sen. Gordon Smith (R-OR) that would allocate $450 million to states for a demonstration project providing Medicaid coverage for HIV infection. Medicaid currently pays only for treatment for AIDS, the disease caused by HIV.

Senator Patty Murray (D-WA) offered an amendment that was rejected that would have extended for six months a deadline for low-income seniors who qualify for both Medicare and Medicaid (i.e., the dual eligibles) to sign up for a new Medicare plan.

Senator Charles Shumer (D-NY) argued for his amendment to encourage the use of generic drugs in Medicaid by requiring the manufacturers’ rebate on generic drugs to equal that used on brand name drugs. However, his amendment failed by a vote of 49-50. Senator Jack Reed (D-RI) proposed striking a provision that would tighten rules for Medicaid-paid case management and would exclude many foster care services from coverage. The Senate voted 46-52 to defeat his amendment.

Finally, by a vote of 48-51, the Senate rejected an amendment offered by Sen. Blanche Lincoln (D-LA) that would have allowed hurricane victims with incomes below the poverty level to get Medicaid health care coverage for five months. The final bill did include a compromise relief package of $1.8 billion to help Gulf Coast states cover their Medicaid costs.

**Pandemic Flu Preparations**
On November 1, President Bush released the Administration’s Pandemic Influenza Plan. The proposal costs $7.1 billion and includes funding to detect and contain flu outbreaks; vaccine development and treatment; stockpiling of antiviral medications; and dollars to coordinate preparedness efforts.

In the Senate, Majority Leader Bill Frist (R-TN) and Budget Committee Chair Judd Gregg (R-NH) originally planned to offer an amendment to the Senate reconciliation bill providing $3.95 billion for avian flu activities. However, ultimately they decided to fund these efforts through the Labor/HHS appropriations measure.

Despite support from the White House and Senate, the House of Representatives may be the stumbling block to funding pandemic flu preparedness. While the Senate provision and Bush proposal do not require offsets, House conservatives support cutting programs elsewhere to pay for these new programs. In addition, there likely will be controversy around whether to grant immunity from liability to manufacturers of the new flu vaccine.

**Graduate Medical Education**
A letter to CMS Administrator Mark McClellan urging an administrative resolution to the issue of volunteer faculty in residency training in non-hospital settings garnered 43 signatures in the House. Reps. Kenny Hulshof (R-MO) and Jack Tanner (D-TN) were the primary cosponsors of this effort. The letter is similar to the one signed by 61 Senators that Senators Susan Collins (R-ME) and Dick Durbin (D-IL) developed.

Senator Olympia Snowe (R-ME) considered offering an amendment to the budget reconciliation legislation that would define “all or substantially all” in a tighter, more controlled fashion thus prohibiting CMS from auditing and requiring refunds from programs which use (but do not pay) volunteer faculty as preceptors in the nonhospital setting. Sen. Snowe attempted to obtain the support of Sen. Charles Grassley (R-IA), who chairs the Finance Committee.

Ultimately, the amendment was not offered. However, in a November 4 phone call with CMS, agency officials reviewed data submitted by the major stakeholder groups and discussed various factors, including limitation and credibility of the data. CMS expressed a belief that 10 percent or more of a preceptor’s time could be spent on instructional activities not related to patient care. Therefore, the agency stated that as much as $12,000 per resident per year could be at stake. Agency officials agreed to consider the comments offered by stakeholder groups during the conference call and reconvene in late November or early December.

Other Federal Health-Related Issues:

- The conference committee that is considering the Commerce and Justice, Science, and Related Agencies Appropriations Act (H.R. 2862) has stricken a provision that had been included in last year’s bill. The House-passed version had the provision that would have given the U.S. Drug Enforcement Administration, rather than the U.S. Food and Drug Administration (FDA), final authority over allowing new narcotic medications on the market. On Thursday, November 3, the FDA issued a statement opposing the provision because it would “ultimately delay access by physicians and their patients to important, safe and effective pain management and palliative care medicines.”

- On November 3, by a vote of 81-18, the Senate approved a final version of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act (H.R. 2744), which dropped a House-approved amendment that would have blocked the FDA from enforcing a ban on reimporting prescription drugs from foreign countries. This is the third year a provision allowing importation has been struck from the bill. The conference report has been passed by both the House and Senate and now goes to the President for his signature.