EM ACTION FUND
Preserving the Future of our Specialty

Vital Viewpoint

Perspectives from Emergency Medicine on Federal Regulatory Activities

Message from the Chair

Our Capitol city is in the midst of the National Cherry Blossom Festival, the nation's greatest springtime celebration. National Park Service horticulturists predict that cherry blossom's will peak on April 4, 2016, making the next few weeks a remarkable sight for locals and tourist alike.

Of course, the cherry blossoms are not the only things in bloom here in Washington. A few days ago, the Centers for Medicare and Medicaid Services (CMS) submitted its proposed rule outlining new Medicare physician payment programs established in the Medicare Access and CHIP Reauthorization Act (MACRA) of 2015, for review by the Office of Management and Budget (OMB). The rules are expected to be public in the next month or so. Our team of consultants from Health Policy Alternatives and Hart Health Strategies, Inc., along with ACEP's DC staff are preparing tools that will help them provide a thorough and detailed analysis to EMAF Board of Governors on the challenges for emergency providers along with several potential comments that would help improve the requirements for our physicians and practices.

As a reminder, we will meet face-to-face on May 18, 2016 during ACEP's 2016 Leadership and Advocacy Conference (LAC). ACEP has secured an exciting line up of speakers that will address a host of challenges facing our speciality.

If you have a moment, please send me an email to let me know how EMAF can continue to serve you and your organization better.

VITAL SIGNS: CMS Releases 2016 Value Modifier Results

CMS recently posted results from the implementation of the 2016 Value Modifier and the adjustment factor that will be applied to physician groups that are subject to upward payment adjustments under the Value Modifier in 2016. According to CMS, 13,813 physician group practices with 10 or more eligible professionals are subject to the 2016 Value Modifier based on performance in 2014. Physicians in 128 groups exceeded the program's benchmarks and will receive an increase in their Medicare Physician Fee Schedule, while physicians in 59 groups will see a decrease. Physicians in 5,418 groups that failed to meet minimum reporting requirements will see a decrease in their Medicare payments in 2016. Most physician groups that met the minimum reporting requirements will remain unchanged in 2016 because of their performance on quality and cost efficiency measures or because there was insufficient data to calculate the groups' Value Modifier.

MIPS, APMs Proposed Rule Arrives at OMB

Late last week, the OMB Office of Information and Regulatory Affairs (OIRA) received for review the long-anticipated proposed rule that would modify the Medicare physician payment system as required under MACRA. The proposed rule, Merit-Based Incentive Payment System (MIPS) and Alternative Payment Models (APMs) in Medicare Fee-for-Service (CMS-5517-P), was received on March 25, 2016, and is marked "economically significant." For all "economically significant" regulations, Executive Order 12866 directs agencies to provide (among other things) a more detailed assessment of the likely benefits and costs of the regulatory action, including a quantification of those effects, as well as a similar analysis of potentially effective and reasonably feasible alternatives. The period for OIRA review is limited by Executive Order 12866 to 90 days, and there is no minimum period for review. Based on prior

agency comments, the proposed rule should be published in the *Federal Register* not later than May 2016.

Plans to Address "Meaningful Use" Challenges

As part of a recent panel discussion during the Health Information Management and Systems Society (HIMSS) 2016 Conference, CMS' Acting Administrator Andy Slavitt reiterated the agency's intent to address provider concerns with the current "meaningful use" program as part of the new Medicare physician payment programs established under MACRA.

"We have created a new playbook at CMS by making our most concerted effort ever at listening to front-line physician and patient input upfront," Slavitt explained. "We have completed 8 focus groups with front line physicians in 4 separate markets and have many more coming. And I've been on the road meeting with a number of physicians in their offices to see how they interact with technology directly."

Slavitt also referenced the Secretary's earlier announcement that companies representing 90 percent of electronic health record (EHR) systems have committed to taking steps that would ensure true interoperability across EHR systems. Learn more about the pledge on the Office of the National Coordinator's web site.

MedPAC Issues March Report to the Congress

The Medicare Payment Advisory Commission (MedPAC) issued its March Report to the Congress, which includes payment policy recommendations for Medicare fee-for-service (FFS) providers and discusses the status of Medicare Advantage (MA) plans and Medicare's prescription drug plans (Part D). For hospitals, physicians, and outpatient dialysis centers, MedPAC recommends an increase in 2017 payment rates consistent with current law. MedPAC is recommending an elimination of the 2017 payment update for hospice, long-term care hospitals, inpatient rehabilitation facilities, home health agencies, skilled nursing facilities and ambulatory surgery centers. MedPAC also recommends a reduction in Medicare payment rates for 340B hospitals' separately payable 340B drugs by 10 percent of the average sales price (ASP) and that ASCs begin cost reporting. A fact sheet and press notice is available on MedPAC's web site.

HHS Says 30 Percent of Medicare Spending Tied to Value

In early March, the Department of Health and Human Services (HHS) announced that it estimated 30 percent of Medicare spending was tied to quality and cost through alternative payment models (APMs). In January 2015, HHS Secretary Sylvia Burwell announced clear goals and a timeline for shifting Medicare reimbursements from quantity to quality, setting a goal of 30 percent of Medicare payments through alternative payment models by the end of 2016 and 50 percent by the end of 2018. Following the Centers for Medicare and Medicaid Services (CMS) announcement of 121 new ACOs as well as greater provider participation in other alternative payment models, HHS estimates that it has achieved that goal well ahead of schedule. According to the announcement, As of January 2016, CMS estimates that roughly $117 billion out of a projected $380 billion Medicare fee-for-service payments are tied to alternative payment models, figures that were evaluated by CMS' Office of the Actuary. A fact sheet with additional details is available on CMS' web site.

New CMS Tool Identifies Areas of Disparities

CMS' Office of Minority Health (OMH), in collaboration with the Centers for Disease Control and Prevention (CDC), released a new interactive map that identifies disparities between sub-populations (e.g., racial and ethnic groups) in health outcomes, utilization, and spending to assist government agencies, policymakers, researchers, community-based organizations, health providers, quality improvement organizations, and the general public, with understanding geographic differences in disparities in order to inform future policy decisions and efficiently target populations and geographies for interventions. According to CMS, the Mapping Medicare Disparities (MMD) Tool provides a dynamic interface for descriptive statistics on chronic disease prevalence, Medicare spending, hospital and emergency department (ED) utilization, and preventable hospitalizations,

readmissions and mortality rates for Medicare beneficiaries with various chronic conditions, a disability, or end stage renal disease (ESRD), and allows users to select these measures for specific Medicare beneficiary sub-populations, defined by state or county of residence, sex, age, dual eligibility for Medicare and Medicaid, and race and ethnicity. A CMS overview document provides more detail about the tool and how it can be used.

GAO: OMB Could Improve Rulemaking Transparency

In testimony before the Subcommittee on Government Operations, Committee on Oversight and Government Reform in the House of Representatives, Michelle Sager, Director, Strategic Issues with the Government Accountability Office (GAO), explained that opportunities remain for the OMB/OIRA to improve the transparency of rulemaking processes. Since 2003, GAO has made 25 recommendations to OMB to address transparency issues identified in seven reports; however, OMB has only implemented 9 of the recommendations. GAO believes that the other 16 recommendations that have not been implemented still have merit and, if acted upon, would improve the transparency of federal rulemaking. For example, in a 2012 GAO report on exceptions to proposed rules, GAO reviewed a generalizable sample of final rules published over an 8-year period, and found that, although agencies often requested comments on final major rules issued without a prior notice of proposed rulemaking, the agencies did not always respond to comments received. GAO previously recommended that OMB issue guidance to encourage agencies to respond to comments on final major rules, for which the agency has discretion, that are issued without a prior NPRM.

Health Datapalooza Set for May 9-10

Registration is open for the 7th Annual Health Datapalooza, which will be hosted May 8-11, 2016 in Washington, DC. Participants can attend onsite or participate via webcast or streaming audio during plenary, pre-conference and track sessions. Keynote speakers include Sen. Bill Cassidy (R-LA), HHS Secretary Sylvia Burwell, and CMS' Deputy Administrator for Innovation and Quality and Chief Medical Officer, Patrick Conway, MD, MSc. The full agenda is available on the Health Datapalooza web site.

About EMAF

In January 2011, the ACEP Board of Directors voted to create the Emergency Medicine Action Fund to generate additional financial support for our well established advocacy activities in Washington, DC.

This Action Fund will finance activities that complement ongoing work and enhance resources to address the issues that matter most to you.

The Action Fund can help us enhance our regulatory advocacy with policy makers to ensure emergency physicians receive fair payment for our services. It can also fund numerous meetings with regulators to help guarantee our patients receive the best care, and provide funding for studies to demonstrate the value of emergency medicine.

Find out more about the Action Fund's goals, contribution levels, and governance structure by visiting www.acep.org/EMActionFund.