EM ACTION FUND
Preserving the Future of our Specialty

# Vital Viewpoint

Perspectives from Emergency Medicine on Federal Regulatory Activities

## Message from the Chair

The heat and humidity weighing down on Washington during the month of July was matched only by the volume of proposals in newly issued regulations that would change how emergency medicine physicians deliver health care and are reimbursed for it, under Medicare.

Both the CY2017 Medicare Physician Fee Schedule (MPFS) and the CY2017 Hospital Outpatient Prospective Payment System (OPPS) and Ambulatory Surgery Center Prospective Payment System (ASC PPS) were released by the Centers for Medicare and Medicaid Services (CMS) during the first week of July, outlining new payment and policy proposals that will have a direct impact on our specialty.

For example, proposals in the MPFS meant to help the agency better understand the pre- and post-service work associated with procedures with 10- and 90-day global periods would place a signifiant burden on emergency medicine practices, as the proposed claims-based mechanism for data collection, not to mention the new "billing" codes that would need to be reported, do not consider how our specialty delivers health care, nor does it consider the environment in which we practice.

Equally concerning are proposals to review 0-day global procedures that are frequently billed with an evaluation and management (E/M) service and Modifer -25. CMS has identified just over 80 procedures that fall into this "screen," and is suggesting they are "potentially misvalued." More than half of the procedures are performed in the emergency department.

Other proposals are also concerning, including one that would require physicians to be enrolled in Medicare or have a valid opt-out on file in order to see and be reimbursed for care provided to beneficiaries enrolled in Medicare Advantage (MA) plans. This is particularly challenging considering the difficulties physicians routinely face in becoming enrolled in the Medicare program, including lengthy delays in processing enrollment applications. The proposal is not unlike others we've seen in recent months that would make Medicare enrollment or valid opt-out a requirement to order and prescribe other items and services paid under Parts A and B.

On a positive note, as part of the OPPS, CMS is proposing to remove three questions from the

### VITAL SIGNS: 2016 MedPAC Data Book Now Available

***The Medicare Payment Advisory Commission (MedPAC) released its annual data book on healthcare spending and the Medicare program, which covers national health care and Medicare spending, the quality of care in Medicare, Medicare Advantage and prescription drugs, among other topics. The data book is widely hailed as an important resource for healthcare researchers, policy makers and other healthcare stakeholders. The data book can be downloaded from MedPAC's web site***

HCAHPS instrument that focus on pain management when calculating hospital reimbursements under the Hospital Value-Based Purchasing (VBP) Program. The questions prompted significant concern by providers, as pressures mounted to overprescribe pain medications in order to maintain high VBP scores, which contradicted important efforts aimed at addressing a growing opioid epidemic.

Working with our consultants at Health Policy Alternatives (HPA) and Hart Health Strategies, Inc., emergency medicine is preparing a robust response to these and other proposals in both rules.

In addition, I asked Robert Jasak, JD, one of our consultants from Hart Health Strategies, Inc., to repeat his web presentation to the EMAF Board of Governors (BoG) on July 22, 2016. A recording of the presentation is available for those who missed it.

I am looking forward to my next visit with our EMAF consultant team on August 18, and our next in-person EMAF BoG meeting on October 18 as part of the ACEP annual meeting in Las Vegas. As always, should you have any questions, do not hesitate to reach out to me.

## CMS Proposes New Episode Payment Models

Recently, CMS' Innovation Center issued a proposed rule that would implement three new Medicare Parts A and B episode payment models (EPMs) that aim to encourage coordination among all providers involved in a patient's care for certain conditions.

"Acute care hospitals in certain selected geographic areas will participate in retrospective episode payment models targeting care for Medicare fee-for-service beneficiaries receiving services during acute myocardial infarction [AMI], coronary artery bypass graft, and surgical hip/femur fracture treatment episodes," CMS explains in the rule summary. "All related care within 90 days of hospital discharge will be included in the episode of care."

The new cardiac bundles would be tested by hospital participants in 98 randomly-selected metropolitan statistical areas (MSAs), whereas the hip/femur fracture surgeries model builds upon the existing Comprehensive Care for Joint Replacement (CJR) model, thus CMS proposes to test these bundled payments in the same 67 MSAs that were selected for that model.

CMS also proposes to allow hospital participants to enter into financial arrangements with other types of providers (for example, skilled nursing facilities and physicians), which "would allow hospital participants to share reconciliation payments, internal cost savings, and the responsibility for repayment to Medicare with other providers and entities who choose to enter into these arrangements, subject to the limitations outlined in the proposed rule."

In the rule, CMS notes that AMI, coronary artery bypass graft (CABG), and surgical hip/femur fracture treatment (SHFFT) episodes always begin with an acute care hospital stay, typically preceded by an emergency room visit. However, the financial responsibility for an episode would fall to the hospital to which the episode is attributed, under the proposal.

EMAF consultants are reviewing the impact of the proposed models on emergency medicine, which may require a formal response. A fact sheet on the rule is available on CMS' web site.

## Submit Comments on CMS Episode Groups, Patient Relationship Categories and Codes

CMS continues to post additional information and opportunities to comment on proposals stemming from the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA). Most recently, CMS updated its episode groups and related materials, which include new and revised

episodes of care, and seeks feedback by August 25, 2016. CMS is also looking for feedback on patient relationship categories and codes, with comments due August 15, 2016. Emergency medicine is preparing responses, as needed.

## Next PTAC Meeting Scheduled

The Department of Health and Human Services (HHS) announced the next meeting of the Physician-Focused Payment Model Technical Advisory Committee (PTAC), which is set for September 16, 2016, from 9 am - 1 pm ET at the Hubert H. Humphrey Building in Washington, DC. Our consultants from Hart Health Strategies, Inc. will be attending the meeting on our behalf and report back on discussion pertaining to the impact on emergency medicine and the role we might play as models are brought forward and considered.

## New Guidance for States, Manufacturers on VBP

CMS released guidance meant "to inform manufacturers on how to seek guidance from CMS on their specific value based purchasing (VBP) arrangement, as well as encourage states to consider entering into (VBP) arrangements as a means to address, as well as offset, Medicaid's high cost drug treatments." The guidance, released through State Release #176 and Manufacturer Release #99, address inquiries to CMS regarding VBP arrangements impact on "best price," offering state Medicaid partners VBP arrangements, and collecting supplement rebates on Medicaid Managed Care drug claims.

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.

**About EMAF**