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Vital Viewpoint

Perspectives from Emergency Medicine on Federal Regulatory Activities

Message from the Chair

Thank you to everyone who was able to particpate in the May EMAF Board of Governors (BoG) meeting during the 2016 ACEP Legislative and Advocacy Conference in Washington, DC. For those of you who missed it, we had an extensive dialogue on ~~a~~ important issues facing emergency medicine; heard presentations from our EMAF Health Policy Scholars on the incredible research they are doing to help solidify our policy positions on key issues; and discussed ways to utilize the expertise from our consultants at Health Policy Alternatives (HPA) and Hart Health Strategies, Inc., as well as our sophisticated ACEP staff in the DC office, as we continue to position ourselves and our issues through the regulatory process. If you missed the email summary that was sent shortly after the meeting concluded, please send me or Orit Sager, EMAF Coordinator, a quick note, and we will get this to you for your review.

Of note, EMAF has approximately $1.2 million in its budget after a contribution was made to ACEP for the Greatest of Three lawsuit and APM Task Force. A dues statement will be sent later in the year.

Given the short amount of time and expansive agenda, we were forced to postpone our discussion of new payment models established under the Medicare Access and CHIP Reauthorization Act (MACRA) and the impact on emergency medicine. As a result, I am working with ACEP staff to plan a webinar on the details of the newly released proposed rule implementing the Medicare Quality Payment Program, including the Merit-Based Incentive Payment System (MIPS) and alternative payment models (APMs), which will be presented by Robert Jasak, JD, one of our consultants from Hart Health Strategies, Inc. This will be a very engaging discussion. I strongly encourage your participation in this event, and please come prepared with questions so we can be sure to address the issues that are most relevant to your organization. Details about the webinar are forthcoming, so keep your eyes peeled for an email from Orit Sager on this upcoming event.

As always, I am looking forward to the ongoing discussion on these and other issues that impact how we deliver important emergency care to countless patients each day. Should you have any questions, do not hesitate to reach out to me.

VITAL SIGNS: CMS Publishes Final Quality Measure Development Plan

CMS posted its final Quality Measure Development Plan (MDP) to its dedicated MACRA web site, which considers comments from more than 60 individuals and 150 institutions. The plans aims to support the transition from CMS' current quality improvement programs to the new MIPS and APM tracks for Medicare physicians.

GAO Announces New MedPAC Appointments; Reappointments

In a press announcement on June 2, Gene L. Dodaro, Comptroller General of the US Government Accountability Office (GAO) announced the appointment of five new members to the Medicare Payment Advisory Commission (MedPAC). The newly appointed members are **Amy Bricker, RPh**, Vice President, Supply Chain Strategy, Express Scripts, Inc., St. Louis, Missouri ; **Brian DeBusk, PhD**, CEO, DeRoyal Industries, Powell, Tennessee; **Paul Ginsburg, PhD**, Leonard Schaeffer Chair in Health Policy Studies, Brookings Institution, Washington,

D.C. and Professor of Health Policy, University of Southern California; **Bruce Pyenson, FSA, MAAA**, Principal and Consulting Actuary, Milliman, Inc. in New York, New York; and **Pat Wang, JD**, CEO, Healthfirst, New York, New York. Their terms will expire in April 2019.

Jon Christianson, PhD, Professor of Health Policy and Management at the University of Minnesota's School of Public Health in Minneapolis, Minnesota was reappointed to the Commission and will continue to serve as Vice Chair. His term will also expire in April 2019.

OCR Finalizes Non-Discrimination Regulations

The Department of Health and Human Services (HHS) Office of Civil Rights (OCR) issued its final rule implementing Section 1557 of the Affordable Care Act (ACA), which would prohibit discrimination on the basis of sex, in addition to existing discrimination prohibitions on the basis of race, color, national origin, disability, or age, in federally funded health programs. The rules explain that individuals cannot be denied health care or coverage based on their sex, including their gender identity and sex stereotyping. The rule also explains that categorical coverage exclusions or limitations for all health care services related to a gender change transition are discriminatory.

OCR also finalizes policies that modify language assistance for people with limited English proficiency and ensures effective communication for individuals with disabilities. For example, covered entities are prohibited from using low-quality video remote interpreting services or relying on unqualified staff, translators when providing language assistance services. In addition, covered entities are required to make all programs and activities provided through electronic and information technology accessible to individuals with disabilities, unless doing so would impose undue financial or administrative burdens or would result in a fundamental alteration in the nature of the covered entity's health program or activity.

Major Rules Hit OMB Review List

CMS recently delivered its proposed CY 2017 payment rates and policies for physicians and non-physician professionals paid under the Medicare physician fee schedule (MPFS); hospital outpatient departments and ambulatory surgery centers (ASCs) paid under the hospital outpatient prospective payment system (OPPS) and ASC prospective payment system (ASC PPS); and home health agencies paid under the home health prospective payment system (HH PPS), to the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs (OIRA) for review. Generally, OMB's OIRA takes between 30-60 days to review proposed and final regulations of "economic significance". These proposed rules are expected to be available for public inspection in late June.

CMS also delivered its final Conditions of Participation for Home Health Agencies (HHA CoPs) on May 6. The final rule is expected to be released for public inspection in the coming weeks.

First-Ever Release of MCBS Public Use File

The Centers for Medicare and Medicaid Services (CMS) released the first-ever public use file (PUF) for its Medicare Current Beneficiary Survey (MCBS), the largest federal health survey of the Medicare population and the leading source of information on Medicare and its impact on beneficiaries. The MCSB is a continuous, in-person, longitudinal survey of a representative national sample of the Medicare population. The survey has been carried out continuously for 25 years, encompassing more than one million interviews.

According to CMS, *"The MCBS PUF is prepared from data collected in 2013 from over 13,000 community dwelling Medicare beneficiaries and contains standard demographic variables, such as age categories, race/ethnicity and gender, as well as information about health conditions, access to and satisfaction with care, type of insurance coverage, and information on utilization, such as the number of fee-for-service claims per beneficiary for certain health care event types."*

OIG Issues Semiannual Report to Congress

The HHS Office of Inspector General (OIG) released its semiannual report to Congress, summarizing activities aimed at protecting the integrity of HHS programs from fraud, waste, and abuse. The report covers the 6-month period that ended March 31, 2016. In the report, OIG cites examples of its efforts in Medicare payments,

policies and practices that led to policy changes in hospice payment policies, Part B payments for 340B purchased drugs and the quality of care and beneficiary access, Medicare contractor performance, and use of health information technology. OIG also issued a separate report that calls on CMS to improve provider enrollment activities to prevent inappropriate payments, protect beneficiaries, and reduce time-consuming and expensive "pay and chase" activities. Both reports are on the OIG website.

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.