

Protecting Access to Medicare Act

CAP on rule to implement law: 'We will be there'

Charles Fiegl

June 2014—The CAP's leaders say they will keep pushing for favorable pathology payment policies as federal regulators implement new legislation that could lead to steep cuts in Medicare rates.

Six weeks before the May 5-7 CAP Policy Meeting in Washington, DC, Congress enacted the Protecting Access to Medicare Act of 2014. The bill, signed into law April 1, stopped cuts to physician services under the flawed Medicare sustainable growth rate formula used to calculate Medicare pay. But the act, which represents the 17th time a temporary SGR fix has been used since 2003, also included several Medicare reforms that will affect pathologists.

The CAP had strongly advocated a permanent fix to the SGR, which was set to cut physician rates by about 24 percent if not for the temporary stopgap measure enacted by Congress. The SGR again will threaten Medicare pay in April 2015.



Dr. Myles

"It's a mixed bag for us," said CAP Economic Affairs Committee chair Jonathan L. Myles, MD, during his presentation on pathology's payment challenges at the meeting. Although the legislation stopped drastic cuts to all physician services under the SGR, it established expanded mechanisms to target what Medicare officials may consider misvalued physician services. That revaluing could further place pathology payment in jeopardy.

In addition, Congress stopped a Centers for Medicare and Medicaid Services plan to make "technical changes" to the Medicare clinical laboratory fee schedule that could have cut an estimated \$8 billion in payments to laboratories. CLFS reforms, such as new administrative requirements found in the Protecting Access to Medicare Act, will go into effect over the next several years.

"CMS will make a rule that will define the particulars of the implementation of the law," Dr. Myles said. "The rule will first be a proposed rule and there will be an opportunity for us to comment. We will be there to make the rule as favorable to the profession, and as easy to implement, as possible."

The new law implements policy calling for further review of values for physician services. Between 2017 and 2020, it sets a target for net reduction of 0.5 percent in Medicare's payment rates. If code revaluation recommendations do not hit that target, the CMS could further cut payments to physicians until the target is reached.

The CAP has expressed strong concern about such enhanced authority for the CMS with respect to misvalued codes, Dr. Myles said. In recent years, Medicare payment to pathologists already has been significantly reduced, and more cuts may occur through 2015.

The 2010 Affordable Care Act empowered the CMS to review pay rates for all high-volume physician services. Starting in 2011, the CMS identified pathology services to be revalued under a "misvalued codes initiative." While

pathology has already seen cuts under this initiative, more payment changes are expected. Payment changes to in situ hybridization services, for example, are anticipated for 2015. The CMS also created temporary G-codes for immunohistochemistry services in 2014, with payment at a lower rate. The CAP is working through various channels to address Medicare's payment policy for IHC services, and Dr. Myles said its leaders are hopeful that 2015 will bring relief from the IHC G-codes.

In 2013, the CMS proposed to link the technical component for several pathology services to hospital outpatient rates, which would have cut pay rates significantly, Dr. Myles said. The CAP opposed the policy by filing regulatory comments, cultivating grassroots advocacy with federal lawmakers, and conducting a thorough legal analysis. The CMS halted its plan, but the agency has signaled that it could bring the proposal up for reconsideration. Pathologists should be prepared for potential changes to the technical component and global payment of pathology services in 2015 as the CMS continues to scrutinize payment rates, Dr. Myles said.

Under the new CLFS reforms, starting Jan. 1, 2017 payment rates for clinical laboratory tests will be based on the weighted median pay for services from private payers. To calculate the weighted median, the CMS will collect data on private payer rates from laboratories starting Jan. 1, 2016. The CAP sent a letter to the CMS on June 2 with recommendations on how to implement this and other changes to the CLFS in a way that lessens disruptions in patient access to testing and minimizes administrative burdens to pathologists and labs.

According to the law, the CMS can set a low-volume or low-spending threshold to exempt smaller laboratories. All other labs would be required to report or face a \$10,000 per day penalty for noncompliance.

While the CMS' initial proposal would have established unpredictable payment cuts, the new law limits cuts to 10 percent per year from 2017 to 2019, and to 15 percent annually from 2020 to 2022.

On another front, CMS officials appear to be heeding the profession's concerns about having measures in the Physician Quality Reporting System that capture the value pathologists bring to patient care and population health.

"I actually worry for pathologists that we don't have the right measures, and we are not measuring what matters," said Patrick H. Conway, MD, the CMS' chief medical officer. Dr. Conway is also the agency's deputy administrator for innovation and quality.

Despite challenges with the PQRS, pathologists have had the highest participation rate in the quality reporting program compared with other specialties. Nearly 70 percent of eligible pathologists participated in the program in 2012, compared with 36 percent of all eligible professionals. Many pathologists have earned bonuses, too.

The CAP has created eight PQRS measures for pathologists, and five of these measures are in the quality-reporting program. The PQRS carries Medicare payment penalties for physicians who do not meet program criteria. For 2015, the penalty for eligible physicians is a 1.5 percent cut to Medicare payment rates. The penalty increases to two percent in 2016.

However, the CMS has assured the CAP—in writing—that pathologists who have fewer than the total of nine measures required by Medicare for 2014 PQRS reporting will not be penalized when they report on only the measures applicable to their practices. In instances where a pathologist has no applicable measures, that physician will not face PQRS penalties in either 2015 or 2016.

"We want to work with you to fill measure gaps in pathology and for the patients you serve," Dr. Conway told the crowd at the CAP Policy Meeting.

At the meeting, nearly 150 CAP members obtained in-depth analysis of emerging policy trends and regulatory and legislative issues, along with grassroots training, from nationally recognized experts. Other key issues that members addressed at the meeting included closing the self-referral loophole in the in-office ancillary services exception and stopping unfair payment penalties under Medicare EHR programs.

On Capitol Hill, CAP members asked elected officials to support legislation closing the self-referral loophole, repeal the broken SGR formula, and sign a letter to the CMS to grant pathologists relief from EHR meaningful-use penalties for five years. Pathologists also spoke with their representatives in Congress as well as top policymakers, such as Elliott S. Fisher, MD, MPH, of the Dartmouth Institute for Health Policy and Clinical Practice, and former Maine senator Olympia Snowe.

The CAP's next Policy Meeting will be held in Washington, DC, in May 2015.

[hr]

Charles Fiegl is CAP manager of advocacy communications, Washington, DC.