# Liability, Medicare Payment Top 2005 Priorities

BY THE PRACTICE TRENDS STAFF
*Rheumatology News*

While medical liability and health care reform remain the top issues for many physicians this year, of particular urgency is a fix to Medicare's flawed payment formula, which threatens cuts of up to 5% in 2006 and cumulative cuts of 30% through 2012.

"It's certainly one of our top priorities for the coming legislative year," Paul Speidell, government affairs representative for the Medical Group Management Association (MGMA), told this newspaper. Health information technology and other capital investments "are all thrown into question for the physician practice community when you're looking at cuts that major," he said.

The issue should generate widespread interest, as "every member of Congress has physicians and Medicare beneficiaries in their district," Mr. Speidell said. All of the physician groups who spoke with this newspaper detailed grassroots and other efforts to get Congress to avert the cuts.

The Medicare physician fee schedule "is a likely subject for our committees and it's possible we'll do hearings" on the issue this year, although no specific agenda has been discussed, said Jon Tripp, deputy communications director with the Energy and Commerce Committee.

An ideal scenario would be to scrap the sustainable growth rate (SGR), a component in the physician pay formula that determines each year's update, and to "look toward a vision of paying for performance and rewarding quality," a Senate aide told this newspaper.

That approach comes with a high price tag: The Congressional Budget Office estimates it would cost $95 billion to replace the SGR. Exploring that option "really all depends on what the budget outlook is for this year," the aide said.

No matter what the cost, the fix needs to be done, Robert Doherty, senior vice president for governmental affairs and public policy with the American College of Physicians, said in an interview. "The cost of fixing this may be high, but the reason it's high is because the hole is so deep—and we didn't dig that hole. All we're asking is to fill in that hole so we're breaking even."

The budget situation is clearly the biggest obstacle, Mr. Doherty said. "If the deficit wasn't bad as it is, it wouldn't be that difficult."

While no one can predict whether Congress will pursue a permanent fix or a temporary reprieve as they've done in the past, physicians would gain more credibility if Congress didn't focus solely on fixing the SGR, Mr. Doherty said. "We need to engage in other reforms to the physician payments system to make it more functional for the physician, payer, and patient," he said. For example, medical organizations could talk to Congress about integrating a pay-for-performance component into Medicare, he said.

Malpractice reform is on the top of President Bush's health care agenda and will likely take precedence over the public health safety net and other health care reforms in 2005. Several physician groups and the administration have long advocated a $250,000 cap on noneconomic damages as part of a reform package.

The hurdle ahead is getting the Senate to approve such a bill, Matt Salo, director of the health and human services committee with the National Governors Association, told this newspaper. "Ultimately, you need 60 votes in the Senate to get a bill through. While the Republican margin is a little larger after the elections, it's not 60," Mr. Salo said.

Passage of the bill is possible, provided that all 55 Republicans in the Senate vote for it, Mr. Doherty said. But physicians will have to decide which is more important: their desire for a Medicare payment increase or their desire for medical liability reform, a Republican House staff member said at a meeting sponsored by the American Bar Association.

"They've got two competing interests," he said. And while some physician groups may pursue liability reform on the assumption that Congress is probably going to pass the payment increase anyway, that isn't necessarily the case, the aide said.

Physicians are also holding their breath on the expected transition from the International Classification of Diseases, 9th Revision (ICD-9)—the current diagnosis and inpatient procedure classification system—to the 10th revision (ICD-10).

An upgrade had been recommended on the premise that the ICD-9 was too antiquated to address the need for accurate health care billing in today's technology-driven environment. But physician groups remain concerned that ICD-10 has the potential to drive up costs and add new hassles to physician practice.

The Department of Health and Human Services may issue a proposed rule in 2005, although it's questionable that regulators are looking for more feedback at this point, Robert M. Tennant, MGMA's senior policy advisor for health informatics, said in an interview. Such a notice would more likely be designed "to give us a heads-up, rather than ask questions" that could lead to changes in the rule, he said.

Physicians would prefer a staggered implementation date, Mr. Tennant said. In addition, "we would like health plans to be compliant first, so physician practices could have time to get their systems upgraded and complete their testing and staff training," he said.

The new year also brings new leadership to the federal health bureaucracy. At press time, President Bush named Michael O. Leavitt as his pick to lead HHS. Mr. Leavitt served as the administrator of the Environmental Protection Agency in the president's first administration and was previously governor of Utah. Mr. Leavitt must be confirmed by the Senate before assuming his new duties. ■

*Joyce Frieden, Jennifer Silverman, and Mary Ellen Schneider contributed to this report.*

## More Doctors in the House—and Senate

Physicians are heading to Capitol Hill this month and not just to lobby. Below are the results of last year's House and Senate races in which a physician ran for office.

### House of Representatives

**Arkansas, 2nd District:** *Vic Snyder, M.D. (D), defeated Marvin Parks (R)
**Florida, 15th District:** *David Weldon, M.D. (R), defeated Simon Pristoop (D)
**Georgia, 6th District:** Tom Price, M.D. (R), was unopposed
**Georgia, 11th District:** *Phil Gingrey, M.D. (R), defeated Rick Crawford (D)
**Illinois, 15th District:** David Gill, M.D. (D), lost to *Timothy V. Johnson (R)
**Louisiana, 3rd District:** Kevin Chiasson, M.D. (R), lost to Charles Melancon (D)
**Louisiana, 7th District:** Charles Boustany, Jr., M.D. (R), defeated Willie Mount (D)
**Michigan, 7th District:** Joseph Schwarz, M.D. (R), defeated Sharon Renier (D)
**New Jersey, 3rd District:** Herb Conaway, M.D. (D), lost to *James Saxton (R)
**New York, 24th District:** David Walrath, M.D. (Conservative Party), lost to *Sherwood Boehlert (R)
**North Carolina, 12th District:** Ada M. Fisher, M.D. (R), lost to *Melvin Watt (D)
**Pennsylvania, 13th District:** Melissa Brown, M.D. (R), lost to Allyson Schwartz (D)
**Pennsylvania, 18th District:** Mark Boles, M.D. (D), lost to *Timothy Murphy (R)
**Texas, 14th District:** *Ron Paul, M.D. (R), was unopposed
**Texas, 26th District:** *Michael Burgess, M.D. (R), defeated Lico Reyes (D)
**Washington, 7th District:** *Jim McDermott, M.D. (D), defeated Carol Cassady (R)

### Senate

**Kentucky:** Dan Mongiardo, M.D. (D), lost to *Jim Bunning (R)
**New York:** Marilyn O'Grady, M.D. (Conservative Party), lost to *Charles Schumer (D)
**Oklahoma:** Tom Coburn, M.D. (R), defeated Brad Carson (D)

*denotes incumbent

## ACR Eyes Bottom Line, Formularies

The top focus for the American College of Rheumatology this year will be changing physician reimbursement under Medicare, said Joseph Flood, M.D., chairman of ACR's government affairs committee.

Unless there's a significant change in the statute next year, there will be cuts to physicians' pay, he said. This comes at a time when prices for everything in the physician's office have gone up, but reimbursement has not, he said. And the rates set by Medicare affect how other insurers reimburse physicians because they usually follow Medicare's lead.

ACR is also keeping an eye on the list of covered drugs that will be available under Medicare's Part D drug benefit. If the list of drugs is too restrictive, it's not a real step forward, Dr. Flood said.

For example, ACR is concerned that the proposed framework for structuring drug formularies would allow prescription drug plans to exclude important medications like cyclooxygenase-2 (COX-2) inhibitors. "We need to have the opportunity of looking at different drugs for our patients," Dr. Flood said.

In addition, formularies shouldn't include heavy administrative burdens for physicians, he said.

Rheumatologists will be advocating for passage of the Arthritis Prevention, Control, and Cure Act, which would support programs in arthritis and encourage research. It would also help efforts to recruit people into pediatric rheumatology. The bill was introduced in 2004 and had a lot of support, Dr. Flood said. ACR officials expect that the bill will be reintroduced this year.

ACR will also be focusing on the payments for the purchase of Part B drugs under Medicare. The Centers for Medicare and Medicaid Services recently announced the addition of new codes for drug administration that pay physicians more for performing complex infusion therapy. But this increase is offset by declines in payments for the drugs themselves.

Although ACR favors a system that pays appropriately for the administration of the drug, Dr. Flood said, officials want to ensure that the calculation of the average sales price of the drug is not detrimental to individual physicians who lack the buying power of larger groups.

ACR is concerned about the annual congressional appropriations process. They would like to see more money appropriated for research at the National Institutes of Health and the Department of Veterans Affairs in the area of arthritis.

**—Mary Ellen Schneider**