

SGR Fix Means 6-Month Reprieve for Physicians

BY MARY ELLEN SCHNEIDER

President Obama on June 25 signed into law a bill that replaces the 21% Medicare physician payment cut with a 2.2% pay raise for 6 months.

The legislation (H.R. 3962) provides physicians with a 2.2% increase in their Medicare payments through Nov. 30. The change is retroactive to June 1, the date that the 21% cut officially went into effect. Officials at the Centers for Medicare and Medicaid Services held claims from June 1 to June 18 to give Congress time to reverse the cuts, but has been paying physicians at the lower rate since then.

Now that the pay cuts have been reversed, CMS has directed its contractors to stop processing claims at the lower rates and temporarily hold all claims for services provided on or after June 1. This delay will give contractors time to adjust their claims processing systems. CMS said it expects to begin processing claims at the increased pay rate no later than July 1.

Medicare will also begin reprocessing any June claims that were paid under the 21% cut. Physicians should not resubmit those claims, but may need to contact their local Medicare contractor to request an adjustment, according to CMS. Under the law, Medicare must pay physicians the lower of either their submitted charge or the Medicare Physician Fee Schedule amount. Claims with submitted charges at or above the new 2.2% increased rate will be automatically reprocessed.

While physicians welcomed the temporary reprieve, they remain dissatisfied with the lack of congressional action on a permanent solu-

tion to the recurring Medicare payment cuts. The American Medical Association noted that without further action from Congress, physicians will face a 23% cut in December that will increase to nearly 30% in January 2011.

"Congress is playing a dangerous game of Russian roulette with seniors' health care. Sick patients can't wait. Congress must replace the broken payment system before the damage is done and cannot be reversed," Dr. Cecil B. Wilson, AMA president, said in a statement. "The baby boomers begin entering Medicare in 6 months, and if the physician payment problem isn't fixed, these new Medicare patients won't be able to find a doctor to treat them."

The instability of the current payment system doesn't just affect Medicare, but will have a significant impact on the future success of health reform, according to the American Academy of Family Physicians. The Affordable Care Act calls on physicians to change their practices through the adoption of health information technology and new practice models, both of which require time and money to implement. "Physicians can't invest in change if they can't count on payment for their services," Dr. Lori Heim, AAFP president, said in a statement.

President Obama is also urging Congress to come up with a permanent replacement for the Medicare physician payment formula.

Before signing the bill, the President released a statement saying that the practice of temporary payment patches was "untenable" and must end. On June 24, the House of Representatives passed H.R. 3962 by a vote of 417-1. The Senate approved the measure on June 18. ■

Recess Appointment Makes Berwick CMS Chief

BY ALICIA AULT

President Obama announced the recess appointment of Dr. Donald Berwick to be the administrator of the Centers for Medicare and Medicaid Services, bypassing what looked like a lengthy fight to have the nominee confirmed by the Senate.

In making the appointment, which has been vacant since 2006, the president said in a statement, "It's unfortunate that at a time when our nation is facing enormous challenges, many in Congress have decided to delay critical nominations for political purposes."

Dr. Berwick said he was flattered that the president had appointed him to head the CMS, especially at this time. "I have never felt more excited about what is possible for what we all care about—a healthier nation, a healthier system of care, and a healthier world," he said in a statement. "In moving to CMS as a member of a strong governmental team, I will pursue those aims as hard as I can." Dr. Berwick is president and CEO of the Cambridge, Mass.-based Institute for Healthcare Improvement.

The American College of Physicians President J. Fred Ralston Jr. said that "Dr. Berwick's career and work at the Institute for Healthcare Improvement illustrates the drive to provide patient-centered care, patient safety, quality improvement, and care coordination in health care." Dr. Ralston added that the ACP believed that "Dr. Berwick will be an able administrator and partner for change."

Others also leaped to support Dr. Berwick. "Don has dedicated his career to engaging hospitals, doctors, nurses and other health care providers to improve patient care," American Hospital Association President Rich Umbdenstock said in a statement.

In a statement, Sen. John Kerry (D-Mass.) chided Republicans for their "lockstep stalling" of Dr. Berwick's nomination, and praising him for his assistance in overhauling the Massachusetts health care system.

"He's first rate all the way, and through-

out Massachusetts's landmark health reform, Don was there, helping lead our state to the highest rate of health care coverage in the nation," according to Sen. Kerry.

Senate Minority Leader Mitch McConnell (R-Ky.), however, was scathing in his reac-



COURTESY INSTITUTE FOR HEALTHCARE IMPROVEMENT

Dr. Donald Berwick has been a leader in health care quality improvement.

tion to the appointment, calling Dr. Berwick "one of the most prominent advocates of rationed health care."

"Democrats haven't scheduled so much as a committee hearing for Donald Berwick but the mere possibility of allowing the American people the opportunity to hear what he intends to do with their health care is evidently reason enough for this Administration to sneak him through without public scrutiny," Sen. McConnell said in a statement.

Under the Constitution, the president nominates individuals to serve in high-level government positions; those individuals must then be confirmed by the Senate. However, the Constitution also allows the president to make such appointments without Senate confirmation if Congress is in recess, as it was for the Independence Day holiday. ■

'Red Flags' Rule Delayed; AMA Fights Rule With Lawsuit

BY MARY ELLEN SCHNEIDER

The Federal Trade Commission has again postponed enforcement of the "Red Flags" rule, giving physicians until the end of 2010 before they must implement identity-theft prevention programs in their practices.

Enforcement of the rule had been scheduled to begin on June 1. In late May, the FTC announced that it was delaying enforcement to give Congress time to consider pending legislation that would exclude some small physician practices and small businesses from the rule.

Last year, the House passed a bill (H.R. 3763) that would have exempted physician practices with 20 or fewer employees from having to comply with the Red Flags rule, but that legislation has failed to gain trac-

tion in the Senate. FTC officials urged lawmakers to act quickly to clarify what groups should be covered by the regulation. "As an agency we're charged with enforcing the law, and endless extensions delay enforcement," FTC chairman Jon Leibowitz said in a statement.

The Red Flags rule was written to implement provisions of the Fair and Accurate Credit Transactions Act, which calls on creditors and financial institutions to address the risk of identity theft. The rule requires creditors to develop formal identity-theft prevention programs that would allow an organization to identify, detect, and respond to any suspicious practices, or "red flags," that could indicate identity theft. The rule became effective on Jan. 1, 2008, with an original enforcement deadline of Nov. 1,

2008. However, the FTC has delayed enforcement of the rule several times, first to give organizations more time to get familiar with the requirements and later at the request of members of Congress.

The rule has been controversial in the medical community because many physicians believe their practices don't fit into the definition of a "creditor." However, the FTC has continued to insist that physicians are creditors because they allow their patients to defer payments over time.

The agency also has tried to assure physicians that the requirements should not be a burden and that small practices can come into compliance by implementing simple steps.

The American Medical Association and other physician groups have been lobbying to get physicians excluded complete-

ly from the requirements. On May 21, the AMA joined the American Osteopathic Association and the Medical Society of the District of Columbia in a federal lawsuit that seeks to prevent the FTC from applying the Red Flags rule to physicians.

These groups contend that not only are physicians not creditors, but that the rules would be burdensome and duplicate requirements already in place under the Health Insurance Portability and Accountability Act. "Physicians are already ethically and legally responsible for ensuring the confidentiality and security of patients' medical information," said Dr. Peter E. Lavine, president of the Medical Society of the District of Columbia, said in a statement. "It is unnecessary to add to the existing web of federal security regulations physicians must follow." ■