# Red Flags Rule Enforcement Delayed Until June

BY MARY ELLEN SCHNEIDER

The Federal Trade Commission once again has delayed enforcement of the Red Flags Rule, giving physicians until June 1, 2010, before they have to comply with new requirements aimed at preventing identity theft.

The rule, which was issued by the Federal Trade Commission (FTC) in 2007, most recently had been scheduled to go into effect Nov. 1. But this is not the first time that the FTC has delayed the enforcement date. The agency has been pushing back enforcement of the rule every few months for about a year. Most recently, the FTC issued a statement on Oct. 30 saying that it was again delaying enforcement at the request of members of Congress.

Congress has been working on a legislative solution to exempt some physician practices and other small businesses from the identity theft requirements. On Oct. 20, the House passed a bill (H.R. 3763) that would exempt physician practices with 20 or fewer employees—as well as small accounting and legal practices—from the Red Flags Rule. The Senate has yet to act on the bill.

Rep. John Adler (D-N.J.), one of the chief sponsors of the legislation, said the regulations would be burdensome and expensive for small businesses and that physician practices were not meant to be caught up in this regulation.

"The Federal Trade Commission went too far and went beyond the intent of Congress," Rep. Adler said on the House floor Oct. 20.

Under the Red Flags Rule, all creditors, including physician practices, must establish a written identify theft–prevention program to protect consumers. The Red Flags Rule requires physician offices and other health care institutions to conduct risk assessments to determine their vulnerabilities to identity theft and respond to those risks.

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The rule has raised the hackles of organized medicine. Groups such as the American Medical Association have objected, saying that it is inappropriate to classify physician practices as creditors simply because they allow patients to defer payment while the practices bill insurance companies. The Red Flags Rule also would add financial and administrative burdens on practices, the AMA said, because it duplicates existing privacy and security requirements put in place under the Health Insurance Portability and Accountability Act.

"For over a year, the AMA has continued to make the case to FTC that physicians are not creditors, and the red flags rule should not apply to them—now attorneys and members of Congress are also rightly raising concern with the FTC's broad interpretation," Dr. Cecil Wilson, the AMA's president-elect, said in a statement. "The FTC's latest delay of 7 months should give them the time they need to take a good, hard look at the rule and finally revise the list of groups to which it applies."

To see frequently asked questions, go to www.ftc.gov/bcp/edu/microsites/redflagsrule/faqs.shtm. ■

# Final 2010 Medicare Pay Tough on Some Specialties

BY ALICIA AULT

The Centers for Medicare and Medicaid Services issued the final physician fee schedule for 2010, and, as expected, Medicare reimbursement will be reduced by 21% overall unless Congress intervenes.

For some specialties, the cuts could be even deeper, thanks to a revamping of the relative value assigned to each specialty and to reductions in medical imaging payments.

But primary care physicians are pleased, as the fee schedule makes good on the agency's promise to assign a higher value to their services. Internists, general practitioners, family physicians, and geriatric specialists will see pay increases of 5%-8%. And like all physicians, primary care doctors will also be eligible for a 2% bonus payment for participating in e-prescribing and another 2% if they take part in the Physician Quality Reporting Initiative (PQRI).

Even so, they, too, will be subject to the overall reduction, mandated by the Sustainable Growth Rate (SGR) formula.

The upshot is that primary care physicians will see a slightly smaller cut than other physicians, said Dr. Ted Epperly, in an interview. Congress will most likely step in and, as it has for the past 7 years, reverse the SGR-imposed reductions, said Dr. Epperly, chairman of the board of trustees of the American Academy of Family Physicians.

He said that he does not expect the House or the Senate to take on the SGR fix as part of the health reform package because at this point, it would add too much to that plan's cost. The House has proposed a separate, standalone permanent fix, but it's not clear that bill will pass, either.

In a statement, American Medical Association President James Rohack said the fee schedule "confirms that in 60 days physicians face steep cuts of 21.2%—the largest payment cut since Congress adopted the fatally flawed Medicare physician payment formula." Dr. Rohack added that "permanent repeal of the payment formula is an essential element of comprehensive reform."

Even if Congress does find a way to avert the SGR cuts or overturn the formula entirely, cardiologists will still take a huge hit, Dr. Jack Lewin, the CEO of the American College of Cardiology, said in an interview.

To calculate this year's fees, the CMS relied on self-reported expense data based on the Physician Practice Information Survey. That survey was designed by the AMA and was supposed to make payments more accurate.

Dr. Lewin said that cardiologists must have incorrectly completed the surveys because it resulted in an 11% reduction in payment. The CMS also said it would reduce how much it would pay for echocardiography and stress testing—two of the most commonly performed in-office diagnostics. In 2010, Medicare payments for echo will be reduced by 11% and stress by 8%. The cuts are slated to be even deeper going forward.

In a surprise announcement, the CMS also said it would reduce single-photon emission computed tomography payments by 37%. The ACC collaborated on creating a new single code for SPECT and expected a phasing-in of a reduced payment. Instead, it's coming in just 1 year. The ACC hopes that this was an error, said a spokesman for the organization.

The cutbacks could cause many community-based cardiologists to close their private practices and become employees of hospitals instead, Dr. Lewin said. ■

# *Multispecialty Group Practices Feel the Recession's Pinch*

BY ERIK GOLDMAN

DENVER — Multispecialty group practice revenue dropped last year for the first time in a decade as practices across the country felt the impact of the recession, but primary care revenue appears relatively healthy.

The Medical Group Management Association's Cost Survey for 2009 showed a 1.9% decline in mean total medical gross revenue among multispecialty groups, as well as a 9.9% drop in volume of medical procedures (indicated by RVUs provided per patient) and an 11% decrease in total patient volume. Not surprisingly, bad debt from fee-for-service charges increased by 13%.

The 2009 report, released at the MGMA's annual conference, was based on 2008 data and so represents a snapshot of the early phase of the recession. Current conditions could be significantly worse, but won't likely show up until the next survey, said Dr. William F. Jessee, who presented the data and is president and chief executive officer of MGMA.

Though fully one-third of practices surveyed reported a decrease in total revenue in 2008, the news isn't all bad. Data on single-specialty groups showed some clear winners, even in these hard times. In particular, cardiologists reported a 7.9% mean increase in total revenue after operating costs. Pediatricians topped that, with a 9% increase. Family physicians reported a 2.4% mean increase.

Hardest hit were gastroenterologists, with a 5% drop in revenue. In general, the procedure-based specialties are feeling the hardest squeeze, Dr. Jessee noted.

Still, even in the sectors that have seen increases, the percentage increase in gross revenue is only a few points higher than the rising costs of staying in practice, if that much. Many practices, especially the smaller ones, are struggling. Dr. Jessee said that group practices are tightening their belts.

On average, practices reported reducing support staff costs by 1.5%, though there were no reported significant changes in number of staff members. That means only one thing: Many employees have taken pay cuts. In some cases, the doctors themselves are taking home less pay, he pointed out.

Thirty-five percent of practices have instituted hiring freezes, and 34% say they've cut operating budgets. Thirty-seven percent said that they have postponed capital expenditures. Over one-third of the practices in the survey said that they have seen an increase in the number of uninsured patients in 2008.

Solo and physician-owned small group practices have been especially hard hit by the recession, and increasingly, they are reaching out to hospitals and the large group practices for a lifeline. MGMA surveys over the last decade show clearly that America's doctors are huddling up and selling out to larger health care entities, Dr. Jessee said.

The number of MGMA member groups owned by hospitals grew by 20% during the 5-year period from 2003 to 2008, and they now comprise 10% of the organization's total membership. During that time, the average number of physicians in MGMA member group practices increased from 16 in 2003 to 19 in 2008. The number of doctors in the average hospital-owned group rose from 64 to 76, a 19% increase. "There's a big, big trend toward consolidation," Dr. Jessee said.

Not surprisingly, the economic downturn has affected MGMA itself. The organization acknowledged that attendance at this year's annual meeting—roughly 2,150 paid attendees—was down 21% from its peak several years ago. ■