DENVER MEDICAL BULLETIN
Official Publication of The Denver Medical Society

Volume 101/Number 1 January 2011

The Good News: Medicare Payment Extension and Red Flag Rule Exemption

Physicians' Medicare reimbursement received yet another last minute reprieve from an impending 25% reduction on January 1 when Congress passed the Medicare and Medicaid Extenders Act of 2010. The Act freezes physician rates at current levels through the end of 2011. It follows a one month extension that had previously been enacted to prevent cuts scheduled to take effect December 1, 2010. The estimated cost of the payment rate freeze is $14.9 billion over 10 years.

The bill also extends a number of payment policies set to expire at the end of 2010 including a 12 month extension of the current 1.0 floor on the "physician work" index used to calculate geographic adjustments to the Medicare fee schedule. Medicare relies on three factors to make geographic adjustments reflecting differences in the costs of resources needed to produce physician services that include physician work, practice expense, and medical malpractice insurance. The estimated cost of this extension is $500 million over 10 years. The exceptions process for Medicare therapy caps was also extended through 2011 at an estimated cost of $900 million over 10 years. The exceptions process allows therapy benefits for cases in which additional therapy services beyond per beneficiary payment limits for all out-patient therapy services are determined to be medically necessary. Independent laboratories will also be able to receive direct payments for the technical component of certain pathology services throughout 2011 due to an extension that is estimated to cost $100 million over 10 years.

Funds were also included to allow the Centers for Medicare and Medicaid Services (CMS) to reprocess Medicare claims back to January 1, 2010, affected by provisions of the Patient Protection and Affordable Care Act that was passed last spring with a retroactive effective date of January 1, 2010.

The AMA and all of organized medicine fought hard to achieve a minimum 12 month extension to stabilize Medicare physician payments while Congress works on a new payment methodology to replace the flawed SGR formula. Support in these efforts came from an aggressive grassroots campaign from AARP, which included over 100,000 contacts by seniors to Congressional offices as well as paid radio and print advertising, direct mail, electronic town halls, and educational efforts conducted with medical societies in several states, including Colorado where CMS Immediate Past President Mark Laitos, MD, addressed an AARP "telephone town hall" attended by approximately 6,000 Colorado seniors.

According to data from the AMA, the impact of averting the physician pay cuts from December 1, 2010, through December 31, 2011, amounts to $190 million in additional reimbursements for Colorado physicians, with an average impact of $14,000 per physician in the state. These numbers are based only on Medicare services, and do not include additional effects from private, Medicaid, and other plans that tie their payments to Medicare rates. Individual physician impacts will vary based on physicians' individual Medicare patient load and utilization. Nationally, the changes will result in a total increase in physician Medicare reimbursement of $20,490,000 or $26,000 per physician.

President Obama echoed bipartisan recognition that recurring stopgap measures to prevent reimburse-

Meaningful Use Workshop. . . . . .Page 3

ment disruptions caused by the SGR must come to an end when he said, "It's time for a permanent solution that seniors and their doctors can depend on, and I look forward to working with Congress to address this matter once and for all in the coming year." DMS will continue to work with CMS and the AMA to advocate for a permanent solution to this problem before another SGR crisis looms on December 31, 2011.

Physicians Exempted from Red Flag Rule

Physicians received additional good news from Congress on December 7 when the Red Flag Program Clarification Act of 2010 was passed, limiting the type of "creditor" that must comply with the Red Flags Rule. The bipartisan legislation clarified the Rule that requires creditors to develop identity-theft prevention and detection programs. The Rule was originally scheduled to take effect on November 1, 2008. According to the Federal Trade Commission (FTC), physicians who do not accept payment from their patients at the time of service are creditors and so must comply with the Rule by developing and implementing written identity-theft prevention and detection programs in their practices. As a result of continued discussions with the FTC and an aggressive congressional advocacy campaign, the agency delayed the original compliance deadline on several occasions, up through the end of 2010.

The new legislation defines creditors as those who regularly and in the ordinary course of business: 1) obtain or use consumer reports, directly or indirectly, in connection with a credit transaction; 2) furnish information to certain consumer reporting agencies in connection with a credit transaction; or 3) advance funds to or on behalf of a person, based on the person's obligation to repay the funds or on repayment from specific property pledged by them or on their behalf. The legislation explicitly excludes those who advance funds on behalf of a person for expenses incidental to a service that is provided. Under this definition, the bill's sponsors have stated that physicians, dentists, and other professionals would not generally meet the definition of a "creditor," and so they are exempt from the Rule's requirements. However, the bill does leave open the possibility that the FTC may revisit the issue in the future through the rule making process. President Obama was expected to sign the new bill into law before the January 1, 2011, compliance deadline.

Colorado Medicaid Proposes Payment Delays

As if Medicare challenges were not enough, Colorado physicians and other providers under the state Medicaid program will likely face additional payment delays during the first half of 2011 as a result of the state's budget crisis, which has produced a $262 million budget gap.

The plan proposed by Governor Ritter avoids Medicaid payment cuts but proposes to save an estimated $70 million in the remainder of the 2010-2011 fiscal year which ends on June 30, 2011, by further postponing Medicaid payments.

The current two week delay to Medicaid fee-for-service payments will be extended to three weeks. The Department of Health Care Policy and Financing (HCPF) will begin paying claims three weeks after the submission of a clean claim. HCPF is working on a plan to implement the timing of the payment delays for one week each month over the final three months of the fiscal year—April, May and June. Another proposal would push June managed care capitation payments into July for a savings of $15.2 million. PACE providers would be exempt from the delays during the current fiscal year but not in FY2011-12. Accountable Care Collaborative Regional Organizations that are part of the new Medicaid Accountable Care Collaborative program will be exempt from the delays during the current fiscal year.

HCPF anticipates knowing by March 2011 if these proposed delays will need to be implemented based on state revenues.

***Denver Medical Bulletin**: Naomi M. Fieman, MD, DMS President and Publisher / Michael B. Keller, MD, Chair of the Board / Lucy W. Loomis, MD, President Elect / Curtis L. Hagedorn, MD, Treasurer / Kathy Lindquist-Kleissler, Executive Director / Barbara Kamerling, Program Director. The **Bulletin** is the official publication of the Denver Medical Society, established April 11, 1871, as the first medical society in the Rocky Mountain West. Published articles represent the opinions of the authors and do not necessarily represent the official policy of the Denver Medical Society. All correspondence concerning editorial content, news items, advertising and subscriptions should be sent to: The Editor, **Denver Medical Bulletin**, 1850 Williams Street, Denver, CO 80218. Phone (303) 377-1850. Fax (303) 331-9839. web www.denvermedsociety.org. Email: dms@denvermedsociety.org. Postmaster: Send address changes to 1850 Williams Street.*

Arapahoe-Douglas-
Elbert Medical Society

Meaningful Use Workshop

Aurora-Adams County
Medical Society

Does Your Practice Have a Plan to Get Your EHR Stimulus Funds?

The metro Denver county medical societies (AACMS, ADEMS, CCVMS and DMS) and CO-REC (Colorado Regional Extension Center) invite any interested physician to attend and learn more about what you need to do to qualify for federal incentives. You may attend either of the listed programs.

When: **Tuesday, January 11, 2011** 5:30 PM – 7:30 PM
Where: P/SL Medical Center – Colorado North and South Rooms (Main floor)

When: **Tuesday, February 8, 2011** 11:30 AM – 1:30 PM*
Where: Exempla Lutheran Medical Center - Learning Center 4 & 5

(more dates to follow)

What to Bring: A billing report from your practice with your 2009 and 2010 billings and charges by payer source

Note: *Three additional topics will be addressed through the coming year:*
Selecting an EHR
Implementing an EHR
Understanding the Privacy & Security for EHR systems.

To register go to http://www.surveymonkey.com/s/PG5SY27.
(Completing the registration survey allows CO-REC to target the workshop to better meet your needs.)

COPIC is awarding 1 ERS point for participation in this activity

**Exempla Lutheran Medical Center designates this educational activity for a maximum of 2 AMA PRA Category 1 Credits TM. Physicians should only claim credit commensurate with the extent of their participation in the activity.*

This workshop and meal are provided free of charge to you by CO-REC and the generous support of the hosting hospitals.

Clear Creek Valley
Medical Society

Denver
Medical Society

Social Media: Is It a Tool or a Weapon?

Malpractice Risks

Social media (YouTube, Twitter, Facebook, MySpace, blogs, etc.) are used by doctors for doctor-to-doctor networking. However, these types of media are not appropriate for doctor-patient communications because they are too informal and lack an atmosphere of professionalism—making it easy to lapse into casual conversation and inadvertently cross the boundary between personal and professional relationships. The following recommendations are made regarding the use of social media:

1. Do not discuss individual patients, dispense medical advice, respond to clinical questions from patients, or otherwise practice medicine on these sites. These types of media do not use HIPAA-compliant secure networks, and inadvertently disclosing a patient's health information will violate HIPAA.
2. Presume that anything you say or post is in the public domain, and remember that anything typed or emailed creates a permanent record that is subject to discovery.
3. Doctor office practices should have written confidentiality and communication policies with employees that clearly forbid online disclosure or discussion of patient health information.

Your patients, on the other hand, will have no compunction about posting comments about you and your practice.

The Internet: Friend or Foe to Physicians

Physicians from coast to coast and in Canada are voicing concern over websites and medical web logs ("blogs") that publish negative comments from patients about their physicians. Other industries, such as restaurants and retail stores, have been regularly reviewed online for years. Recently, there has also been an increase in the number of websites that focus exclusively on physicians, including www.ratemds.com, www.drscore.com, and www.ratemydoctor.net.

(Continued on page 7)

Legislative Night – 2011

Tuesday, January 25, 2011, 6:00 – 8:00 pm
Cocktails and Hors d'oeuvres

Warwick Hotel – Millennium Ballroom, 1776 Grant St., Denver

We hope you will take advantage of this opportunity to meet some of the newly elected legislators as well as offering continuing legislators your insight as they face enormous challenges in the coming legislative session.

Enjoy an evening of informal discussions with the Denver metro area legislators brought to you by the four metro area medical societies (Denver, Arapahoe-Douglas-Elbert, Aurora-Adams County, and Clear Creek Valley Medical Societies) in conjunction with the Colorado Medical Society. Mention Legislative Night to the valet and receive *free valet parking*.

Please RSVP to dms@denvermedsociety.org or call us at 303-377-1850.

DMS cordially invites our Young Physicians

"Managing Social Media— The New Communication Paradigm"

Maggiono's, 500 16th Street, Denver

Wednesday evening, February 16, 2010

6:00—cocktails and hors d'oeuvres 7:00—dinner begins 7:30—program starts

You are welcome to bring a guest.

To RSVP call 303-377-1850 or email dms@denvermedsociety.org.

This program generously sponsored by THE DOCTORS COMPANY

RAINER AUDITORIUM AT
SAINT JOSEPH HOSPITAL

Chamber Music Concerts

5:30 pm—Cocktails and Hors d'oeuvres
6:30 pm—Concert
7:00 pm—Dessert

Tuesday, January 25, 2011

Encantada Quartet

Larisa Fesmire, violin
Dorian Kincaid, violin
Helen McDermott, viola
Margaret Koeppner, cello

Tuesday, March 29, 2011

Favonius Trio

Paul Naslund, trombone
John Neurohr, trombone
Greg Harper, trombone

Tuesday, May 24, 2011

Catherine Peterson, flute
Erik Peterson, violin
Margaret Gutierrez, violin
Phillip Stevens, viola
Silver Ainomãe, cello

CLASSIFIED AD

Board Certified Family Medicine Position in Westminster, CO

Join an established practice of 5 providers in a busy, growing outpatient practice. No inpatient or OB. Take call from home. NextGen's PM and EHR are fully implemented.
Forward your CV to Denise Duysen at dduysen@rockymountainprimarycare.com.
Visit our website at www.rmpc.info.

IMPORTANT REMINDER

Be sure and review your Physician Profile on the Colorado Medical Board website for completeness and accuracy as required under the Michael Skolnik Transparency Act.

Social Media and the Internet

(Continued from page 4)

These sites provide consumers with a forum for rating physicians on a variety of experience points, including bedside manners, waiting times, and treatment choices. In reviewing some of the ratings, it appears that prescriptions are a frequent source of consumer frustration, with complaints ranging from difficulty in obtaining refills to the physician's choice of medication. Other complaints center on insurance issues, like the amounts of co-pays or co-insurance. Patients also express anger over physicians who drop a particular insurance plan or choose not to contract with any insurance plan at all.

A business ratings and review site might provide a way for a physician to respond to a negative comment, but it's unlikely that the site will remove the comment. Physicians can encourage their patients to post positive comments on these websites as well, but each site determines which comments to post. The sites might even choose not to post positive comments-especially those they identify as originating from the physician's office computer.

In the March 2007 issue of *Plastic Surgery News,* Neal Reisman, MD, JD, a practicing plastic surgeon in Houston, states, "Patients who use the internet to damage a plastic surgeon's practice usually have one of two motives: They are angry over their real or perceived treatment by the physician or staff and feel compelled to lash out in any manner at their disposal, or they have demanded a refund and/or other financial compensation for work they deem to be substandard-contrary to objective standards, and they want to exact revenge in a public forum when their demands are not met." Dr. Reisman adds, "The anonymity of blogging and the difficulty in assigning legal responsibility, or what should be held responsible, make it hard to hold accountable the people who post negative statements and the entities that post them."

Many physicians wonder how these sites can legally post such inflammatory remarks against a physician, but the protections available to them include the First Amendment. There is also 47 USC Section 230, which provides federal immunity to any cause of action that makes service providers liable for information originating with a third-party user of the service. (*See Zeran v. American Online, Inc*., 129 F. 3d 327, 330 [4th Cir. 1997].)

A very practical concern when trying to fight a blog or a business rating and review site is the fact that responding to a negative comment may just draw more attention to it and increase its online profile. Having said that, however, there is an ever-growing interest in the development of internet law to somehow control "consumer" comments that might be proven in a court of law to be defamatory.

Until that time comes, what can physicians do about these reviews?

Provide a forum for patients to address their concerns, and encourage patients to use it. Patients who have no other avenue for expressing their concerns and frustrations might turn to review sites. A simple way to encourage feedback in your office is to place a suggestion box in a convenient location. At the end of each visit, ask if the patient or family has any concerns or questions.

Develop a policy for handling complaints. Complaints should be reviewed carefully and routinely and responded to in a timely manner.

Utilize a patient satisfaction survey. Patients can rate their encounter with your practice and provide you with valuable feedback about both you and your staff.

Review websites regularly. Use a search engine, such as Google, to identify sites where your name or the name of your practice can be found. Review these websites for positive and negative comments, and learn from both.

Design your own website. Patients are searching the internet for physicians. Creating your own website gives you a chance to showcase your education, certifications, practice philosophy, and personality.

Buy domain names. For a relatively inexpensive price, you can buy all of the domain names that are close to your name or your practice's name. (Godaddy.com is an example of where you can buy domain names.)

Remember that image control begins with the patient's first encounter with your office. Generally, that means the patient's first impression of you is made by your office staff, so make sure that it is a good impression. Encourage your staff to make eye contact with the patient and to offer a friendly greeting. Educate your staff on communication techniques. The internet is expanding from being not only a source of consumer information about businesses but also the preferred method of obtaining information about physicians. While you may not be able to control negative information on blogs or physician review sites, you can monitor the sites as you might monitor your own credit report. Take charge of your image by creating your own website. Finally, provide high-quality care in a manner that promotes patient satisfaction.

By David B. Troxel, MD, Medical Director, Board of Governors; Sandra Shalometh, MA, MSN, RN, CPHRM; and Robin Diamond, JD, RN, AHA Fellow-Patient Safety Leadership, all with The Doctors Company.

DMS will be offering a series of programs on social media for Young Physicians sponsored by TDC. ***(See page 5 for the first in the series.)***