

# Cardiologists Continue To Fight Medicare Cuts

BY ALICIA AULT

**H**uge cutbacks in Medicare payment rates will likely cause many community-based cardiologists to close their private practices and become employees of hospitals instead, Dr. Jack Lewin, CEO of the American College of Cardiology, said in an interview.

Although a federal judge refused to hear a suit challenging the 2010 Medicare payment rates for cardiologists, the ACC said it will continue to fight what it considers to be an excessive and arbitrary reduction in fees.

The ACC filed a complaint in late December in the United States District Court for the Southern District of Florida, alleging that Health and Human Services Secretary Kathleen Sebelius illegally adopted the rates, using invalid survey data. Only a federal court would have jurisdiction over Medicare rates; the suit was filed in Florida because several of the plaintiffs reside in the state.

Among other issues, the ACC said that the Physician Practice Information Survey, which was used to collect practice expense data to set the 2010 rates, was inaccurate because it collected data from only 55 cardiologists, too few to be representative of the nation's cardiologists, alleged the suit.

The Department of Justice filed a motion to dismiss the suit, arguing that the Centers for Medicare and Medicaid Services' administrative expertise outweighed the court's judgment, and that the Florida district did not have jurisdiction.

Judge William Dimitrouleas agreed, and refused to hear the suit on Jan. 12.

The ACC was "deeply disappointed" by the refusal, Dr. Lewin said in a statement. He added, "What is deeply troubling about today's ruling is that it sets the precedent that CMS has complete and unchecked control over physician reimbursement for patient care even where its determinations are based on faulty data."

Dr. Lewin said cardiologists aren't the only ones who will be affected. "Today's ruling should be a warning to all physicians that anyone is susceptible to falling into CMS's crosshairs unfairly and without recourse," he said.

The ACC has not given up its fight, although it may now move from the courts back into Congress.

Medicare payments for all physicians are slated to be cut by 21% in 2010, as required by the sustainable growth rate (SGR) formula. Reductions could be as high as 30%-40% for cardiologists.

Fees are to be cut by 11% on average (in addition to the 21%), plus there will be reductions in imaging payments that will disproportionately affect cardiologists.

Currently, the mandated 21% SGR reduction is on hold until March 1. Congress approved a 2-month delay, tucking it into an appropriations bill for the U.S. Defense Department, which was signed

into law by President Obama in late December.

However, cardiologists were hit with other reductions starting Jan. 1. Medicare payments for echocardiography are being cut by 11% and for stress testing by 8%. The cuts are slated to be even deeper going forward.

The agency also is slashing single-photon emission CT 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.

Finally, starting Jan. 1, cardiologists and other specialists were no longer allowed to bill Medicare using inpatient or outpatient consultation codes. The CMS eliminated the codes as part of the 2010 fee schedule.

The American Association of Clinical Endocrinologists, the American Gastroenterological Association, and other providers have petitioned Congress to adopt an amendment introduced by Sen. Arlen Specter (D-Penn.) to delay that elimination for a year. The amendment was attached to the Senate health reform bill. At press time, House and Senate Democrats were still in negotiations over what would be included in the final health reform package.

In turn, that will reduce access to cardiologists and increase Medicare costs because hospital-based procedures are more expensive, he said. These are unintended consequences of "bad public policy," Dr. Lewin said.

Indeed, practicing in the community is getting a lot tougher, said Dr. Tom Hill, a cardiologist in an eight-physician Muskegon, Mich.-based practice.

The cuts will "have a significant impact on our practice," Dr. Hill said in an interview. He noted that Medicare revenue has already been flat to declining for the last decade, while expenses have been rising.

He and his partners are looking at options for reducing overhead, including eliminating staff positions. They've already instituted cuts in pay and benefits, and they may also have to reduce services.

For instance, the practice conducts 20-30 echocardiographic and nuclear stress tests at its office daily. The nuclear imaging reductions could amount to a 35% cut in income, and further cuts will come from the echo reductions.

More cardiologists in his region are joining hospitals to cope, he said.

"In some ways we're victims of our own success," Dr. Hill said, noting that cardiologists have made strides in reducing cardiovascular morbidity and mortality. And yet, they are being repaid with lower fees, he said.

Across-the-board reductions don't take appropriateness or quality into account, Dr. Hill said. That does not change the incentives. "People already ordering tests inappropriately will just order more," he said. ■



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### Clinic Patients Have Less Debt

Patients at "safety-net" clinics in New Orleans have fewer problems affording care and fewer instances of insufficient care than most U.S. adults, even though the clinic patients are disproportionately low-income and uninsured, the Commonwealth Fund reported. According to the group's researchers, this success indicates that the post-Katrina primary care program, which relies on a network of government-funded clinics, could serve as a national model for providing primary care to low-income patients. In a survey of the 27 New Orleans clinics, the nonprofit group found that patients at these facilities were much less concerned about affordability of care than were other U.S. adults and reported less medical debt and fewer unpaid medical bills. They also said they received more efficient care: Only 4% of clinic patients reported getting duplicate medical tests or being told results were delayed or missing, compared with one-third of the general U.S. adult population.

### IBM Drops Copays for Primary Care

IBM said it will no longer require copayments or deductibles from U.S.-based employees getting fee-for-service primary care, making it one of the first U.S. companies to cover 100% of primary care costs through health insurance. Visits to in-network internists, family physicians, pediatricians, and general practitioners qualify for full coverage, the company said. The new benefit applies to about 80% of IBM's approximately 110,000 U.S. employees. The remaining IBM employees in this country participate in HMOs that already provide free or low-cost primary care.

### MedPAC Pushes for Pay Increases

Most Medicare beneficiaries are able to get a timely appointment when they need one, according to an annual survey conducted by the Medicare Payment Advisory Commission. In fact, Medicare beneficiaries report better physician access than the privately insured population, according to the findings, which were based on a poll of 4,000 Medicare beneficiaries and 4,000 privately insured individuals aged 50-64 years. Of note, both groups reported that finding a new primary care physician was more difficult than finding a new specialist. In related news, MedPAC voted last month to request that Congress approve a 1% increase in the Medicare physician payment rate for 2011.

### Concierge Medicine Is Growing

The number of concierge practices has grown to more than 5,000 nationwide, according to a report from the National Center for Policy Analysis.

The private primary care delivery model also has expanded from a high-end option for wealthy people to include uninsured patients who pay a flat fee to access primary care services they might otherwise lack, the report said. In addition, physicians have opened concierge practices that supplement Medicare and other insurance coverage. The concierge model allows physicians to experiment with different ways of charging patients, such as billing for telephone and e-mail consultations, the analysis noted. "Innovative practices now offer many different kinds of bundled prices and solutions—for those with or without insurance, for the middle income or the wealthy patient," report author Devon Herrick said in a statement.

### Advantage-Plan Gaffs Are Unclear

The Centers for Medicare and Medicaid Services has little information about the number of beneficiaries who have experienced inappropriate marketing of Medicare Advantage (MA) plans, despite a high number of complaints and questions from lawmakers about the problem, a Government Accountability Office study found. The CMS took compliance and enforcement actions for inappropriate marketing against at least 73 organizations that sponsored MA plans from January 2006 through February 2009, the study said. The government actions ranged from warning letters to fines and suspensions of marketing and enrollment. However, it's not clear how many MA plans engage in inappropriate marketing or how many beneficiaries have been affected, the report said. The GAO recommended that the CMS gather more information on the extent of inappropriate marketing, which can include providing inaccurate benefits information and conducting prohibited marketing practices.

### No Smoke, No Device Authority

The U.S. District Court for the District of Columbia ruled that the Food and Drug Administration does not have the authority to regulate so-called e-cigarettes—electronic cigarettes—as a drug-device combination. E-cigarettes are battery-powered devices that deliver vaporized doses of nicotine to be inhaled. The FDA had detained multiple shipments of e-cigarettes imported by one company, Smoking Everywhere, saying that they were unapproved drug-devices. Judge Richard Leon disagreed with the FDA's justification for its action. However, he did not address whether the agency has authority to regulate e-cigarettes under the Family Smoking Prevention and Tobacco Control Act, which President Obama signed into law last June.

—Jane Anderson