

# Payment for E&M to Go Up

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ical Association is betting that the change will make it less expensive for Congress to repeal the SGR, which would also benefit physicians.

The removal of drugs from the SGR is one of several changes included in the 2010 Medicare Physician Fee Schedule proposed rule, published in the Federal Register on July 13. A final rule is expected in November.

Even if enacted, the proposal will not stop the 21.5% pay cut slated to go into effect on Jan. 1, 2010. However, several physicians interviewed said they were hopeful that Congress would step in again this year to roll back this cut,



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DR. EPPERLY

whether through health reform legislation or in a separate bill.

While the 21.5% cut would affect physicians across the board, the rest of the fee schedule proposal affects physicians quite differently depending on their specialty. For example, the proposed rule includes plans to eliminate the use of consultation codes, increase payments for evaluation and management (E&M) services, and update the practice expense component of physician fees based on new survey data.

Under the proposal, the CMS would eliminate the use of all consultation codes except telehealth codes starting Jan. 1. At the same time, the agency would increase the work relative value units for new and established office visits, increase the work values for initial hospital and initial nursing facility visits, and incorporate the increased use of these visits into the practice expense and malpractice relative value unit calculations.

"We believe the rationale for a different payment for a consultation service is no longer supported because documentation requirements are now similar across all E&M services," the CMS wrote in the proposed rule.

Also included in the proposed rule is an increased payment for the Welcome to Medicare physical, which focuses on primary care, health promotion, and disease prevention.

The CMS estimates that the combination of the various proposals would mean a 6%-8% payment increase for primary care physicians, excluding the impact of the 21.5% cut.

"This is very welcome news to primary care physicians and is long overdue," said Dr. Ted Epperly, president of the American Academy of Family Physicians.

If the 21.5% cut is stopped, 2010 could be a good year for primary care, Dr. Epperly said. In addition to the 6%-8% increase in the fee schedule proposed rule, primary care physicians could gain 5%-

10% in payments through health reform legislation pending in Congress.

These increases will be critical for primary care physicians in practice today who need money to invest in changing their practice in order to provide care under the medical home model. "It provides the fuel for transformation," Dr. Epperly said.

Equally important, he said, is that increasing the payments sends the message to medical students that primary care is a viable field and that they don't have to go into subspecialties to earn a living.

Conversely, subspecialists would lose out under the schedule proposal, experiencing either cuts or only small increases.

The combined proposals will result in an average 11% cut in Medicare payments for cardiologists, in part due to the elimination of consultation codes, but also because of practice expense changes based on new survey data. The American College of Cardiology criticized the CMS for proposing significant payment cuts based on a small amount of survey data.

"These proposed cuts are based on the incorporation of a few esoteric pieces of data into a complex formula," Dr. Alfred Bove, president of the ACC, said in a statement. "The focus on this formula completely ignores the very important issues of access that are certain to be created by these huge slashes in payment."

The combined proposals will result in a 3% increase in payments to dermatologists on average, according to CMS estimates that do not include the 21.5% payment cut. Dermatologists end up with a positive update mainly due to increases in the practice expense values based on new survey information.

The cut represents a dangerous precedent because it pits one group of physicians against another by taking money away from specialists to provide additional compensation to primary care, said Dr. Sharad Lakhanpal, clinical professor of internal medicine at the University of Texas Southwestern Medical School in Dallas and chairman of the government affairs committee at the American College of Rheumatology.

The fee schedule proposal also includes policy changes related to imaging. The proposed rule would cut payments for certain high-cost imaging services by assuming that imaging equipment priced at more than \$1 million is used 90% of the time, compared with the current assumption of use at 50%.

The proposed change is based on studies from the Medicare Payment Advisory Commission (MedPAC) showing that the use of high-cost imaging equipment is higher than previously thought. For example, MedPAC found that in certain markets, MRIs were being used an average of about 46 hours a week, or 92% of a 50-hour workweek.

The agency said it will continue to examine the data for equipment valued at less than \$1 million but is not proposing a change at this time. ■



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## Hospitals OK Cuts for Reform

Three major hospital organizations, including the American Hospital Association, have agreed to accept \$155 billion in reimbursement cuts for hospitals over the next 10 years as part of health care reform legislation. In a deal negotiated by key Senate lawmakers and announced by Vice President Joe Biden, hospitals would see reductions in their Medicare and Medicaid fees, in addition to \$50 billion in cuts in the programs that help pay for care to the uninsured. Some of the cuts would take effect only if reform reduces the uninsured population. The AHA suggested that the deal was as far as hospitals could go: Reimbursement couldn't be cut further "without damaging hospitals' ability to care for their communities." And two groups that didn't take part in the negotiations, representing public hospitals and children's hospitals, warned that cuts—if not carefully crafted—could hurt institutions caring for large numbers of Medicaid patients.

## FDA Seeks Tobacco Comments

The Food and Drug Administration wants public input on how to implement its new authority to regulate tobacco products. In a Federal Register notice, the FDA said it will rely on the public comments when implementing the new Family Smoking Prevention and Tobacco Control Act and when establishing the FDA Center for Tobacco Products. The agency said it's particularly interested in suggestions for reducing tobacco use and protecting public health, but that remarks on any aspect of its new regulatory authority are welcome. Comments will be accepted until Sept. 29, and all will be posted online. They may be submitted at [www.regulations.gov](http://www.regulations.gov), the FDA said.

## Malpractice Payments Are Down

Medical malpractice payments were at record low levels in 2008, according to an analysis by the consumer-advocacy group Public Citizen. For the third straight year, 2008 saw the lowest number of malpractice payments since the federal government's National Practitioner Data Bank began tracking such data in 1990, the group said. The data showed that 11,037 payments were made last year, which Public Citizen said was nearly one-third lower than the historical average. The monetary value of payments was either the lowest or second-lowest since 1990, depending on how inflation was calculated, the group said. The total cost of all malpractice insurance premiums fell to much less than 1% of the total \$2.1 trillion in annual health costs in 2006 (the most recent year for which full data were available). The cost of actual malpractice payments to patients fell to 0.2% of overall health

costs, the group said. David Arkush, director of Public Citizen's Congress Watch division, said in a statement that the numbers indicate that many victims of medical malpractice receive no compensation for their injuries.

## Environmental-Health Tool Launched

The Centers for Disease Control and Prevention has launched an online tool so health professionals, scientists, and—for the first time—the public can track environmental exposures to pollutants and chronic health conditions together. The Environmental Public Health Tracking Network combines nationwide data on air and water pollution and conditions such as asthma, cancer, childhood lead poisoning, and heart disease. The CDC said the network should reveal links between environmental and health conditions. The tracking tool is located at [www.cdc.gov/ephtracking](http://www.cdc.gov/ephtracking).

## FTC Wants 'Pay-for-Delay' Outlawed

A new law to eliminate deals in which pharmaceutical companies agree with their competitors to keep low-cost generic drugs off the market could save consumers and the federal government \$3.5 billion a year over the next decade, according to Federal Trade Commission Chairman Jon Leibowitz. In a speech, Mr. Leibowitz said that stopping these "pay-for-delay" deals is one of the FTC's top priorities, although a series of recent court rulings has allowed some of the arrangements to continue. For instance, the U.S. Supreme Court recently declined to hear a case brought by consumers and health plans challenging a \$398 million payment by drug maker Bayer AG to Barr Laboratories Inc. to settle the companies' patent dispute over a generic version of the antibiotic Cipro (ciprofloxacin).

## Many Young Adults Uninsured

Approximately 5 million U.S. adults aged 19-23 years had no health insurance in 2006 for the entire year, and 30% said they didn't think it was worth the cost, according to the Agency for Healthcare Research and Quality. The AHRQ found that 46% of uninsured young adults worked full-time and 26% worked part-time. Only 19% of those uninsured throughout 2006 were full-time students, the agency said. In addition, 19- to 23-year-olds who were uninsured for the entire year were only about half as likely as those who had insurance part of the year to have a usual source of care, such as a family doctor—just 36% of the wholly uninsured reported a usual source of care. In fact, about two-thirds of the young adults who went without insurance for the whole year never saw a doctor at all, the AHRQ found.

—Jane Anderson