Welcome to *Washington Update*, the weekly e-newsletter on the latest health care happenings in the nation's capital that affect APG's members.

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Achieving Greater Value In Both Medicare Advantage And Traditional Medicare Focus Of APG Meetings With Congressional Staff

More value-based care can still be achieved in both the traditional Medicare program and Medicare Advantage, APG argued this week as it met with congressional staff from key committees on the eve of Congress's pre-election recess.

Speaking with the staff of congressional leaders – Senate Majority Leader Chuck Schumer (D-NY), Speaker Mike Johnson (R-LA) and other key staff from the Senate Budget and House Ways & Means committees – APG pressed the case for sustaining the lagging move to value-based care in the traditional fee-for-service Medicare program. Among the reforms that APG said were needed were these:

- **Maintaining Medicare's incentives** for providers to enter alternative payment models, but through a longer-term approach than annual extensions of the now-small Advanced Alternative Payment Model bonuses (see item below). Congressional staff asked APG to submit ideas for overhauling these and other provisions of the MACRA law, a discussion likely to continue in Congress over the next year and beyond.

- **Building on past successes** to achieve even more in the future. An example APG cited was the ACO REACH program's High Needs Population model, which allows severely chronically ill older patients to remain at home with intensive support in lieu of undergoing hospitalization. The ACO REACH program is currently scheduled to end in 2026.

- **Creating alternatives** for small and rural physician practices entering ACOs and other value-based care models, but which have limited resources for meeting requirements to use certified electronic health record systems in reporting digital quality measures. Congressional staff asked APG to submit ideas to better support these smaller practices, a crucial bipartisan goal.

Medicare Advantage improvements: APG staff also discussed needed improvements in Medicare Advantage (MA) to augment physician groups' ability to provide accountable care. Meeting with bipartisan staff from the Senate Finance Committee and the office of Sen. Bill Cassidy (R-LA), a gastroenterologist, APG stressed the following:

- Congress should continue to **monitor the impact** of the phase-in of the new MA risk adjustment model, which is already producing revenue cuts for physician groups treating large numbers of MA patients. Revenues to support care coordination and other value-added services are diminishing, even as some MA plans are likely to cut some supplemental benefits and increase enrollees' cost-sharing.

- Many of these supplemental benefits, such as for hearing, vision, and dental care, **are crucial** for maintaining enrollees' health, whereas others such as cash cards have less benefit. The Centers for Medicare & Medicaid Services (CMS) should **collect more data** on all supplemental benefits and make the results transparent.

- Practices often attacked as aiding unnecessarily intensive coding or "upcoding" actually have great value to physician groups, but **guardrails** should be installed around their use. Examples are health risk assessments and chart reviews performed by physician groups and their care teams. These

tools are essential to identify conditions such as behavioral and mental health and substance abuse that may be difficult to detect in a relatively brief office visit. APG has recommended that, to reduce concerns about upcoding, any new codes identified through these processes should be reflected **in an auditable "care plan"** noted in patients' electronic health records.

- Prior authorization in MA can be a serious headache for patients and providers, but it is a **critical utilization management tool** for APG members operating in delegated relationships with MA plans. An example APG cited was prompting patients and prescribers to use equally effective biosimilars in lieu of far more costly biologic drugs. **Multiple improvements** can still be made, such as establishing more "gold card" programs for physician groups that have demonstrated their commitment to providing evidence-based and cost-effective care.

Congressional staff invited APG to submit further information in all the areas cited above. APG will continue to work closely with these and other congressional offices to amplify the views of APG members.

With Fiscal 2024 Federal Funding Now Extended To Mid-December, Battles Over 2025 Spending Loom Post-Election

The stopgap spending plan that cleared Congress and was signed into law this week extended fiscal 2024 funding until December 20, thus averting a partial government shutdown. But it also postponed until the post-election lame duck session decisions on key health care issues for fiscal 2025 – most notably, efforts to roll back a portion of the proposed 2.8 percent cut in the Medicare Physician Fee Schedule that CMS is likely to finalize soon.

Appropriations committees in the House and Senate have now set the so-called "top line" numbers for fiscal 2025 spending in various categories. With those in place, negotiations will now continue on specific spending provisions, such as modifications of the fee schedule cuts, extension of Medicare's telehealth flexibilities adopted during the pandemic, and extension of the 1.75 percent Medicare bonuses for clinicians participating in Advanced Alternative Payment Models beyond the current performance year. APG will continue to follow and report on the negotiations as they proceed.

Lawmakers Probe Causes Of Massive Summertime Tech Outage That Broadly Disrupted Sectors Including Health Care

Past practices of the cybersecurity company CrowdStrike came under sharp criticism this week as a House panel examined the massive information technology outage that occurred last July 19. The outage, which occurred when the company inadvertently released a faulty software update, shut down millions of computers that use Microsoft software – disrupting critical information flows at multiple U.S. health systems, federal agencies, major airlines, and beyond. The episode raised concerns that foreign-based cyberattackers could be inspired to launch a comparable multi-sector cyberattack.

Under questioning from members of the House Committee on Homeland Security, a key CrowdStrike official told lawmakers that the company has since revised many of the procedures that allowed the flawed software updates to cause the massive outage, such as distributing them to all its customers at once. The official, CrowdStrike senior vice president Adam Meyers, said the company no longer does that, and has also adopted more robust testing of updates in advance of their release.

According to CrowdStrike, its cybersecurity software is used on more than 1 million individual devices in health care organizations throughout the United States. Health systems including Mass General Brigham were among those forced to temporarily close ambulatory clinics and cancel nonurgent surgeries and procedures amid the outage.

Separately, the hearing came as key Senate Democrats unveiled legislation that would direct the Department of Health and Human Services to create and enforce tough minimum cybersecurity standards for health care providers, health plans, clearinghouses and their business associates.

In Case You Missed It

- A cloud hanging over the 2023 performance of multiple Medicare Shared Savings Program participants was lifted this week when CMS released a final rule holding them harmless from the effects of a multibillion-dollar catheter billing fraud (see *Washington Update,* July 12). By raising reported

spending for their attributed beneficiaries, the so-called "significant, anomalous, and highly suspect billing activity" could have jeopardized any shared savings of ACO participants. CMS is now expected to apply similar rules for ACO REACH. APG generally supports the CMS plan, but prefers a different approach that would adjust billing codes regionally rather than nationally to account for the regional nature of the apparent fraud.

- Pharmaceutical manufacturers and other plaintiffs can proceed with their lawsuit challenging the constitutionality of the Medicare Drug Price Negotiation Program. The Sept. 20 decision by the U.S. Fifth Circuit Appeals Court reversed a lower court ruling that dismissed the case on technical grounds last February. The suit is one of nine brought against the drug price negotiation program, most of which other federal district courts have so far dismissed.

- The phase-in of the revised risk adjustment model in Medicare Advantage will actually lower the ratio of the government's per-beneficiary payments to Medicare Advantage plans versus per-beneficiary spending on enrollees in traditional fee-for-service Medicare, a new Berkeley Research Group (BRG) study finds. Employing a different analytical model from that used by the Medicare Payment Advisory Commission (MedPAC), the study predicts that per-beneficiary MA spending will be 97 percent of fee-for-service spending for an equivalent population in 2024, and may decline to 91 percent in 2026. By contrast, MedPAC shows spending between the two arms of Medicare as being roughly at parity. BRG says MedPAC's approach "will not capture absolute changes in MA plan payments during a risk-adjustment-model transition."

- The three largest pharmacy benefit managers (PBMs) and their affiliated group purchasing organizations inflated insulin prices through anticompetitive practices, the Federal Trade Commission alleges in a lawsuit filed on September 24. The agency also warned that pharmaceutical manufacturers "should be on notice" that they also could face enforcement actions "over similar conduct." In response, the trade organization representing PBMs accused the FTC in a news release of "running a biased investigation with predetermined anti-industry outcomes."

- Building on previously announced policy allowing states to use Medicaid funds to pay health care providers for providing guidance on firearms safety, the Biden administration said this week that it would "proactively raise this clarification with states" and "explore how best to convene state governments and health care providers on incorporating

Medicaid benefits into violence prevention programs."

APG Announcements And Offerings

- REGISTRATION IS OPEN! - **APG's Fall Conference 2024 - Health Care Strong: Embracing Change and Thriving in Uncertain Times - will be held November 11 – 13 in Washington, DC.** Don't miss our superb lineup of speakers and unparalleled networking opportunities. Early Bird savings end on 9/30, so register today!

- The next APG Hosted Webinar, **"Intersecting Clinical Documentation Improvement (CDI) and Technology to Positively Impact Risk Adjustment and Patient Outcomes" will take place on Thursday, October 3, 2:00-3:00 pm ET.** The webinar will be presented by Episource. For more information, including the learning objectives and speakers, click here. Please register here.

- Want to get more involved in APG's Federal advocacy efforts? Join APG Advocates today.

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