

***Government Affairs Committee (GAC)***

***e-newsletter***

***Issue #15 –August 2013***

One of the strategic goals for our committee is to improve communication to the broader ASCLS membership and to provide a more consistent face to our members. The GAC e-newsletters are also available on the ***ASCLS Advocates for You*** section of the ASCLS website.

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**Center for Medicare and Medicaid Services (CMS) July 19, 2013 Proposed Rule**

The GAC would like to call your attention to the current issues which have the potential to significantly impact clinical laboratory reimbursement. While these topics specifically apply to Medicare reimbursement, we know that all health care insurance payers, including private payers and the Medicaid program, tend to follow Medicare’s lead on reimbursement decisions Therefore these issues have the potential to impact our profession significantly.

In June we reported to you that the Department of Health and Human Services’ (HHS) Office of Inspector General (OIG) had just released a report “*Comparing Lab Test Payment Rates: Medicare Could Achieve Substantial Savings”*. The report, recommends that the CMS seek legislation that would allow it to establish lower payment rates for lab tests and consider seeking legislation to institute competitive bidding, co-payments and/or deductibles for lab tests. The analysis of 20 high volume laboratory tests showed an opportunity to lower reimbursement by $910 million per year (a 38% reduction). The analysis is one-sided and does not reflect those tests which would result in higher reimbursement if the same analysis was made for all tests on the fee schedule. CMS stated that it is exploring whether it has authority under current statute to revise payments for lab tests consistent with OIG’s recommendation and that a proposal to establish “deductibles and coinsurance” for lab tests is not included in the fiscal year 2014 President’s Budget.

The link to the entire OIG report is at <http://oig.hhs.gov/oei/reports/oei-07-11-00010.pdf>

The first set of potential issues relates to the Notice of Proposed Rulemaking from CMS on July 19, 2013. The CMS proposal can be viewed at the following website: <http://www.federalregister.gov/articles/2013/07/19/2013-16547/medicare-program-revisions-to-payment-policies-under-the-physician-fee-schedule-clinical-laboratory#h-169> The proposed rule contain three potential threats to current laboratory reimbursement and are presented below.

1. **Technology adjustments to the Clinical Laboratory Fee Schedule (CLFS)**

CMS is proposing a process under its existing authorities in 1833(h)(2)(A)(i) that would allow for the systematic examination of payment amounts.  This examination would seek to identify those codes that had undergone “technological changes” affecting the price of the test.  CMS cites the increased use of point of care testing, genetic and genomic testing, and laboratory developed tests as rationale for developing this process. Under its proposal CMS would review all CLFS codes over a five-year period, beginning with the oldest codes, reviewing a portion of the total codes each year and making appropriate adjustments.  After the initial review of the codes, CMS will allow the public to nominate codes for review; however, these codes must have been on the CLFS for at least five years.  Public nominations must include sufficient rationale describing the technological changes and how those changes affect payment and delivery. Here again, the concern is that the proposed methodology could result in cherry-picking to address only tests for which significant reduction in reimbursement is deemed possible. The tests that have been on the fee schedule the longest include many of the automated tests that due to technology and automation are likely to be reduced when evaluated. Many tests that we believe should require an upward adjustment are newer to the CLFS and thus may be delayed or never addressed.

1. **Bundling of hospital outpatient laboratory testing into overall outpatient reimbursement.**

In addition to its proposal to overhaul the rate-setting process under the CLFS, CMS proposed in the CY2014 Hospital Outpatient Prospective Payment System (OPPS) Notice of Proposed Rulemaking to bundle clinical laboratory payments into the OPPS payments. This would have a significant impact on hospital laboratory revenue as all tests, with the exception of molecular testing and those tests ordered as “lab only” visits would no longer be billed and reimbursed separately. They would be bundled into the overall outpatient procedure/visit. Concern is also that it is unlikely that the reimbursement for the bundled payment will be adjusted upward to compensate for this change.

1. **Significant reduction in the technical component of anatomic pathology testing on the physician fee schedule.** Another component to the proposed rule is an update to payment policies and payment rates for services furnished under the Medicare Physician Fee Schedule (PFS). Effective January 1, 2014 CMS proposes reductions in the technical component (TC) of 40 pathology codes it described as misvalued so they are reimbursed at the same rate as currently used for hospital outpatients. These reductions would be significant, as much as 80%. For physicians, the cuts included in the proposed 2014 PFS rule primarily impact technical component payment and global payment for pathology services performed on non-hospital patients. Professional components, with one exception are basically not impacted or have a small 1-2% adjustment.

GAC is discussing all of these issues and ASCLS will be providing written comments before the September 6 deadline. We also send you comments that you can submit to CMS. In addition, Elissa Passiment, Don Lavanty and Patrick Cooney plan to meet with CMS to share our concerns and offer alternatives. Patrick and Don will also be in contact with Congressional legislators to determine the reactions and thinking of Congress about these developments.

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**Fixing the Sustainable Growth Rate (SGR) –**

In addition to the above, fixing the SGR also has the potential to reduce clinical laboratory reimbursement from Medicare. On July 30, 2013, the House Energy and Commerce committee passed a bill that would provide a permanent fix to the physician payment methodology, known as the Sustainable Growth Rate (SGR). The SGR is the formula CMS uses to determine reimbursement rates for physicians accepting Medicare patients. The committee’s bill would make changes in three phases:

* a period of payment stability and development of an improved fee-for-service program
* applying quality measurement to payments
* an “opt-out” provision to allow providers to move to an alternative payment model, such as an accountable care organization or a patient-centered medical home.

The period of stability would call for some small increase in payments (likely 1%) during the first few years, with a possible differential for primary care physicians. What has not yet been defined is how the fix would be paid for and that is a concern for the clinical laboratory because recent history tells us that Congress keeps cutting us to pay for such fixes.. The Congressional Budget Office now estimates a fix will cost about $139 billion over the next decade. Since Congress is now on its 5-week break, the next steps in the process will occur in September when our legislators return to Washington DC.

ASCLS will be watching potential legislative action and paying particular attention to how the fix might impact laboratory reimbursement levels.

**GAC 2013-2014 Regional Liaisons**

For the coming year the following GAC committee members have been assigned to be your regional liaisons. They will be communicating with your state GAC liaisons and our ASCLS membership.

***2013-2014 assignments:***

*Region I – Leslie Martineau*

*Region II – Kyle Riding*

*Region III – Angela Phillips*

*Region IV – Linda Goossen*

*Region V - Lori Murray*

*Region VI – John Koenig*

*Region VII – Becky See*

*Region VIII – Debbie Shell*

*Region IX – Donna Reinbold*

*Region X – Josh Pulido*

*Student and New Professional Liaison - Theresa Fruehling*

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