



College of American Pathologists

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Advancing Excellence

TO: Intersociety Pathology Council

FROM: Thomas M. Sodeman, MD, FCAP
President, College of American Pathologists

DATE: February 8, 2006

RE: College of American Pathologists - Report

FEDERAL and STATE ADVOCACY

Medically Unbelievable Edits

The College, in coalition with national and state pathology societies, is pressing the Centers for Medicare and Medicaid Services (CMS) to withdraw proposed severe limits on allowable units of service under Medicare.

The CAP and state and national pathology leaders have been conferring through conference calls in recent weeks to coordinate advocacy efforts, including a coalition letter to CMS in opposition to the units of service limitations, known as "medically unbelievable edits" (MUEs). In the series of calls, CAP President Thomas M. Sodeman, MD, worked with leaders of the Association of Directors of Anatomic and Surgical Pathology, Association of Pathology Chairs, American Pathology Foundation, the United States and Canadian Academy of Pathology and American Society for Clinical Pathology, American Society of Cytopathology, Association of Molecular Pathology and the National Association of Medical Examiners, as well as presidents of state pathology societies.

In their letter to CMS Administrator Mark McClellan, the groups will convey a unified message that the edits are grossly out of synch with standard medical practices and contradicted by abundant clinical evidence. The College is working with its scientific resource committees and coalition partners to gather clinical evidence for use in the response to the MUE proposal. The CAP also is expressing its concerns to Congress about the edits and the process CMS used to bring the MUE proposal forward.

The proposed edits, whose use will result in automatic denials of all claimed units in excess of the criteria units of service ceiling, are far-reaching: They affect the majority of pathology services and include CPT codes for all other specialties. While the proposed limit of two units for CPT 88305 (Level IV—Surgical Pathology, Gross and Microscopic Exam) has drawn the greatest concern and attention in the pathology community, the MUEs will affect all areas of pathology, including the clinical side.

The College, in a December 21 letter to McClellan, characterized the MUE proposal as "seriously flawed" and called on CMS to withdraw the plan for review by providers and others. The College pointed out that the volume of affected codes—more than 1,000—demands more review time than the 60-day comment period CMS has provided. The due date for response is March 20, 2006

The MUE proposal also is drawing fire from the American Medical Association. In a January 18 letter to McClellan, AMA Executive Vice President and Chief Executive Michael D. Maves, MD, called upon CMS to delay the proposed edits for six months, until January 2007.

Medicare Physician Fee Schedule

On February 2, the House by a narrow margin gave final approval to budget reconciliation legislation, S. 1932, that would maintain 2006 Medicare physician fees at 2005 levels and, as a result, reverse a 4.4 percent cut that began January 1. President Bush is expected to sign the bill.

The 4.4 percent cut that had been planned resulted from the application of the much-criticized sustainable growth-rate (SGR) formula, which Medicare uses to calculate annual fee updates. The College and most other physician organizations have campaigned vigorously in recent years for replacing the SGR with an updated formula that more accurately accounts for increases in physicians' practice costs.

In a recent letter, the CAP and more than 120 other national and state organizations called on Congress to overhaul the SGR and forgo pay-for-performance measures until the update formula is fixed. Medicare's payment system "should provide predictable and stable payments that: take into account the costs of delivering services, including the substantial costs associated with performance measurement and reporting; create positive and non-punitive incentives for quality improvement; and allow physicians to share in system-wide savings that result from quality improvement," the groups said in the letter.

The Centers for Medicare and Medicaid Services (CMS) told Congress last month that Medicare contractors stand ready to quickly adjust payment rates and reprocess previously paid claims once S. 1932 becomes law. In a January 6 letter to the House Ways and Means Committee Chair Bill Thomas, CMS said its contractors will be able to adjust payment rates within two days of the reconciliation bill becoming law and that contractors will automatically reprocess claims paid under the 4.4 percent cut.

Cytology PT

The College continues its aggressive advocacy campaign to suspend federal cytology PT and force a review of the program. The College believes the program is based on outdated practices and unfairly singles out pathologists.

On December 17, the Proficiency Testing Improvement Act of 2005 won House approval. The legislation seeks to suspend and revise the federal program and directs the secretary of Health and Human Services to make specific changes to the program, including changing the grading criteria, requiring that the test not be conducted more frequently than every two years, and making changes within a one-year time frame. The legislation is currently awaiting Senate action.

Most recently, on January 23, the College received a letter from CMS administrator Mark McClellan, MD, PhD, informing us that CMS has agreed to suspend penalties for the PT program in 2006 and continue the program "as previously adopted in 2005". Laboratories will not have deficiencies cited or sanctions imposed against their CLIA certificates for failure to comply with the cytology PT requirements," provided they enroll all affected individuals in a CMS-approved testing program for the calendar year testing cycle; and ensure that all such individuals are tested within 2006 "in accordance with the regulatory protocol and timeframes" specified in the 1992 regulations for the Clinical Laboratory Improvement Amendments of 1988 (CLIA).

The College continues to seek a mandate from Congress to suspend and revise the program and will continue its dialog with CMS to revise the program.

Contractual Joint Ventures

Another issue that continues to be of concern to the College are contractual joint ventures being undertaken by some physician groups, primarily large dermatology, gastroenterology, and urology groups, which are contracting with operators of "pod" or "condominium" laboratories to share in revenue generated by pathology services the physician groups order for their patients.

The College continues to support enforcement action by the Office of Inspector General and other agencies against participants in suspect laboratory joint ventures under the anti-kickback statute and other healthcare laws prohibiting false statements, false claims and other fraudulent practices and we are seeking an expedited regulatory response through these agencies.

Additionally, the College continues to pursue legislation to modify the in-office ancillary services exception to physician self-referral (Stark) laws to expressly prohibit the development of "pod" or "condominium" laboratories.

Direct Billing Legislation for Anatomic Pathology Services

The CAP has made state enactment of direct billing laws for anatomic pathology a strategic priority in 2006, as it was in 2005. Currently, nine states (SC, CA, NY, NJ, LA, RI, NV, IA, MT) have laws requiring direct billing for certain pathology services. In addition, direct billing for laboratory/pathology services is required under state Medicaid laws and federal Medicare law.

As a result of CAP and state pathology society advocacy on this issue over the last several years:

- 9.4 million Americans in 4 states (LA, SC, IA, MT) are now benefiting from direct billing laws for anatomic pathology.
- 9.8 million Americans in 2 states (TN, NC) are now entitled to disclosure of clinician markups of anatomic pathology services.
- 4.4 million people (WA) are protected against clinician markups of these services.

Nine state pathology societies have expressed interest in pursuing direct billing legislation in 2006, including Georgia and Massachusetts.

LABORATORY ACCREDITATION PROGRAM

As the leader in laboratory accreditation, the College recognizes that the pursuit of quality means continuously striving to be better. Recently, the College completed a comprehensive review of its Laboratory Accreditation Program to assess how the program could be strengthened. As a result of this review and in order to better serve our patients, the College has announced a series of program changes that are designed to:

- Enhance the effectiveness of laboratory inspections by strengthening the information and tools available to inspectors;
- Strengthen the procedures for monitoring laboratories for sustained compliance to CLIA and CAP program standards;
- Enhance the consistency of laboratory inspections by strengthening the training of our inspection teams;
- Reinforce public confidence in the objectivity and integrity of the accreditation process;
- Coordinate communication among stakeholders, and;
- Protect laboratory personnel and promote complaint reporting

For additional information about specific program changes, please visit www.cap.org.

CAP '06– THE PATHOLOGISTS MEETING

The College continues to build upon the success of its last several annual meetings, with record-breaking attendance. We invite you to attend CAP '06 – The Pathologists' Meeting, which will take place September 10-13, 2006 in San Diego. More than 50 percent of the planned courses are brand new.

EDUCATION

The College invites everyone to attend its Companion Society Meeting symposium at the 2006 USCAP meeting. The CAP will present “Common Medicolegal Situations and How to Potentially Avoid Them” on Saturday, February 11. Mahul Amin, MD, FCAP, will moderate the program which will focus on issues that may arise in breast pathology, hematopathology, dermatopathology, and genitourinary pathology.

In addition, the College's education track at CLMA Thinklab, March 18-21, will offer six courses on five topics, including two LAP update courses as well as course covering quality issues, finance, and cytology PT.

PUBLICATIONS

The CAP Press released four new publications in 2005:

- *Quality Management in Anatomic Pathology: Promoting Patient Safety Through Systems Improvement and Error Reduction* (Nakhleh RE, Fitzgibbons PL, editors)
- *Quality Management in Clinical Laboratories: Promoting Patient Safety Through Risk Reduction and Continuous Improvement* (Valenstein P, editor)
- *So You're Going to Collect a Blood Specimen: An Introduction to Phlebotomy*, 11th edition (Kiechle FL, editor)
- *An Introduction to Autopsy Technique*, 2nd edition (Collins KA, Hutchins GM)

MEDIA and PUBLIC AFFAIRS

The College's fifth See, Test, and Treat event was held in Minneapolis on October 14 and 15. It was held in partnership with the NorthPoint Health and Wellness Center, a National Community Center of Excellence in Women's Health, under the US Department of Health and Human Services. The purpose of the program is to offer Pap tests, mammograms and other health screenings to underserved populations, while providing follow-up treatment in the same visit. Each See, Test and Treat event illustrates the vital role pathologists play in patient care. The Minneapolis program is the first one held in an urban setting. More than 100 women received care during the two-day program.

Pathologist spokespersons participated in 364 media interviews in 2005.

SNOMED

International interest in SNOMED CT is increasing and SNOMED continues to explore opportunities to strengthen SNOMED CT's position as a global terminology standard. The CAP is exploring the option of forming an international standards organization that would be supported by interested governments. The goal is to speed the global adoption of SNOMED CT.

CAP FOUNDATION

In 2005, forty-nine CAP members received grants and awards from the CAP Foundation. Grant opportunities for 2006 have been rolled out to residency program directors and CAP members, including a new advanced training grant in for residents and fellows in training. Details on grant and award deadlines are available on at www.cap.org.

On September 11, the CAP Board of Governors established a Hurricane Katrina Relief Fund through the CAP Foundation. The College has matched contributions to the Fund and more than \$139,000 has been raised.

The CAP Foundation Katrina Humanitarian Fund is reserved for areas impacted by Hurricane Katrina. The purpose of the fund is to help pathologists and pathology services affected by the hurricane. Following the Foundation's humanitarian philosophy, the money will be used to deliver pathology and medical services to medically underserved patients. Grant recipients will be announced in February.

FUTURE MEETING DATES

CAP '06 September 10-13, 2006 – San Diego, CA

CAP '07 September 30 – October 3, 2007 – Chicago, IL