



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 15, 2007

RE: College of American Pathologists - Report

FEDERAL and STATE ADVOCACY

Medicare Physician Fee Schedule/TC Grandfather

A College-led grassroots effort helped to successfully defeat the five percent Medicare physician payment cut that was scheduled for 2007 in CMS's physician payment rule. This was a significant victory given that few health provisions were included in this late session package. However, the Tax Relief and Health Care Act of 2006 only provides a short-term fix; without an overhaul of the SGR, cuts in 2008 are expected to be 10%. The CAP will continue in 2007 to work toward a federal legislative solution for SGR reform and also with CMS on the physician fee schedule for 2008.

The legislation also extends the TC Grandfather through 2007; it was originally scheduled to expire per the CMS's regulation. The CAP has successfully worked with CMS and lobbied Congress for extensions of the TC Grandfather since 2001, and will continue to pursue a permanent extension in during 2007.

Pay for Performance

A provision in the same legislation also provides a 1.5 percent "bonus" payment for physicians who report pay for performance (P4P) measures with Medicare claims in 2007. Because Congress altered the timeline for inclusion of approved performance measures, pathologists will not be eligible for the bonus payments in 2007.

A number of specialty societies tried to push through measures for approval by the Ambulatory Quality Alliance (AQA), a payor-dominated measures implementation group, in order to meet the January 31 deadline. As the AMA-designated lead to develop performance measures for pathology, the College determined it was in pathologists' best interest not to rush to seek AQA approval of two performance measures at this time.

The CAP has, however, approved measures on breast and colon cancer and we are proceeding through the appropriate endorsement process in order for measures to be implemented by CMS in 2008.

Cytology PT

The College continues to present its case that the current CMS-CDC process for revising the cytology PT regulations is deficient and that the rule needs to be withdrawn or reissued utilizing the College's alternative approach.

The College will pursue passage of legislation that was introduced in the last Congress to transform the current cytology PT program from a punitive program to an educational one. Under the College-backed legislation, the current program would be suspended and instead a new program would be established that requires annual continuing medical education that would provide opportunities to cytotechnologists and pathologists to improve their screening and interpretation skills.

Once reintroduced, the CAP will call on state and national pathology societies to endorse the legislation.

Contractual Joint Ventures

Addressing abusive contractual joint ventures (pod labs) remains high on the list of CAP's advocacy priorities in 2007, as it has been for several years. Although the final rule on physician payment issued November 1 by CMS did not include pod labs, the rule did include a placeholder for it and CMS officials indicated that they are taking comments—including those from the College—into consideration.

The College has been educating and working with CMS officials on this topic for several years. CMS has assured us that it will address pod labs in its proposed rule later this year and that it "remains committed to addressing arrangements that may encourage over utilization of diagnostic services." CMS is likely to publish its proposed rule after the Office of the Inspector General issues its report, expected in the first half of the year.

Since 2005, OIG has been investigating pod labs as part of its Work Plan. The CAP has been lobbying Congress on the issue since 2004 and helped spur the OIG's investigation.

The CAP will continue to work with Congress on consideration of a legislative remedy should CMS fail to resolve problems in the expected regulation.

While the CAP does not expect all of the problems with pod labs to be resolved with the CMS rule, it hopes CMS will have taken some good first-steps to resolve the problems.

The College sees this as a continuing battle that will not necessarily be resolved by more legislation and regulation because for every new law or new rule we propose, the other side will think of new legal ways to work around it.

Medically Unlikely Edits

The College responded on January 8 to a CMS proposal on Medically Unlikely Edits (MUEs) that was issued to medical societies on November 6, 2006 by the American Medical Association. The MUEs are proposed for implementation in April 2007.

In keeping with its previous line of reasoning, the College urged CMS to set MUEs at a level of “unlikelihood” such that only exceptional cases would fail to meet the MUE criterion for the service, and that the cases would therefore properly be adjudicated through a process of individual appeal, obviating the use of override modifiers, as agency representatives have indicated.

In early January, the College received Phase 3 of MUEs for public comment. The latest set of edits has 154 edits for the pathology and laboratory sector and largely focusing on clinical codes. Comments are due by March 16. The College will be working with various pathology and laboratory societies to coordinate our response.

Licensure of Clinical Laboratory Personnel

The College in 2006 defeated legislative efforts to require licensure of clinical laboratory personnel in Illinois, Massachusetts, Michigan and Missouri. We will continue to oppose and defeat such efforts. Licensure laws, which establish conflicting scope of practices, disrupt the necessary, federally prescribed hierarchy of the laboratory structure and can, as a consequence, adversely impact patient care. In addition, the overly stringent and inflexible personnel qualifications set forth in these laws are unlikely to keep pace with the responsibilities and demands of evolving modern laboratory methods, including rapid shifts in technological automation that require less expertise to manage instrument operation and test performance. Further, although there is no established, proven link between enactment of licensure laws and discernable improvements in laboratory performance, the strict educational qualifications established by these laws bars otherwise qualified workforce candidates from a potential career track and can potentially create difficulties for laboratories in the recruitment and training of workers leading to personnel shortages.

In 2006, a CAP member survey on personnel licensure found that 51 % of the respondents strongly oppose or oppose laboratory personnel licensure requirements that exceed CLIA; 32% support such requirements and 17% are undecided. In addition, the CAP survey found: 68% of survey respondents strongly oppose or oppose personnel licensure requirements that limit the authority to qualify applicants for laboratory positions; 16% support such requirements and 16% are undecided.

Direct Billing Legislation for Anatomic Pathology Services

The CAP has made state enactment of direct billing laws for anatomic pathology a strategic priority in 2007, as it was in 2006. Currently, 12 states (SC, CA, NY, NJ, LA, RI, NV, IA, MT, MA, AZ, TN) 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. Nine state pathology societies have expressed interest in pursuing direct billing legislation in 2007.

SCIENTIFIC AFFAIRS

In December 2006, the College jointly with the American Society of Clinical Oncology (ASCO) published guidelines on improving accuracy in HER2 Testing. The guidelines provide specific ways by which laboratories can improve HER2 testing, which was shown to be inconsistent. They will help ensure that patients receive the most appropriate, most effective treatment available.

Beginning in 2007, LAP accreditation requires laboratories to participate in HER2 proficiency testing in order to conduct such testing. In addition, LAP-accredited labs will be required to adhere to the rest of the guidelines when conducting and reporting HER2 testing.

The guidelines can be found on the CAP and ASCO web sites and have been published in both organizations' scientific journals.

CAP '07– THE PATHOLOGISTS MEETING

We invite you to join us for CAP '07 – The Pathologists' Meeting, scheduled September 30 – October 3, 2007, in Chicago.

EDUCATION

The College invites everyone to attend its Companion Society Meeting symposium at the 2007 USCAP meeting. The CAP will present Best Practices in Contemporary Diagnostic Immunohistochemistry. The course topic planned for residents attending USCAP is a follow-up to the 2006 session, focusing on important issues for pathologists in their first year of practice.

In addition, the College's education track is scheduled for CLMA's ThinkLab '07 in March. Five courses will be offered that address competency testing requirements and approaches, laboratory accreditation and proficiency testing updates, and critical value management.

Maintenance of Certification

The College was recently approved as an MOC self- assessment module provider. In addition, the CAP has developed a personalized transcript as part of our learning management system that is available to all pathologists. The transcript, which can be accessed on the CAP web site, automatically maintains a record of the individual pathologist's CAP CME activities and pathologists can even add non-CAP learning activities so that they can have a complete record of all learning activities in one convenient on-line report.

The CAP continues to work with ASCP to develop a shared understanding of ABP's MOC requirements and identify how we can best provide assistance to pathologists participating in MOC

PUBLICATIONS

The CAP Press released three new publications in 2006:

- *Basic Competencies in Forensic Pathology: A Forensic Pathology Primer*, Joseph A. Prahlow, MD, Editor
- *Cause of Death and the Death Certificate*, Randy Hanzlick, MD, Editor
- *Color Atlas of Body Fluids: An Illustrated Field Guide Based on Proficiency Testing*, Katherine A. Galagan, MD, David Blomberg, MD, P. Joanne Cornbleet, MD, PhD, Eric F. Glassy, MD, Editors

MEDIA and PUBLIC AFFAIRS

In December the College launched a new member benefit. CAP members can now download newly developed anatomic pathology patient information sheets from the web and attach them to their pathology reports, as needed, providing added value to both their clinicians and to patients. These copyrighted pieces focus on 20 of the most common cancer histologic types and address such issues as “how does the pathologist make the diagnosis?” and “what questions should I ask my doctor?” Each also provides a glossary of terms, as well as images of diseased and normal tissues. Patients can also access the information in HTML, Microsoft Word, and PDF versions on the College’s new patient information web site, www.mybiopsy.org. Twenty topic sheets have been developed for the site to date, with additional topic sheets scheduled throughout the year.

SNOMED

SNOMED International continues to meet regularly with representatives from nine countries (SNOMED International continues to meet regularly with representatives from nine countries (Australia, Canada, Denmark, Lithuania, The Netherlands, New Zealand, Sweden, the United Kingdom, and the United States) on the formation of the SNOMED Standards Development Organization (SDO). All parties are optimistic the SDO will be formed during the first quarter of 2007.

CAP FOUNDATION

In 2006, fifty-four grants were awarded to residents, pathologists, and institutions for projects ranging from humanitarian aid to quality assurance, advanced training, and translational research. Grant opportunities for 2007 have been rolled out to CAP members and residency program directors.

The Foundation has developed a technology oriented conference series “Futurescape of Pathology.” The first conference in the series, “Technologies Designing the Future of Anatomic Pathology,” will be held June 9-10, 2007, in Chicago.

FUTURE MEETING DATES

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

CAP '08 September 25-28, 2008 – Manchester Grand Hyatt, San Diego, CA

CAP '09 October 11-14, 2009 – Gaylord National Resort & Convention Center, Washington, DC

CAP '10 September 26-29, 2010 – Hyatt Regency, Chicago, IL