



College of American Pathologists

325 Waukegan Road, Northfield, Illinois 60093-2750
800-323-4040 • <http://www.cap.org>

Advancing Excellence

TO: Intersociety Pathology Council

FROM: Jared N. Schwartz, MD, PhD, FCAP
President, College of American Pathologists

DATE: February 15, 2008

RE: College of American Pathologists - Report

FEDERAL and STATE ADVOCACY

The 2008 physician fee schedule from the CMS, published in November addressed a number of physician payment issues that the College has been working on.

The rule included positive developments to help end pod labs for Medicare along with negative, yet expected, provisions on payment levels affecting pathologists.

Sustainable Growth Rate (SGR)

The College worked with the AMA to successfully delay the scheduled 10.1 percent cut in the Medicare physician reimbursement conversion factor through June 2008. Since there is a change to the fee schedule rates, CMS is extending the Participation Decision Period through February 15. The CAP will continue to work with the AMA and others to urge Congress to act again in the next six months to avoid a cut in Medicare payments to physicians

Contractual Joint Ventures/POD Labs

The anti-markup provision of the rule included recommendations from the College that effectively end pod labs for Medicare, beginning January 1, 2008, by focusing on where the service is performed, regardless of who performs the service.

The rule, which applied to both the professional and technical components, prevents an ordering physician from charging Medicare more than the net charge paid to a pathologist or other laboratory supplier for the pathology service if the service is performed outside of the office of the billing physician.

Pay for Performance

The physician fee schedule extends the Medicare Physician Quality Reporting Initiative (PQRI) and eligibility for a 1.5 percent bonus for successful participation through December 2008. Two pathology performance measures based on breast and colon cancer protocols are included in the 2008 rule under CMS's Physician Quality Reporting Initiative.

In keeping with CAP strategy of cautious participation, the College continues to work on development of pathology measures in anticipation of additional initiatives to link quality and payment both in federal programs and in the private sectors.

Five Year Review/Practice Expense Phase In

Under the rule, pathologists also will face an additional two-percent reduction due to the five-year review and the impact of changes to CMS's methodology for estimating practice expense. Hospital-based pathologists will see the largest negative impact due to the practice expense formula, and could experience declines of up to four percent next year and 18 percent by 2010, over and above the SGR effects.

The final rule did not include the College's alternative proposal submitted to CMS, which would have eliminated the reductions faced by hospital-based pathologists. The College will continue to work with CMS to re-open the discussion about their practice expense methodology.

TC Grandfather

Finally, the College was successful in obtaining a six-month extension of the TC grandfather provision, until June 30, 2008, allowing eligible independent laboratories the ability to continue billing Medicare directly for the technical component of certain physician pathology services. As with the SGR issue, Congress will have to act again in the next six months to avoid expiration of the "grandfather" policy.

With support from hospital and rural health care organizations, the College has successfully lobbied for introduction of a House bill that would permanently extend the TC grandfather. The College's strategy also includes lobbying CMS for administrative fix.

Medically Unlikely Edits (MUEs)

The College continues to monitor and respond to additional Phases of MUEs. We submitted our comments for Phase VI late last year and expect Phase VII to soon be available for the College's review and comment.

Last fall, the College testified before the Practicing Physicians Advisory Council (PPAC) regarding MUEs. PPAC is a federally appointed body charged with providing advice to CMS on issues of concern to practicing physicians. Specifically, the College requested that CMS make MUEs publicly available and asked the agency to form a working group to help establish a more transparent process that would include formal participation from the laboratory and pathology communities. The College's testimony prompted further

meetings between CAP and CMS officials as well as leading to PPAC's endorsement of the College's recommendation to make MUEs publicly available. CMS also subsequently requested comments from medical specialty societies regarding the public disclosure of MUEs. Last month, the agency indicated that it is still reviewing the comments received regarding this matter.

Cytology PT

The College also continues to press on in opposition to CMS' cytology PT program.

H.R. 1237, the *Cytology Proficiency Improvement Act of 2007*, is well-positioned in the House with 140 cosponsors, including 50 out of a possible 57 Energy and Commerce Committee members (the committee of jurisdiction). The bill would suspend the current cytology PT program and substitutes in its place a less punitive approach that requires annual CME to enhance locator and interpretive skills. The Senate companion bill was introduced on Tuesday, December 18th. Efforts to add additional cosponsors will continue throughout the second session of the 110th Congress.

ACOG has recently joined the College-formed Cytology Proficiency Improvement Coalition to support legislation.

While CMS continues to propose changes to the cytology PT program, the changes do not resolve concerns by the laboratory and pathology community, therefore, the College continues to pursue a legislative remedy.

Direct Billing

Direct billing laws remain a state legislative priority for the College. Direct billing of anatomic pathology services is crucial to protect the profession against unethical practices that exploit patients and that reduce pathology to a commodity. Direct billing of anatomic pathology services will ensure that pathology services remain a co-equal branch of medicine. The College's advocacy on this issue is based upon AMA Ethics Policies and the AMA coding guidance for the billing of pathology services. AMA Ethics policies are very explicit in rejecting markups on pathology services.

With 13 state laws requiring direct billing for certain pathology services now in place, and other state laws that prohibit markups, or require disclosure, and with the added foundation of Attorney General positions, and prior national media exposure, the issue has solidified its credibility and permanence in the public policy arena.

Today, more than one-half of the population, including enrollees in the Medicare and state Medicaid programs, of the United States receives pathology services under direct billing laws that prevent ordering physicians from marking up the cost of these services.

In 2007, Direct Billing laws were enacted in Kansas and expanded in California. Anti-mark-up laws were enacted in Utah and a Disclosure law was enacted in Texas.

Licensure of Clinical Laboratory Personnel

In 2007, the CAP and State Pathology Societies in an alliance with American Association of Bioanalysts (AAB), the American Clinical Laboratory Association (ACLA) and state medical societies and hospital associations blocked licensure bills in Illinois, Massachusetts, Michigan, Minnesota and Missouri. In 2008, the CAP anticipates efforts to pass licensure in at least the same states as 2007 with a concentrated effort in Minnesota and possibly Massachusetts.

In New York, CAP is leading efforts to amend the licensure law enacted two years ago. An independent assessment by the New York State Department of Health asserts that licensure in that state has restricted the scope of authority of laboratory medical directors, exacerbated workforce shortages and may lead to a degradation in quality as the results of shortages in personnel. The College agrees with findings of the independent assessment and will continue to oppose licensure of clinical laboratory personnel.

SCIENTIFIC AFFAIRS

In 2006, the College collaborated with the American Society of Clinical Oncology (ASCO) to develop HER2 testing guidelines. We are continuing this collaborative relationship and are working together to develop estrogen receptor/progesterone receptor (ER/PR) testing guidelines.

CAP '08– THE PATHOLOGISTS MEETING

We invite you to join us for CAP '08 – The Pathologists' Meeting, scheduled September 25-28, 2008, in San Diego.

EDUCATION

The College once again presented a Companion Society Meeting symposium at the 2008 USCAP meeting. The CAP symposium, *Value Added Diagnostics: Emerging Tests in Clinical Practice*, included Jared N. Schwartz, MD, PhD, FCAP, Sanja Dacic, MD, Lawrence J. Burgart, MD, Mark A. Rubin, MD, Sylvia L. Asa, MD, and Jennifer L. Hunt, MD as faculty.

In addition, the College is sponsoring an education track at CLMA's ThinkLab '08, scheduled on March 29-April 1 in Atlanta, Georgia. Four courses will be offered that address competency testing requirements and approaches, point-of-care testing deficiencies, laboratory accreditation updates and proficiency testing utilization.

Maintenance of Certification

CAP is focused on helping pathologists meet MOC requirements and continues to expand its portfolio of education programs. In 2007, the CAP released two separate Self-Assessment Module (SAM) activities. They were very well received by participants. Pathologist reactions to the HER2 SAM are described in the January issue of CAP Today. At least two new SAMs are planned for release in 2008.

Competency Assessment Program

January 1, 2008 marks the release of version 2.0 of the Competency Assessment Program, a new, systematic online approach to CLIA-mandated competency assessment

in the laboratory. Version 2.0 includes significant new features such as an all new curriculum totaling 36 courses and an expanded menu of instrument-specific observation checklists. Information about the program including how to enroll can be found on the CAP website.

Virtual Management College

The College is planning its tenth series of Virtual Management College (VMC) audioconferences designed to improve leadership and management skills for residents and new pathologists. The new sessions will begin in August 2008.

The remaining sessions of the 2008 Virtual Management College (VMC) audioconference series will highlight:

- The View from Wall Street – April 8, 2008, Jared N. Schwartz, MD, PhD, FCAP
- The Pathologist as a Leader – May 13, 2008, Michael S. Brown, MD, FCAP
- Advocacy Update: Federal and State Legislative/Regulatory Issues – June 10, 2008, Speaker to be announced

For information on all Education activities, visit www.cap.org and click on the Education Programs tab.

Pathology Practice Management

The College will host its annual Pathology Practice Management 2008, a one-day conference that will provide tactics and trends for today and tomorrow, and offer useful tools and techniques to help manage a practice more successfully. Topics include a five-year look at pathology trends, as well as an update on contracting, legislative issues, and CPT Coding. In addition, a variety of companies will exhibit throughout the day. The 2008 Pathology Practice Management conference is scheduled for Saturday, June 28, 2008 at the Hyatt Regency Chicago.

PUBLICATIONS

The CAP Press announces the release of:

- *So You're Going to Collect a Blood Specimen*, 12th edition, Frederick L. Kiechle, MD, PhD, editor

The CAP Press will release its latest publication in Summer 2008:

- *An Algorithmic Approach to Hemostasis Testing*, Kandice Kottke-Marchant, MD, PhD, FCAP, Editor

An Algorithmic Approach to Hemostasis Testing is an illustrated reference text and practical guide for pathologists and laboratories engaged in hemostasis testing. It includes sections on hemostasis physiology, the basics of hemostasis laboratory testing and interpretation, an algorithmic approach to bleeding disorders and venous thrombophilic disorders, and monitoring anticoagulant drugs. Sample collection and processing as well as patient history and diagnostic criteria also are covered. Each chapter contains a thorough list of recommended reading, and both adult and pediatric reference ranges are included.

PUBLIC AFFAIRS

In September and October 2007 more than 3.2 million people saw the College of American Pathologists' two CAP ads in American Airlines' in-flight magazine, *American Way*. The two-page spreads, which each promoted pathologists and their life-saving contributions to patient care, were featured in magazines on all domestic and international flights. Each ad featured either a cervical cancer survivor or a colon cancer survivor and spotlighted the College's two patient web sites, MyBiopsy.org and MyHealthTestReminder.org. The ads have also been converted into downloadable posters and ads, and are featured on the College's web site for members to download and use locally.

The College's patient web site, MyBiopsy.org, which was launched last year, has grown to include information on 27 cancer and cancer-related topics. Each topic also features questions to ask your doctor, information on how the pathologist makes the diagnosis, as well as images of both diseased and normal tissues and cells. Patients can also access the information in HTML, Microsoft Word, and PDF versions. Additional topics are scheduled to be added in 2008.

SNOMED

The Standards Development Organisation (IHTSDO), based in Denmark, was launched in April 2007 with nine member countries: Australia, Canada, Denmark, Lithuania, The Netherlands, New Zealand, Sweden, the United Kingdom and the United States. CAP's SNOMED Terminology Solutions (STS) division serves as the support organization that maintains and updates SNOMED CT on behalf of the (IHTSDO). In addition, the division continues providing its clients SNOMED Clinical Terms (SNOMED CT) education and consulting. Of particular interest to pathologists, STS will present "SNOMED CT: Pathology and Cancer Content" March 18 at 10 am CST. For more information and to register, please visit: www.capsts.org and select "Education Calendar" in the middle of the page.

CAP FOUNDATION

In 2007, the CAP Foundation successfully launched the first in a series of Futurescape Conferences. This year's conference is entitled "*Transforming Pathology: Emerging technology driving practice innovation*" and scheduled for June 6 to 8 at the Westin O'Hare. The Conference will take a closer look at pathology's massive transformation and will provide strategies for reinvention and renewal.

Also in 2007, the Foundation increased the number of awards to residents, practicing pathologists, and institutions by 18% to seventy-seven awards, and more than tripled the amount of funding granted for humanitarian programs. Additionally, industry support of the Foundation increase by more than 114%.

FUTURE MEETING DATES

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

CAP '11 September 11-14 – Gaylord National Resort & Convention Center, Grapevine
(Dallas), TX.