



College of American Pathologists

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Advancing Excellence

TO: Intersociety Pathology Council

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

DATE: February 19, 2009

RE: College of American Pathologists - Report

FEDERAL and STATE ADVOCACY

The 2009 Physician Fee Schedule from the CMS published in November addressed a number of physician payment issues affecting pathologists.

The rule included an extension for the technical component “grandfather” and the Physician Quality Reporting Initiative, updates to the clinical lab fee schedule and the conversion factor, and a requirement for the use of new G codes for specific prostate biopsy saturation sampling.

Sustainable Growth Rate (SGR)

The College worked with the AMA to successfully replace the scheduled 10.6 percent cut in the Medicare physician reimbursement conversion factor with a 1.1 percent increase through June 2009. The U.S. House and Senate overrode a Presidential veto to pass the retroactive legislation.

CAP will continue to work with the AMA and others to urge Congress to act again to avoid a cut in Medicare payments to physicians.

Anti-Markup Rule

In the 2009 Final Physician Fee Schedule Rule, CMS shifted from requiring an exclusive arrangement with the billing provider to permitting physicians to work with more than one practice through the 75 percent test. All references to diagnostic tests purchased from an “outside supplier” have been eliminated.

As a result, the 2009 anti-markup provision applies solely to diagnostic tests performed or supervised by a physician who does not “share a practice” with the billing physician or supplier. To determine whether parties “share a practice,” CMS adopted a hybrid of the two alternatives in the 2009 Proposed Rule.

Under its hybrid approach, arrangements must first be analyzed under Alternative 1 focusing on whether a substantial portion of the rendering physician's services (at least 75 percent) are furnished through the practice of the billing provider.

Under Alternative 2, CMS maintains the "site of service" approach in the current anti-markup provisions to determine if a physician "shares a practice" with the billing provider/supplier.

If Alternative 1 is not satisfied, on a test-by-test basis, Alternative 2 is to be applied. Under Alternative 2, CMS maintains the "site of service" approach in the current anti-markup provisions to determine if a physician "shares a practice" with the billing provider/supplier.

Therefore, the TC and PC must be performed in the same office where the ordering physician provides the "full range of services" for the anti-markup provision to not apply.

Pay for Performance

The Physician Fee Schedule extends the Medicare Physician Quality Reporting Initiative and eligibility for a two percent bonus for successful participation through December 2009. Two pathology performance measures based on breast and colon cancer protocols are included in the 2009 rule under CMS's Physician Quality Reporting Initiative.

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

The Budget Neutrality Adjustment will now be applied to the Conversion Factor (rather than the work RVUs) as advocated by the College, resulting in a 36.0666 dollars for 2009.

As a result of this change, reimbursement for hospital based pathologists will see an increase above what CMS originally proposed. For example, CPT code 88305-26 will see a 3 percent increase as opposed to the 2 percent cut in 2009 as announced in the proposed rule.

TC Grandfather

The College was successful in obtaining an 18-month extension of the TC grandfather provision until Dec. 31, 2009, allowing eligible independent laboratories the ability to continue billing Medicare directly for the technical component.

The College plans to lobby for introduction of a House bill that would permanently extend the TC grandfather. CAP's strategy also includes lobbying CMS for an administrative fix.

Medically Unlikely Edits (MUEs)

The Centers for Medicare and Medicaid Services began publishing some of the edits utilized in its Medically Unlikely Edit program Oct. 1, 2008, and will continue releasing further edits on a quarterly basis. The College has repeatedly called on CMS to publicly release all MUEs both in comments to the agency and in testimony before the Practicing Physicians Advisory Council.

The College submitted comments for Phase VIII of the proposed MUEs in September and is currently reviewing and developing comments to Phase IX.

Cytology PT

The Centers for Medicare and Medicaid Services (CMS) published a notice of proposed rulemaking January 16, 2009, just days before Barack Obama took office as President, and in time to beat an Executive Order from the President halting all pending proposed rules.

The College believes the regulation is fatally flawed, and the proposed changes do not go far enough to correct these flaws. Staff is analyzing the proposed rule and preparing to comment within the 60 day comment period.

Direct Billing

Direct billing laws remain a state legislative priority for the College. Fifteen state laws now require direct billing for certain pathology services, six state laws prohibit markups, and 15 require disclosure.

Licensure of Clinical Laboratory Personnel

Over the last several years CAP, in partnership with State Pathology Societies, has opposed licensure bills introduced in the states. The College is now going beyond raising concerns about these bills and announced specific modifications to these bills that, if incorporated, would result in the CAP rescinding its opposition.

The model criteria include defined scope of work, support for limited specialty licenses, reaffirmation of the authority of the lab director in making personnel decisions, balanced representation on licensing boards, and more.

Coalition Development

The National Pathology Societies' Leadership met in Washington, D.C. Jan. 30 to discuss the "big picture for pathology" and other top issues for 2009. The half-day meeting included discussion of laboratory-developed tests, reimbursement, cytology proficiency testing and health information technology. The group is scheduled to meet again throughout the year.

SCIENTIFIC AFFAIRS

The College is collaborating with the American Society of Clinical Oncology (ASCO) to develop estrogen receptor/progesterone receptor (ER/PR) testing guidelines.

CAP '09– THE PATHOLOGISTS MEETING

We invite you to join us for CAP '09 – The Pathologists' Meeting, scheduled October 11-14, 2008, in Washington, DC.

EDUCATION

The College once again presented a Companion Society Meeting symposium at the 2009 USCAP meeting. The CAP symposium—*Quality Assurance, Error Reduction, and Patient Safety in Anatomic Pathology*—included Mr. Leo Serrano and Drs. Raouf Nakhleh, Jeffrey Myers, Jan Silverman, and Craig Allred as faculty and was moderated by Drs. Jennifer Hunt and Paul Swanson. Mr. Robert McGonnagle, publisher of *CAP Today*, led the panel Q&A session.

Maintenance of Certification

CAP is focused on helping pathologists meet MOC requirements and continues to expand its portfolio of education programs. The College originally introduced Self Assessment Modules (SAMs) in 2007. At least 12 new SAMs are planned for release in 2009.

Virtual Management College

The College is planning its 11th 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 2009.

The remaining sessions of the 2009 Virtual Management College (VMC) audioconference series will highlight:

- Risk Management: Taking Care of Patients and Your Pathology Practice- March 17, 2009, Gene Herbek, MD, FCAP
- Laboratory Equipment and Supply: Purchasing and/or Contracting – Items to Consider- April 14, 2009, Richie Seaberg, BS, MT(ASCP)
- US Healthcare Finance and Medicare– How Are We Paid for What We Do? – May 12, 2009, W. Stephen Black-Schaffer, MD, FCAP
- Healthcare Economics: Where Does Your Salary Come From? June 9, 2009, Michael L. Talbert, MD, FCAP.

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

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 released two publications in the last quarter of 2008:

- *An Algorithmic Approach to Hemostasis Testing*, Kandice Kottke-Marchant, MD, PhD, editor. The text includes sections on hemostasis physiology, hemostasis laboratory testing and interpretation, an algorithmic approach to bleeding disorders and venous thrombophilic disorders, and monitoring

anticoagulant drugs. Dr. Marchant is the chair of the Pathology and Laboratory Medicine Institute and section head of Hemostasis and Thrombosis at the Cleveland Clinic, and is a former member of the Coagulation Resource Committee.

- ***College of American Pathologists Practical Guide to Gynecologic Cytopathology***, David Wilbur, MD, and Michael Henry, MD, editors. The text covers the evaluation of specimens, criteria for specimen adequacy, and the morphology of the vast majority of entities routinely identified in Pap tests. Dr. Wilbur is the director of the Cytopathology Laboratory at Massachusetts General and chair of the Cytopathology Resource Committee. Dr. Henry is the director of Cytopathology at the Mayo Clinic and a member of the Cytopathology Resource Committee.

PUBLIC AFFAIRS

As part of the College's ongoing campaign, "If it weren't for my pathologist ...," the CAP developed an ad, featuring a prostate cancer survivor, for American Airlines' in-flight magazine, *American Way*. The ad, which promoted pathologists and their life-saving contributions to patient care, was featured on the inside front cover of the magazine on September 15-30 and was seen by 1.6 million people. In addition, the ad featured the College's two patient information Web sites – MyBiopsy.org and MyHealthTestReminder.org.

In 2008, nine new anatomic pathology sheets were added to MyBiopsy.org, bringing the total number of individual patient information sheets to 36. In addition, a new reminder on prostate cancer was added to MyHealthTestReminder.org. The reminder is available in English and Spanish. Also in 2008, the *NewsPath* Editorial Board posted its first *NewsPath* podcast on Recent Developments in Human Leukocyte Antigen Testing and Kidney Transplantation. The Editorial Board plans to post one new podcast each month in 2009.

SNOMED

The College of American Pathologists' SNOMED Terminology Solutions (CAP STS) Division, which includes the Diagnostic Intelligence and Health Information Technology (DIHIT), Clinical Informatics, Operations, and Professional Services departments, is furthering its leadership role in the areas of diagnostic intelligence and clinical vocabularies through ongoing collaboration and initiatives with internal and external constituents. The DIHIT team, working closely with the CAP Cancer Committee, recently released XML versions of the CAP Electronic Cancer Checklists. Quarterly, CAP STS offers the Web teleconference SNOMED CT in Pathology and Cancer Registry Work. The next session will be offered May 18 at 10 am CST. The division continues serving as the support organization to update and maintain SNOMED CT[®] for the International Health Terminology Standards Development Organisation[®] which now consists of 11 member nations. If you would like more information on the XML versions of the checklists, Web teleconference, or other CAP STS programs, please visit www.capsts.org, call 847-832-7700 or e-mail snomedolutions@cap.org.

CAP FOUNDATION

In 2008, the CAP Foundation held its second Futurescape Conference. This year's conference is entitled "*Transforming Pathology: Information as a Disruptive Technology*" and is scheduled for June 12-14 at the Westin O'Hare. The conference will explore the latest innovation theory, strategy, and case studies and pathologists will learn how to successfully implement and refine innovation to leverage and grow your practice.

In 2008, the Foundation offered three new industry support grants and co-hosted the Pathology Visions Conference. In addition, the number of Foundation donors as well as the level of industry support both increased last year

FUTURE MEETING DATES

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.