

MAY 28, 2010

RED FLAGS RULE DELAY/MEDICARE PAYMENT UPDATE

The following information is just in from the AOA:

We wanted to provide you with an update on the latest. Just this morning, the FTC announced a delay in enforcement of the Red Flags Rule, this time for the rest of the year. In addition, we are closely monitoring the effort in Congress to prevent enactment of a more than 21 percent Medicare fee cut. Early this afternoon, the US House approved a scaled-back measure that would prevent cuts through 2011. However, the Senate has already adjourned for the week-long Memorial Day recess. As a result, AOA is urging members to withhold claims, if possible, until Congress returns to Washington, DC early next month and can remedy the situation.

Red Flags Delay:

AOA Secures Eleventh-Hour Red Flags Rule Enforcement Delay

Facing mounting pressure from AOA and others, the Federal Trade Commission (FTC) has announced today that it will once again postpone enforcement of the Red Flags Rule, this time through Dec. 31, 2010. The FTC was scheduled to begin enforcement of the Rule June 1, 2010. However, AOA continued to pressure agency officials and urge key members of Congress to provide a permanent exemption for optometry practices and, ultimately, to secure the latest enforcement delay.

The May 28 announcement was the fifth consecutive delay and appears to signal an understanding on the part of the FTC that Congress is moving closer toward providing permanent relief for small business health care practices. Work will continue to secure a much needed permanent exemption. The U.S. House has already approved AOA-backed legislation (HR 3763) sponsored by Rep. Adler (D-NJ) that would exempt small business optometry and other health care practices with 20 employees or fewer from Red Flags requirements. However, Rep. Adler's bill has stalled before the U.S. Senate Banking Committee.

Within the past week, companion legislation to Rep. Adler's bill has been introduced into the U.S. Senate (S. 3416) by John Thune (R-SD). AOA will use this added time to advance these bills and help ensure that Congress follows through on promises made and ultimately fixes the Red Flags issue. In a press release this morning, FTC Chairman Jon Leibowitz said "Congress needs to fix the unintended consequences of the legislation establishing the Red Flags Rule – and to fix this problem quickly. We appreciate the efforts of Congressmen Frank and Adler for getting a clarifying measure passed in the House, and hope action in the Senate will be swift."

The FTC announcement can be viewed on their Web site at:

<http://www.ftc.gov/opa/2010/05/redflags.shtm>.

Medicare Payment Update:

House Approves Modified Medicare Fee Fix Bill

Over the course of the last week, lawmakers have been working to bring legislation to the floor of the U.S. House and Senate that would prevent the June 1 enactment of a massive 21 percent cut in Medicare payments to ODs and other physicians. However, as reported earlier, an unease over the bills' \$200 billion price tag and increased partisan wrangling have fueled growing concerns that Congress would fail to act before the May 31 deadline.

Late Wednesday, lawmakers were forced to scale-back their proposal in an effort to shrink the overall cost and allay the concerns of many in Congress. As a result, the bill (HR 4213) was amended so as to prevent scheduled cuts while providing modest payment updates through 2011. Overall, the bill would provide a 2.2 percent update for the remaining months of 2010 and a 1 percent update for 2011. In 2012, the flawed SGR formula would be allowed to resume with a conversion factor that is much lower than it is today.

Early this afternoon, the U.S. House voted 215-204 to approve HR 4213. The effort now moves to the U.S. Senate, where most Republicans remain vigorously opposed and many centrist Democrats are admittedly uneasy with the increasing levels of deficit spending. Senate Majority Leader Reid (D-NV) had indicated that he would keep the Senate in session until it finished work on the bill. However, the Senate adjourned late Thursday and is not scheduled to return to Washington, D.C. until after their week-long Memorial Day recess.

As a result, the Centers for Medicare & Medicaid Services (CMS) has instructed its contractors to temporarily hold fee-for-service claim processing for the first 10 business days of June, believing that Congress will continue working to avert the negative update scheduled to take effect June 1, 2010. Following suit, the AOA is now urging ODs to withhold claims, if possible, until Congress returns to the nation's capital early next month and can remedy the situation. As new information becomes available, we will provide members with the latest.