Neurosurgeons Taking Action

Neurosurgeons Taking Action *is an E-newsletter from the American Association of Neurological Surgeons (**AANS**). The purpose of this E-publication is to provide you with timely updates on socio-economic and political issues facing neurosurgeons.* ***Neurosurgeons Taking Action*** *is sent out as news and events warrant your attention so that our members can stay on top of the issues that affect them.*

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Legislative Affairs

The Not-So-Super Supercommittee

The bi-partisan co-chairs of the Joint Select Committee on Deficit Reduction, otherwise known as the "supercommittee," announced on Nov. 21 that they would not meet the predetermined Nov. 23 deadline to make budget recommendations that would reduce the federal budget by $1.2 trillion over the next 10 years. As a result, this effectively punts the ball back to Congress and the President.

This announcement has generated a great deal of the "blame game" occurring inside the beltway. Democrats blamed Republicans for the committee's failure by refusing to come up with taxes above $300 billion, and that would raise revenues for high-income earners, while Republicans said Democrats remained persistent in refusing to address the rising cost of entitlements. House Speaker John Boehner (R-OH) and Democrat leaders have said the automatic cuts should remain in place, and President Obama issued a statement saying he would veto any legislation attempting to amend the trigger.

The mandate under the Budget Control Act (BCA) results in $600 billion in across-the-board cuts over 10 years beginning in 2013. It stipulates two-percent cuts to physicians, and additional cuts to research and GME funding, while Medicaid and CHIP spending would be left untouched. All this said, the automatic cuts could be mitigated in a number of ways, and there's still ample time to achieve sensible, meaningful budget savings before the automatic cuts go into effect.

Throughout the supercommittee process and its aftermath, the American Association of Neurological Surgeons (AANS) and the Congress of Neurological Surgeons (CNS) will continue to work with key Members of Congress to seek sustainable growth rate (SGR) repeal, seek repeal of the Independent Payment Advisory Board (IPAB), adopt medical liability reform and prevent cuts to Graduate Medical Education (GME). Detailed accounts of these efforts are provided within the confines of this newsletter.

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Efforts to Repeal Flawed Medicare Physician Payment System Continue

The AANS and CNS continue to urge Congress to repeal the flawed sustainable growth rate (SGR) system. If Congress fails to act, neurosurgeons face a 27.4-percent cut in reimbursement on Jan. 1, 2012. Most recently, the AANS and CNS joined with others in organized medicine, including the Alliance of Specialty Medicine and the American Medical Association (AMA), to urge the supercommittee to include a full repeal of the SGR in its final legislative recommendations. In one letter, the physician community noted that "... continued delay in replacing the SGR has escalated the cost of permanent payment reform, from $48 billion in 2005 to nearly $300 billion today. We estimate additional short-term interventions will double the cost to approximately $600 billion by 2016. With a 30 percent across-the-board payment cut in physician services scheduled for January 1, 2012, the implications of continuing this practice of simply putting off cuts to future years are clear. Continued access to care for our nation's senior and disabled citizens is seriously threatened."

Since the supercommittee failed to agree on a deficit reduction proposal, full repeal is likely out of the question, and Congress will now consider adopting a

short-term solution to prevent the cuts for the next year or two, despite the long-term fiscal irresponsibility of this approach.

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- **MedPAC's SGR Proposal Pits Specialists and Primary Care Against One Other**

On Oct. 14, 2011, the Medicare Payment Advisory Commission (MedPAC) sent a letter to Congress outlining a framework for replacing the sustainable growth rate (SGR). While the proposal is considered a nonstarter on Capitol Hill, it nevertheless has garnered significant attention for its proposal to fix the SGR on the backs of specialists. Key elements of the MedPAC proposal include:

- Repealing the SGR and replacing it with 10 years of statutory fee updates. Specialty services would be cut by 5.9 percent each year for three years, followed by a seven-year pay freeze. Primary care services would receive a 10-year pay freeze.
- Directing CMS to collect additional data to develop more accurate work and practice expense values, and to ensure that Medicare fees reflect *efficient* care delivery.
- Directing CMS to identify overpriced procedures and reduce their values accordingly.
- Accelerating the development of shared savings payment models, such as accountable care organizations (ACOs).

The AANS and CNS have strenuously objected to this proposal, and, earlier this fall, we joined our colleagues in the Alliance of Specialty Medicine and the AMA in sending letters to MedPAC (with copies to the entire Congress and the White House) rejecting this proposal. Click here to read the Alliance letter, and click here for the AMA letter. Additionally, AANS/CNS Washington Office staff worked closely with Reps. Michael Burgess, MD, (R-TX) and Gene Green (D-TX) to garner Congressional support against this proposal. Reps. Burgess and Green sent a letter to Congressional leaders opposing this proposal, which was signed by 94 Members of Congress.

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- **Rep. Schwartz's SGR Proposal Would Penalize Physicians Remaining in Fee-for-Service Medicare**

While Rep. Allyson Schwartz (D-PA) has been a tireless proponent of repealing the sustainable growth rate (SGR), the AANS and CNS, along with many other physician groups, including the Alliance of Specialty Medicine and the AMA, oppose her recent proposal to fix the Medicare physician payment system. Under her framework, the SGR would be repealed and replaced with a new system based on ACOs, bundled payments, capitation or other government-directed shared savings/coordinated care models. Under the five-year transition to the new payment system, primary care would receive 2.5-percent annual increases, while specialists would receive annual fee boosts of only 0.5 percent. Physicians who choose to remain in Medicare's fee-for-service program would be penalized with pay cuts as follows: -2 percent in 2018, -3 percent in 2019, -4 percent in 2020, and -5 percent in 2021 and thereafter. The AANS and CNS, along with the Alliance of Specialty Medicine, sent Rep. Schwartz a letter outlining our serious concerns with her proposal.

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- **AANS and CNS Press for Medical Liability Reform**

The AANS and CNS continue to take a leadership role in seeking federal medical liability reform. Most recently, neurosurgeon Ann Stroink, MD, a member of the AANS/CNS Washington Committee and AANS delegate to the AMA, joined Washington office staff in attending a September AMA Medical Liability Task Force Meeting. Following the meeting, task force members and others sent a letter to the supercommittee urging the group to include meaningful medical liability reform in its final legislative package. The letter urges the adoption of a number of reforms:

- A $250,000 cap on non-economic damages;
- Prohibiting new causes of action against physicians and other healthcare providers based on standards or guidelines specified in the Patient Protection and Affordable Care Act (PPACA);
- Liability protections for physicians and other healthcare providers so that evidence of nonpayment or payment adjustments based on the CMS' policies (e.g., nonpayment for surgical site infections) would be inadmissible as evidence in a liability claim or lawsuit to prove liability or establish a presumption of liability on behalf of a physician or other health care provider;
- Liability protections for physicians and other healthcare providers who provide emergency care or volunteer to treat victims of a disaster by requiring clear and convincing burden of proof; and
- Reforms to require an individual who serves as an expert witness in a liability case to meet standards of expertise and knowledge

The Congressional Budget Office estimates that implementing comprehensive medical liability reforms, including limits on non-economic damages, would reduce the federal budget deficit by $62.4 billion over 10 years.

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Support Grows for Repealing the Independent Payment Advisory Board (IPAB)

Support is building in Congress for the repeal of the IPAB. The IPAB was created by the health-reform legislation, and is a board of 15 unelected and largely unaccountable government bureaucrats whose primary purpose is to cut Medicare spending. Joining with more than 300 organizations representing consumers, patients, seniors, healthcare providers, business and others, the AANS and CNS strongly oppose the IPAB, and are calling for its immediate repeal. Most recently, a coalition organized by the AANS and CNS sent a letter to the supercommittee urging it to include IPAB repeal in its recommendations. There are many problems with the IPAB, including:

- Fewer than half of the IPAB members can be healthcare providers, and none are permitted to be practicing physicians or otherwise employed;
- IPAB will be required to recommend cuts based on unrealistic spending targets starting in 2014;
- Providers representing roughly 37 percent of all Medicare payments, including hospitals and hospice care, are exempt from IPAB cuts until 2020 — thus, IPAB-directed cuts will disproportionately fall on all other providers and suppliers, including surgeons;
- Without a permanent solution to the Medicare's sustainable growth rate formula, physicians essentially are subject to "double jeopardy" with cuts from both the SGR and IPAB; and
- IPAB recommendations are "fast-tracked" and automatically go into effect unless blocked or amended by Congress within seven months, which is completely unrealistic.

The AANS and CNS are pushing legislation introduced by Rep. Phil Roe, MD (R-TN) and Senator John Cornyn (R-TX), which would repeal the IPAB. Rep. Roe's bill, H.R. 452, the Medicare Decisions Accountability Act, currently has 211 sponsors, while Senator Cornyn's legislation, S. 668, the Health Care Bureaucrats Elimination Act, has 33 sponsors.

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Grassroots Action Alert

- **Urge Congress to Repeal Independent Medicare Board**

Neurosurgeons are encouraged to contact Congress and urge your elected officials to cosponsor the Health Care Bureaucrats Elimination Act (S. 668) in the Senate and the Medicare Decisions Accountability Act (H.R. 452) in the House. To send an e-mail message to Congress, go to the AANS/CNS Legislative Action Center at http://capwiz.com/noc/issues/alert/?alertid=52741501. We have created a draft letter that you can personalize. (This is highly encouraged.)

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NeurosurgeryPAC

- **NeurosurgeryPAC Closing in on its 2011 Fundraising Goal — Contribute Today!**

The NeurosurgeryPAC has raised $249,825 from 334 contributors in 2011. This money was the result of a number of fundraising efforts launched throughout the year. With a $500,000 fundraising goal for the 2012 cycle, we are only $175 away from our 2011 goal of $250,000. Please help NeurosurgeryPAC reach its goal by contributing now! At its recent meeting, the NeurosurgeryPAC Board voted to create an online contribution mechanism to make donating to the PAC even more streamlined for members. Watch for this new feature in 2012!

Each year NeurosurgeryPAC engages the states in a healthy competition to see which one will donate the most money to the PAC. Named the Leibrock State Leadership Award after Lyal Leibrock, MD, a former Chairman of the Council of State Neurosurgical Societies (CSNS) and former AANS vice president, the 2011 award was presented to two states at the October CSNS meeting. The great state of Texas won the award for most money donated and the mountaineers of West Virginia won the award for most donated by percentage of membership. Congratulations to both of these recipients!

Click here for more information on the NeurosurgeryPAC. Read more about your NeurosurgeryPAC in action. Thanks to all those who have contributed to NeurosurgeryPAC in the 2012 Election Cycle!

Editor's Note: All contributions to NeurosurgeryPAC must be drawn on PERSONAL accounts. Contributions are not tax-deductible. AANS members who are citizens of the United States and who pay dues or have voting privileges may contribute to NeurosurgeryPAC. Federal law requires NeurosurgeryPAC to use its best efforts to collect and report the name, mailing address, occupation, and the name of the employer of individuals whose contributions exceed $200 in a calendar year.

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- **NeurosurgeryPAC — Your Money at Work**

This year, NeurosurgeryPAC has used its money to donate funds to sitting

Members of Congress, candidates for Congress and leadership committee PACs who share neurosurgery's views on healthcare policy. NeurosurgeryPAC is a nonpartisan political action committee and does not base its decisions on party affiliation, but instead focuses on the voting records and campaign pledges of the candidates.

Contributions were primarily made to Members of Congress who have co-sponsored legislation to repeal the Independent Payment Advisory Board (IPAB) — H.R. 452 and S. 668; supported medical liability reform — H.R. 5, H.R. 157, H.R. 816 and S. 1099; advocated to allow for physicians and patients to enter into Medicare private contracts — H.R. 1700 and S. 1042; and protect student athletes from concussions — H.R. 469.

Recent contributions to candidates running for a seat in the House include: Rep. Dan Benishek, MD (R-MI), general surgeon;Rep. Tim Bishop (D-NY), Education & Workforce Committee member, and lead sponsor of the Protecting Student Athletes from Concussions Act (H.R. 469); Rep. Scott DeJarlais (R-TN), family physician; Rep. Jeb Hensarling (R-TX), Co-Chair of the Joint Select Committee on Deficit Committee; Mike Oliverio (D-WV), House candidate and supporter of medical liability reform; Rep. Tom Reed (R-NY), Ways & Means Committee member; Rep. Aaron Schock(R-IL), Ways & Means Committee member; and Rep. John Shimkus (R-IL), Energy & Commerce Health Subcommittee member.

The NeurosurgeryPAC also has supported the following candidates for election to the Senate: Rep. Todd Akin (R-MO), who is challenging Sen. Claire McCaskill (D-MO) in the Missouri Senate race, and Rep. Denny Rehberg (R-MT), who is challenging Sen. Jon Tester (D-MT) in the Montana Senate race.

Leadership PAC contributions include: Rep. Michael Burgess, MD (R-TX), OB/GYN (Lonestar PAC); Rep. Kevin McCarthy (R-CA), Majority Whip (Majority Committee PAC); and Rep. Tom Price, MD (R-TX), orthopedic surgeon (Voice for Freedom PAC).

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Coding and Reimbursement

- **CMS Publishes Final 2012 Medicare Physician Fee Schedule**

On Nov. 1, 2011, the Center for Medicare and Medicaid Services (CMS) issued the 2012 Medicare Physician Fee Schedule (MPFS) Final Rule. Overall, neurosurgical reimbursement will be cut by an estimated one percent for services provided on or after Jan. 1, 2012. However, if Congress fails to act before the end of the year, physicians also face an additional 27.4 percent SGR-related pay cut. The AANS and CNS continue to press Congress to repeal the sustainable growth rate (SGR) formula and replace it with a stable mechanism for paying physicians.

The 2012 physician fee schedule also finalizes a number of quality-related provisions authorized under the Affordable Care Act, including expansions to and better alignment of Medicare's three physician quality reporting programs — the Physician Quality Reporting System (PQRS), the Electronic Prescribing (eRx) Incentive Program, and the Electronic Health Records (EHRs) Incentive Program, plus its online public reporting tool, Physician Compare. In 2012, physicians are eligible to earn a 0.5-percent bonus payment under the PQRS and an additional 0.5-percent bonus payment for enhanced MOC participation. Physicians also may earn a 1.0-percent bonus for e-prescribing; however, those who fail to meet Medicare's e-prescribing requirements in 2012 may be subject to a 1.5-percent payment penalty in 2013, unless they meet one of the hardship exceptions.

A full summary of the major provisions of the fee schedule rule is available by

clicking here; the complete fee schedule is available on the CMS website at http://ofr.gov/OFRUpload/OFRData/2011-28597_PI.pdf

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Know Your Medicare Participation Options

It is that time of year when neurosurgeons may wish to consider whether or not to participate in Medicare. There are three basic contractual options for physicians:

1. Sign a Medicare participation agreement. Participating physicians agree to accept Medicare's allowed charge as payment in full for all of their Medicare patients.
2. Elect non-participation. Non-participating physicians may, on a case-by-case basis, either accept the Medicare rate (which is set at 95 percent of the PAR amount) as payment in full or balance bill patients up to 115 percent of the non-PAR rate.
3. Become a privately contracting physician. Physicians who elect this status must opt-out of the Medicare program for two full years, and their Medicare patients are responsible for paying for any services provided by their physician under a private contract.

Neurosurgeons will have until Dec. 31, 2011, to modify their status with the Medicare program. Any change in status will be effective Jan. 1, 2012. To help physicians decide which option best meets their individual needs, the AMA has prepared a "Medicare Participation Kit."

Editor's Note: *The AANS and CNS do not endorse, encourage or support one particular Medicare option over another. It is up to individual neurosurgeons to make their own decisions about which option best meets the needs of their practices and patients.*

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Academic Medical Issues

OSHA Rejects Petition to Regulate Resident Work Hours

More than a year after it was submitted, Occupational Safety and Health Administration (OSHA) Director David Michaels, PhD, MPH, sent a letter to the Public Citizen Health Research Group rejecting the group's petition for OSHA to regulate medical resident work hours. In its letter, OSHA noted, among other things, the following:

> At this time, OSHA has determined that resident duty hour standards are best addressed within the context of resident training and education. However, the whistleblower provisions of the Occupational Safety and Health Act protect employees, including interns and residents, who experience retaliation as a consequence of voicing occupational safety and health concerns related to extended work hours ... OSHA will continue to watch with interested whether the new ACGME standards result in improved working conditions for medical residents and interns. In addition, the Agency is currently working on guidance which will provide advice on coping with the efforts of fatigue and sleep deprivation related to working extended hours.

Public Citizen criticized the OSHA decision and called on the agency to:

1. Begin enforcing safe resident work hours under the General Duty Clause and hold academic hospitals accountable for putting the safety of physicians-in-training, and that of their patients, in harm's way; and

2. Provide data detailing past enforcement actions taken to protect resident whistle-blowers under 29 U.S.C.§ 660(c) and elaborate further on how it plans to hold academic medical centers accountable for retaliatory actions against residents in the future.

The AANS and CNS opposed the Public Citizen petition and have consistently maintained that the Accreditation Council on Graduate Medical Education (ACGME) is the appropriate body to regulate medical resident duty hours.

Details of the OSHA petition and Public Citizen's response are available at http://www.citizen.org/hrg1981

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- **American College of Surgeons' Health Policy Research Institute Releases U.S. Atlas of the Surgical Workforce.**

The ACS Health Policy Research Institute recently released an interactive map highlighting the nation's current surgical workforce. The atlas includes data for general surgeons, colorectal surgeons, neurosurgeons, OB/GYN, orthopedic, ophthalmology, otolaryngology, plastic, thoracic, urology, pediatric and vascular. It also includes metrics on the number of primary care physicians, and Demographic and Health Services (including Medicare population and poverty rates). To find neurosurgical specific data, click on the second drop-down menu, and select neurosurgery. You then can click on each state for specific state and county data. You can find the atlas at http://www.acshpri.org/atlas.

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Of Note

- **Supreme Court Will Hear Challenges to Health Reform Law**

On Nov. 14, the U.S. Supreme Court announced that it will consider several challenges to the Patient Protection and Affordable Care Act (PPACA). The case is tentatively scheduled to be heard in March, making it likely that a final decision will come before the end of the court's term in June. The court chose to review four issues including the constitutionality of the individual insurance mandate and the expansion Medicaid coverage. The court has scheduled a marathon five-and-a-half hour oral argument, which will be held over two days as follows:

Day One

1. Two hours on the core question of whether the individual insurance coverage mandate is constitutional; and
2. One hour on whether a separate tax law (Anti-Injunction Act) bars the court from reaching a decision on the constitutional question

Day Two

1. An hour-and-a-half on whether, if the mandate is unconstitutional, other parts of the health-care law must also be struck down; and
2. One hour on whether the expansion of Medicaid is constitutional

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- **Obama Nominates New CMS Administrator**

On Nov. 23, the current CMS Administrator, Donald Berwick announced he will

step down, effective Dec. 2. Berwick's recess appointment was set to expire at the end of the year, and his resignation was a result of Senate Republicans succeeding in blocking his confirmation. The Obama Administration swiftly nominated Berwick's deputy, Marilyn Tavenner, to take the reins. Tavenner started out as a nurse taking care of patients and rose to become a top executive in the country's largest for-profit hospital company before being named Virginia's health secretary under former Gov. Tim Kaine.

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Communications & Public Relations

- **AANS/CNS Washington Office Hires New Communications Staff**

We are pleased to announce the addition of Alison Dye, MHSM, as the new Senior Manager of Communications in the AANS/CNS Washington Office. Alison comes to neurosurgery from the Health Leadership Council, where she served as Director of Strategic Communications and New Media. She holds a B.A. in Graphic Design and Communications from George Mason University, and a Masters of Health Systems Management, also from George Mason. Dye will oversee both the Washington Office's internal communication efforts (including e-blast content; articles for the *AANS Neurosurgeon* and the *CNS Quarterly;* the DC-Office e-newsletter, *Neurosurgeons Taking Action;* and websites), and our external communications with the media, trade press, and the general public. Her experience and background in "new media" will help move us into the world of Facebook, Twitter, blogs, YouTube, and other new communications venues and avenues for our advocacy-related messages. Finally, Dye will provide staff support for the AANS/CNS Communication and Public Relations Committee, which has been dormant for the past year while this position was vacant.

Her contact information is:

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