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

- **U.S. House of Representatives Repeals IPAB, Adopts Medical Liability Reform**

  On March 22, 2012, the U.S. House of Representatives passed legislation to repeal the Independent Payment Advisory Board (IPAB) and adopt meaningful medical liability reform. The Protecting Access to Healthcare Act (H.R. 5) passed by a vote of 223-181, with seven Democrats joining their Republican colleagues in voting in favor of the bill. Ten republicans joined the Democrats in voting against the measure, four members voted "present" and 23 did not vote. Click here to see how your representative voted.

  During the debate on the bill, several amendments were considered. Supported by the AANS and CNS, Reps. Charlie Dent (R-PA) and Pete Sessions (R-TX) offered an amendment that would address the crisis in access to emergency care by extending liability coverage to on-call and emergency room physicians under the Federal Tort Claims Act. This amendment passed by voice vote. In addition, Reps. Cliff Stearns (R-FL) and Jim Matheson (D-UT) offered an amendment to grant limited civil liability protections to health professionals that volunteer at federal declared disaster sites. The AANS and CNS also supported this amendment, which passed by a vote of 251-157. Twenty-seven democrats joined the republicans in voting in favor of the amendment. Four republicans joined 153 democrats in opposing the amendment, one member voted "present" and 22 did not vote. To see how your representative voted on this amendment, click here.

  Repealing the IPAB and passing federal medical liability reform are two top priorities for organized neurosurgery. Special thanks to all the neurosurgeons who took time to contact their representative on this legislation — it was critical to getting this legislation passed. We now will focus our efforts on getting the U.S. Senate to act on this bill, although it is not likely that the legislation will be considered in its present form.

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- **U.S. Supreme Court Completes Healthcare Reform Oral Arguments**

  On March 28, 2012, the U.S. Supreme Court completed a three-day marathon session of oral arguments regarding the Patient Protection and Affordable Care Act (PPACA). Though not televised, the high court provided full coverage via written transcripts and audio recording. C-SPAN has made each oral argument session (there are a total of four) available for listening according to your own schedule, and neurosurgeons are encouraged to listen to this riveting discussion. To listen to the arguments, click here

  While it is impossible to predict with any certainty what the court will do, if the justices' questions on the issues are any indication, the following outcomes seem plausible:

- The court did not likely accept the argument that the penalty for failing to purchase health insurance coverage mandated by the law is a tax, and therefore the Anti-Injunction Act does not bar the court from deciding the case on the merits.

- The linchpin issue in the case is whether the individual mandate to buy health insurance is constitutional under the Commerce Clause. This debate was fascinating and highly engaging, and by all appearances (and most reports), the individual mandate appears to be in serious trouble. A majority of the justices seemed skeptical that requiring individuals to enter into interstate commerce to buy health insurance is a constitutionally valid use of Congress' Commerce Clause authority. These same justices were concerned about how far the federal powers could go in compelling individuals to enter into commerce, and, if left unchecked, Congress could theoretically compel individuals to buy broccoli because it is good for them.

- If the court strikes down the individual mandate, it must next determine whether or not the entire law must be ruled null because there is no "severability clause" in the law. A severability clause in a statue makes the statute's parts or provisions severable so that one part can be invalidated without invalidating the entire law. This was the topic of the third session of oral arguments and the outcome of the severability issue is unclear. Several justices believe that it would be a very difficult (and inappropriate) job for the court to wade through the statute and determine which provisions can stay and which must go, though it was acknowledged that parts of the law have nothing to do with the individual mandate and should therefore remain in place. Justice Antonin Scalia, on the other hand noted, "My approach would say if you take the heart out of the statute, the statute's gone."

- The final matter at issue is the requirement that states must expand their Medicaid rolls to cover more individuals who are not currently eligible for Medicaid. At issue is whether this is a coercive and unconstitutional exercise of federal power over the states. Here it appeared that the justices were a bit less sympathetic, noting that up to now, states have been happy to take federal money to help pay for their Medicaid programs. Several justices did acknowledge, however, that accepting this financial enticement may not truly be a voluntary act, with Chief Justice John Roberts noting this could be analogous to the situation where someone has a gun to their head and has asked "your money or your life."

Case documents, transcripts and other information pertaining to PPACA are available on the Supreme Court's website. The high court is expected to render its decision sometime in June.

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Senate Unanimously Passes PAHPA Reauthorization

In early March, the U.S. Senate unanimously passed the Pandemic and All-Hazards Preparedness Act (PAHPA) Reauthorization of 2011 (S. 1855), joining their colleagues in the House in acknowledging that the critical emergency care system is an essential component of national preparedness. The Senate's PAHPA reauthorization includes a key provision that adds trauma and emergency care preparedness goals to the National Health Security Strategy's medical preparedness goals-ensuring that trauma and emergency care is prioritized in planning efforts to increase preparedness, response capabilities, availability, coordination and accessibility with respect to public health emergencies.

The PAHPA reauthorizing legislation — spearheaded by the bipartisan efforts of Senate Health, Education, Labor, & Pensions (HELP) Committee members, Chairman Tom Harkin (D-IA), Ranking Member Michael Enzi (R-WY), and Sens. Richard Burr (R-NC) and Bob Casey (R-PA) — makes several important

changes to streamline the federal government's disaster planning. The legislation strengthens national preparedness for, and responses to, medical and public health emergencies and disasters; optimizes state and local all-hazards preparedness and response efforts and collaboration; enhances medical countermeasure activities; and reauthorizes key medical and public health programs, including the Strategic National Stockpile and the BioShield Special Reserve Fund.

Throughout this process, the AANS and CNS continued to engage with key Members of the Senate HELP Committee to ensure language in the reauthorizing legislation recognized the important role of the trauma and emergency care system in federal healthcare delivery, and in the delivery of care during a disaster.

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Grassroots Action Alert

- **Medicare Care Cuts Loom — Contact Congress to Support Medicare Private Contracting**

Physicians face Medicare payment cuts of 32 percent on Jan. 1, 2013, and patients are finding it increasingly difficult to see the physician of their choice. To help ameliorate this situation, the AANS and CNS are working to pass legislation to create a new Medicare option that will allow patients and physicians to enter into private contract arrangements without penalties to either party. Neurosurgeons are highly encouraged to contact Congress and urge your elected officials to cosponsor H.R. 1700 and S. 1042, the Medicare Patient Empowerment Act (MPEA), introduced by Rep. Tom Price (R-GA) and Sen. Lisa Murkowski (R-AK), respectively. To send an e-mail message to Congress, go to the AANS/CNS Legislative Action Center. We have created a draft letter that you can personalize. (This is highly encouraged.)

In addition to sending a letter to Congress, please take a moment to visit www.MyMedicare-MyChoice.org, where you can add your name to a petition supporting the Medicare Patient Empowerment Act and obtain additional education materials about the MPEA.

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NeurosurgeryPAC

- **Donate to NeurosurgeryPAC**

NeurosurgeryPAC's 2012 fundraising cycle is well underway, and as of April 3, 2012 your PAC has raised a total of $116,950 -- thank you contributors! But we still have a ways to go before we meet our $250,000 fundraising goal. Your support has been instrumental in helping achieve recent legislative successes such as the repeal of the Independent Payment Advisory Board (IPAB) and adoption of federal medical liability reform. Please donate to the PAC so we can continue making progress on the advocacy front. Contributing is easy with our new online donation option.

Click here for more information on the NeurosurgeryPAC and read more about your NeurosurgeryPAC in action. Thanks to all those who have contributed to NeurosurgeryPAC.

It is an important election year, so NeurosurgeryPAC will need to have maximum resources to make a difference in November. We encourage you to donate early and often.

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 U.S. and pay dues or have voting privileges may contribute to NeurosurgeryPAC. All corporate contributions to NeurosurgeryPAC will be used for administrative expenses and other activities permissible under federal law. Federal law requires NeurosurgeryPAC to use its best efforts to collect and report the name, mailing address, occupation, and employer name of every individual whose contributions exceed $200 in a calendar year.

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- **NeurosurgeryPAC — Your Money at Work**

In 2012, NeurosurgeryPAC already has donated $252,000 to several Members of Congress and campaign committees who support neurosurgery's legislative agenda. Most recently, your PAC contributed to Rep. Todd Akin (R-MO), who is running for the Missouri Senate seat; Rep. Larry Bucshon, MD (R-IN), House Education & Workforce Committee; Rep. Frank Pallone (D-NJ), Ranking Member of the House Energy & Commerce Subcommittee on Health; Rep. Jim Gerlach (R-PA), House Ways & Means Subcommittee on Health; Rep. Fred Upton (R-MI), Chairman of the Energy & Commerce Committee; Blue Dog PAC, a coalition of House democrats; and Maggie's List, a coalition working to elect women to Congress. If you have questions about how you can get more involved with NeurosurgeryPAC, contact Adrienne Roberts, AANS/CNS Senior Manager of Legislative Affairs, at aroberts@neurosurgery.org.

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Coding and Reimbursement

- **CMS Extends Compliance with HIPPA Electronic Standard Version 5010**

On March 15, 2012, the Centers for Medicare & Medicaid Services (CMS) announced that it has delayed the date for compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 electronic standard, Version 5010, to June 30, 2012. HIPAA requires physicians to ensure they are protecting the privacy and security of patients' medical information and, to that end, physicians must use a standard format when submitting electronic transactions, such as submitting claims to payers. CMS had originally scheduled enforcement of the new standard for Jan. 1, 2012, but has delayed enforcement in response to requests by the American Medical Association (AMA) and specialty societies. The AMA is tracking physician experience with CMS processing and additional information can be found here. Physicians who experience claims processing delays are encouraged to file a complaint form with the AMA and CMS using the forms here.

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- **MedPAC Releases March Report to Congress, Recommends 18% Pay Cut for Surgeons**

Recently, the Medicare Payment Advisory Commission (MedPAC) released its March 2012 Report to Congress. In the report, MedPAC reiterated its proposal for reforming the physician payment system, which cuts payments to surgeons by 18 percent over the next 10 years. The proposal includes:

Freezing primary care services at current rates and cutting specialty services by 5.9 percent for three years, followed by a freeze for seven years;
- Basing reimbursement rates on "efficient" practices;
- Reducing RVUs of so-called "overpriced" services, and beginning in 2015, these RVU reductions must result in a one-percent cut in overall fee-schedule spending for five consecutive years; and
- Increasing shared savings opportunities for physicians participating in two-sided risk accountable care organizations (ACOs).

The AANS and CNS, along with the Alliance of Specialty Medicine (Alliance) and others, oppose the MedPAC proposal and have written letters and met with MedPAC staff expressing our concerns.

Click here for a copy of the MedPAC report.

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Washington State Evaluates Coverage of BMP

The Washington State Health Care Authority's Health Technology Assessment Clinical Committee met on March 16, 2012, to consider coverage for bone morphogenic protein (BMP) used in spine surgery. The AANS and CNS submitted written comments on the issue in response to a technology assessment released earlier this year by Spectrum, a clinical evidence consulting firm hired to review the medical literature. At the meeting, neurosurgeon John Ratliff, MD, FAANS, FACS, vice-chair of the AANS/CNS Quality Improvement Workgroup and member of the AANS/CNS Coding and Reimbursement Committee, presented neurosurgery's position on the proposal to limit coverage of BMP. Trent Tredway, MD, FAANS, also attended the meeting on behalf of the Washington State Association of Neurosurgical Surgeons. Following discussion, the committee voted to cover BMP-2 for some uses, with conditions. BMP-2 will be covered for the FDA on-label use of single level lumbar fusion, for revision surgery and for some off-label uses in the lumbar spine for "compromised" patients for whom bone harvesting is not feasible. However, the committee voted not to cover BMP-7. Currently BMP-7 has an FDA Humanitarian Device Exemption (HDE), but is not widely used.

Click here for the meeting materials, including Dr. Ratliff's presentation. Results of the meeting will be published on the Washington State Health Care Authority's website soon, and a brief opportunity to review the exact wording of the coverage provisions will be provided.

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Quality Improvement

CMS Announces Process for Obtaining Exemption for 2013 eRx Program Penalties

On March 1, 2012, the Centers for Medicare & Medicaid Services (CMS) re-opened the Quality Reporting Communication Support Page to allow individual eligible professionals and CMS-selected group practices the opportunity to request a significant hardship exemption for the 2013 Electronic Prescribing (eRx) payment adjustment. The Communication Support Page will accept hardship exemption requests now through June 30, 2012. A user manual is available to assist individual eligible professionals and CMS-selected group practices in submitting their requests for hardship exemption.

Additionally, CMS has confirmed that the QualityNet Help Desk is now prepared to take calls from physicians who applied for a 2012 hardship exemption. Many physicians who applied have not had their exemption approved and have

therefore received Medicare's ePrescribing penalty. Neurosurgeons who are having problems with their ePrescribing penalty should contact the QualityNet Help Desk Monday through Friday, between the hours of 7:00 a.m.–7:00 p.m. CMT at 866-288-8912 or via e-mail at qnetsupport@sdps.org. If you continue to experience problems with the Help Desk, e-mail your concerns directly to Medicare at: eRx_hardship@cms.hhs.gov.

More information about Medicare's ePrescribing program is available on the CMS website.

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- **CMS Releases EHR Incentive Stage 2 Meaningful Use Proposal**

On March 7, 2012, the Centers for Medicare & Medicaid Services (CMS) released the proposed rule on Stage 2 of the Medicare/Medicaid Electronic Health Record (EHR) Meaningful Use Incentive Program. The proposed requirements build on Stage 1 of the program. Stage 2 does not start until 2014.

For Stage 2, CMS is proposing that physicians meet a total of 17 core objectives and 3 of 5 menu objectives. Additionally, physicians will be required to report on 12 clinical quality measures. To be eligible for EHR incentive payments, physicians will be required to successfully meet all measures. Physicians who do not successfully meet meaningful use requirements in 2013 (or by Oct. 3, 2014 in the case of those who start participation the year before a penalty is effective), face a penalty starting on Jan. 1, 2015.

Organized neurosurgery is significantly opposed to the proposed timeline and financial penalty structure and the AANS and CNS are advocating that these be changed. For a detailed analysis of the rule and breakdown of incentives and penalties, please click here. Additionally, for specific information on the objectives, measures and exclusions click here. For more information, please contact Koryn Rubin, AANS/CNS Senior Manager of Quality Improvement, at krubin@neurosurgery.org.

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- **AMA Releases Suite of Physician Data Resources**

In an effort to help physicians understand and use the data reports they receive from payers, the American Medical Association (AMA) has created a number of helpful resources. Take Charge of Your Data is a guidebook designed to help physicians understand and verify the accuracy of complex physician data reports used by public and private health insurers to profile physicians. The guidebook was created to be used in tandem with the AMA's Standardized Physician Data Report, which provides a uniform format for displaying physician data that includes the depth of information needed by physicians to identify practice improvement opportunities. Used together, these resources provide physicians with a roadmap to understanding how to use the payer-provided data to verify the accuracy of their profiles and assist them in providing exemplary care to their patients.

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- **AANS, CNS Comment to PCORI on Research Priorities, Definition**

On March 13, 2012, the AANS and CNS submitted comments to the Patient Centered Outcomes Research Institute (PCORI) regarding its draft research agenda. The PCORI was created by the Patient Protection and Affordable Care Act (PPACA) and is charged with conducting comparative effectiveness research (CER). The AANS/CNS comment letter highlighted the need for PCORI to include specific clinical conditions for additional research and criticized the lack of specificity contained in the draft PCORI research agenda. Additionally, neurosurgery supported PCORI's efforts to use clinical registries as a source for evaluating and studying comparative effectiveness research. Neurosurgery's NeuroPoint Alliance (NPA), and its National Neurosurgery Quality and Outcomes Database (N2QOD) project, was cited as one such program.

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- **Alliance 'Roundtable' Features AHRQ's Carolyn Clancy, CMMI's Sean Cavanaugh**

The Alliance of Specialty Medicine (Alliance), of which the AANS and CNS are members, hosted its inaugural Physician Roundtable with the Agency for Healthcare Research and Quality (AHRQ) and the Center for Medicare and Medicaid Innovation (CMMI). The goal of the event was to highlight the need for the federal government to involve and engage specialty physicians in its quality improvement and value-based payment initiatives, which to date have been largely focused on primary care. Carolyn Clancy, MD, Director of the AHRQ, and Sean Cavanaugh, the Acting Director of Programs and Policies for CMMI, made presentations and fielded questions from Alliance physicians who represent a variety of medical specialties.

Dr. Clancy acknowledged that while AHRQ is agnostic when it comes to endorsing or funding different means of care, she made it clear that she appreciates the value that specialty care brings to the healthcare system in terms of outcomes and cost savings. She recommended that the specialty community be more aggressive in conducting research and sharing its results. Mr. Cavanaugh echoed this sentiment when asked what efforts are underway at CMMI to ensure that quality improvement initiatives are actionable and meaningful for a range of patients and specialty physicians.

Neurosurgeon Zachary Litvack, MD, represented the AANS and CNS at this meeting and he highlighted neurosurgery's registry development work through the NeuroPoint Alliance. Dr. Litvack encouraged AHRQ to fund such efforts and for CMS to include such data collected by the specialty societies in its quality improvement efforts.

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Academic Medical Issues

- **New Data Reveals Residency Match Rate Highest in 30 Years**

According to new data released by the National Resident Matching Program (NRMP), more than 95 percent of U.S. medical school seniors — the highest rate in 30 years — have been placed in residency programs. In total, 26,772 new doctors will be fanning out across the country to begin their three- to seven-year residencies. According to NRMP, the number of applicants in this year's Main Residency Match rose by 642 for a total of 38,377 participants, an increase of more than 2,400 over the last five years. For more information, visit www.nrmp.org.

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Of Note

- **Dr. Alex Valadka in the News**

On March 21, 2012, Roll Call Newspaper (Capitol Hill's paper of record) published a Guest Opinion piece featuring the Alliance of Specialty Medicine (Alliance) and our own Alex Valadka, MD, FAANS, FACS, the Alliance's spokesperson and chair of the AANS/CNS Washington Committee. The article, "IPAB: Unaccountable And a Risk to Medicare," not only generated large amounts of interest on Capitol Hill, but it also made rounds in the social media realm. More specifically, on Twitter, the Roll Call article was tweeted about 10 times by key health policy influencers, including House Speaker John Boehner (R-OH), and reached an audience of 297,525 people.

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Communications & Public Relations

- **Follow @Neurosurgery on Twitter**

In March 2012, the AANS and CNS Washington Office launched its @Neurosurgery Twitter handle, which garnered more than 125 followers in its first two weeks of operation. This outlet allows the AANS/CNS Washington Office to communicate health policy updates and provide links to positive stories about neurosurgery. By joining the Twitter family, organized neurosurgery was able to actively engage in the debate on the Protecting Access to Healthcare Act (H.R. 5) — which repealed the Independent Payment Advisory Board (IPAB) and included medical liability reform — reaching key Members of Congress, other advocates and the general public to promote our advocacy message. Follow @Neurosurgery to stay up to date with all the daily health policy activities happening in Washington, D.C. We look forward to connecting with you online, and welcome your content ideas and contributions. If you are interested in these communications activities, please contact Alison Dye, AANS/CNS Senior Manager of Communications, at adye@neurosurgery.org.

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