



# 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.

[Go to Entire News Page](#)

## Legislative Affairs

- **U.S. Supreme Court Upholds Individual Mandate to Buy Health Insurance; Rejects Medicaid Expansion Requirements** [\[more\]](#)
- **Neurosurgery Responses to Ways and Means Request for SGR Reform Ideas** [\[more\]](#)
- **House Passes Bill to Repeal Medical Device Tax** [\[more\]](#)
- **MedPAC June Report Proposes Payment Change** [\[more\]](#)
- **Neurosurgery Makes its Mark at AMA Annual Meeting** [\[more\]](#)

## NeurosurgeryPAC

- **NeurosurgeryPAC Supports Additional Candidates** [\[more\]](#)
- **Contribute to NeurosurgeryPAC Today** [\[more\]](#)

## Coding and Reimbursement

- **Neurosurgery Continues Rapid Response to Coverage Policy Proposals** [\[more\]](#)
- **Neurosurgery Urge CMS to Include Neurosurgeons for Medicaid Payment Increases** [\[more\]](#)

## Quality Improvement

- **Neurosurgery Hosts Comparative Effectiveness Research Roundtable in Washington, D.C.** [\[more\]](#)
- **Neurosurgery Meets with CMS to Discuss NPA, PQRS, Physician Compare and the Value Based Payment Modifier** [\[more\]](#)
- **Neurosurgery Meets with Obama Administration and ONC to Discuss Meaningful Use** [\[more\]](#)
- **Neurosurgery Submits Comments to CMS on 2013 IPPS Proposed Rule** [\[more\]](#)

## Of Note

- **Cato Institute Paper Reveals Unconstitutionality of IPAB** [\[more\]](#)
- **Neurosurgeons Appointed to CMS MEDCAC** [\[more\]](#)

## Communications

- **Keep the Pulse on Health Policy Activities in the Nation's Capital** [\[more\]](#)

## Legislative Affairs

- **U.S. Supreme Court Upholds Individual Mandate to Buy Health Insurance; Rejects Medicaid Expansion Requirements**

On June 28, 2012, in a 5-4 decision, the [U.S. Supreme Court](#) upheld the individual mandate to buy health insurance under Congress' taxing power and, hence, ruled that the [Patient Protection and Affordable Care Act \(ACA\)](#) is constitutional. Chief Justice John G. Roberts wrote the opinion for the majority, joining with the court's four liberal justices — Stephen G. Breyer, Ruth Bader Ginsburg, Elena Kagan and Sonia Sotomayor — in upholding the law. Justices Samuel A. Alito, Anthony Kennedy, Antonin Scalia and Clarence Thomas dissented. According to Chief Justice Roberts, "[p]ut simply, Congress may tax and spend. This grant gives the Federal Government considerable influence even in areas where it cannot directly regulate. The Federal Government may enact a tax on an activity that it cannot authorize, forbid or otherwise control." Alternatively, Justice Kennedy summed up the view of the dissent: "In our view, the entire Act before us is invalid in its entirety."

Although the court upheld the individual mandate, it struck down in part the requirement for states to expand Medicaid coverage by a 7-2 margin. Under this aspect of the ruling, the court found that Congress acted constitutionally in offering states funds to expand coverage to millions of new individuals and states can agree to expand coverage in exchange for those new funds. If a state accepts the expansion funds, then it must follow the rules and expand coverage. However, a state can refuse to participate in the expansion without losing all of its Medicaid funds, keeping in place its current Medicaid program.

Speaking for the majority, Chief Justice Roberts stated: "Nothing in our opinion precludes Congress from offering funds under the ACA to expand the availability of healthcare, and requiring that states accepting such funds comply with the conditions on their use. What Congress is not free to do is to penalize States that choose not to participate in that new program by taking away their existing Medicaid funding." Thus, as pointed out by Roberts, "[a]s practical matter, that means states may now choose to reject the expansion; that is the whole point. But that does not mean all or even any will." Justices Ginsburg and Sotomayor dissented from this ruling, believing that the entire Medicaid expansion program is constitutional, even the provision threatening to cut off all funding unless states agreed to the expansion.

While the opinion settles the constitutional debate on the issues before the court, many unanswered questions remain. For example, will all the states now move forward to implement insurance exchanges? Will some states refuse to expand Medicaid coverage? Will most individuals opt to pay the modest "tax" and forego purchasing more costly health insurance? Will other aspects of the law (e.g., the IPAB, Physician Quality Reporting System (PQRS) and the Value Based Payment Modifier, only seek to further penalize healthcare providers without doing anything to improve patient care. Additionally, neurosurgery continues our efforts to repeal Medicare's flawed sustainable growth rate (SGR) formula and to pass medical liability reform — two critical aspects of health reform that were not addressed in the ACA.

One thing is certain: The Supreme Court's ruling on this case is far from the last word on healthcare reform, and the AANS and CNS will continue to seek repeal of certain aspects of the ACA that are onerous to the practice of medicine and detrimental to patients' access to quality care. Provisions in the law, such as the IPAB, Physician Quality Reporting System (PQRS) and the Value Based Payment Modifier, only seek to further penalize healthcare providers without doing anything to improve patient care. Additionally, neurosurgery continues our efforts to repeal Medicare's flawed sustainable growth rate (SGR) formula and to pass medical liability reform — two critical aspects of health reform that were not addressed in the ACA.

The full opinion in *National Federation of Independent Business et al v. Sebelius* is available at: <http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf>.

If you have any questions, please contact Katie O. Orrico, Director of the AANS/CNS Washington Office, at [korrico@neurosurgery.org](mailto:korrico@neurosurgery.org).

[ [top of page](#) ] [ [back to headlines](#) ]

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## ■ **Neurosurgery Responses to Ways and Means Request for SGR Reform Ideas**

Per the request of [House Ways and Means Committee](#) Chairman Dave Camp (R-MI), the AANS and CNS submitted detailed [comments](#) on how to reform the Medicare physician payment system and improve the quality of care under Medicare. The AANS and CNS noted that fundamental reform of the entire Medicare program is essential to solving the sustainable growth rate (SGR) problem and recommended that Medicare move from its current defined benefit structure to a defined contribution model, which is similar to the [Federal Employee Health Benefit Program \(FEHBP\)](#). Additionally, the letter stressed that it is important to provide stability in the physician payment

system, maintain a viable fee-for-service option, allow patients and physicians to privately contract, and maintain Medicare's financial support of graduate medical education. The letter provided extensive details about the [NeuroPoint Alliance \(NPA\)](#) and the [National Neurosurgery Quality Outcomes Database \(N<sup>2</sup>QOD\)](#). Finally, the letter pointed out that physicians face cumulative financial penalties if they do not successfully participate in multiple Medicare programs, including the e-prescribing program, the [electronic health record \(EHR\)](#) meaningful use program and the [Physician Quality Reporting System \(PQRS\)](#). These cuts are on top of SGR and other budget deficit-related cuts, and will total 85 percent over the next nine years. We conclude the letter by stating that it "is clear that physicians cannot absorb cuts of this magnitude so it is imperative that Congress act to modify these flawed programs, including eliminating these penalties."

[ [top of page](#) ] [ [back to headlines](#) ]

---

#### ■ **House Passes Bill to Repeal Medical Device Tax**

On June 7, 2012, by a bipartisan vote of 270 to 145, the U.S. House of Representatives passed Rep. Erik Paulsen's (MN-03) "[Protect Medical Innovation Act of 2011](#)" (H.R. 436). The bill repeals the \$29 billion tax on American medical device companies, which was part of the Patient Protection and Affordable Care Act (PPACA). It also rescinds the ban on the use of tax-free money for flexible spending arrangements (FSAs) and health savings accounts (HSAs) to purchase over-the-counter medicines without a prescription. The AANS and CNS actively supported passage of this legislation, as we are concerned that the medical device tax will reduce patient access to the latest life-improving and life-saving technologies. The bill is now pending action by the U.S. Senate.

[ [top of page](#) ] [ [back to headlines](#) ]

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#### ■ **MedPAC June Report Proposes Payment Change**

On June 15, 2012, the [Medicare Payment Advisory Commission \(MedPAC\)](#) released its [June report to Congress](#). The report recommends combining Medicare's Part A and B deductibles, replacing coinsurance with copays that vary by type of service and provider, placing a cap on out-of-pocket beneficiary spending and levying a surcharge on Medigap coverage. The report builds on MedPAC's previous recommendations, encouraging Congress to pass reforms that move Medicare away from fee-for-service reimbursement. The Commission also notes that the sustainable growth rate (SGR) system for reimbursing physicians is unworkable and must be replaced. The AANS and CNS continue to advocate for the repeal of the SGR and are urging Congress to act now to prevent the 30 percent pay cut on Jan. 1, 2013.

[ [top of page](#) ] [ [back to headlines](#) ]

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#### ■ **Neurosurgery Makes its Mark at AMA Annual Meeting**

The American Medical Association (AMA) convened its House of Delegates Annual Meeting in mid-June and, once again, neurosurgery's small — but mighty — delegation made a significant mark. We spent most of our time and effort focused on several key reports and resolutions related to the following issues: CPT process; reforming Medicare from a defined benefit to a defined contribution program; limiting the scope of the Medicare-Medicaid dual eligibles demonstration program; transparency in recruiting and marketing techniques for young physicians; continuing medical education tracking; and several ethics reports. Full details about the meeting are available at: <http://bit.ly/b5C97y>.

This meeting marked the conclusion of Peter W. Carmel, MD, FAANS' successful year as president of the AMA. In his final speech, Dr. Carmel, a neurosurgeon, pointed to how AMA advocacy radically improved the Medicare rules for [accountable care organizations \(ACO\)](#), paving the way for physicians to lead the majority of the first 27 shared savings ACOs. Other victories — such as protecting physicians from unreasonable audits — have meant physicians can spend less time on administrative paperwork and more time caring for patients. Dr. Carmel also included a touching tribute to neurosurgeon Karin M. Muraszko, MD, FAANS, recognizing her incredibly inspiring personal journey. Dr. Carmel's speech can be viewed at: <http://bit.ly/LMNZEE>.

Finally, special recognition goes to AANS delegate to the AMA, Mark J. Kubala,

MD, FAANS. The AANS and CNS nominated Dr. Kubala for the AMA's Distinguished Service Award, and the AMA Board of Trustees concurred with our suggestion. The Board, recognizing his 50 years of service to patients and the profession, will bestow on Dr. Kubala this high honor at the AMA Interim Meeting in November. Please join us in congratulating him on this wonderful achievement!

[\[ top of page \]](#) [\[ back to headlines \]](#)

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## NeurosurgeryPAC

### ■ NeurosurgeryPAC Supports Additional Candidates

Recently, NeurosurgeryPAC made donations to the following candidates for the U.S. House of Representatives: Rep. Charles Boustany, MD (R-LA-7); Rep. Dave Camp (R-MI-4), Chairman of the House Ways & Means Committee; Rep. Lynn Jenkins (R-KS-2); Rep. Erik Paulsen (R-MN-3); Rep. Bill Posey (R-FL-15); Rep. Tom Price, MD (R-GA-6); Rep. John Shimkus (R-IL-19); and Rep. Cliff Stearns (R-FL-6). NeurosurgeryPAC also contributed to Gov. Linda Lingle (R-HI), who is running for the Senate seat that is being vacated by Sen. Daniel Akaka (D-HI).

[\[ top of page \]](#) [\[ back to headlines \]](#)

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### ■ Contribute to NeurosurgeryPAC Today

NeurosurgeryPAC's 2012 fundraising cycle is well underway, and, to date, your PAC has raised a total of \$194,950 — thank you, contributors! Although we are closing in on our goal, we still have more to raise before we meet our \$250,000 fundraising goal. Please donate to the PAC so we can continue to make progress on advocacy issues such as Medicare physician payment reform. Contributing is easy with our [new online donation option](#). With another election only a few months away, NeurosurgeryPAC soon will launch its Election-Year Fundraising Drive to raise money to support pro-neurosurgery candidates running for the U.S. House and Senate.

[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.

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.

[\[ top of page \]](#) [\[ back to headlines \]](#)

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## Coding and Reimbursement

### ■ Neurosurgery Continues Rapid Response to Coverage Policy Proposals

Neurosurgery continues to receive requests to review and respond to insurance carrier coverage policies. On June 1, 2012, the AANS and CNS [responded](#) to a Blue Cross/Blue Shield of Illinois policy restricting coverage of lumbar spinal fusion for degenerative disc disease. The proposed policy also includes BC/BS plans in New Mexico, Oklahoma and Texas. While acknowledging that degenerative disc disease often is poorly defined and used to describe a wide variety of conditions, some of which may not be appropriate for surgery, the AANS and CNS offered the following criteria for lumbar fusion in a patient with low back pain and degenerative disc disease: single or two level disc degeneration, inflammatory endplate changes (i.e., Modic changes), moderate to severe disc space collapse, absence of significant psychological distress or psychological comorbidities (e.g. depression, somatization disorder), absence of litigation or compensation issues, and failure to respond to at least one year of non-operative care that includes physical and cognitive therapy.

Although coverage restrictions have focused primarily on spine issues, other

areas of neurosurgery also are under review. For example, on June 7, 2012, AANS and CNS joined the American Society of Neuroradiology (ASNR), the Society of NeuroInterventional Surgery (SNIS) and the Society of Vascular and Interventional Neurologists (SVIN) in [sending a letter](#) to Anthem Blue Cross/Blue Shield in response to its [coverage policy](#) proposal regarding mechanical embolectomy for the treatment of acute stroke. The policy, which became effective in on April 11, 2012, states that mechanical embolectomy is considered investigational and not medically necessary. In response to the multispecialty letter, representatives from the Office of Medical Policy & Technology Assessment have requested a conference call with the groups to further discuss our concerns about the policy.

If you have any questions regarding these or other coding and reimbursement issues, please contact Cathy Hill, AANS/CNS Senior Manager for Regulatory Affairs, at [chill@neurosurgery.org](mailto:chill@neurosurgery.org).

[\[ top of page \]](#) [\[ back to headlines \]](#)

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#### ■ **Neurosurgery Urge CMS to Include Neurosurgeons for Medicaid Payment Increases**

On May 11, 2012, the [Center for Medicare and Medicaid Services](#) (CMS) issued a [proposed rule](#) regarding Medicaid payments for primary care services, including those provided by pediatric subspecialists. Per the Patient Protection and Affordable Care Act (PPACA), Medicaid must pay physicians who provide these services at Medicare rates for two years: 2013 and 2014. On June 11, 2012, Neurosurgery — including the AANS, CNS, AANS/CNS Section on Pediatric Neurosurgery and the American Society of Pediatric Neurosurgeons — along with other child health advocacy organizations, sent [comments](#) to CMS regarding this proposal. In our letter, we applauded and strongly supported the proposal to apply this reimbursement policy to pediatric subspecialists, in addition to general pediatricians, who provide primary care services to children. Unfortunately, per the proposal, only those pediatric subspecialists who have primary board certificates in internal medicine are eligible for this pay increase. We therefore urged CMS to expand the proposal so all pediatric subspecialists — including neurosurgeons — would be eligible for the increased payment rates when providing primary care services to children.

[\[ top of page \]](#) [\[ back to headlines \]](#)

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### Quality Improvement

#### ■ **Neurosurgery Hosts Comparative Effectiveness Research Roundtable in Washington, D.C.**

On June 1, 2012, neurosurgeon Matthew J. McGirt, MD, chaired a physician-patient roundtable discussion on comparative effectiveness research (CER) and the current work plan of the [Patient-Centered Outcomes Research Institute](#) (PCORI), which is charged by Congress to conduct CER. Sponsored by the [Partnership to Improve Patient Care](#) (PIPC), the roundtable focused on ways to ensure that patients and physicians have input into the processes, strategic research agenda and individual project decisions of PCORI. Additionally, the roundtable considered issues related to CER in spine and discussed the importance of seeking patient centricity in the diagnosis and treatment of patients with spinal disorders.

[\[ top of page \]](#) [\[ back to headlines \]](#)

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#### ■ **Neurosurgery Meets with CMS to Discuss NPA, PQRS, Physician Compare and the Value Based Payment Modifier**

In mid-June, Anthony L. Asher, MD, FAANS, FACS; Matthew J. McGirt, MD; Theodore Speroff, PhD of Vanderbilt University; and AANS/CNS Washington office staff met with the [Center for Medicare and Medicaid Services](#) (CMS) to discuss neurosurgery's clinical outcomes registry projects conducted by the [NeuroPoint Alliance](#) and the [National Neurosurgery Quality Outcomes Database](#) (N<sup>2</sup>QOD). The purpose of the meeting was to determine how the NPA can become certified as a [Physician Quality Reporting System](#) (PQRS) registry and how better neurosurgery can collaborate with CMS on the agency's quality improvement initiatives

In a separate meeting, the AANS and CNS, along with other members of the [Alliance of Specialty Medicine](#), met with CMS to discuss our ongoing concerns related to the [Physician Compare](#) website, which is fraught with errors, including the fact that neurosurgery is not listed as a specialty. Meeting participants also raised concerns about the new Medicare [value-based payment modifier](#). Starting in 2015, this budget neutral modifier will adjust payments to physicians based on the cost and quality of care they provide relative to their peers during the course of a reporting period. The AANS and CNS are actively seeking repeal of this modifier, which was included in the health reform law.

[ [top of page](#) ] [ [back to headlines](#) ]

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#### ■ **Neurosurgery Meets with Obama Administration and ONC to Discuss Meaningful Use**

Representatives from Neurosurgery recently attended a White House Town Hall in conjunction with the Department of Health and Human Services [Office of the National Coordinator](#) (ONC) to discuss how health information technology (HIT) and, more specifically, how meaningful use is affecting physician practices. At the meeting, Obama Administration officials also announced that more than 100,000 providers across the U.S. are using certified electronic health record (EHR) systems and the [Centers for Medicare and Medicaid Services \(CMS\)](#) has issued more than \$5.7 billion in EHR incentive payments to encourage the adoption of HIT. During the discussion, we reiterated our concerns about the meaningful use requirements and how they are heavily geared towards primary care, and noted that the benefits of EHR will never be realized unless providers can seamlessly exchange information — which currently is not the case due to problems with interoperability. Finally, we reiterated our ongoing request that CMS take steps to better align Medicare's quality-related programs.

[ [top of page](#) ] [ [back to headlines](#) ]

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#### ■ **Neurosurgery Submits Comments to CMS on 2013 IPPS Proposed Rule**

The Centers for Medicare and Medicaid Services (CMS) recently released the [FY 2013 Hospital Inpatient Prospective System \(IPPS\) Proposed Rule](#). In addition to setting Medicare reimbursement rates for hospitals, the regulation includes additional proposed quality measures to strengthen the Hospital Value-Based Purchasing (VBP) Program and Inpatient Quality Reporting Program (IQRP). In response to the proposal, the AANS and CNS [submitted comments](#) to CMS highlighting our concerns.

[ [top of page](#) ] [ [back to headlines](#) ]

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#### **Of Note**

##### ■ **Cato Institute Paper Reveals Unconstitutionality of IPAB**

A study released by the Cato Institute entitled "[The Independent Payment Advisory Board: PPACA's Anti-Constitutional and Authoritarian Super-Legislature](#)" shows how scary the Independent Payment Advisory Board (IPAB) is for seniors. The IPAB, which was created by the health reform legislation and may in fact be unconstitutional, is a board of 15 unelected and largely unaccountable government bureaucrats whose primary purpose is to cut Medicare spending and threatens the ability of Congress to ensure that Medicare beneficiaries have access to the healthcare they need, when they need it.

According to the paper, "When the unelected government officials on this board submit a legislative proposal to Congress, it automatically becomes law: PPACA requires the Secretary of Health and Human Services to implement it. Blocking an IPAB 'proposal' requires at a minimum that the House and the Senate and the president agree on a substitute. The Board's edicts therefore can become law without congressional action, congressional approval, meaningful congressional oversight, or being subject to a presidential veto. Citizens will have no power to challenge IPAB's edicts in court."

Backed by the AANS and CNS, the U.S. House of Representatives recently passed legislation — the [Protecting Access to Healthcare Act \(H.R. 5\)](#) — to repeal the IPAB. The U.S. Senate has yet to act on this bill, and it is not likely that the legislation will be considered in its

present form

[ [top of page](#) ] [ [back to headlines](#) ]

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■ **Neurosurgeons Appointed to CMS MEDCAC**

On June 4, 2012, neurosurgeons John A. Wilson, MD, FAANS; Jeffrey W. Cozzens, MD, FAANS; and Henry H. Woo, MD, FAANS; were appointed to serve on the Center for Medicare and Medicaid Services' (CMS) [Medicare Evidence Development Coverage Advisory Committee](#) (MEDCAC). More than 100 individuals — including physicians, payors, and consumer representatives — are appointed to serve as needed on the MEDCAC. MEDCAC is charged with evaluating the adequacy of scientific evidence necessary to support Medicare coverage for medical items and services. While the majority of coverage decisions are made at the local Medicare Administrative Contractor (MAC) level, CMS' Office of Coverage has significantly increased its activity over the last five to six years.

[ [top of page](#) ] [ [back to headlines](#) ]

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**Communications**

■ **Keep the Pulse on Health Policy Activities in the Nation's Capital**

The AANS and CNS have taken several steps to expand communication with external audiences and its members to better inform them of key DC health policy activities. Following the Washington Office's [@Neurosurgery](#) Twitter handle is a great way to keep the pulse on what's happening in the Nation's Capital. In recent weeks, we have tweeted on a variety of topics, including the U.S. Supreme Court health reform case, Independent Payment Advisory Board (IPAB), electronic health records meaningful use requirements, and the comings and goings of the American Medical Association's recent annual meeting. 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](mailto:adye@neurosurgery.org).

[ [top of page](#) ] [ [back to headlines](#) ]

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**Questions or comments? Please contact Katie Orrico  
at 202-446-2024 or [korrico@neurosurgery.org](mailto:korrico@neurosurgery.org).**

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