Lobbying in 5 Steps

1. Thank you!
2. Take credit!
3. Ask for Fair Implementation of the “No Surprises Act.”
4. Discuss the Need for Medicare Payment Rate Reform.
5. Urge Support for Preserving Safe Care for Veterans.
Be Gracious…say “Thank You!”

Challenges of being a Member of Congress or Congressional staff

- Pandemic
- January 6

Support for physicians and physicians’ practices

- Paycheck Protection Program (“PPP”)
- Economic Injury Disaster Loan (and grant) program (“EIDL”)
- HHS Provider Relief Fund grants (“PRF”)
- Medicare Advance and Accelerated Payment Program

Take credit…

Highlight the good you’ve done

- It was a challenging year, but we are so proud of the work of our specialty.
- All anesthesiologists have critical care training.
- Ready to step-in when the pandemic required it.

Share a story

- ICU Work
- Proning team
- Intubation team
- Restarting surgery
Implementation of the “No Surprises Act”

Background

- “No Surprises Act”
- Congress worked for more than two years to find a federal solution.
- Physicians and hospitals vs. health insurers.
- Included the Consolidated Appropriation Act of 2021.
- Effective January 1, 2022.

“No Surprises Act” Law

What does it do?

- Prohibits balance billing for out-of-network services.
- Covers ERISA plans and state regulated plans in states that do not have a state law.
- Initial/interim payment.
- 30-day negotiation period.
- Independent dispute resolution/arbitration process.
- Includes criterion for arbiter to consider.
“No Surprises Act” Rulemaking Example

Not later than **July 1, 2021**, the Secretary, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, **shall establish through rulemaking**...

- “No Surprises Act” Text

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“No Surprises Act” Rulemaking

**Rulemaking entities**

- Department of Health and Human Services
- Department of Labor (ERISA)
- Department of Treasury

**Examples of key rulemaking issues**

- Definition of qualified payment amount (median in-network)
- Treatment of States, i.e., who has a state law
- Structure and function of IDR/arbitration process
- Definitions related to batching/bundling
Proposed Rule vs Interim Final Rule

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<thead>
<tr>
<th>Proposed Rule</th>
<th>Interim Final Rule w/ Comment Period</th>
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<tbody>
<tr>
<td>Input in early stages of decision-making</td>
<td>Input in late stages of decision-making</td>
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Congressional “Ask”

“Ask”

• Congress should urge the Administration to issue a Proposed Rule for the “No Surprises Act” – not an Interim Final Rule with Comment Period.
• Took over two years to reach agreement legislation.
• Complicated issue.
• Profound implications for physician practices.
• More important to get it right than quickly.
• Stakeholder input is critical.
• We want the opportunity to formally share our perspective.
Lobbying Tips

✓ Highlight that you are in-network.
✓ Your concerns about insurers pushing you out of network.
✓ Don’t lobby the content of the rulemaking, lobby the process.

ASA will have pro-active formal comments soon – we will share them with you.

ASA will also let you know when/where to submit comments and help you.

Medicare Payment Rates Require Reform

Background

• At least three separate streams of Medicare cuts coming January 1, 2022.
  o Sequester
  o “PAY-GO”
  o Medicare Physician Fee Schedule Cuts
• Congress must act before the end of the year or the payment cuts will be implemented.
Three Streams of Cuts

1) **Sequester (-2%)**: Automatic spending cuts per Budget Control Act of 2011 (BCA)

2) **“PAY-GO” (-4%)**: Automatic spending cuts per Statutory Pay-As-You-Go Act of 2010 (“PAYGO”)
   - Under PAYGO, OMB maintains 5- and 10-year budget “scorecards” that report the estimated changes in revenues and spending generated by new legislation. Deficit increases trigger OMB to order sequestration, to offset the deficit spending.

3) **2021 Medicare Fee Schedule Rule (-3.75%)**: CMS redistributed significant Medicare dollars.
   - Increases in evaluation and management (E/M) codes – codes most often used by primary care and office-based professionals.
   - Medicare budget neutrality mechanism triggered i.e. increases must be offset by cuts to others.
   - Cuts to hospital-based physicians (critical care, anesthesiology, radiology), surgeons and some non-physician professionals, such as physical therapists.
   - Congress acted at the end of 2020 to temporarily block some of the cuts. Some of the temporary provisions expire at the end of 2021.
Congressional “ask”

“Ask”
- Congress must act to block the implementation of these cuts.
- Medicare rates are already low for specialties like anesthesiology.
  - Where other specialties are paid 70 to 80% of commercial pay rates under Medicare, anesthesia is paid less than 33% -- known as the “33% Problem.”
  - “33% Problem” caused by longstanding flaws in our unique payment methodology.
- If not addressed, these cuts will take anesthesiology back to 1991 payment levels.

Lobbying Tips

✓ This is lobbying to prevent the three streams of cuts – not to lobby the “33% Problem.”
  - Use the “33% Problem” as an example.
  - “33% Problem” fixes are being explored per Dr. Mueller’s presentation.
✓ Critical that we stop these cuts.
✓ Congress can pass legislation to extend the moratorium on the sequester, waive the “PAY-GO” cuts and block the Medicare fee schedule cuts.
More Lobbying Tips

Medicare is a broken payment system – wrong foundation for Medicare for All, Medicare-Based Public Option, Expanded Eligibility for Medicare.

Medicare rates are completely unlinked from the actual cost of providing a service – no negotiations, no market consideration, no inflation adjustment.

Preserve Safe Care for Veterans

Background
- Richard Stone, M.D., then-Executive in Charge, Veterans Health Administration, issued memo on April 21, 2020.
- “CRNA Practice During the COVID-19 National Emergency”
  - VA facilities “strongly encourage[d]” to change by bylaws.
  - Dismantles existing team-based model of anesthesia care in VA facilities.
  - Advances nurse-only model of anesthesia care.
- Dr. Stone has told Congress his memo is “temporary” for COVID.
Preserve Safe Care for Veterans

- “Stone Memo” unilaterally reversed a rule that took over 6 years to develop and implement.
- No consultation with VA National Anesthesia Services.
- No shortage of anesthesia clinicians -- cancellation of non-essential surgeries resulted in oversupply of staff.
- Wrong policy for VA patient population.
  - Veterans are already complex patients – heart disease, lung disease, high blood pressure, and other complicating conditions.
  - Agent Orange and “Burn Pit” exposed Veterans are complex patients.

VA Anesthesiologists

“As Anesthesia Service Chiefs and Staff Anesthesiologists, patient safety is our highest priority, and we believe this change unnecessarily threatens the safe, high-quality care delivered to our Veterans. Therefore, we are invoking this measure and asking that you rescind this memorandum immediately.”


*Stop the Line is a VA-wide initiative that empowers VHA employees to speak up immediately if they see a risk to patient safety. Launched in 2013, this awareness campaign encourages employees to report behaviors, action, or inaction that might result in errors or patient harm.*
Preserve Safe Care for Veterans “Ask”

“Ask”

- Lawmakers and staff are asked to send a letter or call the VA Secretary to ask that the “Stone Memo” be rescinded.
  - New VA leaders can immediately rescind/withdraw the “Stone Memo.”
- Draft letter available.

Lobbying Tips

Why did Stone do this?

- Initially claimed workforce shortage – ASA debunked, noting cancellations of surgeries and procedures. There is no demonstrated shortage.
  - As of May 13, 2021, USAJobs.gov lists 13 anesthesiologist vacancies and 10 nurse anesthetist vacancies in the entire VA system.
- Has sought to expand usage of APRNs in VA – ASA argued that use of APRNs may be appropriate in some settings, not surgery and anesthesia.
- Has publicly stated his displeasure that VA is physician “centric.”
- Heavily conflicted.
Contact Information

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