



Dear ENT Advocacy Network Member:

October 1, 2021

Legislative and political activity directly affects our practices and our patients. As a leading advocate for otolaryngology-head and neck surgery, we hope you enjoy reading this edition of *The ENT Advocate*, your premier source of advocacy information for the specialty!

## Lead Story

### AAO-HNS Comments on 2022 Medicare PFS/QPP Proposed Rule

On September 13, the AAO-HNS submitted a comprehensive [comment letter](#) on key elements of the 2022 Medicare Physician Fee Schedule (PFS) and Quality Payment Program (QPP) proposed rule impacting otolaryngology-head and neck surgery. The comments express strong opposition to the proposed decrease to the conversion factor that, if finalized, will negatively impact Medicare beneficiary access to care. The letter also addresses rank order anomalies in the family of certain audiology codes, requests a delay of proposed clinical labor direct practice expense inputs, and offers commentary and revisions to the Centers for Medicare & Medicaid Services (CMS) proposals related to Evaluation and Management (E/M) services, telehealth, scope of practice, appropriate use criteria, the Merit-based Incentive Payment System (MIPS) program, and MIPS Value Pathways. The Academy will continue its advocacy efforts with CMS and Congress, working to ensure fair Medicare reimbursement for members of the AAO-HNS.

## Legislative and Political Reports

### Federal Legislative Update

As we enter the final quarter of 2021, the U.S. Congress seeks to address a range of legislative priorities before the end of the year. The U.S. House of Representatives is currently in the process of drafting legislation through the budget reconciliation process that would, among many other things, expand access to hearing, vision, and dental services for Medicare beneficiaries. While this legislation does not yet have a clear path forward for passage in the House, the Academy is actively engaged with the committees of jurisdiction throughout this process.

AAO-HNS Advocacy staff are keeping key Members of Congress apprised of concerns regarding potential federal expansion of scope of practice for audiologists and other non-physician providers that could impact otolaryngologist-head and neck surgeons. The Academy is also working with coalition partners and champions in Congress to avert cuts to Medicare physician reimbursement that are scheduled to take effect on January 1, 2022. In light of these federal developments, the Academy and our grassroots advocates must continue joint efforts to protect practicing physicians and ensure that the specialty's key legislative issues are prioritized by Congress and the Biden Administration.

### Legislation to Enact Targeted Liability Protections for Physicians Has Been Reintroduced

Following recent natural disasters, and during the ongoing COVID-19 pandemic, many healthcare providers have been eager to volunteer their time to treat patients in affected areas. This surge of interest in volunteerism has demonstrated how necessary commonsense liability protections are for medical professionals who provide voluntary medical care during a public emergency. Representatives Raul Ruiz, MD (D-CA), and Larry Bucshon, MD (R-IN), strong physician advocates, have introduced H.R. 5239, the "Good

Samaritan Health Professionals Act,” in order to provide targeted liability protections for physicians who choose to volunteer during a public health emergency or a natural disaster. H.R. 5239 would create targeted liability protections for medical care provided during federally-declared disasters, addressing gaps in federal and state laws that can leave volunteer providers exposed to medical liability lawsuits for care delivered in good faith. The AAO-HNS looks forward to working with Dr. Ruiz and Dr. Buschon on passage of this legislation.

### Third Quarter “Your PAC Dollars at Work” Report Now Available

ENT PAC is an invaluable tool that strengthens the Academy’s overall legislative advocacy efforts. We understand the importance of providing transparency and a greater understanding about how decisions are made regarding the specialty’s political action committee. Therefore, in 2018, ENT PAC launched a new quarterly report titled “Your PAC Dollars at Work.” [View your “Q3 PAC Dollars at Work”](#) summarizing ENT PAC activities to date in 2021. To invest in the future of the specialty, click [here!](#)

## Regulatory Reports

### AAO-HNS Joins Coalition Commenting on No Surprises Act Regulation

On September 7, the Academy joined a coalition of surgical societies in submitting [comments](#) on the Interim Final Rule, “Requirements Related to Surprise Billing; Part I.” This regulation implements elements of the “No Surprises Act” (included as part of the Consolidated Appropriations Act, 2021), banning surprise medical bills. Among other policy changes, the Act bans surprise billing for emergency services, limits patient cost-sharing for out-of-network care at in-network provider rates, and bans other out-of-network charges without advance notice. The interim final rule defines the methodology for determining the qualifying payment amount (QPA), a key determinant of provider payments for out-of-network care and patient cost-sharing amounts. The AAO-HNS will continue its coalition advocacy efforts with the Tri-Agencies (U.S. Departments of Health and Human Services, Labor, and Treasury) overseeing the law’s implementation to ensure common-sense protections for patients and the physicians who care for them.

### HHS Announces \$25.5 Billion in Available COVID-19 Provider Funding

On September 10, the U.S. Department of Health and Human Services (HHS) announced \$25.5 billion in new funding for healthcare providers affected by the COVID-19 pandemic. The funding includes \$17 billion for the Provider Relief Fund (PRF) Phase 4, administered through the Health Resources and Services Administration (HRSA), to be made available to providers with documented revenue loss and expenses associated with the public health emergency between July 1, 2020, and March 31, 2021. Click [here](#) to access the eligibility and application process for the PRF Phase 4.

### FDA Postpones Required Review of Certain E-Cigarette Products

Based on a court ruling last year requiring the FDA to review all electronic nicotine delivery systems (ENDS) products by September 9, the Academy and other stakeholders were eagerly awaiting that deadline. However, the agency instead [announced](#) its decision to delay review of products from some of the largest ENDS manufacturers such as Juul. The AAO-HNS will continue to advocate, including through joint efforts with members of the Tobacco Control Partners Coalition like the Campaign for Tobacco Free Kids, for the FDA to act quickly to eliminate all flavored e-cigarettes from the market.

### CMS Adds Hurricane Ida to MIPS Automatic Extreme and Uncontrollable Circumstances Policy

The Centers for Medicare & Medicaid Services (CMS) will apply the automatic extreme and uncontrollable circumstances (EUC) policy to Merit-based Incentive Programs (MIPS) eligible clinicians in the FEMA-designated disaster areas of Louisiana, Mississippi, New York, New Jersey, and Missouri for the 2021 performance year (January 1, 2021 to December 31, 2021). In these areas, all MIPS eligible clinicians will automatically receive a neutral payment adjustment for the 2023 MIPS payment year. Additionally, all four performance categories for these clinicians will be weighted to 0% during the data submission period for the 2021 performance period, resulting in a score equal to the performance threshold. The [EUC policy](#) will not apply to MIPS-eligible clinicians participating in MIPS as a group, virtual group, or Alternative Payment Model (APM) Entity.

## AAO-HNS Comments on CY 2022 HOPPS/ASC Proposed Rule

On September 17, the AAO-HNS submitted a [comment letter](#) to the Centers for Medicare & Medicaid Services (CMS) on the CY 2022 Hospital Outpatient Prospective Payment System (HOPPS)/Ambulatory Surgery Center (ASC) proposed rule. The Academy's comments addressed the following proposals most significantly impacting the specialty: 1) changes to the inpatient-only (IPO) list; 2) updates to the ASC covered procedures list; 3) balloon sinus dilation ASC payments; 4) APC assignment of HCPCS code 42XXX, a new CPT code to describe Drug-Induced Sleep Endoscopy; 5) comprehensive ambulatory payment classifications (APCs); 6) pass-through payment for HCPCS Code J7402 (Sinuva); and 7) exceptions to the "2 times" rule. The Academy anticipates that the final rule will be published in November, with an effective date of January 1, 2022. AAO-HNS Advocacy staff will provide an analysis of CMS' response to our comments and final policies for CY 2022 shortly after the rule's release.

## AAO-HNS Publishes Revised Position Statement on Obstructive Sleep Apnea

On September 14, the Academy's Executive Committee voted to approve a [revised Position Statement](#) on Obstructive Sleep Apnea following an extensive review process by the AAO-HNS Sleep Disorders Committee and the Physician Payment Policy (3P) Workgroup. The updated statement includes the addition of treatment for mild sleep apnea, among other revisions. Additionally, the Executive Committee approved a new Position Statement drafted by the AAO-HNS Hearing and Implantable Hearing Devices Committee on Cochlear Implant Candidacy for Children with Bilateral, Sensorineural Hearing Loss. The Academy works continuously to update Position Statements to ensure they reflect the most current evidentiary support.

### Action Requested

#### Call to Action: Ask Congress to Stop Medicare Reimbursement Cuts

Unless Congress intervenes before the end of the year, physicians are facing a 9.75% Medicare reimbursement reduction on January 1, 2022. U.S. Representatives Ami Bera, MD (D-CA-07), and Larry Bucshon, MD (R-IN-08), leading Congressional champions on physician issues, are circulating a sign-on letter to Congressional leadership urging passage of legislation to avert these Medicare cuts. Please contact your U.S. Representative today, asking them to sign the Bera/Bucshon letter and support fair reimbursement for practicing otolaryngologist-head and neck surgeons. Click [here](#) to contact your U.S. Representative.

#### New Volunteers Needed to Strengthen PROJECT 535

Successful legislative advocacy starts with a solid grassroots foundation. Given Congressional focus on legislation addressing health policy and physician reimbursement in the 117th Congress, it's now more important than ever for the Academy to strengthen its "key contacts" network via PROJECT 535. In addition to the Academy's overall advocacy efforts, PROJECT 535 volunteers help reinforce our message by establishing personal relationships with federal elected officials. Federal lawmakers want to hear from YOU—their physician constituents! The commitment is minimal, but the impact is immense. To help further strengthen our collective advocacy efforts, [sign up](#) today or contact [govtaffairs@entnet.org](mailto:govtaffairs@entnet.org) for more information.

Sincerely,

Jeffrey S. Brown, MD  
BOG Legislative Affairs Committee Chair  
and the AAO-HNS Advocacy Team

For more information, contact [govtaffairs@entnet.org](mailto:govtaffairs@entnet.org). Don't forget to bookmark [The ENT Advocate!](#)

If you no longer wish to receive important legislative and political updates via *The ENT Advocate*, please reply to this email with CANCEL ADVOCATE in the subject line.

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