Legislative Update for the MSP – January 2023 – David L. Gang, MD

Not much has happened to the 4 MA bills (2 House, 2 Senate) discussed in the last update in late 2021.

The first act entitled “Relative to pharmacy testing” (old H.2325, S.2597) never came to a floor vote in 2022. The bill has been re-introduced in the Senate, 1/19/23, as SD 1502, and instructs the board of pharmacy to establish a statewide protocol for pharmacists to test, screen, and initiate treatment for qualified health conditions which include Influenza, Streptococcal infections, COVID-19, HIV, and other board-approved conditions. The bill seeks to enlarge the scope of practice for pharmacists arising from their expanded role during the COVID crisis.

To date, the CAP has not taken a national position on this issue and has deferred to state pathology societies. However, the CAP does maintain that the interpretation of laboratory testing is the practice of medicine.

The second set of bills (old H.1137, S.808) entitled “Relative to cancer patient access to biomarker testing to provide appropriate therapy” waived prior authorization for advanced or metastatic stage 3 or 4 cancers. These bills likewise never came to a floor vote but were discussed by both House and Senate Health Care Financing Committees.

On 1/18/ 2023, HD 2413 was instead introduced to mandate coverage for biomarker testing for the diagnosis, treatment, appropriate management, or ongoing monitoring of an enrollee’s disease when supported by medical and scientific evidence such as testing for FDA approved- or cleared tests or tests for FDA-approved drugs, CMS approved National Coverage Determinations, MAC approved Local Coverage Determinations, and nationally recognized practice guidelines and consensus statements.

Additionally, the bill expedites prior authorization decisions for biomarker testing (72 hours for review, 24 hours for high-risk situations) and mandates accessible processes to request exceptions to plans’ coverage policies or adverse utilization review processes.

The bill reflects the American Cancer Society’s model legislation on biomarker testing coverage and expedited prior authorization reform. In comparison to the 2022 prior authorization waiver, there’s no provision to ensure that pathologists and/or laboratories will always be paid for such testing. However, the current coverage mandate provides a greater likelihood of payment when testing is supported by medical and scientific evidence than in comparison to the waiver of prior authorization.

On the Federal side, there were several important items of concern to pathologists included in the Consolidated Appropriations Act of 2023, which passed both houses and was signed into law at the end of December 2022. The most immediate issue was the Medicare Evaluation and Management code reduction in payment rates, projected to be as great as 4.5% for 2023. While the CAP and AMA advocated to prevent the cuts entirely, the bill did mitigate the cuts down to 2.5% for 2023 and 1.5% for 2024. The CAP estimates that average Medicare spending impact on pathology in 2023 will be a loss of 1.16%. More advocacy effort will be needed in 2023 to lobby against implementation of a 3% payment cut associated with the previously deferred G code scheduled to be implemented in 2024. The biggest challenge to all physicians is the requirement for maintaining the budget neutrality of the Medicare Trust Fund. Under its current structure, increased reimbursement to one segment of the medical community requires a reduction in payment to another.

We had also hoped that the SALSA Act (S.4449, H.R.8188) would pass to prevent a 15% Medicare cut to laboratory fees (CLFS) and ensure more accurate data collection from all laboratory segments, but this was not included in the Omnibus bill. However, at least the cuts were delayed until 2024, as well as reporting requirements on private payer rates for clinical lab services. The Prevent Pandemics Act, which was included, will permit expanded genomic sequencing and advanced molecular detection, enhance public health surveillance of pathogens, enhance the public health workforce, and modernize the supply chain for key medical products, etc.

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