Advocating for improvements to the Affordable Care Act

The Affordable Care Act* (ACA) is a comprehensive health system reform law that will increase health insurance coverage substantially for the uninsured and implement long overdue reforms to the health insurance market. The new law includes many major provisions that are consistent with AMA policy and hold the potential for a stronger, better performing health care system. While the new law represents a tremendous step forward on the path toward meaningful health system reform, it is not the last step, but rather the beginning.

A number of key provisions in the law will be implemented this year, but many others will not become effective until a number of years in the future, allowing the AMA and state and specialty societies to have maximum input into the regulatory process and to seek further legislative changes. The following is a summary of some of the major provisions in the ACA that are generally consistent with AMA policy, and provisions we believe need additional refining.

Major provisions the AMA generally supports

- Increasing health insurance coverage to 32 million more Americans
- Making health insurance more affordable for families and small businesses through the creation of state health insurance exchanges and the provision of sliding-scale premium tax credits and cost-sharing subsidies
- Health insurance market reforms to address abuses of the health insurance industry
- Preventing denials of care and coverage, including those for pre-existing conditions
- Stronger patient protections
- Administrative simplification, to eliminate billions of dollars of unnecessary costs and administrative burdens
- Medicare bonus payments for primary care physicians and general surgeons
- Increasing Medicaid payments for primary care physicians
- Increasing geographic adjustments for Medicare physician payments
- Expanding and improving coverage of preventive services in the public and private sectors
- Funding state demonstration grants to study alternative medical liability reforms
- Providing more flexibility in the Graduate Medical Education program
- Requiring individuals to have minimum health insurance coverage or pay a penalty
- Improving Medicare prescription drug benefits by reducing the coverage gap (i.e., "doughnut hole")
- Comparative effectiveness research

Changes to the ACA already accomplished

Prior to enactment, the AMA successfully advocated for several favorable changes to the legislation, including:

- Eliminating a budget neutrality adjustment for primary care and rural surgery bonuses
- Eliminating a tax on elective cosmetic surgery and medical procedures
- Eliminating a Medicare/Medicaid enrollment fee for physicians
- Eliminating a five percent Medicare payment cut for "outlier" physicians
- Postponing penalties related to quality reporting data

* H.R. 3590, the "Patient Protection and Affordable Care Act" (P.L. 111-148), as amended by H.R. 4872, the "Health Care and Education Affordability Reconciliation Act" (P.L. 111-152), collectively referred to as the Affordable Care Act (ACA).

Additional changes the AMA supports

Medical liability reform

The ACA includes the following liability reforms: (1) authorizes grants to states to test alternative liability reform models (in addition to the administration's grant program already underway); (2) extends the Federal Tort Claims Act liability protections to officers, governing board members, employees and contractors of free clinics; and (3) calls for a federal government study to assess whether any new standards, quality, or payment initiatives under the ACA expose physicians to medical liability. In addition to these provisions, the AMA will advocate that Congress appropriate $50 million for additional grants to states to test alternative liability reform models and will work to remove the provision in the grant program that allows a patient to opt out of an alternative liability grant program at any time. The AMA will also work to amend the ACA to indicate that any guideline or standard of care in the new law cannot be used against a physician in a liability claim or lawsuit. Importantly, the AMA will continue to actively pursue medical liability reforms at the federal and state levels that are already working in states such as California and Texas, including a $250,000 cap on noneconomic damages.

Independent Payment Advisory Board

The AMA is opposed to the current authority and framework for the Independent Payment Advisory Board (IPAB), and has advocated for recommended changes regarding double jeopardy for physicians, projection errors and appropriate spending growth not provided in the ACA. The AMA has and will continue to pursue changes in the IPAB authority prior to implementation of the first IPAB recommendations in 2015.

Workforce/graduate medical education

The AMA supports additional graduate medical education (GME) initiatives necessary to ensure an adequate physician workforce, including maintaining Medicare/Medicaid GME funding levels, seeking additional sources of GME funding (e.g., private payers), and increasing Medicare-supported GME positions in primary care, general surgery and other undersupplied specialties, as well as in underserved areas.

Cost/quality index scheduled for implementation in 2015

The ACA requires the development and application of a cost/quality index modifier, the implementation of which is premature due to the need for certain policy tools that currently do not exist. The AMA will work to modify this initiative in subsequent legislation.

Penalties for failure to report quality data

The AMA was able to postpone implementation of PQRS penalties in the ACA for two years (from 2013 to 2015), and will continue to advocate opposition to penalties.

Fraud and abuse

The ACA includes increased funding and authorities to combat fraud and abuse. The AMA is advocating for decreased administrative costs and burdens on honest physicians.

Antidiscrimination provisions for health plans

The ACA includes a provision stating that health plans may not discriminate against any health care provider—acting within its state scope-of-practice laws—that wants to participate in the plan. The AMA will seek clarification that this provision does not allow expansion of the scope of practice for nonphysician allied health practitioners.

Restrictions on hospital ownership

The ACA includes provisions that restrict physician ownership of hospitals. The AMA actively and successfully blocked previous attempts to restrict ownership going back to 2003. The AMA opposes this provision and supports its repeal.

Form 1099 information reporting requirement

The ACA includes a provision that will require businesses, including physician offices, to file a Form 1099-MISC with the IRS if the total amount of payments made to another business in exchange for goods and services is $600 or more in a year. The AMA has urged the IRS to exempt physician practices from this requirement. While there were several attempts in the 111th Congress to repeal section 9006, these efforts did not succeed, in part due to the need to find a politically viable offset. The AMA will continue to seek repeal of this provision.

Health savings accounts in health exchanges

The ACA is silent on whether health savings accounts (HSA) will be deemed acceptable coverage under the individual insurance mandate. The administration has verbally indicated that HSAs will continue to be allowed as an option, and the yet-to-be issued proposed regulations on health exchanges and essential benefits may clarify this issue. The AMA supports clarifying language to ensure that high-deductible plans with HSAs will be an acceptable option.

Outstanding issues to be addressed

Physician payment formula/sustainable growth rate

The ACA did not include a provision to fix the flawed Medicare physician payment formula (SGR). In separate legislation, Congress extended current Medicare physician payments through the end of 2011. The AMA will aggressively work with Congress in 2011 toward permanently repealing and replacing the SGR.

Private contracting

The ACA did not include a provision to ease private contracting restrictions in Medicare. The AMA has highlighted private contracting in multiple communications and forums, and is engaged in the development of a campaign to push for the enactment of the "Medicare Patient Empowerment Act." The AMA developed this proposal, working closely with the delegations that sponsored AMA private contracting policy (Resolution 204, A-10), and has conducted polling on physician perceptions of the issues surrounding the legislation, focus group testing for messaging purposes and meetings with specialties to build support.

Antitrust

The AMA believes that antitrust reforms should be an essential element of health system reform, and will continue to work with the Federal Trade Commission to achieve reforms that provide relief from legal and regulatory impediments to physician collaboration.

Medical shared savings programs/accountable care organizations

The AMA aggressively advocates for accountable care organization (ACO) models that allow participation by a wide range of physician practices and appropriate physician control over governance structure and distribution of shared savings. The AMA is working closely with government agencies to address key issues, such as ACO financing mechanisms, use of quality measures, beneficiary attribution, risk adjustment, and anti-kickback and antitrust barriers.

CMS Innovation Center

The AMA is working closely with the Centers for Medicare & Medicaid Services (CMS) to advocate development of delivery models that allow participation by a wide range of physician practices and appropriate physician control.

Visit **www.hsreform.org** for additional AMA resources regarding ACA implementation.

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