

PROFESSION



Claudia L. Reardon, MD, a psychiatrist and an alternate delegate for the Wisconsin Medical Society. [Photo by Ted Grudzinski / AMA]

AMA house seeks repeal of OTC drug-spending rule

Patients with tax-exempt medical spending accounts are asking physicians to write prescriptions for over-the-counter medications.

By **KEVIN B. O'REILLY**, *amednews* staff. *Posted July 4, 2011.*

Chicago -- Delegates said a health system reform law provision that bars patients from using tax-exempt funds to buy over-the-counter medications without a prescription is adding to physicians' administrative burden and directed the AMA to support repealing it.

The rule, which took effect Jan. 1, applies to tax-exempt funds patients hold as part of health reimbursement arrangements or health savings, flexible savings or Archer medical savings accounts. It was one of many provisions in the Patient Protection and Affordable Care Act aimed at raising revenue to pay for expanding insurance coverage to an estimated 32 million Americans by 2019.

AMA delegates said the provision has led to calls and office visits from patients asking them to write prescriptions for OTC medicines or order similar drugs that are available by prescription only.

"While this is an effort to control costs, the opposite is happening," said Claudia L. Reardon, MD, a psychiatrist and an alternate delegate for the Wisconsin Medical Society from Madison who spoke on behalf of the Young Physicians Section. "We're seeing an increased administrative burden for physicians and decreased access to care. We are being told by malpractice insurers that to write over-the-counter prescriptions, we need to see patients in person."

Maryanne C. Bombaugh, MD, an ob-gyn and an alternate delegate for the Massachusetts Medical Society from Falmouth who spoke for the New England delegation, agreed. "This is creating a large amount of work for practices. Patients who could formerly get their Tylenol or smoking cessation products over the counter through this benefit now are going to the doctor's office and emergency rooms to get this covered. This really is a burden not only for practices and physicians but for their patients and actually increases the cost of care."

A bill proposed in late May by Sen. Orrin Hatch (R, Utah) would repeal the provision and clarify that tax-exempt medical funds can be used to pay retainers for primary care services that are provided by physicians under direct payment, or concierge, arrangements. Rep. Erik Paulsen (R, Minn.) introduced a companion bill in the House.

Enrollment in health plans in which patients are eligible to use HSAs exceeds 11 million, according to the insurer trade group America's Health Insurance Plans.

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ADDITIONAL INFORMATION:**Meeting notes: Legislation**

Issue: Racial and ethnic disparities continue to be a major problem, but insurance status, particularly whether a patient is enrolled in Medicaid or is uninsured, also is linked to disparities.

Proposed action: Affirm the AMA's support for elimination of health care disparities based on insurance status; ask the member organizations of the Commission to End Health Care Disparities to address insurance status specifically; and urge the Agency for Healthcare Research and Quality to investigate the impact of insurance-based segregation in different settings on racial and ethnic health care disparities. *[Adopted]*

Issue: The federal government is working to define what it will call essential health care benefits that must be covered by plans for sale in the state-based health insurance exchanges.

Proposed action: Rather than recommend a list of specific benefits, reaffirm existing policy stating that the coverage offered by the Federal Employee Health Benefits Program should be used as a "reference" when identifying whether a plan offers meaningful coverage for adults. *[Adopted]*

Issue: Accountable care organizations and other payment models that rely on assigning a population of patients to a physician increasingly are becoming more common, under both Medicare and private payers.

Proposed action: Advocate for Medicare payment reforms that "emphasize voluntary agreements between patients and physicians, minimize the use of algorithms or formulas, provide attribution information to physicians in a timely manner, and include formal mechanisms to allow physicians to verify and correct attribution data as necessary." *[Adopted]*

Issue: Laws that bar gays and lesbians from marrying not only limit their access to insurance and other health benefits but also can impose psychological harm.

Proposed action: Modify existing policy to recognize that denying civil marriage based on sexual orientation is discriminatory and stigmatizes gay and lesbian individuals, couples and their families. *[Adopted]*

Issue: Pharmacists are seeking to expand their scope of practice in ways that constitute the unsupervised practice of medicine, such as interpreting diagnostic tests and substantially changing patients' medication regimens.

Proposed action: Collect and disseminate state-specific information on pharmacists' scope of practice and disseminate model state legislation on the matter. *[Adopted]*

Issue: It is difficult for Medicare patients to determine when they are eligible to obtain certain covered preventive services.

Proposed action: Encourage the Centers for Medicare & Medicaid Services to set up a user-friendly way for patients to call in or use the Web to find out the timing of covered benefits. *[Adopted]*

Issue: Patient navigators often are employed by health systems or health insurers to help patients with treatment options and the intricacies of insurance coverage. There are no clear standards or accreditation requirements in this field, and patient navigators may be instructed to direct patients only to certain physicians and hospitals for care, restricting freedom of choice.

Proposed action: A report on the emerging role of patient navigators. *[Adopted]*

Issue: Some physicians refuse to take on-call coverage in the emergency department due to medical liability costs, worsening patients' access to quality specialist care.

Proposed action: Support federal legislation to grant physicians legal immunity under the Federal Tort Claims Act when providing care in accordance with the Emergency Medical Treatment and Active Labor Act. *[Referred for decision]*

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