# December Advocacy Update

January 10, 2022

**Alec Bose:**

Hello and welcome to the CAP Advocacy Recap, a monthly podcast dedicated to catching you up on the top news for pathologists. I'm Alec Bose from the CAP's Advocacy Communications Team, here with your recap for December.

This month we'll look at a lawsuit involving the implementation of the No Surprises Act, the efforts of Congress to mitigate Medicare cuts, and more.

Later we'll speak with CAP Advocacy's Michael Giuliani about the status of the Build Back Better Act, and other legislative priorities pathologists should look out for.

First we shift our attention to important legal issues. The CAP filed an amicus brief supporting a lawsuit challenging the federal government's flawed implementation of the No Surprises Act. The lawsuit warns that the government's actions will cause substantial harm and further drive more physicians out of their patients' health plan networks.

In this statement, CAP President Dr. Emily Volk emphasized the importance of impartiality in the law. "We continue to believe that the subsequent regulations must support an equitable and balanced system for resolving out-of-network payment disputes. As of today, the rules heavily favor the insurers when their power is already too great. With new rules going into effect January 1st, physicians and hospitals have little choice but to ask the courts to fix regulations that strayed from the law."

The lawsuit led by the American Medical Association and the American Hospital Association does not challenge patient protections in the law, but seeks alignment between the statute and the regulation for the independent dispute resolution process.

The rule right now, however, favors the health insurance industry, ensuring that commercial insurers routinely under compensate physicians and patients having fewer choices for in-network services. The lawsuit has been filed against the Departments of Health and Human Services, Labor and Treasury, along with the Office of Personnel Management in the US District Court for the District of Columbia. To read the full amicus brief, visit cap.org/advocacy.

We turn now to alternative payment models and the need for improvements to them. The CAP and the AMA, along with other physician groups, urged the new director of the Centers for Medicare and Medicaid Innovation, Elizabeth Fowler, to improve the implementation and design process of alternative payment models or APMs while engaging with the physician community in their development.

The group had many suggestions to improve these models, including increasing transparency and stability of APMs, enabling APMs to reduce health inequities, extending incentive payments for APM participation, and investing in care transformation by medical practices. They also had recommendations to increase physician engagement in the future development of payment models by setting joint goals and processes, dedicating funds to support development and testing of physician developed APMs, and providing feedback and data to the federal government. The coalition will continue to follow up with the future development of APMs.

In legislative news, Congress passed the Protecting Medicare and American Farmers from Sequesters Act, mitigating steep cuts pathologists were set to face in 2022. The law, which has now been signed by President Biden, is a result of fierce advocacy by the CAP and its members to stop the cuts and protect patient access to pathology services.

The recently implemented law addresses several pay cuts that impact physicians participating in the Medicare program. The key provisions of the law include increased payments on the Medicare physician fee schedule by 3%, eliminating the 4% Medicare pay go cut through 2022, a delay in clinical laboratory fee schedule cuts by one year, and a gradual phase in process for the 2% Medicare sequester cut.

Hundreds of pathologists spoke with the offices of their members of Congress throughout the last year to get lawmakers to stop cuts that totaled about 10%. Pathologists lobbied on this issue during the CAP's Hill Day in May in record numbers, a virtual fly-in October, and by responding to grassroots action alerts. Sign up to participate in CAP action alerts and other advocacy efforts on our website.

Finally, we finish with more updates from Congress and the efforts to pass the Build Back Better Act. The bill has had a tumultuous path through the legislative process. To tell us more is Michael Giuliani, senior director of legislative and political action here at the CAP.

Can you describe what's in this Build Back Better Bill that's in Congress right now and why should a pathologist be paying attention to it?

**Michael Giuliani:**

Sure. It's a rather broad piece of legislation, has quite a few social programs in it. The areas that we're most concerned about or most interested in are the healthcare provisions in the legislation. There's several provisions that we're watching. The Senate version expands ACA coverage for low income populations with cost sharing. It has some issues in there to address the Medicare gap. Public health section of the bill increases GME programs, so that's all positive. The language also has 1.4 billion for laboratory activities at the CDC, which would be positive. And then the FDA would be given money for technology infrastructure and interoperability, which is important. Particularly we see that during the pandemic and making sure the information is flowing freely between all the organizations that need to know what's going on.

So we see some of these provisions and some of the healthcare disparity provisions as positive, trying to address some of these social determinants of health and other areas as well. There be Medicaid and CHIP benefits in this program for qualifying pregnant and postpartum individuals. So there's quite a bit in here, and our hope is that at the end of the day they come out with a package that's going to improve access to care, as well as deal with some of the healthcare disparities that have been highlighted because of the pandemic, and really improve the healthcare delivery system. So we're going to watch it closely and keep everybody informed through the advocacy newsletter and watch that for updates as this goes forward.

**Alec Bose:**

Thank you. And what's the status of the bill now, and what actions, if any, has Congress already taken in moving it forward?

**Michael Giuliani:**

The House has passed the legislation, the version that the House passed will not make it through the Senate because of Senate rules. There's something called the Bird Rule, which anytime this legislation in the reconciliation process comes through, the parliamentarian of the Senate has to determine whether those provisions are germane to the legislation.

So the version that passed the House, the Senate is not going to pass that. They have taken the step of assigning to their various committees in the Senate the task of coming up with how they want to allocate the funds for their specific areas. So Senate Finance Committee, Senate Help Committee have done work to put together their proposals for what they think should be included in the legislation, and they're also talking to a Senate parliamentarian to make sure that those provisions will go through.

The real problem in the Senate is it's a tied Chamber 50/50 with the vice president being the deciding vote, and there are a couple Democrat senators who are not thrilled with this current package and have made that known to the administration and the leadership in Congress.

Senator Manchin from West Virginia has been a sticking point I think for the Democrats to try and move this through. And he's made several demands that, according to him, they have not been met and has still said, I guess the last time he said it was December where he said he is not going to support this bill in its current version. So we'll see. Senator Schumer, the majority leader, has said he's going to bring it to the floor this month, January, so we'll see what happens. But as of right now, they don't have the votes to pass it.

**Alec Bose:**

If it's not able to pass, what can we expect to happen to a lot of these provisions? Are they just going to go away?

**Michael Giuliani:**

I think there's a lot of political capital invested in moving this for the administration and going into the 2022 elections. That it would be hard not to try and move some of these provisions that are very important to the Democrats in the House and Senate and their constituencies back in the States.

So they're going to have to figure out a way to move something, and it may end up being a smaller package that Senator Manchin will support, but if you make it too small, you're going to upset the progressives in the House who may not vote or support what the Senate passes. So it's really kind of a catch-22 at the moment for congressional leadership to try and come up with a package that's going to be palatable to both the House Democrats and the Senate Democrats.

But I don't think it'll go away. It just might be a reduced package in some form.

**Alec Bose:**

What can pathologists and healthcare professionals more broadly do to take action in the meantime?

**Michael Giuliani:**

Yeah, I think really just making sure that they're aware of what's in this and watching the news. And the best solution or best thing to do is to read the advocacy newsletter. I mean, that has had the current information on what's going on with this legislation and where it stands. That would be the key area to look at to make sure you're up to date on what's being proposed and what passes, and we'll update that quite frequently.

Right now, we have not done an action alert on this piece of legislation at the moment because we're trying to determine, as we just discussed, what is the status of the bill and is it going to really move? So we've sent letters to the Hill on this legislation, both the Senate and the House, but we have not done a grassroots push yet until we get a better idea of what's going to be included and how it's going to look at the end.

It really will be a major shift in our social programs if it is enacted. It will deal with some healthcare disparities issues and some of the things that I think that really came to the forefront of everybody's mind during the pandemic. Where people really may be not focusing on some of the issues out there with regards to social determinants of health, et cetera, it really put a spotlight on this. And this bill has got some provisions in there to try and address that, which ultimately will be helpful to everyone in the society. So keep an eye out and watch it, because it could have a major positive impact on healthcare.

**Alec Bose:**

Fantastic. Thank you very much, Michael. We appreciate you being here with us today.

**Michael Giuliani:**

Thank you.

**Alec Bose:**

That's all for this edition of the CAP Advocacy Recap. Thank you so much for listening. Be sure to read our weekly advocacy newsletter and follow us on Twitter @CAPDCAdvocacy. Once again, I'm Alec Bose and we'll see you next month.