

Communications from the Front Line

A bigger bang: DRA sending shock waves, 'reduction without proper representation' to radiology, oncology communities



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After a late night congressional session in December 2005, Congress passed the Deficit Reduction Act (DRA), which sent shock waves throughout the radiology and oncology communities. Often dubbed as "reduction without proper representation," the imposition of this draconian act translated to eliminating the so-called "free-standing advantage."

This term was coined after hospitals began witnessing reductions in reimbursement in 2001 when it was declared that an imaging study performed in a hospital setting would be reimbursed at 20 percent less than when those same procedures are performed in outpatient setting.

Why the difference in reimbursement? In hospital settings, staffing for accounting, legal and general overhead is shared with other departments within the hospital. In an outpatient setting, those leveraging opportunities do not exist, but hospitals were nonetheless upset by the decrease.

The DRA was an over-reaction to a 44 percent increase in utilization during the past three years that had pushed Congress over the edge. Seventy-five percent of Center for Medicare and Medicaid Service monies come from the general fund. That same fund pays for the war in Iraq, Katrina and homeland security and the funding of the new Medicare prescription drug benefit.

Although imaging comprises just one-tenth of the Medicare budget, this specialty has absorbed 33 percent of the cuts. Whatever the rationale—or lack thereof—the reality of trying to earn a modest living by providing outpatient-imaging services has turned into a quest to stay alive, literally overnight.

The DRA provides for a cap on the technical component payment of the lesser amount of either the Medicare Physician Fee Schedule (MPFS) or the Hospital Outpatient Prospective Payment System (HOPPS). However, for imaging services subject to both the contiguous body parts reduction policy and the HOPPS

cap, CMS said recently it would first apply the multiple imaging adjustments and then apply the cap. This approach results in a higher payment than would exist if the cap were applied first, but there is still a devastating effect.

Many in the imaging and oncology communities know that HOPPS was never intended to reflect the cost of providing individual physicians' services. Its use undermines the resource-based physician fee schedule and further indicated that the cap is unreasonable and without merit.

This methodology would have a devastating impact, which is going to threaten the future viability of non-hospital outpatient imaging centers providing PET, CT, ultrasound, MRI and Dexa scans. CMS assigned APC 1511 at a payment rate of \$950, well below the Medicare physician fee schedule most outpatient providers are accustomed to receiving. (APC 1511 is the code for the technical payment for PET/CT.)

To combat this nightmare, most persons in the imaging and oncology com-

munities are still requesting a delay in implementing the cap and have asked CMS to consider co-sponsoring HR 5704, a bill that calls for a two-year moratorium on the imaging cuts. CMS has responded that since Congress mandates the cap, the agency is obligated to implement the measure.

The DRA stipulates substantial cuts in various services including MRI, CT, PET, ultrasound, nuclear medicine, vascular and bone densitometry up to 50 percent of previous reimbursement rates. With these cuts on the horizon, many have expressed concerns to CMS that women's health would be compromised due to reductions in reimbursement for bone density measurements and screenings, PET and computer assisted detection as an add-on service for mammograms. Obviously, if these cuts stay effective, profit margins, stunted growth and expansion and a crippling of purchases of new technology would quickly surface.

The anti-Bush tide swept away several close allies of the diagnostic imaging community in the November Democratic sweep of Congress. For example, 12-term House and Ways committee stalwart Nancy Johnson of Connecticut lost her seat. She understood the lack of access the DRA will impose and the unbalanced effects it has on the industry. She was a major supporter of HR 5704 and S. 3795, both of which called for a two-year moratorium on the deep Medicare payment cuts in medical imaging services.

With Congress closely divided and likely to deadlock on many key issues, the Congressional majority will probably stall consideration of legislation delaying the dramatic cuts in the DRA for the Medicare reimbursement of imaging services.

The delay has little to do with the substance of arguments made by the imaging community and more to do with political timing and partisan politics. The emergence of the new Democratic Party has afforded them the opportunity, by the electorate, to put their stamp on new Congressional actions. This switch in control means Democrats will no longer need to consider major legislation on the terms set by the lame-duck Republican majority. This does not bode well for imaging and oncology specialties.

We must renew the grass-roots movement that was once so successful. The loss of many supporters (about 50 percent) is on Capitol Hill is a setback. But all the work that has been done explaining what a disaster this law may be for providers and Medicare recipients does not take away from previous advocacy efforts. They have not been a waste of time.

We must continue supporting lobbying efforts, educating legislators about access and not just costs. The latest information is that the imaging and oncology communities have gained enough momentum and presented a strong enough case that— in six-to-nine months, there is a possibility that Congress will sign a bill that would put a two-year moratorium in place.

Lastly, with Democrats in control, Congress will likely develop health care policies that could rekindle many legislative issues that encompass the issue of self-referral. For example, Pete Stark's return to chair the health subcommittee within the House Ways & Means Committee is a re-focus on quality imaging services and self-referral. Pete Stark is the namesake sponsor of the federal Stark Prohibition on physician self-referral. In the past, he was focused in on self-referral, time leasing and over-utilization by physician-owned practices.

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