



American Society for Clinical Laboratory Science
Voice, Value, Vision

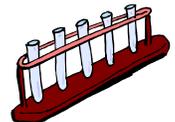
Government Affairs Committee (GAC)
e-newsletter
Issue #13 –January 2013
(Rick Panning, editor)

One of the strategic goals for our committee is to improve communication to the broader ASCLS membership and to provide a more consistent face to our members. The GAC e-newsletters are also available on the **ASCLS Advocates for You** section of the ASCLS website.

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CLIA proficiency testing legislation–Taking Essential Steps to Testing Act (TEST)



On December 4, 2012, President Obama signed the Taking Essential Steps for Testing (TEST) Act, introduced in the House by Rep. Michael Grimm (R-NY) and in the Senate by Senator Amy Klobuchar (D-MN). The House passed the bill (H.R. 6118) on September 19 and the Senate passed the companion bill (S. 3391) on November 14.

The TEST legislation will provide the Centers for Medicare and Medicaid Services (CMS) with some flexibility when surveyors find that a laboratory has inadvertently (not on purpose) sent a PT sample to another laboratory. Since PT samples are supposed to be handled exactly as the laboratory would handle a patient’s sample, in today’s healthcare environment, testing can be referred to another laboratory (often in the same system) in order to perform a confirmatory test or because they do not perform the test in-house. Under the current regulatory language, CMS had to revoke the CLIA certificate of the offending laboratory and suspend the laboratory director from directing any laboratory for a period of time, possibly creating a significant access problem for patients. CMS had expressed concerns about their inability to exercise discretion when imposing sanctions for PT referral with laboratories that had an otherwise stellar reputation. This law allows that discretion.



What does the legislation to avoid the “fiscal cliff” mean?

The 2012 elections resulted in the Democratic Party retaining their control of the Senate and the Republican Party maintaining a majority in the House of Representatives. In the recently completed “lame duck” session of Congress, the main Congressional agenda item was the year-end convergence of the urgent tax and spending issues known as the “fiscal cliff” (are you sick of that term yet?). The key facets of the “fiscal cliff” were the following.

- At the end of 2012, lower, “temporary” tax rates enacted a decade ago under President George W. Bush were set to expire. If Congress did nothing, individual income tax rates would rise sharply for all Americans.
- Deep, across-the-board cuts in federal programs (sequestration) would take effect on January 1 if Congress took no action. This would include a 2% additional cut in the clinical laboratory fee schedule.
- Another issue, contributing to a possible negative impact for clinical laboratories is that Medicare payments to physicians (including pathologists) were scheduled to be cut by 26.5% starting January 1, 2013. ASCLS believes that to avoid this cut, Congress will enact cuts in other areas to balance the revenue and expense.

Don Lavanty (Legislative Consultant), Elissa Passiment (Executive Vice President) and the Government Affairs Committee (GAC) have been monitoring the congressional and administrative negotiations closely to remain aware of any additional potential cuts to laboratory reimbursement.

With the Senate vote on December 31 and the House vote on January 1, a bill was passed which addressed most of the revenue side of the equation. It helps avoid the immediate ramifications of the “fiscal cliff” but did not address the expense side of the equation and the potential sequestration ramifications. So an additional 2% cut to the laboratory fee schedule that was part of the sequestration has been delayed and will need to be addressed between now and March 1.

Here is a summary of the significant revenue items addressed in the recently passed legislation, which amount to about \$600 billion in new revenues over 10 years. (Source: Modern Healthcare.com, January 1, 2013 and CNN.com, January 2, 2013)

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- Tax rate for individuals making more than \$400K and couples making more than \$450K will rise from 35% to 39.6%
 - Itemized deductions will be capped for individuals making \$250K and couples making \$300K.
 - Taxes on inherited estates will go up to 40% (currently 35%)
 - Unemployment insurance will be extended for a year for 2 million people
 - The alternative minimum tax (AMT) will be permanently adjusted for inflation.
 - Child care, tuition, and research and development tax credits will be renewed.
 - The “Doc fix” – Medicare reimbursement for physicians – will continue for one year (this avoids the 26.5% drop in reimbursement). You will see this issue referred to as the Sustainable Growth Rate (SGR). To pay for this item, the bill calls for a recoupment of past DRG overpayments to hospitals and re-pricing of end-stage renal disease payments.
 - One thing not addressed was the payroll tax rate. It had been previously reduced by 2% and that reduction expired on December 31 and was not renewed in this legislation. To put this in perspective, a person making \$30K per year will see \$50 less per month on their pay check and a person making \$113,700 will see \$189.50 less per month)
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Medicare fee schedule adjustments for 2013

Independent of the fiscal cliff, there are a number of adjustments to the Medicare Clinical Laboratory Fee Schedule which take place on January 1, 2013. Overall, our reimbursement will decrease by 2.95%.

The components are as follows.

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| ➤ Consumer Price Index adjustment (Urban component, CPI-U): | +1.7% |
| ➤ Productivity adjustment: | -0.9% |
| ➤ Cuts from Accountable Care Act (healthcare reform): | -1.75% |
| ➤ Cuts to fix the physician fee schedule in 2012: | <u>-2.0%</u> |
| ➤ Total reduction in reimbursement: | <u>2.95%</u> |

For items not on the fee schedule and based on reasonable charge reimbursement, fees will increase by 1.7%. Examples of these items are as follows.

- Blood products
- Transfusion medicine procedures
- Reproductive medicine procedures

Another possible cost impact for laboratories to be aware of is that under the Accountable Care Act, effective January 1, 2013, medical device manufacturers are subject to a 2.3% Medical Device Excise Tax on their products. The potential exists for manufacturers to pass all or part of this tax on to their customers.



Legislative Symposium – March 18-19, 2013

The annual Legislative Symposium, co-sponsored by ASCLS, ASCP, AMT, CLMA, and this year, AGT (Association of Genetic Technologists) will be March 18-19, 2013 in Crystal City, Virginia. More information will be coming to you shortly. The registration form is in the November/December ASCLS Today that should be delivered to you shortly. Please also watch your email and the new ASCLS website for registration information. This symposium is your opportunity to help the laboratory profession speak with one voice as we advocate for important issues impacting our practice. We urge each constituent society to send at least one state representative and to also involve students and new professionals in the event. As the late Senator Paul Wellstone (D-MN) said, "If we don't fight hard enough for the things we stand for, at some point we have to recognize that we really don't stand for them."
