THIS WEEK IN WASHINGTON – JUNE 1, 2012

MEDICAID PROVIDER TAXES TARGETED...AGAIN

The Republican Leadership of the House and Senate put the Medicaid provider tax threshold on the table again this week, this time as a way to pay for a one-year extension of the interest rate for subsidized Stafford student loans that expires on July 1, 2012. A similar proposal was contained in President Obama's FY 2013 budget proposal, which was rejected by the House and Senate earlier this year. Under current law, states may not tax a health care provider and then return the tax revenue to the provider in the form of higher Medicaid payment rates or other guarantees known as a "hold harmless" arrangement. While the letter sent to President Obama by the Republican Leadership on Thursday does not recommend a specific percentage, it notes the President proposed a reduction to 3.5% from FY 2015 to FY 2017 in his FY 2013 budget proposal and the House-passed Sequester Replacement Reconciliation Act would lower it to 5.5% starting in 2013. The provider tax proposal was quickly attacked by the National Association of Public Hospitals and Health Systems, which issued a statement calling the measure a threat to a safety net health care system already under financial stress.

HOUSE PASSES FDA USER FEE BILL

The House of Representatives overwhelmingly passed a bill on Wednesday to reauthorize Food and Drug Administration ("FDA") user fee programs that help fund the agency's review of prescription drugs and medical devices. The Senate passed its own version of the legislation last week. Next, a House/Senate conference committee will begin the process of reconciling differences between the two measures, but its work is expected to be minimal. Both bills reauthorize the FDA's ability to collect user fees from drug and device companies for five years, create new user fee programs for generic drugs, contain provisions to improve the safety of drug supply chains, address drug shortages and permanently reauthorize programs that encourage manufacturers to conduct studies on pediatric drugs. They also require that guidance be issued to hospital pharmacies regarding the repackaging and transfer of drugs between hospitals in a common health system during a drug shortage, and establishment of a process for hospitals, physicians and other entities may report evidence of a drug shortage to the agency. The only significant differences that remain deal with the regulation of medical devices and incentives for companies to create new antibiotics. House and Senate leaders have already set a goal of delivering a final bill to President Obama by July 4, 2012.

CMS URGED TO USE "MEANINGFUL USE" RULE TO PUSH PHARMACY REVIEW AT DISCHARGE

In a May 7 letter that was released to the public this week, Sen. Al Franken (D-MN) called on CMS to use health information technology "meaningful use" regulations as leverage to push hospitals to hire additional pharmacists that would review prescriptions prior to a hospital discharge. Franken noted that Hennepin County Medical Center in his home state recently examined the discharge orders of 37 elderly patients with multiple chronic conditions and found that 92% of the orders contained medication errors. Hennepin implemented a system to use electronic health records for reconciliation during discharge, which reduced the error rate to 70%, and later assigned pharmacists to review the orders. Nine months after the pharmacists were assigned, the error rate was reduced to essentially 0%, and the readmission rate fell by half, Franken said.

PHYSICIAN/SENATOR CALLS FOR INDEFINITE DELAY OF ICD-10 IMPLEMENTATION

Oklahoma Senator Tom Coburn, who is also a physician, called for the indefinite delay of ICD-10 implementation this week in a white paper titled *ICD-10 Implementation Date: Better Never Than Later?* that he authored with Jason Fodeman, M.D., an internal medicine and senior fellow in health care studies at the Pacific Research Institute. The paper argues the transition to ICD-10 codes will have a detrimental effect on hospitals and physicians for numerous reasons. "The main difference between the current ICD-9 codes and the new set, is there are many more codes, and they are filled with redundancies and unnecessary intricacies. The costs of this changeover for hospitals already operating under narrow financial margins will be substantial. The adoption of the codes will, by default, force physicians to devote more time and energy toward coding, which may detract from patient care. ICD-10 could indirectly accelerate the vertical integration of medicine and exacerbate the physician shortage. While the compliance costs of ICD-10 are tangible, the benefits are much more esoteric. As health care providers struggle to navigate the murky waters of health care reform, until more meaningful changes are made to lower costs and reduce administrative costs, HHS should halt ICD-10 implementation."

LEGISLATION

The following health care-related bill was introduced this week:

- A bill to enhance FDA oversight of medical device recalls, to provide for the conditional clearance of certain medical devices and for other purposes. (H.R. 5866)

NEXT WEEK

The House and Senate both return for a full week of legislative activity. While there is no health care-related committee activity of note scheduled in either body, the House is expected to consider bills to repeal the 2.3% medical device tax and the Affordable Care Act's ban on using health savings accounts to pay for over-the-counter drugs.

For more information, please contact John F. Williams, III at 317.977.1462 or jwilliams@hallrender.com.