

THIS WEEK IN WASHINGTON - OCTOBER 4, 2013

COMMITTEE RELEASES NEW DOC FIX DRAFT

On July 18, the House Energy and Commerce Committee **released an updated framework** to replace Medicare's physician payment system. The framework represents the first draft proposal to include Democrats' names, including the ranking member Rep. Henry Waxman (D-CA) and Subcommittee on Health ranking member Frank Pallone (D-NJ). The Subcommittee on Health plans to mark up the legislation on Monday.

The draft proposal would repeal the Sustainable Growth Rate ("SGR") and replace it with an enhanced fee-for-service system, under which providers would get payment updates and incentives based on how they meet specified quality measurements.

The draft bill does not include a full offset for repealing the current system. The Congressional Budget Office estimates the cost of repeal would be \$139.1 billion over 10 years.

HOUSE MEMBERS PUSH FOR EXPANDED STARK EXCEPTION FOR EHR'S

On July 11, Reps. Diane Black (R-TN) and Michael Honda (D-CA) issued a joint letter to the heads of CMS and the Office of the National Coordinator for Health IT. The letter urged administrators to expand the physician self-referral law exception and Anti-Kickback Statute safe harbor for electronic health records ("EHR's") to prohibit the intentional limiting of interoperability among all health information technologies.

Back in April, CMS and the Office of Inspector General modified the Anti-Kickback safe harbor and Stark Law exception so they do not apply to EHR's that are not interoperable with other systems. The members asked in the letter for these provisions to be extended to all health IT tools.

HOUSE VOTES TO DELAY ACA IMPLEMENTATION

On July 17, the House passed two measures to delay implementation of the employer and individual mandates of the Affordable Care Act (the "ACA"). The votes come two weeks after the Obama Administration announced it would postpone the insurance requirement for employers. The House bill attempts to codify the administration's move.

The House passed the employer mandate (H.R. 2668) and the individual mandate (H.R. 2668) legislation by large margins. The employer mandate requires companies with 50 or more full-time employees to provide health insurance or pay a penalty. The bills would delay the respective mandates by one year to January 1, 2015.

The White House has issued a veto threat against both bills, and the Senate is unlikely to vote on either measure.

CAMP SEEKS INPUT AS COMMITTEE DRAFTS MEDICARE REFORM BILL

The House Ways and Means Committee is seeking public comments on ways to reform Medicare. The call for comments comes as the committee is drafting legislation on reforming entitlements and follows a series of hearings the committee has held on broad entitlement reform. The Medicare Trustees Report recently added two years to the life of the trust fund, pushing back the date the fund will be out of money to 2026.

OMB FINALIZES REVIEW ON 340B DISCOUNTS FOR ORPHAN DRUGS RULE

On July 12, the White House Office of Management and Budget ("OMB") finished reviewing a long-awaited regulation on the 340B drug discount program, a regulation that the Health Resources and Services Administration ("HRSA") originally proposed two years ago.

The ACA expanded the 340B drug discount program to free-standing cancer centers, critical access hospitals, rural referral centers and sole community hospitals for outpatient drugs but excluded orphan drugs from the expansion. The orphan drug exclusion only applies to categories of hospitals that gained 340B eligibility from the ACA.

BILLS INTRODUCED THIS WEEK

H.R. 2703: Rep. Green (D-TX) and Rep. Murphy (R-PA) introduced legislation that would give volunteer health care professionals at community health care centers the same medical malpractice protections afforded free clinic volunteers. Health care professionals who

volunteer at free clinics receive federal liability protections covered under the Federal Tort Claims Act, but volunteers at community health centers must provide their own medical malpractice insurance.

S. 1330: Sen. Mark Begich (D-AK) introduced a bill that seeks to delay the implementation of the employer responsibility provisions of the ACA by one year.

NEXT WEEK IN CONGRESS

The House Energy and Commerce Health Subcommittee will hold a markup hearing on legislation to reform the physician payment formula on Monday, July 22. Energy and Commerce Chairman Fred Upton (R-MI) recently told the press that the full committee will pass the bill prior to the August recess and hopes the bill will land on the President's desk "in a few months."

Two House Education and Workforce Committee panels will hold a joint hearing on the Obama Administration's decision to delay the ACA's employer mandate on July 23.

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