

THIS WEEK IN WASHINGTON - FEBRUARY 7, 2014

CMS DELAYS 2-MIDNIGHT RULE FOR SIX MONTHS

Late on January 31, the Centers for Medicare and Medicaid Services ("CMS") **announced** a further delay in the implementation of regulations known as the "2-Midnight Rule." As a result, Medicare Administrative Contractors ("MACs") and other review contractors will not be permitted to perform post-payment "patient status reviews" of claims made for inpatient hospital stays until October 1, 2014. In response, integrity contractors have asked Congress to investigate how CMS is able to suspend the program for a year without its approval. They believe CMS's decision goes against the law that instituted these review contractors in the first place.

HOUSE AND SENATE LEADERS INTRODUCE SGR REPLACEMENT BILL

On January 30, the chairs and ranking members on the three health committees responsible for drafting legislation to permanently replace the Medicare Sustainable Growth Rate ("SGR") formula **announced** they had reached consensus on a **proposal**. The bipartisan, bicameral bill, which was formally introduced by Rep. Michael Burgess (R-TX) and Sen. Max Baucus (D-MT), merges the separate proposals advanced by the three committees over the last year. It provides a 0.5% physician payment update for the first five of the ten-year transition period, combines the three existing quality incentive programs into the Merit-Based Incentive Program and creates an advisory committee on alternative payment models. It does not include Medicare extenders like ambulance add-on payments or outpatient therapy caps.

Although the legislation (H.R. 4015, S. 2000) sets forth the framework of a new payment model, it fails to include any provisions that will offset the \$128 billion cost. According to staff at the Senate Finance Committee, discussions by lawmakers on how to pay for the measure haven't even started. Since agreement on the "pay-for" provisions and Medicare extenders will be the most difficult part of the process, it is becoming more likely that a finished product will not be ready for passage before the current "payment patch" expires on March 31. If that occurs, look for lawmakers to pass another "doc fix" bill that extends the SGR through the end of 2014.

HOUSE COMMITTEE PASSES LEGISLATION TWEAKING ACA

On January 29, the House Ways and Means Committee passed legislation broadening the Affordable Care Act's ("ACA's") definition of full-time work. The legislation, which passed on party lines, would redefine a full-time employee under the ACA as one who works 40 hours per week instead of 30 hours. The bill has not yet been scored by the Congressional Budget Office ("CBO") and its future in the Senate is uncertain. The Committee also passed legislation this week codifying an ACA measure exempting organizations from offering coverage to volunteer emergency responders.

HHS RULE INCREASES PATIENT ACCESS TO RECORDS

On January 28, HHS **released** a final rule allowing laboratories to give a patient, or a person designated by the patient, access to lab results at the patient's request. The action allows patients to acquire their lab results from a physician or directly from the lab. The rule amends the Clinical Laboratory Improvement Amendments of 1988 and HIPAA.

BILLS INTRODUCED THIS WEEK

Reps. Mike Thompson (D-CA) and Anna Eshoo (D-CA) have introduced a bill (H.R. 3986) that would increase the federal tax credits available under the ACA for people living in high-cost parts of the country. Based on an area's cost of living above the national average and determined by the Census Bureau's Supplemental Poverty Measure, the bill would raise the federal poverty level threshold proportionally.

Rep. Adrian Smith (R-NE) introduced a bill (H.R. 3991) that would remove the 96-hour physician certification requirement as a condition of payment for critical access hospitals ("CAHs"). According to the sponsor, the bill would not remove the requirement that CAHs maintain an average annual length of stay of 96 hours, nor affect other certification requirements for hospitals.

Sen. Tom Coburn (R-OK) introduced a bill (S. 2005) that would amend title XVIII of the Social Security Act to provide for the reporting of certain hospital payment data under the Medicare program.

NEXT WEEK IN CONGRESS

The House and Senate will be in session next week. With Senate Finance Chairman Max Baucus now confirmed as the next U.S. Ambassador

to China, the Senate is expected to appoint Sen. Ron Wyden (D-OR) as the new head of the Senate Finance Committee.

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

Please visit the Hall Render Blog at <http://blogs.hallrender.com> for more information on topics related to health care law.