

HALL RENDER'S THIS WEEK IN WASHINGTON - MAY 20, 2016

WAYS AND MEANS COMMITTEE RELEASES HOSPITAL BILL THAT ADDRESSES HOPD SITE-NEUTRAL PAYMENT ISSUE

On May 18, the House Ways and Means Committee **released** the bipartisan Helping Hospitals Improve Patient Care Act of 2016 (H.R. 5273). Among the many provisions in the 30-page legislation is an amendment to the Bipartisan Budget Act of 2015 ("BBA") that reverses the site-neutral pay cuts for hospital outpatient departments ("HOPDs") that were "mid-build" when the BBA was passed last year. The legislation considers a project to be mid-build if the provider had a binding written agreement with an outside, unrelated party for the actual construction of the HOPD on November 2, 2015.

To qualify as mid-build, each HOPD will be required to submit a certification from the provider's chief executive officer or chief operating officer that the HOPD meets the definition of mid-build prior to July 1, 2016. Further, each mid-build HOPD will be required to submit an attestation that it meets the requirements of the provider-based regulations, which will be audited for accuracy. HOPDs that meet these requirements will receive the full HOPD payment rate beginning January 1, 2018 instead of the lower physician fee schedule or ambulatory surgical center payments required under the BBA. Finally, those off-campus HOPDs that submitted a voluntary attestation prior to December 2, 2015 will receive the full HOPD payment rate beginning January 1, 2017.

The bill, which is expected to be marked up by the Ways and Means Committee as early as next week, has several other hospital-related provisions that include a measure sponsored by House Speaker Paul Ryan (R-WI) that requires CMS to translate inpatient hospital codes to outpatient hospital codes for 10 surgical procedures by January 1, 2018. There is also an adjustment of the Hospital Readmissions Reduction Program to account for patients' socioeconomic status, an extension of the Rural Community Hospital Demonstration Extension Act from five to ten years and an exemption of ambulatory surgical centers from electronic health record meaningful use penalties. A full summary of the bill can be found [here](#). While the Federation of American Hospitals quickly endorsed the legislation, the American Hospital Association said it is reserving judgment until it has fully analyzed the measure's non-HOPD-related provisions. Most believe the bill's fate rests on whether the hospital industry will lobby for its passage, which will require support for payment reforms that hospitals have opposed in the past.

LABOR DEPARTMENT ISSUES FINAL RULE FOR OVERTIME PAY

On May 18, the U.S. Department of Labor released its **final overtime rule** that raises the salary threshold under which workers are eligible for time-and-a-half pay whenever they work more than 40 hours per week to \$47,476. The threshold, which will be updated every three years, is linked to the 40th wage percentile for full-time salaried employees in the lowest income region. The new rule will be enforced beginning December 2016 and is expected to affect over four million workers.

The Department of Labor also issued a **non-enforcement policy** for the overtime rule for home care providers who are funded by Medicaid and for health care facilities with 15 beds or fewer. Home care providers and small facilities will be exempt from implementing the new rule until March 17, 2019. Hall Render has issued a more **detailed** summary of the rule on its website.

SENATE RELEASES DRAFT LEGISLATION TO ELIMINATE MEANINGFUL USE ALL-OR-NOTHING APPROACH

A group of Republican senators released a **draft bill** to end the "all-or-nothing approach" to meaningful use under CMS's Electronic Health Records ("EHR") Incentive Programs. Under the all-or-nothing approach, hospitals and providers that fail to meet any of the EHR program requirements can be subjected to large payment penalties.

The legislation would shorten the EHR reporting period from 365 days to 90 days to give providers more time to implement the reporting system. The draft language would also increase flexibility in applying meaningful use hardship exceptions to allow providers to change EHR vendors to better meet their needs without payment adjustments during a reporting period.

The draft bill's authors, including Sens. John Thune (R-SD), Lamar Alexander (R-TN), Mike Enzi (R-WY), Pat Roberts (R-KS), Richard Burr (R-NC) and Bill Cassidy (R-LA), also sent a **letter** to HHS asking for feedback on their proposal.

HEALTH-RELATED BILLS INTRODUCED THIS WEEK

Rep. Paul Ruiz (D-CA) introduced the Protecting Seniors from Health Care Fraud Act (H.R. 5241) to distribute additional information to

Medicare beneficiaries to provide enrollees with up-to-date information and educate them on health care scams. The legislation directs HHS and the Attorney General to submit to Congress and make available to the public an annual report that identifies: the 10 most prevalent health care fraud schemes; actions seniors and government agencies are taking and can take to combat such schemes; and policy recommendations to better protect Medicare beneficiaries.

Reps. Lois Frankel (D-FL) and William Keating (D-MA) introduced legislation (H.R. 5267) to combat fraud in the Medicare program. The Fighting Medicare Fraud Act of 2016 would make stealing a Medicare identification number a federal offense and would require Medicare Advantage and Part D organizations to report instances of potential fraud and abuse.

Rep. Jim McDermott (D-WA) introduced the Medicare Beneficiary Enrollment Improvement Act (H.R. 5268) to make updates to the “Welcome to Medicare” package. The bill requires HHS to update the package within 12 months to include information about options for receiving benefits under the Medicare program, such as through the original fee-for-service program, Medicare Advantage and prescription drug plans.

NEXT WEEK IN WASHINGTON

The House and Senate return on Monday, May 23, when both chambers will continue work on appropriations. Earlier this week, the Senate approved its second appropriations bill of 2016, along with \$1.1 billion in emergency funding for the Zika virus. On Tuesday, May 24, the House Energy and Commerce Oversight Committee will hold a **hearing** examining program integrity issues in Medicare and Medicaid relating to improper payments.

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