

HALL RENDER'S THIS WEEK IN WASHINGTON - JULY 14, 2017

STARK REFORM LEGISLATION INTRODUCED AND ADVANCED IN THE HOUSE

On July 10, Reps. Marchant (R-TX) and Ron Kind (D-WI) reintroduced the Stark Administrative Simplification Act (H.R. 3173). The bipartisan legislation would limit the penalties for technical violations of the Stark Law and create an expedited process for their resolution. The measure was introduced as a result of the efforts of the Stark Law Correction Coalition, which was created by Hall Render in 2013. The bill creates a fixed monetary penalty for health care providers who self-disclose "technical noncompliance," which is defined as an unwritten, unsigned or lapsed agreement that is otherwise compliant. It also gives CMS 90 days to process the disclosure to a complete resolution and codifies certain regulatory changes related to the law's signature, writing and holdover requirements that were included in the 2016 Physician Fee Schedule Final Rule. The legislation is intended to give providers more certainty and predictability regarding the outcome of a technical violations of the Stark Law and free up CMS resources to pursue more egregious fraud and abuse violations.

On July 13, the House Ways and Means Committee held a hearing to **mark up** a package of health bills intended to make minor reforms to Medicare. One of the bills titled the Medicare Part B Improvement Act (H.R. 3178) includes the regulatory codification language found in Sections 3 and 4 of the Marchant-Kind legislation. Lawmakers hope to put H.R. 3178 on the floor of the House before the August recess, but that may be pushed until Congress returns after Labor Day due to a packed legislative calendar. Rep. Marchant made clear at the hearing that he intends to make sure the Ways and Means Committee leadership upholds a promise to pass the remaining portions of H.R. 3173 later this year.

SENATE REPUBLICANS INTRODUCE "TWEAKED" HEALTH REFORM BILL

On July 13, the Senate Republican leadership released a **revised health reform bill**. The latest version doesn't make changes to the Medicaid overhaul proposed in the original Better Care Reconciliation Act ("BCRA"), which would cut nearly \$800 billion by rolling back the Affordable Care Act's ("ACA's") Medicaid expansion and capping payments for each enrollee. The latest version of BCRA makes changes intended to allow for more accurate Disproportionate Share Hospital ("DSH") related decisions by changing the DSH calculation from per Medicaid enrollee to per uninsured. However, those changes will not offset the Medicaid dollars lost by rolling back the expansion. The latest draft also keeps some ACA-related taxes on high income earners and directs more than \$100 billion in new spending to help low-income Americans buy coverage and combat the opioid epidemic.

Also this week, Sen. Lindsey Graham (R-SC) introduced an ACA replacement plan that is intended to be a backup in case the current bill is unable to pass. The Graham proposal would block grant much of the ACA's federal funding directly to the states and would keep all of the ACA's taxes except the medical device tax. The bill will likely be offered as an amendment to BCRA next week if Senate Majority Leader Mitch McConnell (R-KY) can muster the votes needed to clear a procedural hurdle that is necessary to start debate. If he is successful in doing so, Senate Republicans may be able get the 50 votes needed to pass the measure with Vice President Pence casting the tie breaking vote.

BCRA would then be sent to the House where Republicans choose to immediately hold a vote on its approval or make changes, which would require the bill to be sent to a House-Senate conference committee where those differences would be resolved. House Speaker Paul Ryan (R-WI) has yet to indicate how the House will proceed, but many Republicans in the House are still angry at President Trump for calling their ACA repeal bill "mean" and may seek additional changes to win their support.

CMS RELEASES 2018 PHYSICIAN FEE AND HOPD PAYMENT RULES

On July 13, CMS released its proposed 2018 Physician Fee Schedule, which would update Medicare payment rates for doctors who treat Medicare patients in calendar year ("CY") 2018. CMS estimates a 0.31 percent increase in physician payment rates for CY 2018 compared to CY 2017. It also proposes the addition of new telemedicine payment codes doctors can bill for including psychotherapy for crisis, health risk assessments and care planning for chronic care management. CMS released a **fact sheet** further detailing the proposed rule.

On the same day, CMS also released a proposed rule that updates payments rates and policy changes for hospitals in the Hospital Outpatient Prospective Payment System ("OPPS"). The rule proposes to increase prospective payment system rates by 1.75 percent

beginning in CY 2018 compared to CY 2017.

Other provisions in the proposed rule include changing the payment rate for certain Medicare Part B drugs purchased by hospitals through the 340B program at the average sales price minus 22.5 percent rather than average sales price plus 6 percent. The rule would also keep in place Stage 3 meaningful use requirements and reinstate for CY 2018 and CY 2019 the moratorium on enforcement of the direct supervision requirement for outpatient therapeutic services for critical access hospitals and small rural hospitals with 100 or fewer beds.

As it did with the Physician Fee Schedule proposed rule, CMS has also included a Request for Information from the public on how the agency can make the Medicare program more flexible and efficient. Additional information can be found in the [fact sheet](#) that details the OPPS proposed rule. Comments on both proposed rules are due by September 11, 2017.

HEALTH-RELATED BILLS INTRODUCED THIS WEEK

Rep. Patrick Tiberi (R-OH) introduced a bill (H.R. 3168) to provide continued access to specialized Medicare Advantage plans for special needs individuals. The bill was included in the July 13 Medicare reform package marked up by the Ways and Means Committee and will most likely be advanced by the full house in the coming weeks.

Rep. Mike Bishop (R-MI) introduced a bill (H.R. 3171) to amend Title XVIII of the Social Security Act to provide that certain orthotists' and prosthetists' clinical notes under Medicare be treated as part of the patient's medical record.

Sen. Mark Warner introduced a bill (S. 1545) that would amend Title XIX of the Social Security Act to provide the same level of federal matching assistance for every state that chooses to expand Medicaid coverage to newly eligible individuals regardless of when the state expansion took place.

NEXT WEEK IN WASHINGTON

The House and Senate return next week. The main order of business in the Senate will be holding a procedural vote to see whether support exists to begin debate on BCRA. If the bill reaches the floor, expect Majority Leader McConnell to offer a manager's amendment that could significantly change aspects of the health care bill intended to win enough support for passage.

On July 18, the House Energy and Commerce Oversight Subcommittee will hold a hearing on the 340B drug discount program. The Trump administration has urged Congress to take steps to improve program integrity in the 340B program and ensure benefits are being used to benefit patients. Last month, the committee leadership wrote a letter to HRSA expressing concerns about the rapid growth and lack of oversight for the program. The Senate may also take up the FDA user fee reauthorization bill next week. The must-pass legislation was advanced by the House on Wednesday, and the differences between the two chambers bills are minor.

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