

HALL RENDER'S THIS WEEK IN WASHINGTON - NOVEMBER 15, 2019

CMS RELEASES PRICE TRANSPARENCY RULES

On November 15, CMS issued a proposed and final rule, both intended to increase the transparency in pricing for health care providers. One of the rules is the Calendar Year ("CY ") 2020 Outpatient Prospective Payment System ("OPPS") final rule. The second rule is the Transparency in Coverage proposed rule. Both the final and proposed rules would require pricing information be made publicly available.

If finalized, the **proposed Transparency in Coverage rule** would require health plans to provide an online and paper estimate to consumers of their cost-sharing liability for all covered health care items and services. The rule would require plans to disclose on a public website their negotiated rates for in-network providers and allowed amounts paid for out-of-network providers.

The **OPPS final rule** for CY 2020 will require hospitals to provide patients with clear, accessible information about their "standard charges" for items and services provided. The final rule requires hospitals to make their standard charges public in two ways beginning in 2021:

- Hospitals will be required to publish on the internet all standard charges for all items and services in a single data file that can be read by other computer systems.
- Hospitals will be required to make public payer-specific negotiated charges, the amount the hospital is willing to accept in cash from a patient for an item or service, and the minimum and maximum negotiated charges for 300 common shoppable services. This information will need to be updated annually.

The final rule also provides CMS with the ability to impose civil monetary penalties of \$300 per day. The effective date of the final rule is January 1, 2021.

CMS UNVEILS MEDICAID ACCOUNTABILITY PROPOSED RULE

On November 12, CMS issued a **proposed rule** called the Medicaid Fiscal Accountability Rule that is intended to increase transparency in Medicaid supplemental payment programs in states. If finalized, the 222-page rule would make changes to a variety of Medicaid programs and policies including provider taxes, Medicaid disproportionate share payments, upper payment limit payments and intergovernmental transfers.

In the proposed rule, CMS proposes to sunset supplemental payment methodologies after three years, requiring states to seek future approval and adhere to standardized templates and calculations for non-DSH supplemental payments. The rule also seeks to establish new regulatory definitions for non-federal share financing arrangements and upper payment limit ownership categories. Additionally, it would limit the types of governmental funds that could serve as IGTs such that those funds: (i) must come from units of government within a state (including Indian tribes); and (ii) must be derived from state or local taxes.

More details can be found in the **Fact Sheet** CMS released with the proposed rule. The agency is accepting comments on the rule for 60 days after its publication in the federal register. It is currently scheduled to publish on November 18.

HOUSE COMMITTEE MATERNAL HEALTH BILLS

On November 13, the House Energy and Commerce Committee advanced two bills aimed at strengthening maternal care in rural areas. **H.R. 4995** would authorize grants to implement rural obstetric networks, material telehealth programs and a rural maternal care training demonstration program. **H.R. 4996** would provide states the option to extend Medicaid and Children's Health Insurance Program coverage for pregnant and postpartum women from the current 60 days to one year after birth. It is unclear if the Senate HELP Committee will advance similar legislation.

HEALTH-RELATED BILLS INTRODUCED THIS WEEK

Sen. James Lankford (R-OK) reintroduced the Patient Access to Higher Quality Care Act. The bill, **S. 2860**, removes the ACA ban on the creation and expansion of new physician-owned hospitals ("POHs") and allows POHs to participate in Medicare and Medicaid.

Sen. Johnny Isakson (R-GA) introduced a bill (**S. 2846**) that seeks to amend Title XIX of the Social Security Act to provide for the continuing

requirement of Medicaid coverage of nonemergency transportation to medically necessary items and services.

Sen. Shelley Moore Capito (R-WV) introduced a bill ([S. 2842](#)) to amend Title XVIII of the Social Security Act to expand and expedite access to cardiac rehabilitation and pulmonary rehabilitation programs.

Sen. Brian Schatz (D-HI) introduced the Ensuring Access to General Surgery Act of 2019. The bill, [S. 2859](#), would direct HHS to conduct a study on access by underserved populations to general surgeons and the designation of general surgery shortage areas.

Rep. Paul Tonko (D-NY) introduced a bill ([H.R. 5057](#)) that seeks to clarify the treatment of pass-through status under the Medicare outpatient system for certain drugs.

Rep. Daniel Lipinski (D-IL) introduced a bill ([H.R. 5039](#)) that seeks to lower the prices of excessively costly life-sustaining drugs under Part D of Medicare by allowing the HHS Secretary to negotiate their prices. Examples of life-sustaining drugs include cancer chemotherapy drugs, anti-seizure medicine, emergency inhalers, insulin and epinephrine injectors.

Rep. Bradley Byrne (R-AL) introduced a bill ([H.R. 5033](#)) that seeks to expand the eligibility of veterans for hospital care and medical services provided by non-Department of Veterans Affairs medical providers under the Veterans Choice Program. The bill amends the Community Care Program which limits conditions under which veterans are eligible to use the program.

NEXT WEEK IN WASHINGTON

The House and Senate return Monday for the final legislative week before Thanksgiving, which includes additional impeachment hearings in the House. The most pressing legislative priority will be funding the federal government, which expires at midnight on November 21. Congressional leaders reached a loose agreement this week to pass a four-week continuing resolution to fund the government through December 20, 2019. The White House has indicated the president will sign a clean version of the four-week funding bill.

From a health policy standpoint, the bigger issue is whether Congress will use the funding bill to pass substantive legislation, like that to address surprise medical billing. This week congressional leaders indicated that a December spending package could include pieces of the surprise medical billing legislation that has already been introduced.

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