

THIS WEEK IN WASHINGTON - DECEMBER 14, 2012

CMS REJECTS PARTIAL MEDICAID EXPANSION AND DROPS SUPPORT FOR A MEDICAID "BLENDED RATE"

On Monday, CMS announced that states who expand their Medicaid programs to less than 133% of the federal poverty level will not receive the higher federal matching funds set forth in the Affordable Care Act ("ACA"). The agency said that states may propose demonstrations that include a partial expansion of Medicaid coverage, but they will only receive their regular federal Medicaid matching rate. In a statement released to the public, CMS officials said, "The law does not provide for a phased-in or partial expansion. As such, we will not consider partial expansions for populations eligible for the 100 percent matching rate in 2014 through 2016." CMS has yet to reveal whether states that fail to expand Medicaid will still suffer the ACA-mandated DSH payment cuts set to begin in 2014.

CMS also announced this week that it no longer supports establishing a "blended rate" for federal Medicaid matching payments. The proposal was included in President Obama's annual budget proposal and is a measure Congress has discussed using to reduce federal spending on the program. Many governors fear the ongoing "fiscal cliff" negotiations will result in large cuts to Medicaid spending, and they have warned lawmakers in Washington that such a reduction will force them to reconsider whether to pursue the expansion.

MEDPAC QUESTIONS SPENDING ON LONG-TERM CARE HOSPITALS

On December 7, the Medicare Payment Advisory Commission ("MedPAC") discussed the 2014 payment rates for long-term care hospitals ("LTCHs"). Based on comments, the panel appeared ready to approve a draft recommendation to Congress calling for no payment increase in 2014. When MedPAC reconvenes January 17-18, they will formally vote on recommending to Congress the elimination of a payment increase. A moratorium that prevents the expansion of long-term care facilities is set to expire at the end of 2012 and Congress has not indicated whether the ban will be extended.

SENATE DEMOCRATS REQUEST MEDICAL DEVICE TAX DELAY

A group of 18 Senate Democrats recently sent a letter to Senate Majority Leader Harry Reid (D-NV) requesting a delay in the 2.3% device tax set to begin in 2013. The letter does not specify how long the device tax should be delayed, but most assume it would be a one-year delay to January, 2014.

The addition of 18 Senate Democrats to the 45 Senate Republicans likely to support a delay would create a filibuster-proof majority were legislation brought before the Senate for a vote. Last week, the IRS **released** a 58-page final rule explaining how medical device manufacturers will have to comply with the new tax on their products starting January 1, 2013. The tax is structured as a tax on the sale of any medical device by the manufacturer, producer or importer.

FCC APPROVES NEW RURAL HEALTH BROADBAND PROGRAM

On December 12, the Federal Communications Commission ("FCC") **voted** unanimously to reform its rural universal service support programs for health care into a broadband-based program called the Health Care Connect Fund. The new Health Care Connect Fund program will provide up to \$400 million annually to support broadband access across the country, particularly for rural health care providers.

GAO RELEASES REPORTS ON EHR INCENTIVES/CMS AUDIT PROGRAMS

On December 13, the Government Accountability Office ("GAO") **released a report** saying 39% of hospitals eligible for Medicaid "meaningful use" incentives received the bonus payments in 2011. The total payout was \$2.7 billion, with the median around \$613,000. Meanwhile, about 33% of eligible professionals received a combined \$967 million in Medicaid incentives, with 97% receiving the maximum award of \$21,250.

Earlier in the week, GAO **released recommendations** for CMS to eliminate duplication and inefficiencies in the National Medicaid Audit Program. GAO recommends the Medicaid program merge review and audit contractor functions, use comprehensive reviews to better target audits, ensure reliable reporting of state program integrity recoveries, discontinue annual state assessments, and reevaluate and publish its return-on-investment methodology.

LEGISLATION INTRODUCED THIS WEEK

H.R. 6645: Rep. Wally Herger (R-CA), chairman of the House Ways and Means health subcommittee, introduced legislation encompassing some of Republicans' most favored health reforms. The bill would merge Medicare's hospital and medical care coverage and put a cap on out-of-pocket costs for beneficiaries. It would also establish a premium support model for Medicare, institute additional means testing in Medicare, move the Medicare age to 67 and repeal the health law's Independent Payment Advisory Board, among other initiatives.

It is unlikely any of the initiatives will become law before the end of the congressional session.

NEXT WEEK

The House and Senate will reconvene December 17 and begin consideration of the legislative vehicle for the emergency supplemental appropriations bill that would help communities hit by Hurricane Sandy. Over the weekend, the President and House and Senate leadership may continue "fiscal cliff" negotiations.

With only 17 days remaining before the "fiscal cliff," House and Senate Democrats have seemingly solid resistance against changes to the Medicare and Social Security entitlement programs. On December 13, more than 80 House Democrats signed a letter to the President this week urging him not to raise Medicare eligibility. Absent congressional action, tax rates will go up along with massive spending cuts to defense and health-related programs.

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