

THIS WEEK IN WASHINGTON - NOVEMBER 8, 2013

OMB REVIEWING FINAL RULES ON ANTI-KICKBACK STATUTE, STARK LAW PROTECTIONS FOR EHR DEALS

Earlier this week, CMS and HHS sent two final rules to the White House Office of Management and Budget ("OMB") that would extend safe harbor protections for arrangements that provide electronic health record ("EHR") products to physicians until the end of 2016. An Anti-Kickback Statute safe harbor and a separate physician self-referral law exception, which allow physicians to accept donations of software, hardware and related services from hospitals and certain other health care organizations, are set to expire December 31, 2013. The arrival of the rules at OMB signals the final stage in the rulemaking process, and they are expected to be released publicly before the end of the year.

MEDPAC DISCUSSES ACOS, POST-ACUTE CARE PAYMENT REFORM

On November 7, the Medicare Payment Advisory Commission ("MedPAC") met to discuss reforms to Accountable Care Organizations ("ACOs") and the equalization of post-acute care payment rates. While MedPAC didn't make official recommendations to Congress, the committee will meet again in December to continue the discussion on reforms to these areas of Medicare payment policy.

MedPAC discussed whether it will recommend that Medicare remove some of the payment disparities between what it pays skilled nursing facilities and inpatient rehabilitation facilities to treat patients recovering from serious medical problems. A majority of the commissioners agreed with the idea of moving toward more uniform payments, regardless of whether patients are in a skilled nursing facility or an inpatient rehab facility.

The Commission also debated whether ACOs should accept some financial risk. While not making official recommendations, a majority of MedPAC members indicated they favored increased use of a two-sided approach for ACOs, meaning that they enter arrangements in which they would share in both potential savings and losses.

CMS ISSUES GUIDANCE ON 2-MIDNIGHT POLICY

On November 1, CMS issued **additional guidance** related to its 2-midnight inpatient hospital medical review and admission criteria. Specifically, CMS now says that, in general, the agency will not conduct post-payment patient status reviews for claims with dates of admission from October 1, 2013 through March 31, 2014, three months longer than previously announced.

HHS ANNOUNCES \$150 MILLION IN HEALTH CENTER GRANTS

On November 7, HHS **announced** that more than 200 community health centers will receive \$150 million to expand their services under the latest round of Affordable Care Act ("ACA") grants. The grants will go to 236 groups in 43 states, out of 382 total applicants. The announcement was part of a series of grant awards provided under the ACA. Health centers have also received ACA grants to help publicize the law.

BILLS INTRODUCED THIS WEEK

S. 1647: Sen. Pat Roberts (R-KS) introduced a bill that would repeal Section 9003 of the ACA, which prohibits people from using funds in their medical savings account to buy over-the-counter ("OTC") medications. Under current law, plan participants are prohibited from using funds from these accounts to purchase OTC medications, unless they have a prescription for the medication.

NEXT WEEK IN WASHINGTON

On Friday, November 15, the House will vote on a bill that would effectively repeal a piece of the ACA. The measure, which would allow insurance companies to continue offering policies sold in 2013 into 2014, is sponsored by Energy and Commerce Chairman Fred Upton (R-MI).

The House Committee on Oversight and Government Reform will hold a **hearing** on Wednesday, November 13 to investigate the "operational challenges in the development of HealthCare.gov" and whether IT best practices were followed. Also expected next week is the administration's first update on federal exchange enrollment data. Since the website went online October 1, the administration has promised monthly updates starting in mid-November.

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