DUEL SURVIVAL

MACRA: The Good, the Controversial, and the Uncertain

The Medicare, Access and CHIP Reauthorization Act of 2015 ("MACRA"), and its repeal of the sustainable growth rate ("SGR") formula

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for physician payment is one of the rare bills to pass Congress and be signed by the President with broad bipartisan support. Much has been written about this lengthy and complex law. The purpose of this article is to highlight some of the more significant provisions of the law, but without the complex level of detail contained in the law.

The Good

- The repeal of the SGR formula (which was up to a -21.2% payment cut effective April 1, 2015), and providing that Medicare physician payments will increase by 0.5% annually through 2019, at which time the fee-for-service payments will remain at 2019 levels through 2025. Beginning in 2019, however, there will be two payment incentive tracks. One for physicians who participate in an Alternate Payment Models ("APM") and one for those who remain fee-for-service, and participate in a Merit-based Incentive Payment System ("MIPS"), which will contain both positive and negative adjustments for meeting the selected standards. APM is based on a patient-centered risk bearing medical home model. MIPS is based on selected performance categories.
- Extends funding for the Children's Health Program ("CHIP") for two years, which affects eight million children and pregnant women whose income fall slightly above Medicaid eligibility levels and cannot afford private health insurance.
- Provides that mandatory funding for community health centers under the Affordable Care Act is extended through 2017.
- Medicare, Medicaid, and Affordable Care Act quality standards and measures (such as PQRS) shall not be construed to establish the standard of care or duty of care owed to a patient in any medical liability case.
- Extends various Medicare Part B outpatient therapy cap exceptions, and certain other Medicare and Medicaid policies that were set to expire.
- Meaningful use measures will count for 25% in MIPS, and the law sets a goal to achieve widespread electronic exchange of health information between certified EHR technology systems by the end of 2018.
- Amends the civil monetary penalty ("CMP") law to allow payments to physicians to reduce or limit services unless the services were "medically necessary."
- Directs the Secretary of HHS to issue a report to Congress recommending safe harbors from fraud and abuse to provide available options to permit gainsharing arrangements between physicians and hospitals to improve quality and efficiency.
- The GAO is to conduct studies and report to Congress on the use of telehealth and remote patient monitoring technology under the federal programs.

The Controversial

To pay for the increase in payments to physicians and the extension of some benefits MACRA (costing approximately $214 billion and adding $141 billion to that deficit over 10 years) provides for, among other things, several beneficiary and provider offsets, including:

- Restricting Medigap plans from offering "first-dollar" coverage for inpatient hospital payment rate adjustments for new beneficiaries beginning in 2020.
- Restructuring and extending Medicaid disproportionate share hospital payments.
- Imposition of a levy against payments owed to Medicare providers with tax delinquencies.
- Reductions in the prospective payment system ("PPS") updates in 2018 for certain post-acute care

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providers such as skilled nursing facilities, home health, hospices, long-term care hospital and inpatient rehabilitation hospitals.

- Expands physician-identified claims data to be released by CMS on an annual basis.
- Higher income Medicare beneficiaries will pay higher premiums beginning 2018.

The Uncertain

Fee-for-service remains the primary payment system for Medicare part B services. However, as previously promised by CMS, pay-for-performance is transitioning as the preferred future payment scheme.

- Gainsharing is a potent hospital-physician alignment tool. Congress will be considering, after receiving recommendations from HHS, developing safe harbors to encourage effective gainsharing. These safe harbors should address ownership and other compensation arrangements while ensuring that such arrangements do not result in inducements to reduce or limit medically necessary care.
- To reduce improper Medicare payments, MACRA requires Medicare contractors to establish and have in place an "Improper Payment Outreach and Education Program" offering Medicare providers a list of the most frequent and expensive payment errors, instructions on how to avoid such errors, and their own utilization and payment data, including the number of services and submitted charges and payments for such services. Providers who do not access this information, correct such errors, and pay attention to such education, could eventually be subject to false claims actions.
- The CMS policy that required the transition of all 10-day and 90-day global surgical packages to 0-day global periods has been preserved for over 4,000 surgical codes. Instead, beginning in 2017, the Secretary of HHS is to begin collecting data using a process established by Rulemaking, with the accuracy of the claims data to be determined by the Inspector General. Once the process for collecting data is established, the Secretary

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of HHS may withhold portions of payments to incentivize the reporting of information. After the information is collected, the Secretary will reassess the values for services with a global period every four years.

Summary

Although the annual SGR battle is over, MACRA has a number of provisions that need to be addressed in Rulemaking, and how the APM and MIPS bonuses work in practice may result in new challenges and disappointments. As the population ages, there will continue to be cost pressures, and continued efforts to improve quality. The return of inflation alone could pose a significant problem for physicians locked into small annual fee-for-services increases. If all goes well, HHS will continue its dialogue with providers as the law is implemented, and Congress, in contrast to the Affordable Care Act implementation, will be willing to address in a bipartisan manner any unforeseen challenges or glitches in the law. **AM**

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