UPDATE FROM THE HILL

May 11, 2012
Colin Roskey
Alston & Bird

2011 FINAL AGREEMENT

HR 3765 (Health provisions)

• Introduced and passed in the House: 2 year delay of Medicare physician SGR scheduled payment cut (27%), plus:
  – One percent update for physicians
  – Would have repealed the ACA provisions on physician owned hospitals
  – The offsets for the SGR patch and extenders were:
    • $13.4B over 10yr from recapturing insurance exchange subsidies
    • $10.6B from hospital bad debt payments
    • $8B from the prevention fund
    • $6.8B from hospital outpatient evaluation and management services
    • $4.1B from hospital Medicaid DSH
  – Would have extended for 2yr: Rural ambulance add-on; Outpatient Therapy caps; Physician work geographic adj; Quality Improvement programo; Transitional Medical Assit

• Senate passed amended version allowing for only 2 month SGR cut delay, proposed to extend all expiring health provisions for 2 months, and no providers cuts as offsets

• House agreed to and passed a tweaked Senate version allowing for 2 month extension of SGR delay and health extenders, with an agreement to appoint “conferees” to work out a longer term deal by Feb. 29th

• President Signed ON Dec. 23rd
2012

- “Doc-Fix”
  - Most significant hurdle for providers and suppliers has already passed (extension of “doc-fix”) but deal is only good for 10 months
- Presidential and Congressional Elections
  - Congressional elections largely driven by Republicans desire for entitlement reforms, and the Democrats desire to protect and preserve Medicare and to maintain the ACA
- Affordable Care Act
  - Repeal and Replace
  - Supreme Court Decision
- HHS Moves Forward
  - CMS Leadership

Physician “Doc-Fix” Payment

- Sustainable Growth Rate (“SGR”)
  - Problematic formula for paying physicians under Medicare in place for years and, since 2003, has been stipulating that there should be mandatory cuts in payments to doctors
  - BUT Congress has consistently postponed those cuts and instead raised Medicare physician fees slightly or held them constant

Cost of Selected Doc Fix Options, 2012-21

<table>
<thead>
<tr>
<th>Option</th>
<th>Cost Range (Billions of Dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>MedPAC plan</td>
<td>$100 - $150</td>
</tr>
<tr>
<td>Allow full inflation through 2021</td>
<td>$200 - $250</td>
</tr>
<tr>
<td>Bowles-Simpson plan</td>
<td>$300 - $350</td>
</tr>
<tr>
<td>Freeze payment rates through 2021</td>
<td>$400 - $450</td>
</tr>
</tbody>
</table>

Source: Congressional Budget Office; Medicare Payment Advisory Commission. Notes: MedPAC plan freezes primary care rates at current levels for 10 years and cuts rates for other care by 0.9% annually for each of three years, then freezes them for 7 years. The Bowles-Simpson plan freezes rates through 2013, reduces rates by 1 percent in 2014, and reinstates SGR in 2015 using 2014 as the base year.
Most Recent “Doc-Fix”

- February 2012: Ten-Month Extension
  - On Feb. 16, House and Senate negotiators sign conference report includes “doc-fix” and extension of payroll tax and unemployment insurance
  - “Doc-Fix” patch extends Medicare physician payment rates at current levels through the end of the year.
  - $18 billion cost over 10 years is offset by various cuts under ACA, as well as cuts to Medicare payments to inpatient rehabilitation facilitates (“IRFs”), hospitals, skilled nursing facilities (“SNFs”), clinical labs, and other providers
- December 2011: Two-Month Extension
  - As 2011 came to a close, House and Senate deadlocked on a “doc-fix”
  - Ultimately, Congress cleared a two-month “doc-fix”
  - As part of the compromise, House/Senate appoint conferees to resolve differences

Medicare “Extenders”

- In addition to “doc-fix” the following Medicare extenders are included:

<table>
<thead>
<tr>
<th>POLICY</th>
<th>COST (increase spending, 2012-2022)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outpatient Therapy Caps</td>
<td>$700 mill.</td>
</tr>
<tr>
<td>Hospital Payments</td>
<td>$100 mill.</td>
</tr>
<tr>
<td>Hospital Outpatient Hold Harmless Payments</td>
<td>$100 mill.</td>
</tr>
<tr>
<td>Physician Work Geographic Adjustment</td>
<td>$400 mill.</td>
</tr>
<tr>
<td>Payment for Technical Component of Certain Physician Pathology Services</td>
<td>$50 mill.</td>
</tr>
<tr>
<td>Ambulance Add-On Payments</td>
<td>$100 mill.</td>
</tr>
<tr>
<td>Qualifying Individual (“QI”) Program</td>
<td>$600 mill.</td>
</tr>
<tr>
<td>Extension of Transitional Medical Assistance (“TMA”)</td>
<td>$1.1 bill.</td>
</tr>
</tbody>
</table>
Health-Related Offsets

- Health-Related Offsets Would Save $21.2 bill. over 10 years ($18 bill. for “doc-fix”)

<table>
<thead>
<tr>
<th>POLICY</th>
<th>OFFSETS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reducing “Bad Debt” Payments</td>
<td>$18 bill.</td>
</tr>
<tr>
<td>Resetting Clinical Laboratory Payment Rates</td>
<td>$2.7 bill.</td>
</tr>
<tr>
<td>Medicaid Disproportionate Share Hospital</td>
<td>$4.1 bill.</td>
</tr>
<tr>
<td>Correcting the Louisiana Matching Rate</td>
<td>$2.5 bill.</td>
</tr>
<tr>
<td>Reduction in the Prevention and Public Health</td>
<td>$5 bill.</td>
</tr>
</tbody>
</table>

RECAP: EXPIRING HEALTH PROVISIONS

- **DEADLINE DAY: DECEMBER 31st 2012**
- Medicare physician sustainable growth rate (SGR) payment cut – scheduled for 27% unless delayed or reformed
- Therapy cap exception
- Section 508 wage index reclassification
- Rural Ambulance Service payment
- Outpatient hold harmless
- Physician Work Component Geographic floor
- Technical Component of certain physician pathology services
- Mental Health Services reimbursement
- Minimum payment for Bone Mass measurement
- Low-Income “Qualifying Individual” (QI) program
SEQUESTRATION

The failure of the Super Committee in November has triggered a sequester – across the board cuts of up to 2% in all federal programs (domestic and defense) – which will be effective January, 2013 (Medicare beneficiaries, and Medicaid are exempted)

• Defense community is gearing to fight sequestration – they are calling for defense to be exempt
• Congress could pass a deficit reduction package exceeding $1.2 trillion which would prevent sequestration; White House has threatened a veto

KEEP AN EYE OUT FOR...

• Supreme Court heard three days of oral arguments on various pieces of the health reform law including the individual mandate on March 26, 27 and 28 (Decision in June)
• 2013 Budget succeeds in House making major long term structural reforms to Medicare and Medicaid and avoiding sequester but dead on arrival in Senate
• Drug Shortage
  – WH Executive Order: Increased staff in FDA shortages office, expand FDA efforts to review shortages and examine of price gouging, and work more closely with DOJ on “gray market” and hoarding.
  – Finance and HELP held hearings in December: Sen. Hatch bill
  – PDUFA reauthorizations contain policy adjustments addressing drug shortages, likely only bipartisan health bill in Congress before lame duck
MORE 2012 ACA NEWS OF NOTE

• Despite deliberation from Supreme Court and Congress, implementation continues
  – Exchange development
  – Essential health benefits
  – Sunshine regulations
  – Accountable Care Organizations
  – Other CMMI initiatives: bundling
  – Other fraud and abuse authorities: provider suspensions, temporary moratoria, individual exclusion authority
• ... But note strong repeal pressures on CLASS and IPAB

OTHER 2012 CATALYSTS

• Election! November 6th
• “Future of Medicare” likely at center of health care policy discussion for both parties
  – “Lame Duck” session could involve changes to Medicare provider payment policy
• Democrat: Affordable Care Act emphasis, Innovation Center models, delivery system reforms, bundling, accountable care organizations, cost control through IPAB
• GOP: Ryan-Wyden premium support model, well regulated marketplace for private insurance with protections for current seniors
QUESTIONS

Colin Roskey
Alston & Bird, LLP
950 F St NW
Washington, DC 20004
(202) 239-3436 office
(202) 250-1095 cell
colin.roskey@alston.com