Highmark's Weekly Capitol Hill Report

Issues for the week ending October 11, 2019

Federal Issues

Legislative

Uncertainty Looms as Congress Returns From Break

Congress returns from a two week recess this week with key health issues in play and the House's ongoing impeachment inquiry clouding the prospects for legislative activity and any sort of deal with the White House.

- **Surprise Billing**: The bipartisan momentum this issue seemed to have earlier in the year has been replaced by much uncertainty as multiple House committees have delayed action as they navigate disputes between providers and insurers over the best standard for out of network payments. Action in the Senate seems to have stalled as well, with doubt over whether the Lower Health Care Costs Act, passed by the Health Education Labor and Pensions Committee in June, will be brought up on the Senate floor.

- **Drug Pricing:** The House is expected to pass Speaker Pelosi's sweeping drug pricing package in the coming weeks after it moves through multiple House committees. However, much of the package will have no chance of

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clearing the Senate and it remains to be seen if compromise can be reached on a smaller package of bipartisan reforms that could give President Trump a “win” on one of his top priorities.

- **Government Funding**: The government is currently being funded by a stopgap measure that expires on November 21. An additional extension that would allow negotiation on FY2020 funding to continue into December is expected. However, the partisan rancor surrounding impeachment could increase the odds of a government shutdown.

Federal Issues

Regulatory

HHS Proposals to Modernize Stark, Anti-kickback Regulations to Advance Care Coordination

Last week, the U.S. Department of Health and Human Services (HHS) issued two proposed rules that will modernize fraud and abuse laws. The proposed rules:

- **Address restrictions** on physician self-referrals, known as the Stark Law
- **Relax some constraints** in the Federal Anti-kickback Statute that limit the ways in which providers can coordinate care for patients

Key provisions: The proposed rule on Stark, issued by the Centers for Medicare & Medicaid Services, would create new permanent exceptions to the law for value-based arrangements and certain other arrangements, such as donations of certain cybersecurity technology. The exceptions would apply whether the care was provided to Medicare or other patients.

The proposed rule revising safe harbors under the Anti-kickback Statute, issued by HHS’ Office of Inspector General, would provide three new safe harbors for remuneration exchanged between or among eligible participants in a value-based arrangement. It also proposes new safe harbors for remuneration provided in connection with CMS-sponsored models and Medicare accountable care organizations; patient engagement; the donation of cybersecurity technology and services; electronic health records; outcomes-based payments; and telehealth for in-home dialysis; and an expanded safe harbor for local transportation.

Hospital industry reaction: The hospital community is pleased that the proposed rules address concerns raised about Stark Law barriers for providers in value-based payment (VBP) arrangements and establish new safe harbors under the Anti-kickback Statute. These changes represent significant steps forward in creating policy that:

- Allows for greater care coordination and VBP
- Supports health care providers participating in Centers for Medicare & Medicaid Services' payment and delivery system models

Why this matters: Prior to these proposed rules being issued, the Stark Law had not been significantly updated since it was enacted during 1989. Modernizing these rules so they support, rather than hinder, the teamwork among health care providers is essential to providing the best, most comprehensive patient care.

The agencies will accept comments on the proposed rules for 75 days after their publication in the *Federal Register*.

Federal Judges Block Public Charge Rule

A federal judge in Washington state blocked nationwide a Department of Homeland Security final rule from taking effect that would limit the ability of legal immigrants to adjust or extend their immigration status or gain full citizenship based on their prospective receipt of public benefits. The DHS rule was scheduled to go into effect Oct. 15.

"The Court finds that the Plaintiff States have established a likelihood of success on the merits of their claims under the Administrative Procedure Act, that they would suffer irreparable harm absent a stay of the effective date of the Public Charge Rule or preliminary injunctive relief, that the lack of substantial injury to the opposing party and the public interest favor a stay, and that the balance of equities and the public interest favor an injunction," wrote United States District Judge Rosanna Malouf Peterson.

A federal judge in New York also prohibited the implementation of the ruling nationwide. And, in a separate ruling, a district court judge in San Francisco said the administration could not enforce the rule in certain jurisdictions where plaintiffs filed lawsuits. Plaintiffs in this lawsuit were from California, Oregon, Maine, Pennsylvania and the District of Columbia.

Hospital industry reaction: The American Hospital Association and five other hospital groups last month filed a friend-of-the court brief urging the U.S. District Court for the Eastern District of Washington to prevent the rule from being implemented.

"The Public Charge Rule — and the resulting fear of being labeled a public charge — will discourage legal immigrants and their family members, some of whom are citizens, from using public benefits they are legally entitled to — millions more than DHS acknowledges in in the Rule," the brief states. "One report estimates that as many as 13.2 million Medicaid and Children's Health Insurance Program enrollees could disenroll from these programs as a result of the Rule. … In sum, the Public Charge Rule contradicts Congress's intent to reduce the number of uninsured residents and even undermines the very self-sufficiency goals it sets out to achieve."

CMS Issues 2020 Medicare Advantage, Prescription Drug Plan Star Ratings

The Centers for Medicare & Medicaid Services published its star ratings for 2020 Medicare Advantage and prescription drug plans. Most people with Medicare will have access to MA and Part D plans with four or

more stars in 2020, and about 81% of MA enrollees with prescription drug coverage will be in plans with four and five stars in 2020, an increase from 69% in 2017.

CMS last month released premium and cost-sharing information for MA and Part D prescription drug plans for the 2020 calendar year. The average MA premium will decrease by $3.87 (14%) to $23, while the average monthly premium for a basic Medicare Part D prescription drug plan will decrease by $2.50 to $30, the agency estimates. CMS projects MA enrollment will climb by 2.2 million in 2020 to a record 24.4 million. Open enrollment for 2020 Medicare health and drug plans begins Oct. 15.

The Pennsylvania General Assembly is in recess until October 21.

The Delaware Legislature has adjourned for the year.

The West Virginia Legislature has adjourned for the year.

Congress

The U.S. Congress is in session October 15 -18.

Interested in reviewing a copy of a bill(s)? Access the following web sites:

Delaware State Legislation: **http://legis.delaware.gov/.**
Pennsylvania Legislation: **www.legis.state.pa.us.**
West Virginia Legislation: **http://www.legis.state.wv.us/**
For copies of congressional bills, access the Thomas website – **http://thomas.loc.gov/.**