

## NEWSSTAND

### **Healthcare Update: Healthcare News From Capitol Hill and The Department of Health and Human Services**

June 1, 2010

[Leslie J. Levinson](#), [Edward Eynon](#)

In late May, the Centers for Medicare and Medicaid Services (CMS) released a supplemental proposed rule that would result in Medicare payment reductions to hospitals. Meanwhile, questions have begun to arise over the future of the Medicare Payment Advisory Commission (MedPAC), given the upcoming inception of the Independent Payment Advisory Board (IPAB) that was created by the new healthcare overhaul law (Public Law 111-148 and 111-152).

#### **CMS PROPOSES HOSPITAL CUTS**

Provisions in PL 111-148 and 111-152 to be implemented by CMS will result in Medicare payment reductions across all inpatient hospitals by \$820 million in Fiscal Year 2011. CMS put forth these provisions on May 21 in a supplemental proposed rule that will impact more than 3,500 acute care hospitals and roughly 420 long-term care hospitals.

The proposed rule includes healthcare reform provisions that will result in a reduction in the annual update for acute care hospital operating payments and long-term care hospitals. In addition, it includes supplemental payments for qualifying hospitals located in counties that rank among the lowest quartile in the nation in terms of adjusted Medicare spending per beneficiary. In total, when taking into account all of the items that will impact spending, the resulting change in payments across all hospitals that are part of the inpatient prospective payment system (IPPS) is a decrease of \$820 million in the upcoming fiscal year.

#### **THE FUTURE OF MEDPAC**

The next several years will bring the establishment of IPAB, the new independent board designed by the healthcare reform law to develop and submit proposals to Congress aimed at reducing excess cost growth and improving quality of care for Medicare beneficiaries. In years when Medicare costs are projected to be unsustainable, the Board's proposals will take effect unless Congress passes an alternative measure that achieves the same level of savings. Such alternative proposals would be considered on a fast-track basis and could be adopted with a three-fifths majority in both the House and Senate.

As discussions get underway to develop IPAB, questions remain over what its establishment will mean for the future of MedPAC – the commission created to advise lawmakers on Medicare

policy and payment changes, but whose recommendations are non-binding and often ignored by Congress. Though the new healthcare law contains provisions to keep MedPAC in place, the overlapping functions of the two independent entities has resulted in confusion among policymakers over whether they will ultimately cooperate, compete or merge.

IPAB's champion in Congress – Senator John Rockefeller (D-WV) – stated recently that he sees the two bodies as having the same review authority, but added that the new IPAB will have the lawmaking authority that MedPAC lacks. “In the natural order of working these out, maybe MedPAC hangs around, maybe it doesn't,” the Senator said, further indicating MedPAC's still-uncertain future.

### **NEXT STEPS:**

We will continue to monitor Congress, CMS and other relevant federal agencies as the implementation of healthcare reform moves steadily forward, and will provide timely updates as new developments occur.

---

Edwards Angell Palmer & Dodge LLP is pleased to provide regular updates on issues affecting the Healthcare Industry. Our lawyers not only provide sophisticated legal services to a broad array of clients in the healthcare industry, we also monitor and analyze federal and state legislature and regulatory processes to ensure that our clients are informed of government actions and initiatives.

Should you have any questions on the content of this advisory, or wish to discuss any other healthcare related issue, please contact those listed below or call the Edwards Angell Palmer & Dodge LLP attorney responsible for your affairs.

Les Levinson, Partner, Chair, Healthcare Practice 212.912.2772

[llevinson@eapdlaw.com](mailto:llevinson@eapdlaw.com)

Teddy Eynon, Partner, Public Policy & Government Relations 202.478.7379

[teynon@eapdlaw.com](mailto:teynon@eapdlaw.com)