



Health Care Reform – A Provider’s Perspective in Maryland

Maryland State Bar Association Annual Meeting

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Outline

- Themes:
 - What is health care reform?
 - Changes to care
 - Carrot – incentives
 - VS.
 - Stick – penalties

Outline

- Problems with reimbursement solutions
 - Federal: Medicare and Medicaid
 - Maryland: Changes for private payors
- Fraud and abuse
 - Mandatory reporting of overpayments
 - Voluntary self-disclosure protocol
 - Physician ordering

Outline

- Innovative changes
 - Accountable Care Organizations (ACO)
 - Patient centered home (MD)
 - Hospital acquired conditions
 - Preventable readmissions
 - Nursing facility pay for performance

Outline

- Miscellaneous changes
 - State law changes
 - Other reforms
- Questions?



Theme: What is Health Care Reform?

- More than just a federal law
 - Patient Protection and Affordable Care Act (PPACA)
 - Maryland is “out in front” on health care reform
- What does this regulatory environment mean?

Health care for all?

No obligation?

Moral obligation?

Social obligation?



Theme: What is Health Care Reform?

■ Tensions

- Politics: Left vs. right
- Payor vs. provider
- Who is covered?
- What types of services are covered?
- What cost?



Theme: Health Care Reform Litigation

- Court cases
 - Unconstitutional: VA* (state sovereignty), FL* + 26 (entire law)
 - Dismissed: MI (merits), VA (merits, exercise of religion), NJ (standing), OH (Art. I challenge remains), MO (individual), TX (individual)
 - TBD: OK* (state sovereignty), PA (individual)
 - Appeals pending: 3rd, 4th, 6th, 11th Federal Circuits

* State challenge

Theme: Carrot & Stick Environment

- Zero sum game?
- Comply today
 - “Good habits”
 - Increased reimbursement
- Tomorrow?
 - “Bad habits”
 - Decreased reimbursement



Medicare Reimbursement Incentive

- Not enough primary care physicians (PCPs) and general surgeons
- Solution: Medicare incentive payment plan
- 10% Medicare increase: Jan. 1, 2011 – Dec. 31, 2015
- Qualifying physicians and surgeons
 - Primary care physicians, geriatricians, internists, nurse practitioners, physician assistants
 - General surgeons in Health Professional Shortage Areas (HPSA)

Medicare Reimbursement Incentive

- Primary care physicians
 - PCP Codes: 99201-215, 99304–340, and 99341–350
 - Qualifying physicians and physician extenders
 - Enroll in Medicare as PCP
 - 65% of Medicare Physician Fee Schedule billed to PCP codes for 2 previous years
 - New PCP: one year allowed if enrolled only in 2010.

Medicare Reimbursement Incentive

- General surgeons
 - HPSA
 - Enroll as general surgeon
 - 10 to 90 day global procedure reimbursement

Maryland Reimbursement- Non-Par

- Non-participating (Non-par) HMO providers
 - Providers do not join every HMO provider panel
 - Non-par providers cannot balance bill HMO patients for covered services
 - Non-par provider bills HMO
 - Non-par providers dispute HMO reimbursement

Maryland Reimbursement (Non-Par)

- Non-par provider reimbursement is greater of:
 - 125% HMO average rate; or
 - 140% Medicare rate
- Jan. 1, 2010 – Dec. 31, 2014

Maryland Reimbursement (Non-preferred)

- Assignment of billing to non-preferred provider
 - On-call physicians not part of every preferred provider networks
 - Private payor only

Maryland Reimbursement (Non-preferred)

- Patient assigns preferred provider benefits to on-call physician
 - Reimburse the greater of 140% of the average rate the insurer pays to participating providers, or the average rate that the insurer paid on January 1, 2010, indexed for inflation
 - No balance billing

OR

- No assignment and non-preferred provider can balance bill and collect from patient

Mandatory Reporting Overpayments

- Report and return Medicare and Medicaid overpayments within:
 - 60 days after overpayment identified
 - The date the cost report is due
- What does “identified” mean?
- Retention of overpayment = obligation under the Federal False Claims Act

Voluntary Self-Disclosure Protocol

- Stark law – federal physician self-referral law
- Prior to PPACA, difficult to resolve Stark law problems
 - CMS: No authority to settle claims
 - OIG: Refused to accept Stark law self disclosures after March, 2009
- www.cms.gov/physiciansselfreferral/65_self_referral_disclose-protocol.asp

Voluntary Self-Disclosure Protocol

- Define “look back period”
- Remuneration / benefit received by physician
- Medicare reimbursement received from DHS from referrals from that physician
 - Is the Medicare reimbursement an “overpayment”?

Miscellaneous Fraud and Abuse

- Face-to-face encounter with physician before home health services or durable medical equipment can be ordered for Medicare beneficiaries
- Physician enrollment in PECOS required for physician to order items or services for Medicare beneficiaries

Innovative Programs



Bundled Care

- Bundled care
 - Accountable Care Organizations (ACOs)
 - Patient Centered Home (Maryland only- most private payors)
- Shifting risk and cost
 - Currently at carrier / insurer level
 - To hospital / provider / physician level

Hospital Acquired Conditions (HAC)

- Medicare: hospitals located in the 49 other states
- Expected effective October of 2012
- Excess HACs
 - Cost
 - Volume
 - Reasonably preventable
- 1% decrease Medicare reimbursement for bottom quartile

HAC

- Maryland HAC (all payors)
 - HSCRC started process in 2009
 - 49 conditions
 - 2010: collect data
 - 2011: carrot and stick
 - Reward hospitals with low rate of HACs
 - Penalize hospitals with high rate of HACs

Preventable Readmissions

- Medicare (other 49 states)
- Readmissions from a condition you would typical acquire from substandard care
 - 3 readmission conditions by 2012
 - 7 readmission conditions by 2015
- Medicare payment reductions of 1-3%

Preventable Readmissions

- Maryland: Potentially Preventable Readmissions Program
- Maryland hospital reimbursement
 - Fee for service
 - Case rate
 - Total Patient Revenue

Preventable Readmissions

- 2011 Health Services Cost Review Commission staff recommendation
 - Bundled admission payment
 - Readmission within 30 days after discharge
 - Shift risk from payors to providers
 - Separate incidents?
 - Different hospitals?
- Effective 2012?

Other Innovative Programs

- Maryland skilled nursing facility (SNF) pay for performance
 - Carrot - better performing SNF
 - Stick – lesser performing SNF
- Tax on SNF collections
- Reimbursement adjustment from Medical Assistance Program



Other State Law Changes

- State False Claims Act
 - 2010 General Assembly
 - Similar to federal law
 - No personal cause of action if State does not intervene



Other State Law Changes

- MRI/CT ownership and the Maryland Patient Referral Law
- Timeline
 - 2006 Board of Physicians Declaratory Ruling
 - 2007 Circuit Court for Montgomery County
 - 2011 Court of Appeals

Other State Law: MD Self-Referral

- Non-radiologist physicians owning CT Scan and/or MRI integrated with group practice:
 - Cannot refer own patients
 - Non-radiologist physician co-owners cannot refer own patients
- Employed physicians?
- Ownership of separate facility?

Changes Affecting SNF

- Federal Nursing Home Transparency
 - Disclosure of ownership and organization structure
 - 2012 / 2013 reporting
- CLASS Act
- Elder Justice Act

Equal Justice Act

- Reasonable suspicion of crime
 - SNF employee reporting
 - Local law enforcement
 - CMS
- No guidance as of March, 2011

Questions?
