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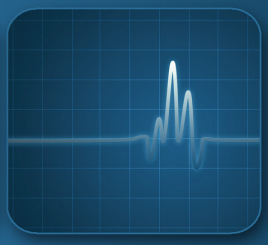


HEALTH CARE LAW IN THE NEWS

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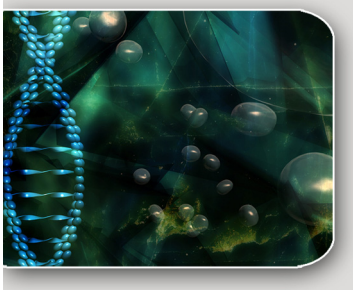

Notable Healthcare Provisions Passed in the American Taxpayer Relief Act of 2012

A Polsinelli Shughart Update

On January 1, 2013 Congress approved the American Taxpayer Relief Act (the "ATRA") avoiding the dreaded "fiscal cliff" which would have instituted income tax rate increases and spending reductions. The ATRA was signed into law by President Obama on January 2, 2013 and garnered much attention in the individual tax realm, particularly the extension of the 2012 income tax rates for individuals earning less than $400,000 and married couples earning less than $450,000. However, most significant for the health care community were the over 40 Medicare and Medicaid changes affecting payment and regulation of various items and services. As a result, health care providers will be faced with a myriad of challenges until Congress must again address the sequestration cuts mandated by the Budget Control Act of 2011 in the first quarter of 2013.

This update will discuss the following:

- Notable ATRA provisions, including the Medicare physician payment update, changes in collection of Medicare overpayments, and a continuing focus on performance improvement;
- Various Medicare extensions; and,

- Other health provisions and extensions on existing health programs.

Notable ATRA Provisions

Medicare Physician Payment Update

Among the most significant provisions in the ATRA is the extension of the 2012 Medicare Physician Fee Schedule (MPFS) payment rates, widely referred to as the "doc fix." This extension prevents substantial cuts to Medicare payments to physicians by allowing the Centers for Medicare and Medicaid Services (CMS) to continue paying the 2012 payment rates through 2013. Absent such a fix, payments to physicians and other practitioners would have been reduced by 26.5% during calendar year 2013. Although physicians and practitioners were relieved that cuts were avoided, the rates have not been increased for two consecutive years. To offset the ATRA's $25 billion MPFS extension, Medicare payments to numerous other health care providers were cut by nearly $30 billion, $14 billion of which are hospital payments.

The ATRA also introduces an alternative for physicians to report quality data to additional clinical data registries as a means to satisfy the requirements that otherwise arise under the Physician Quality Reporting System. Eligible professionals may now receive Medicare incentive payments for reporting on quality measures and by participating in a "qualified clinical data registry." A professional will be deemed eligible for incentive payments—or payment adjustments beginning in 2015—if he or she "satisfactorily participates" in a qualified clinical data registry. Requirements for such clinical data registries will be established by the Secretary of the Department of Health and Human Services (HHS), taking into account whether the entity (i) has mechanisms in place for increased transparency of operations; (ii) requires data submission from participants with respect to multiple payers; (iii) provides timely, individual performance reports to participants; and (iv) supports the overall quality of Medicare, among others. The ATRA also directs the Government Accountability Office (GAO) to conduct a study on the use of clinical data registries to improve quality and efficiency of Medicare beneficiary care.

Collection of Overpayments

In significant provision, largely overlooked, the ATRA increases the statute of limitations to recover Medicare overpayments from three years to five years. As a result providers will be exposed to an increased period of overpayment liability, even in the absence of fraud. The Congressional Budget Office estimates that the extended statute of limitations will result in overpayment recoveries exceeding $1.8 billion over the next 10 years. This charge, when coupled with a proposed Medicare regulation establishing a 10-year "look-back" period but could significantly affect Medicare recovered proceedings.

Performance Improvement

The ATRA continues funding the National Quality Forum (NQF), for activities related to stakeholder engagement and performance improvement. The ATRA continues funding. Additionally, the ATRA calls for the Secretary to develop a strategy to provide performance improvement data to providers, including utilization data and feedback on quality data. His Secretary must publish this strategy on CMS's website and seeks feedback from stakeholders. The GAO will concurrently

study and report on information sharing activities among the public and private sectors, identifying opportunities to improve the Medicare program.

Medicare Extensions

Physician Work Geographic Adjustment

The ATRA extends the 1.0 Geographic Practice Cost Index payment rate floor through December 31, 2013.

Outpatient Therapy Services

The ATRA extends the exceptions process for medically necessary outpatient physical therapy and speech-language pathology caps through Dec. 31, 2013, and extends the application of the cap and threshold to those services furnished by a hospital outpatient department or to inpatients that have exhausted benefits or are not entitled to benefits. The extension applies the therapy cap and threshold to outpatient therapy services furnished by critical access hospitals (CAHs) until Dec. 31, 2013.

Ambulance Add-On Payments

The ATRA extends the 3% increase in ambulance fee schedule amounts for ground ambulance transports in rural areas and the 2% increase for transports in urban areas through December 31, 2013. The ATRA also extends special treatment for rural area air ambulance services previously set to expire at the end of 2012, and provides a "super" rural ground ambulance bonus which increases the base rate for transports in areas within the "lowest population density" areas.

Inpatient Hospital Payment Adjustment for Low-Volume Hospitals

The ATRA extends the payment adjustment for low-volume hospitals under the Affordable Care Act (ACA) through FY 2013.

Medicare Dependent Hospital Programs

Medicare currently reimburses certain hospitals that qualify as Medicare-Dependent Hospitals (MDHs). The ATRA extends the MDH program through FY 2013.

Medicare Advantage Plans for Special Needs Individuals & Reasonable Cost Contracts

The ATRA extends authorization for Medicare Advantage Special Needs Plans (SNPs) through January 1, 2015. Additionally, reasonable cost reimbursement contracts can be extended if there are two or more Medicare Advantage regional plans or two or more Medicare Advantage local plans in the contract's service area.

Extension of Funding Outreach and Assistance for Low-Income Programs

The ATRA extends funding through FY 2013 for state-based health insurance programs that provide information and counseling services. Additionally, the ATRA extends funding for area agencies on aging, aging and disability resource centers, and programs sponsored by the National Center for Benefits and Outreach Enrollment.

Other Health Provisions

IPPS Documentation and Coding Adjustment for Implementation of MS-DRGs

The ATRA revises the TMA, Abstinence Education, and QI Programs Extension Act of 2007 and directs the Secretary to offset payment increases from 2010 resulting from MS-DRG implementation that did not reflect actual changes in providers' case mix. The Secretary is also directed to make additional adjustments to standardized payment amounts for discharges during FY 2014-2017 to fully offset the increase in aggregate payment amounts from FY 2008-2013.

Revisions to the Medicare ESRD Bundled Payment System

The ATRA incorporates recommendations from a December 2012 GAO report and adjusts the bundled payment for end-stage renal disease (ESRD) furnished on or after January 1, 2014. Additionally, the ATRA delays the implementation of oral-only ESRD-related drugs in the bundled prospective payment system to at least January 1, 2016. Finally, the Secretary must analyze bone and mineral metabolism of individuals with ESRD, conduct an analysis of case mix ESRD payment adjustments, and finalize a report on its findings by December 31, 2015.

Treatment of Multiple Service Payment Policies for Therapy Services

The ATRA mandates that multiple therapy procedures increases for 25% to 50% for therapy services furnished on or after April 1, 2013. The multiple procedure payment reduction will also be applied to outpatient physical and occupational services provided by a hospital, rehabilitation agency, skilled nursing facility, or home health agency.

Payment for Certain Radiology Services Furnished Under the Medicare Hospital Outpatient Department Prospective Payment System

The ATRA adds a special payment rule changing the payment amounts for certain stereotactic radiosurgery procedures. The payment rule does not apply to rural hospitals or sole community hospitals.

Adjustment of Equipment Utilization Rate for Advanced Imaging Services

The ATRA provides that the utilization factor used to establish Medicare payments for advanced imaging services will stay at 75% in 2013 but increase to 90% beginning in 2014.

Medicare Payment of Competitive Prices for Diabetic Supplies and Elimination of Overpayments for Diabetic Supplies

The ATRA provides that the payment basis and amount for diabetic supplies, including test strips, will be determined by the competitive bidding process.

Medicare Payment Adjustment for Non-Emergency Ambulance Transport for ESRD Beneficiaries

The ATRA reduces the fee schedule amount for non-emergency ambulance services involving transport of ESRD individuals for dialysis by 10% beginning Oct. 1, 2013.

Medicare Advantage Coding Intensity Adjustment

The ATRA modifies the coding intensity adjustment between Medicare Fee-For-Service and Medicare Advantage, increasing the adjustments from 1.3 percentage points to 1.5 percentage points. The ATRA also increases the minimum percentage for the coding adjustment applicable to CY 2019 from 5.7% to 5.9%.

Elimination of All Funding for the Medicare Improvement Fund

The ATRA eliminates funding for the Medicare Improvement Fund for FY 2015 and removes a provision of the ACA that would have provided annual funding beginning in FY 2020.

Rebasing State Disproportionate Share Hospital Payments

The ACA established a new payment methodology for disproportionate share hospitals (DSHs), wherein DSH payments will be reduced in many states that have the lowest percentage of uninsured and where such DSH payments are less dependent on a hospital's Medicaid or uncompensated care volume. The ATRA extends the DSH payment reduction set by the ACA for an additional year through 2022.

Repeal of the CLASS Program

The ATRA eliminates the Community Living Assistance Services and Supports (CLASS) program established by the ACA to assist with long-term care insurance for certain American workers.

Commission on Long-Term Care

The ATRA establishes a Commission on long-term care (LTC) to develop a plan for establishing, implementing and financing a coordinated LTC system. The Commission will be composed of 15 people tasked with providing recommendations for long-term services and support, LTC insurance, and issues related to LTC workers. Six months after appointment of its members the Commission will vote on a comprehensive LTC, which, if approved, will be submitted to the president, vice-president, speaker of the House, and the majority and minority leaders of each House.

Consumer Operated and Oriented Plan Program Contingency Fund

The ATRA establishes a fund to assist all current non-profit health insurance issuers awarded loans or grants prior to enactment of this legislation, transferring 10% of unobligated funds under the ACA to the newly established Consumer Operated and Oriented Plan Program Contingency Fund. However, the ATRA rescinds all funds appropriated under the ACA that are unobligated as of January 2, 2013.

Other Health Extensions

The ATRA also extends:

- The Quality Individual Program through 2013 and increases the total amount allocated to the program to $485,000,000;
- The Transitional Medical Assistance program through 2013;
- Express Lane eligibility determinations through September 30, 2014;
- The Family-to-Family Health Information Center program through 2014; and,
- The Special Diabetes Program for type-1 diabetes and the Special Diabetes Program for Indians through 2014.

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The firm can be found online at www.polsinelli.com.

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