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SGR Fix Bill Includes Important Change to Gainsharing CMP

President Obama recently signed into law Public Law No. 114-10, the “Medicare Access and CHIP Reauthorization Act of 2015” (P.L. 114-10), which overhauls Medicare physician reimbursements by eliminating the use of the sustainable growth rate methodology for determining Medicare reimbursement rates for physicians’ services. P.L. 114-10 also contains an important amendment to the provision of the federal civil monetary penalties law concerning so-called “gainsharing” arrangements found in Section 1128A(b)(1) of the Social Security Act (Gainsharing CMP).

Prior to the passage of P.L. 114-10, the Gainsharing CMP prohibited hospitals from knowingly making payments, directly or indirectly, to a physician as an inducement to reduce or limit any health services provided to a Medicare or Medicaid beneficiary under the direct care of such physician. P.L. 114-10 amends the Gainsharing CMP by reducing its scope to apply only to arrangements in which a hospital knowingly induces a physician to reduce or limit *medically necessary* services to a Medicare or Medicaid beneficiary under the physician’s care. P.L. 114-10’s amendment of the Gainsharing CMP applies to all gainsharing payments made on or after April 16, 2015.

Violation of the Gainsharing CMP subjects hospitals and physicians to civil money penalties of up to \$2,000 per patient with respect to whom a gainsharing payment is made. Physicians who certify an individual for home health services despite knowing that the Gainsharing CMP has been violated with respect to such individual are subject to a civil monetary penalty of the greater of \$5,000 or three times the amount of Medicare reimbursement payments for home health services provided to the individual.

Though enforcement of the Gainsharing CMP has not been a priority of the Office of Inspector General (OIG), P.L. 114-10’s check on the scope of the Gainsharing CMP is important for hospitals and physicians as health care reform efforts increasingly seek to implement financial incentives for providers to reduce health care costs. Gainsharing arrangements must be carefully structured and include sufficient safeguards to protect against reducing or limiting medically necessary services. Hospitals entering into gainsharing arrangements may find past OIG guidance regarding such safeguards useful in the development of these arrangements.

Robinson+Cole’s [Health Law Group](#) will continue to monitor the impact of this change to the Gainsharing CMP on health care providers and health care reform.

If you have any questions, please contact a member of

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