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Program Integrity Priorities Revealed in FY 2015 HHS Budget [Ober|Kaler]

March 01, 2014

On March 14, 2014, President Obama unveiled his Administration's proposed fiscal year 2015 budget for the Department of Health and Human Services (HHS). In total, the Administration is seeking \$77.1 billion to fund HHS in FY 2015, a reduction of \$1.3 billion from FY 2014.

More Funding for Fraud Enforcement

Despite proposing an overall reduction in spending, the Administration proposed significant increases in funding for fraud enforcement. The Administration proposed expanding funding for the Health Care Fraud and Abuse Control (HCFAC) program by \$403 million through a combination of mandatory and discretionary funding increases. The Administration touts that every dollar spent on fraud enforcement through the HCFAC program produces \$8.10 in fraud recoveries.

The FY 2015 budget proposal also includes a \$105 million increase in funding for the HHS Office of the Inspector General. Finally, in a nod to the fraud threats posed by Affordable Care Act exchanges, the budget seeks an additional \$25 million to investigate the possibility of people lying about their income or citizenship to improperly access subsidized care.

Limiting Key Stark Exception

The in-office ancillary services (IOAS) exception to the Stark physician self-referral law was intended to allow physicians to self-refer for certain services to be furnished by their group practices for patient convenience. While recognizing that there are many appropriate uses for the IOAS exception, the Administration warns that it may have led to "overutilization and rapid growth" of certain services, such as advanced imaging and outpatient therapy. Consequently, the budget proposes to exclude certain radiation therapy, imaging, and lab services from the protections of the Stark law's IOAS exception. The Administration claims that limiting the IOAS exception will result in \$6 billion in savings over 10 years.

Other Program Integrity Proposals

The budget contains several additional proposals designed to strengthen program integrity for Medicare, Medicaid, and other federal health care programs.

1. **Expanding Prior Authorization:** To date, Medicare has implemented prior authorization for scooters and power wheelchairs in only seven states. The budget proposes to require the HHS Secretary to implement prior authorization for power mobility devices and advanced imaging across the country. The budget also proposes to give CMS the authority to require prior authorization for *all* Medicare fee-for-service items (particularly those service items that are "at the highest risk for improper payment").
2. **CMPs for Providers and Suppliers Who Fail to Update Enrollment Records:** HHS proposes establishing civil monetary penalties (CMPs) for providers and suppliers that fail to update their enrollment records. HHS stated that its proposal is designed to incentivize providers and suppliers to

report up-to-date information (such as adverse legal actions), and help reduce program vulnerability to fraud.

3. **Exclusion from Federal Health Care Programs if Affiliated with Sanctioned Entities:** Currently, an officer, managing employee, or owner of a sanctioned entity may evade exclusion by resigning his or her position or divesting his or her ownership in the sanctioned entity. Seeking to eliminate this practice, HHS proposed to expand its current exclusion authority to individuals and entities who are "affiliated" with a sanctioned entity.
4. **Increased Scrutiny of Providers using "Higher-Risk Banking Arrangements" to Receive Medicare Payments:** HHS seeks to require providers to report the use of sweep accounts that immediately transfer funds from a financial account to an investment account in another jurisdiction, preventing Medicare from recovering improper payments.

Given the current political realities in Washington, the Administration's budget proposal stands little chance of being adopted. Nevertheless, the budget proposal remains important because it reveals key budget priorities for the Administration in its fight against fraud and abuse.