PUBLICATION

Highlights of the Protecting Access to Medicare Act of 2014 [Ober|Kaler]

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On the first of this month, President Obama signed into law the *Protecting Access to Medicare Act of 2014*. The measure extends a multitude of provisions that were set to expire and also incorporates many provisions that may significantly impact Medicare reimbursement. Some of the key provisions are highlighted below.

- **Physician Payment Patch** – Medicare's sustainable growth rate (SGR) formula calls for annual cuts to physician payments. However, Congress regularly averts those annual cuts through "patches." The payment rates were slated to be steeply cut, but Section 101 of the new law contains such a patch. The new law extends the existing 0.5% update that was scheduled to apply only through March 2014 through the entire 2014 calendar year. It also provides that the 2015 Medicare Physician Fee Schedule conversion factor update is 0.00% through March 31, 2015. The conversion factor is currently $35.8228.
- **Two-Midnight Rule** – The two-midnight rule, designed to address concerns about over-use of observation status, establishes a presumption that an inpatient admission is "reasonable and necessary" if the patient is expected to remain hospitalized for at least two midnights. Although the rule is effective as of October 1, 2013, its enforcement has been delayed. Section 111 of the new law delays enforcement yet again, generally preventing Medicare Recovery Audit Contractors (RACs) from auditing inpatient hospital claims from the rule's effective date through March 31, 2015. The new law does allow CMS to continue reviewing hospital compliance with the rule through March 31, 2015.
- **Therapy Caps** – Medicare currently limits the amount of expenses patients may accrue for outpatient therapy in a given calendar year. Exceptions to the caps may be made for reasonable and necessary services. Section 103 of the new law extends the therapy cap exceptions process through March 31, 2015. The new law also enlarges the scope of the caps and exceptions process, making it applicable to services furnished in hospital outpatient departments. Lastly, Section 103 prolongs the mandated manual medical review of therapy services for which an exception was requested once the beneficiary reaches the aggregate amount thresholds of $3,700 for physical therapy and speech language pathology services, and occupational therapy services.
- **ICD-10** – International Classification of Diseases (ICD) code sets are used to assign codes to diagnoses and procedures. The new law delays the transition from ICD-9 to ICD-10 code sets. Under Section 212, ICD-10 may not be adopted before October 1, 2015.
- **Ambulance Add-On Payments** – Two ambulance payment provisions set to expire are extended under the new law. The first provision contains the 3% increase in the ambulance fee schedule amounts for covered ground ambulance transports that originate in rural areas and the 2% increase for covered ambulance transports that originate in urban areas. The second is the provision known as the "super rural" bonus, which increases the base rate for ground ambulance transports originating in an area that is within the lowest 25% of all rural areas arrayed by population density. Section 104 extends both provisions through March 31, 2015.
- **Increased Inpatient Hospital Payment Adjustment for Certain Low-Volume Hospitals** – Hospitals with fewer than 1,600 Medicare discharges and that are located 15 miles or more from the nearest like hospital may qualify for add-on payments. Such payments are calculated using the

number of Medicare discharges from the hospital. Section 105 of the new law extends the availability of such a payment adjustment for qualifying hospitals through March 31, 2015.

- **Medicare-Dependent Hospital (MDH) Program** – The MDH program provides enhanced payments for rural hospitals for which Medicare patients make up a significant percentage of discharges or inpatient days. Section 106 of the new law extends the MDH program through March 31, 2015.

Ober|Kaler's Comments

The SGR patch legislation, in the main, provides short-term relief from a number of payment changes that were scheduled to take effect on April 1, 2014. For the most part, that relief is welcome, but there are always winners and losers associated with such legislation. Hospitals and other entities that have spent millions of dollars preparing for the ICD-10 transition are almost certain to be unhappy with the delay. Further, the legislative relief is being funded by payment reform to other programs. Skilled nursing facilities and clinical diagnostic laboratories, for example, will see changes to their future payments that, for some, may not be welcome.