
Physician Practices in the Era
of Health Care Reform:
What You Should Know

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What We're Talking About as "Health Care Reform"

- March 23, 2010: Patient Protection and Affordable Care Act (PPACA)
- March 30, 2010: Health Care and Education Affordability Reconciliation Act (Reconciliation Act)

MAJOR THEMES

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Vastly more covered patients and covered services. Examples:

- 32 million previously uninsured patients.
- Medicaid eligibility to 133% FPL.
- Elimination of co-pay for physicals, vaccines, and preventive care.
- Capacity issues.
- Who pays and how?

Payment for quality and efficiency, not quantity. Examples:

- Focus on primary care and disease prevention. Patient accountability.
- New incentives for clinical integration and risk-bearing: ACOs, bundled payments, and medical homes.

Secretary of HHS, Kathleen Sebelius



Many more regulations and much more paperwork! Examples:

- Enormous regulatory power concentrated in Secretary of HHS and federal agencies.
- Quality and efficiency standards must be developed, analyzed, and applied.
- Everything will be measured against data.
- Electronic data and communications will be critical and will require more security.

Emphasis on fraud prevention, program integrity, transparency, and enforcement.

Examples:

- Expansion of False Claims Act.
- Mandatory disclosures.
- Limitations on physician ownership/referrals.
- Mandatory compliance.



Physician Incentives and Reimbursement

Physician Quality Reporting Initiative (“PQRI”)

Sections 3002, 10327 of PPACA

PQRI – What is it?

- PQRI was established in 2006.
 - The Act extends PQRI bonus payments through 2014.
 - Provides incentive payments to eligible physicians who satisfactorily report data on quality measures for covered healthcare services furnished to Medicare beneficiaries
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PQRI – What are the incentives?

- **2011** – incentive payments equal to 1.0% of total allowed charges for covered services during reporting period
 - **2012, 2013, 2014** – incentive payments equal to 0.5% of total allowed charges for covered services during reporting period
 - **2015** – eligible physicians who do not submit quality measure data will have Medicare payments reduced by 1.5%
 - **2016** – going forward, eligible physicians who do not submit quality measure data will have Medicare payments reduced by 2.0%
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PQRI - What are the incentives?

- Act provides an additional 0.5% payment bonus to physicians who successfully report quality measures to CMS via the new Maintenance of Certification program.
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PQRI – What does the Act require the Secretary to do?

- To provide feedback to physicians on their performance based on quality measure data submitted
 - To develop a “physician compare” website by January 1, 2011 and implement a plan for making public comparable information on quality and patient outcomes by January 1, 2013
 - To integrate PQRI program with the standards for meaningful use of certified electronic health records under the American Recovery and Reinvestment Act of 2009
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Good News for Primary Care and Some Surgeons:

- Increase in Medicaid reimbursement.
 - In 2013, 2014, states must increase Medicaid reimbursement for primary care physicians to Medicare level. [Reconciliation §§ 1201, 1202]
 - Primary care includes family medicine, general internal medicine, and pediatrics.
 - Primary care services include E&M codes plus immunization administration for vaccines and toxoids (CPT codes 90465, 66, 67, 68, 90471, 72, 73, or 74).

Goods News for Primary Care Physicians:

- Bonus payments to primary care physicians.
 - Primary care services by a primary care practitioner between January 1, 2011 and January 1, 2016, get 10% bonus over regular payment amount. [PPACA § 5501]
 - “Primary care physician” includes family medicine, internal medicine, geriatric medicine, or pediatrics, or a nurse practitioner, clinical nurse specialist, or physician assistant and for whom primary care services constituted at least 60% of allowed charges during some previous period (to be determined by the Secretary).

Good News for Primary Care Physicians:

- ❑ Eligible primary care service codes include: 99201 through 99215; 99304 through 99340; 99341 through 99350.
- ❑ Bonus paid without regard to other payment provisions.
- Bonus for surgeons in shortage areas.
 - ❑ General surgeons practicing in health professional shortage areas will get 10% bonus for certain major surgical procedures between January 1, 2011 and January 1, 2016. [PPACA § 5501]
 - ❑ “Major surgical procedures” are services for which a 10 day or 90 day global period is used for payment.

Renewed Emphasis on Fraud and
Abuse, False Claims, Program
Integrity, and Enforcement

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Serious About Fraud and Abuse:

- More than 32 sections in the PPACA address fraud or program integrity.
- \$250 million appropriated over five years for fraud control. [Reconciliation § 1303]
- \$900 million savings budgeted from reduction of Medicare/Medicaid fraud.
- \$69 billion budgeted from penalty payments by individuals/employers.

Program Audits:

- Expansion of Recovery Audit Contractor (RAC) authority.
 - Historically, RAC audits limited to Part A and Part B claims paid since October 2007.
 - PPACA extends RAC program to Medicaid and Medicare Parts C and D. [PPACA § 6411]

Whistleblowers:

- Easier for “Qui Tam” (“whistleblowers”) to bring lawsuits.
 - Historically, “whistleblower” who provided original information of illegal conduct could share in proceeds of prosecution, but cases were dismissed if information had been publicly disclosed in federal or state proceedings.
 - Under PPACA, whistleblower case is dismissed only if information was previously disclosed in federal proceedings, and if government does not oppose dismissal. [PPACA § 10104]

Program Integrity:

- Misrepresentations in enrollment/participation contracts.
 - Prohibits making or causing to be made any false statement, omission, or misrepresentation of material fact in any application, agreement, or contract as provider of services under federal health program. [PPACA § 6402]
 - Punishable by penalty of \$50,000 per false statement and assessment of 3(x) amounts claimed for items or service under such contracts. [*Id.*]
- NPI to be required on Medicare/Medicaid claims.
 - Effective January 1, 2011, physicians must include NPI on all Medicare/Medicaid program applications and claims. [PPACA § 6402]

Program Integrity:

- Compliance plans will be mandatory.
 - Historically, sample compliance plans were recommended. Got “credit” under Federal Sentencing Guidelines.
 - Sample programs available on HHS/OIG website:
 - October 2000, “Compliance Program Guidance for Individual and Small Group Physician Practices”
 - January 2005, “OIG Supplemental Compliance Program Guidance for Hospitals”

Program Integrity (continued):

- ❑ Compliance plan to be required for enrollment.
 - ❑ Secretary of HHS is now to set dates by which industry segments must have a compliance program and prescribe its core elements.
[PPACA § 6401]
 - ❑ Secretary to consult with OIG on content.
 - ❑ In setting schedule, will consider extent of programs already in place within category.
- **Action Item**
- ❑ Establish or review and update compliance plans.

False Claims (Overpayment):

- New “reverse false claim” standards.
 - Historically, a knowing, improper avoidance of an “obligation” not to retain overpayments was treated as a “reverse false claim.”
 - The PPACA clarifies that “overpayment” includes federal program funds which, after reconciliation, a person is not entitled to retain. [PPACA § 6402]

Overpayment (continued):

- ❑ Overpayment now must be returned to its source within 60 days after it is “identified.”
- ❑ Failure to “identify” overpayment cannot be result of “reckless disregard” or “deliberate indifference.”
- ❑ Also, must notify overpayment source of the return and reason for overpayment. [*Id.*]
- ❑ Violation exposes to (\$5,000/\$10,000 civil penalty plus 3(x) amount of false claim). [*Id.*]

Overpayment (continued):

■ Action Item

- ❑ Educate billing staff.
- ❑ Evaluate and describe procedures to “identify” overpayments.
- ❑ Update compliance program with timelines for refunding.

Fraud and Abuse (Knowledge):

- Easier to Prove Anti-Kickback Violation

- Felony to offer or pay or receive any remuneration in return for a referral of any service or item that is paid for by a federal health care program.
- Historically, violation had to be knowing and willful; i.e., actual knowledge that conduct violates the statute and intent to do so.
- PPACA says, “... a person need not have actual knowledge of this section or specific intent to commit a violation”!!! [PPACA § 6402]

- Action Item

- Review current arrangements.
- More important than ever to get within a safe harbor or OIG Advisory Opinion.

Fraud and Abuse (Remuneration):

- Relaxation of “remuneration” under the Anti-Kickback Statute.
 - Historically, “remuneration” broadly defined as any kickback, bribe, or rebate “directly or indirectly, overtly or covertly, in cash or in kind ...”
 - Under the PPACA, “remuneration” now does not include “any other remuneration which promotes access to care and poses a low risk of harm to patients and federal health care programs.” [PPACA § 6402]
 - PPACA section title is, “Clarification of Treatment of Certain Charitable and Other Innocuous Programs.”
 - Subject to future regulation, but is apparent effort to remove barriers to health care reform.

New Stark Self-Referral Restrictions:

- Physician referrals to MRI, CT, and PET.
 - The PPACA amends the Stark “in-office ancillary services exemption” pertaining to physicians referring to their own MRI, etc.
 - Now must inform patient in writing at time of referral: that patient may obtain the same service from other sources; and, furnish list of other suppliers “in the area in which [patient] resides.” [PPACA § 6003]
 - Applies to services furnished after January 1, 2010 [i.e., now].
 - Applies only to CT, MRI, and PET. Other services (e.g., x-ray and ultrasound) could be added.
 - Open issues: What is the “area”; what are “suppliers”; and, patient access?

New Stark Self-Referral Restrictions:

- Limitations on physician-owned hospitals.
 - Major change in Stark exception previously allowing physicians to refer to hospitals in which they had ownership/investment interest (“whole hospital exception”).
 - Effective March 23, 2010: Physician’s ownership percentage cannot increase; number of ORs, procedure rooms and licensed beds are frozen; cannot convert ASCs to physician-owned hospitals. [PPACA § 6001]
 - Exception: Hospitals under construction, without provider number, as of March 23, 2010, but having provider number by December 31, 2010, are “grandfathered.”
 - Exception: Application for expansion of ORs, etc., may be submitted at two year intervals if hospital qualifies as “applicable hospital” or “high Medicaid facility.”
 - Requires annual report to Secretary of: physician identity; ownership interest; patient disclosures; website disclosures, etc.

DME and Home Health:

- New DME and home health certification procedures.
 - Effective July 1, 2010, Medicare-enrolled physician may order DME and home health. [PPACA § 6405]
 - Effective January 1, 2010, physician must document face-to-face encounter with patient before certifying eligibility.
 - Must maintain and provide access to documentation.

Stark Self-Disclosure:

- Secretary of HHS now may negotiate.
 - New self-disclosure protocol must be implemented by September 23, 2010. [PPACA § 6409]
 - Instructions for self-reporting Stark violations (distinct from advisory opinion process) to be developed and displayed on CMS website.

Stark Self-Disclosure (continued):

- ❑ Secretary of HHS has power to compromise self-disclosed violations considering: nature and extent of improper practice; timeliness of disclosure; cooperation in supplementing information needed; and, other factors deemed appropriate.
- ❑ Neither requires nor prohibits involvement of OIG or DOJ.
- ❑ Separate from self-disclosure of violations under Anti-Kickback Statute.

Fraud and Abuse Data Bank:

- National health care fraud and abuse data to be reported to NPDB.
 - Secretary of HHS to establish/maintain national health care fraud and abuse data collection program for reporting adverse actions against health care provider/practitioner. [PPACA § 6403]
 - By March 2011, Healthcare Integrity and Protection Data Bank (HIPDB) will be merged into National Practitioner Data Bank (NPDB).

Enhanced Fraud Enforcement Tools:

- Suspension of Medicare/Medicaid payments during investigation.
 - Secretary of HHS may suspend payments to provider pending investigation of “credible allegations of fraud.” [PPACA § 6402]
 - Must consult with OIG in determining whether there is “credible allegation of fraud.”
 - Secretary to promulgate implementing regulations.
- Penalty for delaying timely access to documents.
 - Failure to give OIG timely access to documents for purposes of audits, investigations, evaluations and other statutory functions may be sanctioned by civil money penalty of \$15,000 per day. [PPACA § 6408]

Physician “Hot Buttons”:

- No repeal of Sustainable Growth Rate (SGR).
 - Neither health reform act repealed/amended the Sustainable Growth Rate formula for adjusting Medicare reimbursement to physicians.
 - Currently, application of SGR would result in 21.3% reduction of physician Medicare reimbursement.
 - Continuing Extension Act of 2010 extends deadline to May 31, 2010.
 - Physicians remain dependent on a series of short-term “fixes” as percentage reduction continues to grow.

Physician “Hot Buttons” (continued):

- Medical malpractice reform.
 - Senate encourages development of demonstration projects.
 - Secretary of HHS authorized to award states \$500,000 grants for up to five years for development, implementation, and evaluation of alternatives to current tort system. [PPACA §§ 6801, 10607]
 - Models must emphasize: patient safety; disclosure of errors; early resolution.

Physician “Hot Buttons” (continued):

- ❑ Patients may opt out any time and alternatives may not conflict with existing law.
- ❑ Physicians serving on the board or providing care at a free health care clinic are covered for medical malpractice under the Federal Tort Claims Act. [PPACA § 10608]

QUESTIONS?

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