REGULATORY AND LEGISLATIVE UPDATE

Kathy Reep
Florida Hospital Association
March 9, 2018
2018 Florida Legislative Agenda

- Budget/Medicaid funding
- Worker’s compensation
- PIP
- 24-hour ASC stay
- Prior authorization
Constitution Revision Commission

• P54-Certificate of need: prohibits the state from limiting the number of health care facilities

• CRC hearings:
  March 13 – Pinellas
  March 29 – Orange
  April 6 – Miami-Dade
  April 7 – Palm Beach
  April 12 – Leon
  April 26 – Alachua
  April 27 – Duval
  May 3 – Bay
  May 10 – Lee (Fort Myers)
  May 17 – Hillsborough
Issue of 340B
- From drugs paid at ASP +6 percent to payment at ASP -22.5 percent
- AHA-sponsored litigation
### Outpatient Prospective Payment System (OPPS) Calendar Year (CY) 2018 Final Rule Analysis

#### Estimated Change in Medicare Payments

CY 2017 Final Rule Compared to CY 2018 Final Rule

**Florida**

<table>
<thead>
<tr>
<th>Impact Analysis</th>
<th>Dollar Impact</th>
<th>Percent Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estimated CY 2017 OPPS Payments</td>
<td>$2,886,277,600</td>
<td></td>
</tr>
<tr>
<td>Marketbasket Update</td>
<td>$68,884,200</td>
<td>2.39%</td>
</tr>
<tr>
<td>ACA-Mandated Marketbasket Reductions</td>
<td>$(34,441,900)</td>
<td>-1.19%</td>
</tr>
<tr>
<td>340B Drug Payment Reduction BN Adjustment</td>
<td>$82,484,000</td>
<td>2.86%</td>
</tr>
<tr>
<td>Other BN Adjustments</td>
<td>$6,723,000</td>
<td>0.23%</td>
</tr>
<tr>
<td>Wage Index</td>
<td>$(9,184,600)</td>
<td>-0.32%</td>
</tr>
<tr>
<td>APC Factor/Updates (Includes 340B Reduction)</td>
<td>$(44,674,300)</td>
<td>-1.55%</td>
</tr>
<tr>
<td><strong>Estimated CY 2018 OPPS Payments</strong></td>
<td><strong>$2,956,068,000</strong></td>
<td></td>
</tr>
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</table>

**Total Estimated Change CY 2017 to CY 2018**

$69,790,400 
2.42%

The impact shown above does not include the impact of the 2.0% sequesterion reduction to all lines of Medicare payment authorized by Congress through FY 2025. It is estimated that the impact of sequesterion on CY 2018 OPPS PPS-specific payments would be: $-59,121,900

#### Estimated Impact of CMS' "340B Reduction" to Drugs and Biologicals Purchased Through HRSA's 340B Drug Pricing Program (340B Hospitals Only)

<table>
<thead>
<tr>
<th>Revenue from CY 2016 OPPS Claims</th>
<th>Portion of CY 2016 OPPS Revenue from Drugs With Status Indicator K</th>
<th>Revenue from Status Indicator K Drugs after Applying 340B Adjustment</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,044,772,600</td>
<td>$206,334,600</td>
<td>$150,857,800</td>
</tr>
</tbody>
</table>

**Percent Change in CY 2016 OPPS Revenue**

-5.31%

**Estimated Impact of 340B on CY 2018 OPPS Payments Based on CY 2016 Impact Percentage**

($60,453,600)

#### Potential Impact if ALL Total Knee Arthroplasty (TKA) Procedures are Performed in an Outpatient Setting Using CPT Code 27447

<table>
<thead>
<tr>
<th>Procedure Description</th>
<th>Est. FFY 2018 IPPS Revenue (TKA Procedures Only)</th>
<th>Est. CY 2018 OPPS Revenue (TKA Procedures Only)</th>
<th>Potential Impact on Total Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>MS-DRG 469: Major Hip and Knee Joint Replacement or Reattachment of Lower Extremity w/ MCC or Total Ankle Replacement</td>
<td>$237,571,200</td>
<td>$182,687,100</td>
<td>($54,984,100)</td>
</tr>
<tr>
<td>MS-DRG 470: Major Hip and Knee Joint Replacement or Reattachment of Lower Extremity w/6 MCC</td>
<td></td>
<td></td>
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</tbody>
</table>
Regulatory Reform

• Looking for “feedback on positive solutions to better achieve transparency, flexibility, program simplification and innovation”

• Ideas for regulatory, sub-regulatory, policy, practice and procedural changes to inform future regulatory action
Regulatory Reform

• $39B annual impact on hospitals, health systems, post-acute providers for non-clinical regulatory requirements
• Regulatory burden costs $1,200 for every admission
• Possible reforms:
  – Eliminate Stage 3 meaningful use
  – Disaster waivers
  – Modify CoPs to allow hospitals to recommend post-acute providers
  – Physician certification of outlier claims
Regulatory Reform

• Brand memo: use of guidance documents for false claims actions
  – Justice Department will not “use its enforcement authority to effectively convert agency guidance documents into binding rules”
  – “May not use noncompliance with guidance documents as a basis for proving violations of applicable law”
  – Guidance documents: Medicare billing manuals, special fraud alerts, coverage determinations, preambles to rules, frequently asked questions
Bipartisan Budget Act of 2018

• Short-term spending bill
  – Addressed many priorities for health care providers
  – Funds the government through March 23, 2018
  – Raises the debt ceiling and sets spending levels for next two years
Bipartisan Budget Act of 2018: What’s Included

- Delays cuts to Medicaid DSH hospitals for two years
- Extends CHIP funding for four years
  - Added to six year funding passed in January
  - Program now continues through 2027
- Repeals outpatient therapy cap permanently
  - Lowers review threshold for medical necessity
- Repeals IPAB
- Extends rural add-on provisions for ambulance and home health
- Repeals “escalation” clause for meaningful use
Bipartisan Budget Act of 2018: What’s Included (Con.)

• Reduces physician fee schedule update for CY2019
  – Conversion factor update reduced from 0.5 percent to 0.25 percent

• Extends sequestration for two years (2027)

• Home health payment reform (2020)
  – 30-day episode (now 60)

• Transfer policy for early discharges to hospice
  – Effective FY2019
  – Impact:
    • U.S.: $4.7 B
    • Florida: $353.91 M
### Cuts Enacted (2010-2027): Legislative

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACA Marketbasket Cuts</td>
<td>($16,087,902,400)</td>
</tr>
<tr>
<td>Medicare DSH Cuts</td>
<td>($6,495,690,000)</td>
</tr>
<tr>
<td>Sequestration</td>
<td>($3,915,531,000)</td>
</tr>
<tr>
<td>ATRA Coding</td>
<td>($2,015,078,100)</td>
</tr>
<tr>
<td>PAMA CLFS Adjustment</td>
<td>($286,531,800)</td>
</tr>
<tr>
<td>Bad Debt at 65%</td>
<td>($193,796,500)</td>
</tr>
<tr>
<td>MACRA Post Acute MB Cut</td>
<td>($44,294,900)</td>
</tr>
<tr>
<td><strong>Total Legislative Cuts</strong></td>
<td><strong>($29,038,824,700)</strong></td>
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### Cuts Enacted (2018-2027): New Legislative

<table>
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<tr>
<td>Hospice Transfer Adjustment</td>
<td>($353,938,200)</td>
</tr>
<tr>
<td>BBA Post-Acute MB Cap</td>
<td>($2,112,500)</td>
</tr>
<tr>
<td>LTCH SN Blend Extension</td>
<td>($1,737,200)</td>
</tr>
<tr>
<td><strong>Total New Legislative Cuts</strong></td>
<td><strong>($357,787,900)</strong></td>
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### Cuts Enacted (2010-2027): Regulatory

<table>
<thead>
<tr>
<th>Description</th>
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<tr>
<td>Coding Cuts</td>
<td>($7,541,069,900)</td>
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<tr>
<td>LTCH SN Adjustment</td>
<td>($821,047,100)</td>
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<tr>
<td>340B Reduction</td>
<td>$268,717,000</td>
</tr>
<tr>
<td><strong>Total Regulatory Cuts</strong></td>
<td><strong>($8,093,400,000)</strong></td>
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### Quality Based Payment Reform (2010-2027)

<table>
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<td>Quality</td>
<td>($1,269,700,100)</td>
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<tr>
<td><strong>Total Cuts Enacted</strong></td>
<td><strong>($38,759,712,700)</strong></td>
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</table>
Enacted Medicare Cuts Analysis (BBA Update)

Relative Magnitude of Enacted Medicare Cuts

**Florida**

The graph below reflects the relative magnitude of each cut included in this analysis. Cuts are grouped together by category - with additional details in subsequent reports. The horizontal axis indicates the relative size of each category as a percent of the whole; the vertical axis indicates each individual cut's share of its category.

- **ATRA Coding** ($2.0 B)
- **Sequestration** ($3.9 B)
- **Medicare DSH Cuts** ($6.5 B)
- **Coding Cuts** ($7.5 B)
- **ACA Marketbasket Cuts** ($16.1 B)
- **LTCH SN Adjustment** ($0.8 B)
Medicare Beneficiary Identifier

• Removal of SSN from Medicare cards
• New cards to be mailed beginning in April 2018
  – All cards replaced by April 2019
  – Florida beneficiaries to receive starting June 2018
• CMS to offer secure look-up tool
• Need to verify Medicare patients’ addresses with that received on electronic eligibility transactions
  – Assist beneficiary with contacting Social Security and updating Medicare records
Other Issues

- President’s budget for FY2019
- Release of 2019 annual payment regulations
- Tax exempt status: 501(r) requirements
Questions??

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