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July 10, 2008

## HEALTH LAW

NEWSLETTER OF THE HEALTHCARE INDUSTRY PRACTICE GROUP OF MANATT, PHELPS & PHILLIPS, LLP

### U.S. Congress Passes E-Prescribing Provisions in Medicare Package

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Yesterday a veto-proof majority in the U.S. Senate passed a Medicare package that includes an e-prescribing mandate. The same package – the Medicare Improvement for Patients and Providers Act of 2008 (HR 6331) – was passed by a veto-proof majority in the U.S. House of Representatives before the July 4th congressional recess. The package passed in the Senate with a 69-30 vote and in the House with a 355-59 vote. The Medicare package is now expected to be vetoed by the President, for reasons unrelated to e-prescribing, and Congress is expected to override that veto.

The e-prescribing provisions provide for incentive bonus payments under the Medicare fee schedule for professionals who e-prescribe between 2009 and 2013 and would reduce payments for those who fail to e-prescribe after 2012. A “successful electronic prescriber” would be rewarded with a 2 percent bonus in 2009 and 2010, a 1 percent bonus in 2011 and 2012, and a 0.5 percent bonus in 2013. A professional who is not a “successful electronic prescriber” will be penalized with a 1 percent reduction in payments in 2012, a 1.5 percent reduction in 2013, and a 2 percent reduction in 2014 and beyond.

An eligible professional would be considered a “successful electronic prescriber” if there are established e-prescribing quality measures applicable to the professional for the reporting period and the professional reported on each such measure in at least 50 percent of the cases. The Secretary of Health and Human Services has the option of replacing this with a requirement for a specific number of electronic prescriptions under the Medicare Part D benefit for the

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reporting period.

The e-prescribing provisions do not apply to professionals who write few prescriptions (the allowed charges for the codes to which the e-prescribing quality measure applies are less than 10 percent of all charges). Further, on a case-by-case basis, the Secretary may exempt professionals from the payment reductions for significant hardship, such as rural providers without sufficient Internet access.

The bill also provides that the Comptroller General report to Congress on the implementation of incentives for e-prescribing by September 1, 2012. Topics to be addressed in the report include:

- the percentage of eligible professionals using e-prescribing;
- recommendations for increasing the use of e-prescribing if less than 50 percent of eligible practitioners are e-prescribing;
- estimated savings to the Medicare program;
- estimated reduction in avoidable medical errors; and
- the extent to which patient privacy is protected, including whether identifying information is kept separate from drug utilization data and whether current law adequately oversees data mining.

Manatt will continue to closely monitor this bill, which now moves to the President's office.

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