Health Care Reform – A Provider’s Perspective in Maryland

Maryland State Bar Association Annual Meeting

Christopher Dean, Esq.

100 Light Street, Baltimore, MD, 21202

cpdean@ober.com

410.347.7376
Outline

- Themes:
  - What is health care reform?
  - Changes to care
    - Carrot – incentives
    - Stick – penalties
Outline

- Problems with reimbursement solutions
  - Federal: Medicare and Medicaid
  - Maryland: Changes for private payors
- Fraud and abuse
  - Mandatory reporting of overpayments
  - Voluntary self-disclosure protocol
  - Physician ordering
Outline

- Innovative changes
  - Accountable Care Organizations (ACO)
  - Patient centered home (MD)
  - Hospital acquired conditions
  - Preventable readmissions
  - Nursing facility pay for performance
Outline

- Miscellaneous changes
  - State law changes
  - Other reforms
- Questions?
Theme: What is Health Care Reform?

- More than just a federal law
  - Patient Protection and Affordable Care Act (PPACA)
  - Maryland is “out in front” on health care reform

What does this regulatory environment mean?

- Health care for all?
- No obligation?
- Moral obligation?
- Social obligation?
Theme: What is Health Care Reform?

- Tensions
  - Politics: Left vs. right
  - Payor vs. provider
  - Who is covered?
  - What types of services are covered?
  - What cost?
Theme: Health Care Reform Litigation

- Court cases
  - Unconstitutional: VA* (state sovereignty), FL* + 26 (entire law)
  - Dismissed: MI (merits), VA (merits, exercise of religion), NJ (standing), OH (Art. I challenge remains), MO (individual), TX (individual)
  - TBD: OK* (state sovereignty), PA (individual)
  - Appeals pending: 3rd, 4th, 6th, 11th Federal Circuits

* State challenge
Theme: Carrot & Stick Environment

- Zero sum game?
- Comply today
  - “Good habits”
  - Increased reimbursement
- Tomorrow?
  - “Bad habits”
  - Decreased reimbursement
Medicare Reimbursement Incentive

- Not enough primary care physicians (PCPs) and general surgeons
- Solution: Medicare incentive payment plan
- Qualifying physicians and surgeons
  - Primary care physicians, geriatricians, internists, nurse practitioners, physician assistants
  - General surgeons in Health Professional Shortage Areas (HPSA)
Medicare Reimbursement Incentive

- Primary care physicians
  - PCP Codes: 99201-215, 99304–340, and 99341–350
  - Qualifying physicians and physician extenders
    - Enroll in Medicare as PCP
    - 65% of Medicare Physician Fee Schedule billed to PCP codes for 2 previous years
    - New PCP: one year allowed if enrolled only in 2010.
Medicare Reimbursement Incentive

- General surgeons
  - HPSA
  - Enroll as general surgeon
  - 10 to 90 day global procedure reimbursement
Maryland Reimbursement- Non-Par

- Non-participating (Non-par) HMO providers
  - Providers do not join every HMO provider panel
  - Non-par providers cannot balance bill HMO patients for covered services
  - Non-par provider bills HMO
  - Non-par providers dispute HMO reimbursement
Maryland Reimbursement (Non-Par)

- Non-par provider reimbursement is greater of:
  - 125% HMO average rate; or
  - 140% Medicare rate

Maryland Reimbursement (Non-preferred)

- Assignment of billing to non-preferred provider
  - On-call physicians not part of every preferred provider networks
  - Private payor only
Maryland Reimbursement (Non-preferred)

- Patient assigns preferred provider benefits to on-call physician
  - Reimburse the greater of 140% of the average rate the insurer pays to participating providers, or the average rate that the insurer paid on January 1, 2010, indexed for inflation
  - No balance billing

OR

- No assignment and non-preferred provider can balance bill and collect from patient
Mandatory Reporting Overpayments

- Report and return Medicare and Medicaid overpayments within:
  - 60 days after overpayment identified
  - The date the cost report is due

- What does “identified” mean?

- Retention of overpayment = obligation under the Federal False Claims Act
Voluntary Self-Disclosure Protocol

- Stark law – federal physician self-referral law
- Prior to PPACA, difficult to resolve Stark law problems
  - CMS: No authority to settle claims
  - OIG: Refused to accept Stark law self disclosures after March, 2009

Voluntary Self-Disclosure Protocol

- Define “look back period”
- Remuneration / benefit received by physician
- Medicare reimbursement received from DHS from referrals from that physician
  - Is the Medicare reimbursement an “overpayment”? 

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Miscellaneous Fraud and Abuse

- Face-to-face encounter with physician before home health services or durable medical equipment can be ordered for Medicare beneficiaries
- Physician enrollment in PECOS required for physician to order items or services for Medicare beneficiaries
Innovative Programs
Bundled Care

- Bundled care
  - Accountable Care Organizations (ACOs)
  - Patient Centered Home (Maryland only- most private payors)
- Shifting risk and cost
  - Currently at carrier / insurer level
  - To hospital / provider / physician level
Hospital Acquired Conditions (HAC)

- Medicare: hospitals located in the 49 other states
- Expected effective October of 2012
- Excess HACs
  - Cost
  - Volume
  - Reasonably preventable
- 1% decrease Medicare reimbursement for bottom quartile
HAC

- Maryland HAC (all payors)
  - HSCRC started process in 2009
  - 49 conditions
  - 2010: collect data
  - 2011: carrot and stick
    - Reward hospitals with low rate of HACs
    - Penalize hospitals with high rate of HACs
Preventable Readmissions

- Medicare (other 49 states)

- Readmissions from a condition you would typical acquire from substandard care
  - 3 readmission conditions by 2012
  - 7 readmission conditions by 2015

- Medicare payment reductions of 1-3%
Preventable Readmissions

- Maryland: Potentially Preventable Readmissions Program
- Maryland hospital reimbursement
  - Fee for service
  - Case rate
  - Total Patient Revenue
Preventable Readmissions

- 2011 Health Services Cost Review Commission staff recommendation
  - Bundled admission payment
  - Readmission within 30 days after discharge
  - Shift risk from payors to providers
  - Separate incidents?
  - Different hospitals?
- Effective 2012?
Other Innovative Programs

- Maryland skilled nursing facility (SNF) pay for performance
  - Carrot - better performing SNF
  - Stick – lesser performing SNF
- Tax on SNF collections
- Reimbursement adjustment from Medical Assistance Program
Other State Law Changes

- State False Claims Act
  - 2010 General Assembly
  - Similar to federal law
  - No personal cause of action if State does not intervene
Other State Law Changes

- MRI/CT ownership and the Maryland Patient Referral Law
- Timeline
  - 2006 Board of Physicians Declaratory Ruling
  - 2007 Circuit Court for Montgomery County
  - 2011 Court of Appeals
Other State Law: MD Self-Referral

- Non-radiologist physicians owning CT Scan and/or MRI integrated with group practice:
  - Cannot refer own patients
  - Non-radiologist physician co-owners cannot refer own patients

- Employed physicians?

- Ownership of separate facility?
Changes Affecting SNF

- Federal Nursing Home Transparency
  - Disclosure of ownership and organization structure
  - 2012 / 2013 reporting

- CLASS Act

- Elder Justice Act
Equal Justice Act

- Reasonable suspicion of crime
  - SNF employee reporting
  - Local law enforcement
  - CMS
- No guidance as of March, 2011
Questions?