September 9, 2022

Major Health Care Programs Await (Possible) Year-End Congressional Action

The federal government's fiscal year ends on September 30 and with it funding for some programs that may be important to your bottom line. Now is the time to let Congress know if any of the expiring programs outlined below are important to you.

Congress is beginning to negotiate a short-term Continuing Resolution (CR) to fund the government through mid-December and it is likely to include a small number of additional items. The Administration sent Congress a list of items it would like to see included in the CR, as well as some items it does not object to being included. (Click here for the list.) The Administration is also seeking an additional $22.4 billion for Covid relief, which would largely be spent on testing, research and development of next generation vaccines and therapeutics, not the Provider Relief Fund.

IMPORTANT UPDATE
Our team has been canvassing Capitol Hill on all these funding issues. We are now hearing that Congress may include a 90 extension of the Medicare Dependent and Low Volume Hospitals programs, and then provide a longer extension in the year-end FY23 funding bill.

Additionally, there is serious consideration of using the $7.5 billion in the Medicare Improvement Fund, which was included in the Gun Safety bill a few months ago, to pay for some of the health care items listed below – in whole or in part. This funding would also take place in the year-end bill.

The CR is the only practical vehicle to extend funding for a variety of items - outlined below - of importance to providers. As you will note, some items expire on September 30, 2022, others expire on December 31, 2022. The expectation is that Congress will pass a CR to fund the government through mid-December and return after the election to pass either another CR or a complete appropriations package for FY23.

As always, let us know if you have any questions or need any assistance in developing information for your delegation.

- **Four percent statutory PAYGO cut** – a 4 percent across the board cut will go into place unless Congress waives the policy once again. This would result in billions of payment cuts to health care providers in 2023. It is assumed that Congress will negate this PAYGO requirement in the year-end bill, as it has always done in previous years when PAYGO requirements were triggered.

- **Two percent sequester cuts –** during the public health emergency (PHE), Congress delayed the 2 percent cuts under the sequester for health care. These were allowed to phase back in over the past year with the full implementation of the two percent in July 2022. Congress is unlikely to make any change to the sequester cuts however, the Administration has stated that it does not object to suspending sequestration.

- **Medicare-dependent hospital (MDH) program and Medicare IPPS adjustment for low-volume hospitals** – these programs allow certain rural hospitals to receive higher Medicare payments and are set to expire on September 30th, to extend both programs for the next year is estimated to cost $600 million. There is a real possibility that this could be included in the upcoming Continuing Resolution, rural health care groups are making a major push for their inclusion and the Administration has stated that they do not object to extending the programs.

- **Physician 2023 Payment Cuts** - the proposed Physician Fee Schedule for 2023 included, on average, a 4.4 percent payment cut for clinicians. Physician groups are actively lobbying Congress to overturn the cuts for next year at an estimated cost about $6 billion for one year. It is important to note that as the other payment rules have become final, CMS has been has taking into account loses during the pandemic and modifying the payments by 1-2 percent, this could suggest that the proposed cut may not be as severe when finalized in October. Additionally, many Congressional leaders have indicated that they are not inclined to reverse the upcoming cuts.

- **Home health payment cuts** – the proposed payments for home health providers included a 4.2 percent payment cut or about $810 million for 2023. Home health providers are pushing for legislation (S. 4605 and H.R. 8581) modeled after a successful program put in place for radiation oncology that would freeze rates for 3 years in order to give the industry some stability. This cut could also be pulled back some if CMS continues to adjust the payment rates taking the pandemic loses into account.

- **Medicare add-on payments for ground ambulance services** - a 3 percent increase in the base and mileage rate for ground ambulance services that originate in rural areas (as defined by the ZIP code of the point of pickup) and a two percent increase in the base and mileage rate for ground ambulance services that originate in urban areas (as defined by the ZIP code of the point of pickup) are set to expire at the end of this year.

- **MACRA reauthorization** – The Medicare Access and CHIP Reauthorization Act, passed in 2015 as a solution to the yearly physician sustainable growth rate payment adjustments, consists of a five percent advanced alternative payment model (AAPM) path for providers or the Merit-based Incentive Payment System (MIPS) quality reporting program. Funding for the AAPM five percent bonus expires at the end of 2022 and costs about $600 million per year to extend the program. Several of the hospital trade associations, physician trade associations, and specialty groups are advocating for a 1-to-2-year extension.

- **Telehealth** – the FY 2022 Appropriations package, signed into law in March, included an extension of telehealth flexibilities provided under the Public Health Emergency (PHE) for an additional 151 days after the PHE ends. In August, the House passed H.R. 4040 which would extend telehealth flexibilities provided under the PHE through 2024. The Senate has yet to take up the House passed bill, this is unlikely prior to the end of September. However, a very strong lobbying effort now underway could result in some additional funding to extend the current waiver for as long as a year.

- **Hospital at Home** – Despite the lobbying efforts of dozens of health systems to push for a two-year post-PHE waiver extension, Congress is not likely to grant this request. As an alternative, Congress might agree to a demonstration project. We continue to hear that Congress is concerned that there are still no formal CBO or CMS budget numbers on the cost of the program. There are other concerns, including the perception by some on the Hill that the program benefits mostly wealthier individuals (lack of health equity). Hospitals have been pushing back with their own specific examples.