POWERS

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ATTORNEYS AT LAW

MEMORANDUM

To: ACRM

From: Peter Thomas, Steve Postal, and Laura Macherelli

Date: June 9, 2016

Re: Helping Hospitals Improve Patient Care Act (H.R. 5273)

On June 7, 2016, the full House of Representatives passed the *Helping Hospitals Improve Patient Care Act* (H.R. 5273) via voice vote. The bipartisan legislation's main objective is to advance hospital and Medicare payment reforms, among other changes. On May 18, 2016, House Committee Ways & Means Health Subcommittee Chairman Pat Tiberi (R-OH) and Ranking Member Jim McDermott (D-WA) introduced the bill. On May 24, 2016, the bill was favorably reported by the Ways and Means Committee by a unanimous vote.

Overview: One of the most significant provisions of the legislation provides relief related to Medicare payments for certain hospital outpatient departments (HOPDs). The bill allows providers that were in the process of building new off-campus outpatient facilities ("mid-build") as of the date of enactment of the Bipartisan Budget Act of 2015 (BBA 2015) (November 2, 2015) to be grandfathered into the bill. In order to qualify as a "mid-build," HOPDs will be required to submit certification and attestation that they meet the requirements of being provider-based by July 1, 2016. HOPDs that qualify and are deemed "mid-build" will begin to receive the full HOPD payment rate on January 1, 2018, rather than the lower physician fee schedule or ambulatory surgical center (ASC) payments as required under the BBA 2015. The Medicare Access and CHIP Reauthorization Act (MACRA) of 2015 offsets the cost of "mid-build" HOPDs receiving full payment rates by reducing hospital inpatient documentation and making adjustments to coding.

Cancer hospitals. The legislation also precludes Prospective Payment System (PPS)-exempt cancer hospitals from payment changes under BBA 2015 and instead will use a different, separate payment system. Cancer hospitals will continue to be paid at cancer hospital rates at new off-campus locations. This provision is offset by a slight reduction in the payments PPS-exempt cancer hospitals currently receive as calculated by their Payment to Cost Ratio (PCR).

Readmissions. The Medicare Hospital Readmissions Program is further refined under the legislation as it improves efforts to support hospitals that serve high populations of low income patients by minimizing and preventing penalties and fines. The Department of Health and Human Services (HHS) will implement a transitional risk adjustment methodology, calculated by comparing the performance of hospitals serving similar proportions of dual eligible beneficiaries, to serve as a proxy of socio-economic status. HHS will then use a more advanced and accurate methodology once the analysis required by the Improving Medicare Post-Acute Care Transformation (IMPACT) Act of 2014 is complete.

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Additional provisions. Additional provisions of the legislation include:

- Extending the current Rural Community Hospital Demonstration for an additional five years;
- Providing a "mid-build" exception for Long-Term Care Hospitals (LTCH) to the current law moratorium on bed expansion;
- Delaying the Center for Medicare and Medicaid Services' (CMS) authority to terminate Medicare Advantage (MA) plans that fail to achieve minimum quality ratings under the Medicare Advantage Star Rating System;
- Excluding physicians who provide most Medicare services at ASCs from penalties under the Electronic Health Records (EHR) Incentives Program and the Merit-Based Incentive Payment System (MIPS);
- Reducing MACRA's payment update for fiscal year 2018 to 0.4590; and
- Requiring HHS to publish Medicare enrollment data by Congressional District, zip code, and state on an annual basis.

CBO estimates. The Congressional Budget Office (CBO) estimates that enacting the bill would increase direct spending by $50 million from 2017-2021 but would decrease spending by $14 million from 2017- 2026. CBO also estimates that enactment would not increase on-budget deficits by more than $5 billion in any of the four consecutive 10-year periods beginning in 2027.

Support for the bill. The hospital industry, including the American Hospital Association, America's Essential Hospitals, the Association of American Medical Colleges, and the Federation of American Hospitals, have expressed their support for their bill as an effort to correct and adjust problems created by BBA 2015. The Alliance for Site-Neutral Payment Reform, an advocacy group comprised of insurers, providers, and patient groups including the U.S. Oncology Network, opposes the bill as it weakens payment parity for services provided in a physician's office and HOPDs. The House legislation currently has no companion bill in the Senate.

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