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HHS Secretary Proposes Legislation to Continue Move toward Value-Based Health Care Delivery

On February 15, 2008, Michael O. Leavitt, Secretary of the Department of Health & Human Services, announced that he was sending legislation to Congress designed to facilitate a decrease in Medicare spending ("Trigger Legislation"). The Trigger Legislation was proposed in response to the requirements of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (Public Law 108-173). The Trigger Legislation was formally introduced in both chambers of Congress on February 26 by Majority Leader Steny Hoyer, D-Md., and Minority Leader John Boehner, R-Ohio, in the House and by Senate Finance Committee Chair Max Baucus, D-Mt., and Sen. Judd Gregg, R-N.H., in the Senate.

In addition to creating the Medicare drug program, the MMA mandated, among other things, that a Medicare funding warning will be triggered when the Trustees of the Medicare program determine for two consecutive years that more than 45 percent of total Medicare spending will be derived from general revenues within the current or following six years. The Trustees issued the first such warning in April 2007 and recently issued their second warning. The Trigger Legislation attempts to address the impact of these warnings.

In his letter of transmittal to Congress, Secretary Leavitt warns that the Medicare program "is on an unsustainable path." This path is being driven by two principal factors: (i) projected growth in per capita costs; and (ii) increases in the Medicare population as Americans age. Because of these factors, Leavitt further warns that the Medicare program is on the "path to insolvency," unless changes are made. Such warnings should come as little surprise given the continual news about financial problems facing the Medicare program.

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Leavitt suggests that government intervention in health care decision-making creates higher costs. To counter this notion, the Trigger Legislation has been designed to “modernize” the Medicare program and to “offer greater choice and price accountability to individual consumers.”

The full text of Leavitt’s letter to Congress can be accessed at:

www.hhs.gov/asl/medicarefundingwarningtransmittal.html.

The Trigger Legislation includes three parts. Title I would provide the Secretary of HHS with the authority and responsibility to introduce value-based health care into the Medicare program. We have discussed the industry-wide focus on a shift to value-based health care, including pay-for-performance, in several prior articles of *Health Industry Online*, which can be accessed at: <http://www.strasburger.com/p4p/>. Title II of the Trigger Legislation would implement medical liability tort reform on the federal level, and Title III would provide for income-based measures for premiums related to the Medicare Part D benefit.

Leavitt projects that the savings achieved through enactment of the Trigger Legislation and those submitted with President Bush’s 2009 fiscal year budget would significantly improve the Medicare program’s long-term financial outlook. Specifically, the proposed legislation has the potential to reduce the estimated 75-year unfunded obligation for Medicare by nearly 33 percent.

The principal elements of the value-based provisions in Title I of the Trigger Legislation focus on proposals to reduce Medicare spending by increasing provider efficiency and by encouraging Medicare beneficiaries to make wiser health care choices. Specific elements to this end include: (i) the adoption of improved health information technology such as interoperable electronic health records; (ii) transparency of health care pricing; (iii) transparency of health care quality information; and (iv) incentives for providers and beneficiaries in the pursuit of high-quality, lower-cost health care services.

Over the past few years, the Centers for Medicare & Medicaid Services has conducted a series of demonstration projects designed to test the ability of providers to adhere to quality standards to improve health care delivery (See <http://www.cms.hhs.gov/DemoProjectsEvalRpts/downloads/MMAdemolist.pdf>). The financial impact of these demonstration projects has yet to be fully analyzed.

For example, payments to physicians who participated in the Physician Quality Reporting Initiative in 2007 just finalized their reporting on February 28, 2008. Financial incentives—payment of up to 1.5 percent of total allowed charges for covered services payable under the Physician Fee Schedule—will be paid to participating physicians in mid-2008. The PQRI has been extended through 2008, with similar financial incentives to be paid to participating physicians in mid-2009.

Clearly, the fundamentals for the value-based health care initiatives adopted by CMS will come from the findings derived from these demonstration projects.

The Democratic response in Congress to the Trigger Legislation has been lukewarm. In fact, Hoyer and Baucus said that they were introducing the legislation because they were required to do so under Medicare law and not because they endorsed the bill's contents. It also appears that there is not much support for the tort reform aspects of the Trigger Legislation.

The Trigger Legislation will be considered by House Ways & Means Committee, the House Energy & Commerce Committee, and the Senate Finance Committee. Medicare law requires that the House committees discharge the legislation by June 30, 2008, with a vote to take place soon after such date.

It is not clear at this time what action, if any, the Senate Finance Committee will take with respect to the Trigger Legislation. While Baucus has publicly expressed interest in the value-based purchasing and health information technology aspects of the proposed legislation, he has stated that he will likely introduce his own version of a Medicare reform bill later this year.

No matter what form the final version of the Trigger Legislation may take, it is highly likely that Medicare will ultimately adopt a new payment methodology related to the quality and efficiency with which the health care services are delivered. Beyond this fact, much remains to be decided. The one thing that is clear is that something must be done to stem the cost of the Medicare program. Since the value-based purchasing concept is the only one that has at least been tried by CMS, it is likely that any new program will include elements of the Trigger Legislation regardless of who becomes President in 2009. Physicians and providers would do well to continue to learn to thrive in this new environment.

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