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MedPAC Suggests Changes to Stark "In-Office Ancillary Services Exception"

The Medicare Patient Advisory Commission (MedPac), who advises Congress on Medicare payment issues, is turning their focus on what some claim is the overuse and increasing costs of radiation therapy, outpatient rehabilitation services (physical and occupational therapy and speech-language pathology services), diagnostic imaging, and laboratory tests. The reform suggestions being considered by MedPac would greatly reduce the number of physician offices covered by the Stark Law In-Office Exception, and would reduce the overall market for MRI, CT, and PET imaging for Medicare patients. [1]

Currently, Stark Law prohibits any physician from referring a patient reimbursable under a federal program for any "*designated health services*" to another physician group or entity with which the physician has an ownership or compensation interest.[2] Under the In-Office Exception, owners and employees of group practices may refer Medicare patients within the group while still remaining compliant with Stark Law, subject to certain restrictions.[3] Despite Stark's attempt to limit physicians, the Medicare Physician Fee Schedule is based on a fee-for-service payment system, which promotes over-utilization of services. Additionally, under the In-Office exception, many physicians have invested in ancillary equipment leading to increased utilization.[4] In 2008 Medicare paid $104 million to multi-specialty physician groups for radiation therapy alone, an 84 percent increase from 2003. Similarly, reimbursement payments for outpatient rehabilitaion increased 57 percent ($1.4 billion to $2.2 billion) over the same time period.[5] Rapid growth along with reports that some diagnostic imaging and physical therapy services are not clinically appropriate has brought about concern about the equity and accuracy of physician payments.[6] Since March of 2010, MedPac has been considering various methods to address the financial incentives of the fee-for-service model which are discussed in MedPac's June 2010 report to Congress.

The following three options are under consideration as a means to reign in the growth of ancillary services: (1) limiting the types of services or groups covered by the In-Office Exception; (2) changing payment protocols to mitigate incentives to increase volumes; and, (3) using targeted pre-authorization requirements for advanced diagnostic imaging.[7] Under the limiting of services option, three levels of restriction are being deliberated. The most drastic limitation would exclude all outpatient therapy and radiation therapy from the In-Office Exception. Less severe, a second option would be limiting the exception to physician groups that can demonstrate clinical integration in order to balance the risk of overutilization with the benefits of "*comprehensive and coordinated care*."[8] Another approach would exclude diagnostic tests that are not generally provided on the same day as an office visit.[9] The second option of reducing payment incentives would change Medicare payment policies by either reducing payment rates for diagnostic tests performed by physicians who would fall under the In-Office Exception to offset rising costs or improving payment accuracy for ancillary services and including such discrete services within larger payment bundles creating a single payment rate for one episode of care.[10] The third option under consideration would require self-referring physicians with a history of relatively high utilization of advanced imaging services to participate in prior authorization programs for such services where CMS or contactor would review their requests.[11]

MedPac has not initiated any policy recommendations to Congress, but is examining each of these options individually, and in combination, as each possesses various strengths and weaknesses. These possible reforms would have a broad impact, possibly; eliminating competition from multi-specialty physician groups, effecting mid level provider of outpatient services who provide care under incident to billing, and impacting where Medicare patients may receive care. Additionally, these suggestions would have a great impact on CMS itself as more clear definitions of; clinical integration, what designates high utilization as compared to peers, redefined payment policies, and timing of service may all be needed.[12] Whatever MedPac eventually suggests, it is unlikely that any reform would go into effect until 2012 at the earliest.[13]

[1] "Medpac Explores reform That Could Dramatically affect Competition for Radiation Therapy, Outpatient Rehab, Lab Test and Diagnostic Imaging" By Kate W. Feola, et al., McDermott Will & Emery, Newsletter (May 10, 2010), http://www.mwe.com/index.cfm/fuseaction/publications.nldetail/object_id/cb96b385-5ef4-4a73-a9b1-0360ba15e691.cfm (Accessed 6/14/10).

[2] "Financial Relationships Between Physicians and Entities Furnishing Designated Health Services" 69 Fed. Reg. 16126 Section

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411.350(a) (March 26, 2004).

[3] "General Exceptions to the Referral Prohibition Related to Both Ownership/Investment and Compensation" 69 Fed. Reg. 16126 Section 411.355(a) (March 26, 2004).

[4] "Aligning Incentives in Medicare" Medicare Payment Advisory Commission, Report to Congress, Washington, D.C.: MedPac, June 2010, p. 214.

[5] "MedPac Explores reform That Could Dramatically affect Competition for Radiation Therapy, Outpatient Rehab, Lab Test and Diagnostic Imaging" By Kate W. Feola, et al., McDermott Will & Emery, Newsletter (May 10, 2010), http://www.mwe.com/index.cfm/fuseaction/publications.nldetail/object_id/cb96b385-5ef4-4a73-a9b1-0360ba15e691.cfm (Accessed 6/14/10).

[6] "Aligning Incentives in Medicare" Medicare Payment Advisory Commission, Report to Congress, Washington, D.C.: MedPac, June 2010, p. 213.

[7] "Aligning Incentives in Medicare" Medicare Payment Advisory Commission, Report to Congress, Washington, D.C.: MedPac, June 2010, p. 224.

[8] "Aligning Incentives in Medicare" Medicare Payment Advisory Commission, Report to Congress, Washington, D.C.: MedPac, June 2010, p. 227.

[9] "Aligning Incentives in Medicare" Medicare Payment Advisory Commission, Report to Congress, Washington, D.C.: MedPac, June 2010, p. 227.

[10] "Aligning Incentives in Medicare" Medicare Payment Advisory Commission, Report to Congress, Washington, D.C.: MedPac, June 2010, p. 228, 230.

[11] "Aligning Incentives in Medicare" Medicare Payment Advisory Commission, Report to Congress, Washington, D.C.: MedPac, June 2010, p. 231-32.

[12] "Aligning Incentives in Medicare" Medicare Payment Advisory Commission, Report to Congress, Washington, D.C.: MedPac, June 2010, p. 225, 226, 227, 228, 230, 232.

[13] "Medpac Explores reform That Could Dramatically affect Competition for Radiation Therapy, Outpatient Rehab, Lab Test and Diagnostic Imaging" By Kate W. Feola, et al., McDermott Will & Emery, Newsletter (May 10, 2010), http://www.mwe.com/index.cfm/fuseaction/publications.nldetail/object_id/cb96b385-5ef4-4a73-a9b1-0360ba15e691.cfm (Accessed 6/14/10).

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