



Government Relations Update

November 8, 2016



Pennsylvania Issues

Advocacy

- **Pennsylvania Opioid Crisis**: On November 2, 2016, Governor Tom Wolf (D-PA) signed into law five bills intended to address the Commonwealth's opioid addiction and abuse crisis. Among other items, the legislative package limits to a seven day supply opioid prescriptions provided in emergency rooms, in urgent care centers or to patients in observation status, except for patients treated with a cancer diagnosis, for palliative care or for another acute medical condition where a non-opioid drug product alternative is unavailable. In addition, the legislation requires that physicians query the Commonwealth's prescription drug monitoring database each time they prescribe an opioid drug product in a non-emergent setting. Representatives Rosemary Brown (R- Monroe, Pike) and Doyle Hefley (R-Carbon) led the effort to pass the bills, which were supported by the Hospital & Healthsystem Association of Pennsylvania (HAP).

New Jersey Issues

Legislation

- **A. 1952**: Out-of-Network Consumer Protection, Transparency, Cost Containment and Accountability Act. On June 20, 2016, Assemblyman Craig Coughlin (D-Woodbridge) reintroduced legislation which would require hospitals and physicians to disclose to patients who are scheduling non-emergent or elective procedures whether those services are covered by the patients' insurance network before treatment occurs. If a patient is not informed that the facility, provider or service is out-of-network, then the patient would only have to pay the in-network amount. If a patient chooses to have an out-of-network procedure performed, the health care facility would be required to make available in advance a description of the standard charges for items and services to be provided.

The Medical Society of New Jersey (MSNJ) and the New Jersey Hospital Association (NJHA) oppose the legislation. Both the MSNJ and the NJHA argue that the bill would create unnecessary burdens on providers and undermine a significant source of bargaining power for New Jersey hospitals when negotiating with insurance companies.

On October 27, 2016, the Assembly Appropriations Committee unanimously approved the bill, with three members abstaining, including Assemblyman John DiMaio (R-Warren, Hunterdon). The bill has been forwarded to the Assembly for consideration. Similar legislation was introduced in the previous legislative session, but it failed to advance. Illinois, Texas, Florida, Connecticut and New York have passed similar bills.

- **S. 2474**: Aid in Dying for the Terminally Ill Act. On July 29, 2016, Senator Nicholas Scutari (D- Linden) introduced legislation which would allow patients with a terminal illness to request a prescription to end their lives. The bill would apply to an adult patient: (a) expected to live less than six months, as determined by two licensed physicians; (b) who is deemed capable to make medical decisions; and (c) who has requested the lethal medication twice verbally and once in writing with witnesses present. A physician would need to wait at least 48 hours to issue the prescription.

The bill is strongly opposed by several groups, including the Catholic Church, the New Jersey Hospice and Palliative Care Organization and the MSNJ. On November 3, 2016, the Senate Health, Human Services and Senior Citizens Committee approved the bill by a vote of 5 to 3, and it has been sent to the full Senate for consideration. On October 20, 2016, a companion bill was approved in the Assembly by a vote of 41 to 29,

with Assemblymen Erik Peterson (R-Warren, Hunterdon) and John DiMaio (R- Warren, Hunterdon) voting against the measure. Oregon, Washington, Montana, Vermont and California have passed assisted suicide laws, and officials in Minnesota and Washington, D.C. are considering similar bills. The NJHA remains neutral on the issue.

Federal Issues

Advocacy

- **Off-Campus Provider-Based Hospital Outpatient Departments:** As previously reported, President Barack Obama (D) signed into law the Bipartisan Budget Act of 2015 on November 2, 2015. Section 603 of the Act includes a Medicare site-neutral payment policy, which prohibits payments at Medicare Outpatient Prospective Payment System (OPPS) rates after January 1, 2017 for services performed at off-campus hospital sites, unless the location was previously billing at OPPS rates when the Act was passed. The Act failed to clarify whether grandfathered outpatient sites that expand or relocate, or sites under construction when the law was enacted, would receive OPPS rates.

On July 6, 2016, the Centers for Medicare & Medicaid Services (CMS) issued proposed regulations to implement the site-neutral payment policy. During the public comment period, the hospital community and a majority of Senators and members of the House of Representatives urged CMS to delay implementation of the policy, expand exceptions to the policy and clarify certain provisions included in the policy. Unfortunately, despite those requests, CMS refused to delay implementation of the Act.

On November 1, 2016, CMS issued the OPPS final rule for 2017, which established the following: (1) OPPS payments for services performed at off-campus hospital sites that were not billing as a department of a hospital prior to November 2, 2015 will end on January 1, 2017; (2) non-excepted off-campus hospital sites will be paid pursuant to the Medicare Physician Fee Schedule (MPFS) for items and services that can no longer be billed under OPPS, representing a fifty percent (50%) payment reduction; (3) excepted off-campus hospital sites that relocate will lose their excepted status and no longer be able to bill under OPPS rates, except in extraordinary circumstances, such as natural disasters or significant public health and safety issues; and (4) excepted off-campus hospital sites will lose their excepted status upon sale of the excepted location, unless the sale of the excepted location is part of the sale of the main provider and the new owner accepts the main provider's Medicare provider agreement.

CMS declined to finalize its proposed rule limiting service expansion in excepted locations to items and services in the same clinical family of items and services furnished prior to November 2, 2015. Upon further reflection, CMS agreed with commenters that its proposed policy could be complex and burdensome. Although the final rule allows for OPPS payments at excepted off-campus hospital sites regardless of the services provided as of November 2, 2015, CMS intends to monitor service line growth and propose limitations on service line expansion. Finally, CMS reiterated its position that it is constrained by the Act from creating an exception for mid-build or under development off-campus hospital site locations and deferred to Congress for any such exception.

Following the release of the final rule, Premier issued a statement expressing its disappointment. Similarly, the American Hospital Association expressed concern that the final rule may impede access to care, especially in vulnerable communities. HAP and NJHA plan to provide additional details to members over the next few weeks.

Legislation

- **H.R. 3590:** Halt Tax Increases on the Middle Class and Seniors Act. Taxpayers can deduct medical expenses exceeding 7.5% of their income in any given calendar year. Pursuant to the Patient Protection and Affordable Care Act, this threshold will increase to 10% of the patient's income in 2017. On September 22, 2015, Congresswoman Martha McSally (R-2-AZ) introduced legislation to prevent the threshold from increasing. On September 13, 2016, the bill was approved by the House, with Congressmen Charlie Dent (R-15-PA), Mike Fitzpatrick (R-8-PA) and Leonard Lance (R-7-NJ) voting in favor and Congressman Matt Cartwright (D-17-PA) opposing the bill. The legislation has been forwarded to the Senate for consideration.