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Legislative Update

On March 15, 2022, President Biden signed the omnibus bill (H.R. 2471) funding the federal government for fiscal year 2022, which actually began on October 1, 2021. While the bill does contain some important healthcare provisions, it also leaves out several key components that many in the healthcare community had been pushing for.

First, let's address what the bill did accomplish. In addition to providing funding for several government agencies that support the healthcare industry, such as CMS, HHS, and HRSA, the bill contained several provisions that directly impact healthcare entities.

- **Telehealth Waivers** – This provision has received the most attention. During the pandemic, CMS temporarily expanded the telehealth services that Medicare would cover. This includes waiving restrictions regarding where services can be provided, removing the requirement for an in-person visit within six months of telehealth services, expanding the practitioners eligible to provide telehealth services, and allowing audio-only telehealth services. However, many of the temporary provisions are set to expire at the end of the public health emergency (PHE). Currently, the PHE is scheduled to expire on April 16; however, it is likely to be extended for another 90-day period, which would carry it into mid-July. While many providers have pushed for the telehealth waivers to become permanent, the omnibus bill provides a temporary extension for 151 days after the end of the PHE. Accordingly, if the PHE is extended into July, this provision would allow the expanded telehealth services to continue through most of 2022. Purportedly, this temporary extension will allow Congress more time to study the impacts of telehealth and determine whether to make the waivers permanent.
- **340B Drug Discount Program** – Certain providers at risk of losing eligibility to participate in the 340B program due to changes in patient mix and volume during the COVID-19 pandemic will now retain eligibility for the program through December 31, 2022. Participants that had already lost eligibility prior to this bill becoming law can file a self-attestation within 30 days (i.e., by April 14, 2022) to be reinstated.
- **Telemedicine Costs for HSAs** – Under current tax law, in order to qualify for tax-advantaged health savings accounts (HSAs), an insured's health plan must carry a high deductible. Statutorily, the annual deductible must be met before the health plan can cover telehealth services. Prior COVID-relief legislation had waived that requirement, but the waiver expired at the end of 2021. This left employers and health plans, as well as patients, in a quandary, as continuing to cover telehealth services without first meeting annual deductibles would cause the employees to lose their eligibility to use the HSAs. The omnibus bill allows employers and high-deductible health plans to resume coverage of telehealth services from April 1, 2022, through December 31, 2022, without requiring that the deductible be met first. However, it does <u>not</u> cover the first quarter of 2022, leaving uncertainty about how claims for that period should be addressed. Further, the waiver applies only during this defined period, regardless of the plan year, which can create complications for plan sponsors.

Now we'll address several key issues that were not addressed in the omnibus funding bill and remain points of discussion with Congress.

- **Medicare sequester** – A 2% Medicare sequester, stemming from a 2011 law requiring across-the-board spending cuts, was suspended during COVID as healthcare providers were faced with extreme financial and operational challenges. Currently, sequestration is scheduled to resume in phases, beginning April 1, 2022. A 1% reduction in reimbursement would apply from April 1 through June 30, 2022, increasing to 2% starting July 1. Additionally, automatic PAYGO cuts of 4% are currently scheduled to resume in 2023. Providers are urging Congress to extend the suspension of the sequester cuts as they continue to recover from COVID-related impacts to their practices.
- **Provider Relief Funds** – Some providers have pushed for additional provider relief funds to offset financial losses incurred during the most recent COVID surges. Prior distributions only addressed periods through March 31, 2021, while many providers experienced increased costs and/or lost revenue after that due to impacts from the delta and omicron surges. Additionally, HRSA has indicated that the Uninsured Program will no longer accept claims for COVID testing and/or treatment after March 22, 2022, as the funds designated for that program are depleted. Further, HRSA will not accept vaccination claims after April 5, 2022 due to lack of funds. Unless Congress approves additional funding for the Uninsured Program, providers will be unable to receive reimbursement for the provision of these services to uninsured patients.
- **MedPAC Recommendations** - On March 15, 2022, the Medicare Payment Advisory Commission (MedPAC) released its report to Congress addressing recommendations regarding payment rates for various healthcare services. This report recommended no changes in reimbursement for services provided by physicians and other healthcare professionals. Physician groups, including the American Medical Association (AMA) and Medical Group Management Association (MGMA) immediately reached out to Congress, imploring them not to freeze physician payments, noting that this recommendation does not appropriately take into account the impending sequester cuts, inflationary increases, and continued pandemic-related financial impacts physician practices are facing.

Clearly, healthcare providers continue to face extreme uncertainty. While the number of COVID-19 cases and hospitalizations has significantly declined in recent weeks, no one knows what the future holds. In the meantime, providers have experienced drastic increases in expenses, both for labor and supplies, which are squeezing margins and creating even more concern over potential declines in reimbursement rates. We will continue to watch for developments relating to these ongoing concerns that will have such a significant impact on healthcare providers.