Proskauer

Real-Time Health Care Reform: What's Affecting Provider Operations Today

April 2, 2010

Understanding and interpreting the new sweeping healthcare reform changes is a top priority for all health care providers. To help clients work through the myriad of issues and changes, the Proskauer Health Care Reform Task Force is publishing a series of targeted client alerts that will focus on key elements. This client alert focuses on provisions enacted as part of the Patient Protection and Affordable Care Act (H.R. 3590) (the Reform Act), as amended by the Health Care & Education Affordability Reconciliation Act of 2010 (H.R. 4872) (the Reconciliation Act), which are immediately applicable to health care providers and organizations.

Hospitals

The Reform Act expands the availability of Section 340B program drug pricing to certain types of hospitals, including children's hospitals, critical access hospitals, and rural referral centers, which meet specified criteria. This change is effective for drugs purchased on or after **January 1, 2010**.

The Reform Act restricts physician ownership in hospitals, whether rural or urban, to hospitals that have a Medicare provider agreement in place as of December 31, 2010. Further, such hospitals are strictly limited in their ability to increase the number of beds, operating rooms, and procedure rooms, and may not increase the percentage of equity interests held by physicians.

Teaching hospitals will be affected, usually positively, by the Reform Act provision permitting resident time spent in non-provider settings to be counted toward full-time equivalency for Medicare graduate medical education payments. This is effective for cost reporting periods beginning on or after **July 1, 2010**.

Physician Office-Based Practice

The Reform Act requires that physicians providing advanced imaging services in their offices immediately begin disclosing the identity of alternative providers to patients. This provision adds this disclosure requirement by amending the “in-office ancillary” exception to the federal physician self-referral law, effective for services provided after January 1, 2010. The requirement applies to magnetic resonance imaging, computed tomography, and positron emission tomography. The Secretary of Health and Human Services may add other radiology services to this list in the future. Referring physicians must inform patients in writing at the time of the referral that the patient may obtain the services from a source other than the group practice and provide the patient with a written list of alternative suppliers in the area.

The Reform Act also reduces Medicare payment for multiple imaging procedures, effective for services provided on or after **July 1, 2010**, by increasing the Part B fee schedule multiple procedure reduction from 25 percent to 50 percent.

Orders for Durable Medical Equipment and Home Health Services

Medicare covers home health services and durable medical equipment, but only if a physician orders them and certifies that they are necessary. The Reform Act tightens these requirements in several respects.

- Effective now:
  - A face-to-face patient encounter – with the ordering physician or a nurse practitioner, physician assistant, or certified nurse specialist working in collaboration with the physician – is required before Medicare or Medicaid durable medical equipment or home health services are ordered (effective for services ordered or certifications made after January 1, 2010 for home health services and the date of enactment for durable medical equipment); and
  - For services ordered or physician certifications made after **January 1, 2010**, the ordering physician must maintain, and provide to HHS as requested, documentation concerning orders or referrals for durable medical equipment, home health services, and other Medicare-covered services as determined by HHS.
- Effective for Medicare durable medical equipment or home health services ordered or certified after **July 1, 2010**, the ordering physician must be enrolled in Medicare.

This client alert is meant to summarize and highlight some key, immediate (or imminent) changes to the law impacted by health care reform. We will provide more in-depth analysis of some of the issues highlighted above in future client alerts and will continue to update our clients on new developments in this rapidly changing area of the law. In the meantime, please feel free to contact your Proskauer attorney or any member of our Health Care Reform Task Force should you have questions regarding how health care reform may impact you.

To ensure compliance with requirements imposed by U.S. Treasury Regulations, Proskauer Rose LLP informs you that any U.S. tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Related Professionals

- **Ira M. Golub**
- **Steven D. Weinstein**
  Partner
- **Edward S. Kornreich**