



WOODS ROGERS  
ATTORNEYS AT LAW

## Impact of Health Care Reform on Physicians

By Christine F. Underwood, Esq.

WOODS ROGERS PLC

# Health Group Update

President Obama signed the Patient Protection and Affordable Care Act of 2010 (the “Act”; Pub. L. 111-148) on March 23, 2010. The Act was amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152), signed into law on March 30, 2010. Together, these laws will have a significant impact on health care providers. This E-Alert summarizes some of the more noteworthy provisions affecting physicians and hospitals. Numerous other provisions are contained in the Act which relate more directly to employers and to health plans.

### PHYSICIANS

**Self Referrals:** The Act requires a referring physician to inform patients *in writing*, at the time of a referral, that patients may obtain specified services (e.g, MRI, CT, PET) from a provider other than the referring physician or another provider in the same group practice and to provide the patient with a written list of suppliers who furnish such services in the area where the patient resides. **Effective Date: January 1, 2010.**

**Overpayments:** Any identified overpayments must be reported and returned within 60 days to the applicable government contractor, intermediary, or carrier along with a written notification of the reason for the overpayment. Failure to return such payments within 60 days can trigger liability under the False Claims Act. **Effective Date: March 23, 2010.**

**Anti-Kickback Statute Amendments:** The Act amends the Anti-Kickback statute to state that “a person need not have

actual knowledge” of the statute to commit a violation. This new standard could create exposure even where there is no specific intent to violate the statute. Further, violations of the Anti-Kickback statute now constitute a false or fraudulent claim for purposes of the False Claims Act. Previously, prosecutors had to prove another connection between an anti-kickback violation and submission of a false claim. **Effective Date: March 23, 2010.**

**False Claims Act Qui Tam Actions:** The Act eliminates the bar against qui tam litigation based on “public disclosure” of the alleged fraud. Previously, such action would be barred where the allegations had been publicly disclosed in a criminal, civil, administrative or certain other proceedings, or by the news media. **Effective Date: March 23, 2010.**

**Civil Monetary Penalties:** The Act expands the application of civil monetary penalties (CMPs) to the failure to report and return an overpayment; making a false statement in a provider enrollment application; making a false statement in a claim for payment; failure to timely grant access to the Department of Health and Human Resources (“HHS”) for investigations, audits or evaluations; and ordering or prescribing a medical item or service for an excluded individual. **Effective Date: March 23, 2010.**

**Self-Disclosure:** The Act establishes a self-disclosure protocol for actual or potential violations of the Stark Law, and grants “HHS” the discretion to reduce any amounts due for violations to an amount less than the statutory amount.

HHS may consider the following factors: 1) nature and extent of the improper or illegal practice; 2) timeliness of self-disclosure; 3) cooperation in providing additional information related to the disclosure; and 4) such other factors as HHS deems appropriate. **Effective Date: Following establishment of procedures required on or before September 23, 2010.**

**Physician Ownership of Hospitals:** The Act limits the Stark exception that allows physicians to have an ownership interest in hospitals as long as the interest is in the whole hospital. Physicians will generally be prohibited from referring to a hospital in which they have an ownership interest. Certain grandfathering provisions permit existing physician-owned hospitals to qualify for the whole hospital exception, and set strict limitations on the expansion of any such facilities including a prohibition on any increase in the percentage of the physicians' ownership interests above that held on March 23, 2010. The Act also requires each hospital owned in whole or in part by physicians to submit an annual report containing a detailed description of each physician and other owner or investor and the nature and extent of all ownership interests. Such information will be made public on a website maintained by CMS. Guidance for this reporting requirement is expected within 18 months of enactment (projected to be September 2011), at which time the disclosure requirements will begin. **Effective Date: December 31, 2010.**

**Transparency:** The Act requires manufacturers that provide a payment or other item of value to a physician (or to an entity or individual at the request of or designated on behalf of a covered recipient) to disclose annually the value, nature, purpose, and recipient of the payment. This provision generally applies to device, drug, medical supply, and biologic companies, and requires reporting information related to payments and other transfers to physicians and teaching hospitals for values of \$10 or more (\$100 aggregate in a calendar year). **Effective date: March 31, 2013.**

**Medicare Payment Changes:** The Act provides a 10% bonus on select primary care services for physicians in family medicine, internal medicine, geriatrics and pediatrics whose Medicare charges for office, nursing facility and home visits comprise at least 60% of their total Medicare charges and to general surgeons performing major surgery in health professional shortage areas. For 2010, payments for psychotherapy ser-

vices will increase by 5%. Also in 2010, the Act re-establishes the national average "floor" on Medicare's geographic payment adjustment ("GPCI"). In 2010 and 2011, Medicare will reduce the GPCI adjustment for physician practice expenses in rural and low-cost areas, and in 2011, will bring the GPCI adjustment up to the national average for "frontier" states. The American Medical Association (AMA) estimates that, in 2010, Virginia Physicians will see a 1% pay increase due to work GPCI; a 1.3% pay increase due to PE GPCI; and a 2.3% pay increase due to combined work and PE GPCI. Incentive payments of 1% in 2011 and 0.5% in years 2012-2014 will continue for voluntary participation in Medicare's Physician Quality Reporting Initiative (PQRI). An additional 0.5% incentive payment will be made to physicians who participate in a qualified Maintenance of Certification Program (quality practice-based learning programs through specialty boards). Beginning in 2015 physician payments will be reduced if they do not successfully participate in the PQRI program. In 2015, the penalty will be 1.5% increasing to 2% in subsequent years. **Effective Date: as above.**

**Medicaid Payment Changes:** Medicaid payment rates to primary care physicians will be raised to no less than 100% of the Medicare payment rates for 2013 and 2014.

**Medicare Prescription Drug Coverage:** Medicare patients whose prescription expenses reach Medicare Part D coverage gap, known as the "donut hole," will receive a \$250 rebate in 2010. During the next ten years, the beneficiary co-insurance rate for this coverage gap will be narrowed in phases from the current 100% to 25% in 2020. **Effective Date: 2010.**

## HOSPITALS

**Value-Based Purchasing:** The Act establishes a value-based purchasing incentive payment to acute care hospitals paid under the Inpatient Prospective Payment System (IPPS) based on specific performance standards. For the first year, incentive payments will be based on measures related to: 1) acute myocardial infarction (AMI); 2) heart failure; 3) pneumonia; 4) surgeries; and 5) healthcare-associated infections. **Effective Date: On or after October 1, 2012.**

**Readmissions:** The Act defines a "readmission" as the admission to the same hospital from which the patient was discharged, or to another hospital, within a time

period specified by HHS (the Act uses 30 days as an example) from the date of the patient's discharge. The Act reduces Medicare payments based on the percentage of potentially preventable readmissions for certain conditions. Effective October 1, 2012, conditions subject to this provision are AMI, heart failure, and pneumonia, and the readmission period is 30 days. Beginning in 2015, the program will expand to include: acute myocardial infarction coronary artery bypass graft, percutaneous transluminal coronary, and certain other vascular procedures. The Act also requires HHS to publish hospital readmission rates on a "Hospital Compare" website. **Effective Date: October 1, 2012.**

**Hospital Acquired Conditions:** Beginning in 2015, Medicare will reduce payments by 1% to hospitals in the highest quartile with respect to rates of hospital acquired conditions (HAC). A HAC is a condition subject to payment restrictions under IPPS payment rules and any other condition determined appropriate by HHS that an individual acquires during a stay. HHS shall study the possibility of expanding the hospital acquired conditions policy to other types of facilities and report to Congress no later than January 1, 2012. **Effective Date: 2015.**

**Residency Redistribution Program:** HHS will implement a new residency redistribution program which will redistribute residency positions that have been unfilled for the prior three cost reports. At least 75% of the previously unfilled slots must be used for primary care or surgery residents. **Effective Date: January 1, 2011.**

**Disproportionate Share Hospitals:** The Act adjusts downward the payments received by Medicare disproportionate share hospitals (DSH). Beginning in 2015, Medicare DSH payments to acute care hospitals paid

under IPPS will be reduced to 25% the amount that would otherwise be paid. **Effective Date: 2015.**

**Tax Exempt Hospitals:** The Act establishes four specific requirements for tax-exempt hospitals. Failure to meet these requirements may result in the imposition of a substantial excise tax. They are: 1) conducting a community health needs assessment and adopting an implementation strategy to meet the needs identified in the assessment; 2) adopting a financial assistance policy which specifies: a) eligibility criteria for financial assistance; b) basis for calculating charges to patients; c) method for applying for financial assistance; d) actions that will be taken in the event of nonpayment if the hospital does not have a separate billing and collections policy; and e) measures to widely publicize the financial assistance policy within the community served; 3) setting a limitation on charges for emergency or medically necessary care to individuals eligible for assistance not more than the amounts generally billed to those who have insurance coverage and prohibiting the use of gross charges; and 4) undertaking reasonable efforts to determine whether an individual is eligible for assistance under the financial assistance policy before engaging in extraordinary collection actions. **Effective Date: March 23, 2010.**

## PHYSICIANS AND HOSPITALS

**Timely Filing of Fee-For-Service Claims:** The Act reduces the statutory timely filing deadline for Medicare fee-for-service claims under Medicare Parts A and B to 1 year, effective for all Part A and B services furnished on or after January 1, 2010. All Medicare claims with dates of service prior to January 1, 2010, must be filed by December 31, 2010. **Effective Date: January 1, 2010.**

## Health Care Group:

Agnis Chakravorty  
chakravorty@woodsrogers.com  
540.983.7727

Michael Cole  
mcole@woodsrogers.com  
434.797.8205

H. Allen Glover, Jr.  
glover@woodsrogers.com  
540.983.7636

Alton L. Knighton, Jr.  
knighton@woodsrogers.com  
540.983.7632

Heman A. Marshall, III, Chair  
marshall@woodsrogers.com  
540.983.7654

Thomas T. Palmer  
palmer@woodsrogers.com  
540.983.7686

Elizabeth G. Perrow  
eperrow@woodsrogers.com  
540.983.7707

Christopher W. Stevens  
cstevens@woodsrogers.com  
540.983.7538

Christine F. Underwood  
cunderwood@woodsrogers.com  
540.983.7512

Dudley F. Woody  
woody@woodsrogers.com  
540.983.7683

**Want to know more about the new Health Care Reform?**

**“Impact of Health Care Reform on Employers  
and Healthcare Providers”**

**May 6, 2010  
8:30 am—12:00 pm**

**Claude Moore Education Complex  
109 Henry Street**

**Cost: \$60 per person or \$50 per person for two or more from the same company**

**Register by emailing [seminars@woodsrogers.com](mailto:seminars@woodsrogers.com), calling 540.983.7712**