Health Care Legislative & Public Policy ADVISORY

APRIL 23, 2021

Sequester Relief Extension Highlights Potential Reimbursement Cliff for Medicare Providers in 2022

By Elinor Hiller, Brian Lee, and Jane Lucas

Before the COVID-19 pandemic, Medicare payments had been subject to “sequestration” in the form of a 2 percent payment reduction for more than seven years. Designed as a budget enforcement tool to control federal spending, the statutory requirement for this sequester was enacted as part of the Budget Control Act of 2011 (BCA) and applied to payments starting in fiscal year 2013. Through a provision included in the CARES Act (in response to COVID-19), Congress placed a moratorium on this Medicare sequester, effectively increasing Medicare payments by 2 percent until April 1, 2020. On April 14, 2021, President Biden signed H.R. 1868 into law, retroactively extending the moratorium on the 2 percent Medicare sequestration until December 31, 2021. While the recent moratorium extension until the end of the year gives welcome stability and relief for health care stakeholders, the timing means that reinstatement of the 2 percent Medicare sequester is now one of several Medicare “cuts” looming for 2022.

In addition to the 2 percent Medicare sequester, the American Rescue Plan Act (ARP) is projected to trigger the Statutory Pay-As-You-Go Act of 2010 (Statutory PAYGO) Medicare payment cuts. Absent congressional action to waive the Statutory PAYGO rules for the ARP (and for other future legislation that could trigger Statutory PAYGO), Statutory PAYGO will result in an additional 4 percent Medicare cut in 2022. The combined effect of returning to the 2 percent BCA sequester and the 4 percent Statutory PAYGO sequester (if not averted by Congress) would be a 6 percent across-the-board cut to all Medicare payments in early 2022.

Providers paid under the Medicare Physician Fee Schedule (PFS) could face even a larger cliff. At the end of 2020, Congress enacted legislation that, among many other major policy changes, provided a 3.75 percent increase in reimbursement for PFS services provided in 2021. This bump-up was provided in large part due to the impact of the Calendar Year (CY) 2021 PFS final rule, which reshaped the reimbursement landscape and was projected to significantly reduce reimbursement for many health care practitioners. Absent further congressional action, the additional 3.75 percent reimbursement will disappear beginning January 1, 2022.

Combined with the effects of sequestration, the PFS reimbursement could face an automatic 9.75 percent reduction in 2022 compared with 2021. The Centers for Medicare & Medicaid Services may take regulatory steps to try to rework the CY 2022 PFS to account for or protect clinicians from these impending cuts. However, congressional action would be needed to fully address the 2 percent sequester and 4 percent Statutory PAYGO cuts, as well as the eventual expiration of the 3.75 percent reimbursement bump-up.

This advisory is published by Alston & Bird LLP to provide a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may also be considered attorney advertising under court rules of certain jurisdictions.
You can subscribe to future Health Care and Legislative & Public Policy advisories and other Alston & Bird publications by completing our publications subscription form.

If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following: