AVENUE SOLUTIONS

JPS | Jennings Policy Strategies Inc.
1301 Pennsylvania Avenue NW
Suite 500

CalPERS July Board Update

I. DELIVERY REFORM DEVELOPMENTS:

A. End of Life Counseling: On July 8th, Centers for Medicare and Medicaid Services (CMS) announced a plan for Medicare to reimburse physicians for counseling on end of life care beginning on January 1st following a 60-day comment period. This is the same counseling that was referred to by some as "death panels." Though one bill was recently introduced to block the compensation, the debate is not nearly as contentious. The Administration and advanced illness patient advocates are hopeful that the regulation will open the door for further conversations about the end of life issue.

B. Wyden-Hatch Chronic Care Bill: In May, Finance Committee Chairman Orrin Hatch (R-Utah) and Ranking Member Ron Wyden (D-Ore) announced the formation of a bipartisan initiative spearheaded by Finance Committee members Johnny Isakson (R-GA) and Mark Warner (D-VA) to explore cost effective solutions to improve health outcomes for Medicare patients living with one or more chronic conditions. On July 28th, the Committee released the 530 submissions from interested stakeholders across the country who provided thoughtful ideas on ways the Medicare program can better deliver health care to beneficiaries with multiple chronic illness. The committee staff will process these throughout August and hearings will likely be held in September and October on potential legislative proposals.

CalPERS Implications:

- Both the Administration's announcement around end-of-life counseling reimbursement under Medicare (and the relatively modest political push-back on it) and the bipartisan chronic care management legislation that the Finance Committee is considering are encouraging developments. They signal a less polarized and more constructive openness to address the elements of health care needs that disproportionately and overwhelmingly drive costs AND have the greatest potential to improve the care experience by patients and their families. We will continue to track progress on both issues to identify ways for CalPERS to engage and help move the debate forward.

C. Medicare Hip-Knee Replacement Bundling Initiative: On July 9th CMS announced a plan to pay physicians a lump sum for hip and knee replacements rather than paying for the operations, hospitalizations and rehab separately. Hospitals would be held accountable for any replacement surgery they perform and any follow-up care 90 days after the patient's discharge and payment would be tied to quality and outcomes. The new model would be mandatory in 75 randomly selected geographic areas. If it is adopted after a 60-day comment period, it will impact more than 100,000 Medicare beneficiaries starting in January. A voluntary trial previously showed promising results and according to CMS, could save up to $150 million over five years.

D. **Home Health Value Based Design:** On July 6th, CMS released a proposed rule providing details of a pilot program to encourage home health agencies to move toward value-based purchasing. Under the program, Medicare would increase or reduce payments to home health agencies by up to 8 percent depending upon their performance on specified quality metrics. This program is set to begin in 9 states in January, though California is not one of them.

CalPERS Implications:

- The bundling initiative is consistent and aligned with CalPERS' previous initiatives to apply bundling and reference pricing techniques to both utilize incentives for enrollees to choose high quality and cost effective providers for elective surgery. Interestingly, many of the health care providers raised openness to the Administration policy, particularly if implemented with clear expectations and their input.
- The home health value based design may be of interest to CalPERS benefit managers to determine applicability to home care services and cost experience within system.
- CalPERS staff/consultants will continue to collaborate with CMS on future efforts with the goal of determining if there are other areas of mutual interest as well as to insure that approaches taken by CMS do not undermine ongoing initiatives by CalPERS.

II. PRESCRIPTION DRUG COSTS:

A. **Medicare Trustee/Actuary's Report:** The report released on July 22nd concluded that the Trust Fund will be able to meet its financial obligations for another 15 years and will become insolvent in 2030, the same projection as last year. Spending increased in 2014 by 2.3%, (the highest in three years -- but low by historical standards), and was driven largely by increases in prescription spending, which increased 10.9%. This jump in costs is attributed to increased spending on hepatitis C treatments.

B. **Oncologists Voice Displeasure on Rx Costs for Patients:** On July 23rd, a group of over 100 oncologists published an editorial in the Mayo Clinic's medical journal voicing their displeasure with the impact of both high drug prices and higher cost sharing are having on their patients. In particular they focused on difficult decisions forced by these burdens of prolonging or increasing quality of life and putting themselves and their families in extreme debt. They estimate that 10-20% of cancer patients don't take their treatment as prescribed because of high costs.

C. **CMS Biosimilar Reimbursement:** CMS recently proposed that all biosimilars of a single reference product be assigned one reimbursement code and that the reference product be assigned its own code. No formal statements of support have been made but some purchaser groups seem to be leaning towards supporting this policy. Conversely, however, Representative Anna Eshoo (D-CA) and Rep. Joe Barton (R-TX), supported by the Biosimilars Forum, advocate for each biosimilar to have its own unique payment rate and unique code. Comment is due by September 8th on this proposed rule.

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D. **21st Century Cures:** On July 10th, the House passed the 21st Century Cures Act by a vote of 344-77. The Act includes $9.3 billion to the NIH and FDA over 5 years, attempts to modernize the FDA's drug/medical device review process, and contains undesirable market exclusivity provisions for some drugs to treat rare childhood illnesses. The Senate is expected to vote on similar legislation in the fall at the earliest. Purchasers are working against provisions that block generic competition.

E. **Trans-Pacific Partnership:** A wide range of groups including consumers, generic manufacturers and others are concerned about the impact of market exclusivity and patent protection provisions included in leaked documents related to ongoing negotiations over the Trans-Pacific Partnership (TPP) pact. In particular, the inclusion of a universal 12 years of market exclusivity for biologics would impede Congress' ability to reduce market exclusivity provisions to seven years, as has been included in the President's last five budget proposals. In addition, a proposal of 12 years of clinical trial data exclusivity, which goes beyond current US regulations of four years has many concerned about a further delay of market entry for generics.

   i. **CalPERS Implications:**
      - Consistent with the experience of CalPERS medical spending trends, prescription drug price/cost increases continue to be primary contributor of increasing premiums for both public and private purchasers. As evidence is increasing, so to is media attention.
      - Notwithstanding the disconcerting Rx drug costs trends, a good many policymakers in the Congress are promoting proposals could create more challenges (C, D, and E above – i.e., how biosimilars are treated, 21st Century Cures and the TPP trade pact).
      - CalPERS is now considering whether or not to sign a planned August letter with the National Coalition on Health Care (NCHC) and the Generic Pharmaceutical Association (GPhA) to urge the Senate to resist policies to extend market exclusivity (and delay generic competitors from entering the marketplace) as an "incentive" for Rx drug manufacturers to produce new medications and treatments. CalPERS staff is also considering whether to send a CalPERS-only letter that can highlight the cost concerns from a the system's perspective.
      - CalPERS may wish to consider submitting comments on the proposed CMS rule on appropriate Medicare reimbursement coding of biosimilars. CMS' ultimate decision could set a precedent that could help or hinder purchasers' actions in the future on this subject.
      - Board, career staff and your consultants continue to look to find ways to creatively highlight the Rx drug cost burden and its implications as well as to embrace policy approaches that spur on additional competition and choice in the market place (such as supporting accelerated review/approval of biosimilar medications and clearing out the generic drug approval pathway).

III. MISCELLANOUS DEVELOPMENTS OF RELEVANCE TO CalPERS:

A. **Legislative update on the "Cadillac Tax":** Without changes to the underlying law (or to benefits structures), it is clear that some CalPERS plan offerings will hit the threshold for the Cadillac Tax in 2018. And, because of the indexing provision, it is virtually inevitable that most all of CalPERS plans will eventually cross over the threshold. There is currently legislation in the House introduced by Rep. Joe Courtney (D-CT) with 118 Democratic and 14 Republican sponsors, and another from Rep. Frank Guinta (R-NH) with 81 Republican sponsors to totally repeal the "Cadillac tax." In addition, different business and labor coalition efforts to highlight the tax have been growing steam. Most recently, a new organization called the "Alliance to Fight the Forty" (referencing the 40% tax if the cost threshold in the law is breached) has been formed. In addition to labor and business interests, other partners from the insurer, pharmaceutical and public purchaser community (e.g., the California Schools VEBA) have joined this coalition. While few expect this un-offset repeal policy to be enacted in an Obama Administration (who will strongly oppose any such bill), the interest and activity against the underlying policy is increasing.

B. **Executive action update on the implementation of the "Cadillac Tax":** On the implementation front, the IRS released a supplement to their previous notice on the Cadillac Tax on July 30th. It requests information and feedback on how the IRS should identify Americans who may be liable for the excise tax, employer aggregation and the allocation of the tax among the applicable taxpayers (as well as operational issues).

   i. **CalPERS Implications (regulatory):** CalPERS, courtesy of career staff, have submitted comments to IRS about how best to implement the current policy to avoid as many unintended consequences as is possible. CalPERS may wish to look at most recent IRS supplement to comment further. They are currently reviewing the latest notice to make that determination.

   ii. **CalPERS Implications (legislative):** As to positioning around bipartisan legislation, CalPERS Board will need to discuss whether they wish to engage in support of such legislation at this time. There are clear arguments in favor, including the underlying statute will create notable disruption in CalPERS plans and bipartisan legislation is available to embrace. However, questions that remain include: (1) When is right time (if, as is likely, such legislation will not move before the next President is sworn in), (2) Without an offset, such a policy will substantially increase the deficit; (3) There are other approaches short of repeal, which are more likely to be eventually enacted (and could assist CalPERS notably IF the system is represented as part of the drafting process).