

Federal Health Policy Report for CalPERS November 2015

I. DELIVERY REFORM DEVELOPMENTS:

- A. CMS Continues Move Toward Value Purchasing:** In a response to CMS' request for comments on how it should structure the new physician payment policy that was included in the Medicare Access and CHIP Reauthorization Act (MACRA) passed earlier this year, the American Hospital Association, the American Medical Association and other provider groups submitted a letter to CMS cautioning that it needs better measures before it ties physician pay to quality and outcomes performance. The law eliminated the rarely implemented sustainable growth rate formula in favor of a value-based payment system to reward or limit payments to doctors under traditional fee-for-service medicine. The new merit-based incentive payment system (MIPS) is slated to go into effect in 2019. The American Medical Association has outlined 10 principles it would like CMS to consider while making the payment transition, including making requirements flexible enough for a variety of patient populations and organizational structures. The AMA also said current programs for gathering data and measuring Medicare quality cannot simply be combined to form the basis for the new merit-based system. CMS will take the comments into consideration before it issues a proposed rule, which is expected sometime in the spring of next year.
- B. Mandatory Knee and Hip Bundles:** In mid-November, CMS finalized the rules for its first mandatory bundled-pay demonstration and in the process, decreased the number of regions that will participate in the model. They also pushed back the start date from January 2016 to April 2016 to give hospitals more time to prepare. The final pay bundle rule requires about 800 hospitals in 67 metropolitan statistical areas -- a decrease from the proposed 75 geographic areas -- to take responsibility for quality and cost of a 90-day episode of care around a hip or knee replacement. The bundle includes Medicare Part A and B services and items during that time, with a few exceptions. Hospitals will receive additional pay if quality and spending performance is strong and will potentially have to repay Medicare for a portion of spending for care following a hip or knee replacement if their performance is not as strong.
- C. CalPERS Implications:** The above-mentioned Medicare delivery reform/value purchasing initiatives are designed to improve care and reduce costs, a long-time goal and commitment of CalPERS. They are similar to policies already being implemented by CalPERS.
- D. CalPERS Next Steps:** We are working with CalPERS staff to monitor and ensure that these and other announced federal delivery reform programs to ensure they do not inadvertently undermine system reforms that we are proposing and implementing. If they are not aligned, CalPERS staff will document challenges/problems and we will work with the HHS/CMS to modify accordingly.

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II. Cadillac Tax Updates

A. Ongoing Debate on the Cadillac Tax: The American Cancer Society [announced](#) that it has officially joined the national campaign to repeal the Cadillac tax. The President of the political arm of the Cancer Society said the 40 percent tax would have "a direct impact on the continued affordability of employer-sponsored health insurance that improves the chances of surviving cancer". The coalition leading the push for repeal – The Alliance to Fight the 40 – touted the latest endorsement as proof of mounting momentum for its cause. Notwithstanding their support, however, none of the bills proposing to repeal the tax that have been introduced in Congress appear to be gaining significant traction. Having said, as of this writing, there are ongoing discussions of delaying the tax for 2-5 years as part of a larger package renewing a number of expiring tax provisions being negotiated for consideration prior to the end of the year. While there is a possibility that this will occur, most analysts believe it unlikely that everything necessary to fall in place will happen prior to Congress recessing for the Christmas' holiday. Regardless, the growing bipartisan concern and engagement by the Congress and many Presidential candidates signals a greater likelihood that the underlying provision of the law will be delayed, modified or repealed prior to the 2018 effective date of the current law.

- i. **CalPERS Implications:** Questions remain as to how the law will be implemented by the IRS AND whether the law will be delayed, amended or repealed prior to the 2018 effective date by the next Administration and Congress.
- ii. **CalPERS Next Steps:** The Board will be presented additional background information on this subject, data on the impact of the tax on plan design, as well as options for taking a formal position on the Cadillac tax at the January off-site. In the meantime, CalPERS staff and consultants will monitor progress of a possible delay in Congress as well as the release of IRS regulations.

III. MISCELLANEOUS DEVELOPMENTS OF RELEVANCE TO CalPERS:

A. Changes Relate to Exchange Enrollment: CMS recently released a proposed rule with wide-ranging changes to the ACA's exchange plans and related policies for 2017, including allowing issuers to standardize plan offerings by metal level, requiring states to select minimum network adequacy standards, counting out-of-network charges toward the maximum limits, changing the risk adjustment methodology and adding new options for the Small Business Health Options Program. The agency is also seeking comment on the idea of improving transparency by finding a way to designate network strength. Prior to the release, UnitedHealth Group Inc., the biggest U.S. health insurer, said it has suffered major losses on policies sold on the ACA's exchanges and will consider withdrawing from them possibly altogether by 2017. UnitedHealth Group has claimed it has lost \$425 million from health plans sold on the ACA's marketplaces, which forced the company to lower its profit projections for the rest of the year. It has also "pulled back" significantly on marketing its 2016 plans and cut commissions to insurance brokers to minimize enrollment growth.

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- i. **CalPERS Implications:** The exchanges are the primary conduit to expand health coverage to middle-class Americans. The United announcement is not a positive development but other major insurers are not yet following suit. In fact, Anthem, Aetna and Kaiser all explicitly announced in the aftermath of the United announcement that they are in the market for the long-term. Insurers are hoping more new consumers, especially those who are younger and healthier, will sign up so they can balance the risk from the initial surge of sick members.

Enrollment numbers in CA are generally better than in other states. However, over time, the question will be can affordability of these plans' premiums AND ongoing enrollment in them by those who have been enrolled be retained. To the extent they cannot and new enrollees cannot be secured (AND to the extent that some have hoped that the lessening numbers of uninsured will reduce cost shifting), this could be a disappointing development. Having said, it is also clear, that there has been very little dropping of Americans in employer-sponsored plans into the exchanges – as some (including the Congressional Budget Office) had suggested. That seems to be the case when CalPERS members as well.

- ii. **CalPERS Next Steps:** None necessary.

B. Prescription Drug Pricing:

- i. **HHS Forum:** Modern Healthcare released a new survey of CEOs of 100 hospital systems, insurance companies, large physician practices, trade groups and not-for-profits in which nearly seven-eighths said they favor the government taking a bigger role in curbing the rising cost of prescription drugs and nearly all say that the two-year run-up in drug prices has hurt their bottom lines. In the face of multiple similar surveys and with lawmakers from across the political spectrum questioning drug pricing, HHS held a forum in late November to discuss the challenges and solutions to ensuring patients have access to affordable, innovative medicines. HHS officials signaled that they want to help curb soaring prescription drug prices but didn't say what steps the administration might take or lay out a timetable. Instead, the forum was intended to air the views of insurers, drug companies, patient advocates and others in the debate.

On the same day as the forum, Republican Senators John McCain and Chuck Grassley sent a letter to HHS Secretary Sylvia Mathews Burwell urging her to certify some drugs as safe for importation from Canada. The letter says that Burwell should use the authority in the 2003 Medicare Prescription Drug Improvement and Modernization Act to allow importation if it would lower costs and pose no public health risk.

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- ii. **AMA Weighs In:** The American Medical Association is calling for a ban on drug advertising to consumers, citing it as a chief cause for the rise in prescription drug prices in an attempt to make drugs more cost-effective. The United States and New Zealand are the only countries that allow direct-to-consumer advertising on drugs. The market research firm, Kantar Media, estimates that spending on prescription drug advertising have increased by 30 percent in the last two years to \$4.5 billion. While there are likely notable constitutional free speech issues that are raised with the AMA position, it has, at minimum, raised the issue as to whether such ads should continue to be eligible for tax deductions as a business expense. In addition, the new AMA policy calls for more transparency in drug prices and costs and for the launch of an advocacy campaign around this topic – all positions consistent with CalPERS policy.
- iii. **Continued Congressional Interest:** U.S. Senators Susan Collins (R-Maine) and Claire McCaskill (D-Mo.), who together lead the Senate Special Committee on Aging, announced a bipartisan Senate investigation into pharmaceutical drug pricing. The Senators have requested documents and information from four pharmaceutical companies: Valeant Pharmaceuticals, Turing Pharmaceuticals, Retrophin Inc., and Rodelis Therapeutics.

Each request focuses on prescription drugs that have seen recent and significant spikes in price. The Senate Special Committee on Aging has tentatively scheduled an initial hearing on this issue for December 9, 2015 and will hold subsequent hearings, as needed, in the following months. The committee will focus on FDA's role in the drug approval process for generic drugs, the agency's distribution protocols, and, if necessary, its off-label regulatory regime. In addition, House Democrat leaders announced a new congressional task force into drug prices.

- iv. **CalPERS Implications:** The attention to drug prices by the Presidential contenders and on both sides of the aisle in Congress is a positive development for healthcare purchasers. However, the potential for substantive action to affect prescription drug prices in Congress remains unlikely for the immediately foreseeable future.
- v. **CalPERS Next Steps:** CalPERS staff and consultants will continue to track proposals from Congress as well as the Administration and to look for additional opportunities to ensure that incentives for innovation are balanced with affordability. We will also continue to work to ensure there is a broad understanding amongst policy makers of the impact of drug costs on payers like CalPERS.

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- C. Democratic Presidential Candidate Governor Martin O'Malley Proposes Comprehensive New Plan:**
- i. Innovation in Paying for Health Care.** The Governor proposes a new “Medicare Essential” program to provide comprehensive benefits—hospital, physician, prescription drug, and supplemental coverage—in one opt-in plan. He proposes to expand and build upon current payment models that promote widespread adoption of medical homes.
 - ii. Encourage Transparency and Fair Competition.** The Governor proposes to stop the use of hospital “charge masters” and in their place require clear and transparent bills. He will act to ensure that provider consolidation does not lead to higher prices and seek legislation to close loopholes companies use to game the tax code and to ban price-gouging profiteering in prescription drugs. He will urge Congress to allow Medicare to negotiate for better drug prices, together with Medicaid and the VA.
 - iii. Reduce Waste and Empower Patients Through Data and Technology.** The Governor proposes to invest in Health Information Exchanges; to help health care organizations provide key data to patient accounts; and to ensure that medical record security will be a part of comprehensive federal cybersecurity protections.
 - iv. Build on the Affordable Care Act to Expand Coverage.** O'Malley has already proposed giving immigrants granted deferred action, including DACA recipients, access to Medicaid and to the health insurance exchanges created by the ACA. In addition, he would eliminate waiting periods for Medicaid coverage for New Americans, and support local efforts to provide primary care coverage to undocumented families. He also supports efforts to repeal the Cadillac tax.
 - v. Focus on Wellness and Prevention.** The Governor proposes to provide stable, five-year funding for the Affordable Care Act’s Maternal, Infant, and Early Childhood Home Visiting program and to protect the Prevention and Public Health Fund established by the Affordable Care Act. O'Malley will work to reauthorize and fully fund the Older Americans Act— ensuring access to basic supports like subsidized transportation, household management, personal care, nutrition assistance, and help with accessing medical services, benefit programs and other fundamentals of daily life – and require that the Medicare and Medicaid programs create a consistent set of incentives to encourage community-based care. O'Malley will encourage physicians to speak with their patients regarding end of life care, make templates for completing advance directives available for free, and support the implementation of patient wishes across all health care settings.
 - vi. CalPERS Implications:** Significant changes to Medicare, long-term care, coverage or drug pricing proposed by the Presidential candidates could have far reaching implications for CalPERS and members including changes in how members obtain coverage, how plans offer coverage, costs, and a number of other potential impacts.

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- vii. **CalPERS Next Steps:** CalPERS federal representatives will continue to monitor health care proposals from Presidential candidates and comment on their potential implications for CalPERS. For now, though, it is ill advised to spend too much time on evolving proposals until the field narrows, policy positions solidify and the election is engaged at the general election level.