

Federal Health Policy Report for CalPERS October 2016

I. PRESCRIPTION DRUG PRICE/COST DEVELOPMENTS OF RELEVANCE TO CalPERS:

- A. Goldman Sachs analysis finds that many pharmaceutical companies relying on price increases:** A recent Goldman Sachs analysis of price increases over the last five years found that some drug companies are relying significantly on increasing prices to improve their financial state. Topping the charts were Horizon Pharmaceuticals and Jazz Pharmaceuticals with about 60 percent of their sales attributed to price hikes. Other top companies were Concordia at 50 percent, Abbvie at 19 percent, and Pfizer at 17 percent. Eli Lilly, Celgene and Gilead were the lowest on the chart with 1 percent or less coming from price hikes. The report noted that this is likely an unsustainable practice and may be a significant public relations and political problem for these companies going forward due to consumer and political backlash about these increases.
- B. Merck and Aetna agree to value based contract:** Merck and Aetna reached an agreement to enter a value based contract for two type 2 diabetes drugs, Januvia and Janumet. The agreement adjusts Merck's rebates based in part on how these drugs perform in assisting Aetna's enrollees reach health and treatment goals. This agreement joins a growing number of others like this between manufacturers and insurers including contracts between Amgen and Sanofi with Cigna and Eli Lilly with Anthem.
- C. In-patient hospital drug spending increases:** A study conducted by the Federation of American Hospitals and the American Hospital Association found that hospital spending for in-patient drugs increased 23 percent from 2013-2015. Over the same time, spending for retail pharmacies increased only 9.9 percent. More than 90 percent of hospitals said that the increases were a significant strain on their budget. Following these findings, the American Hospital Association suggested reforms to deal with the price increases including more value based payment agreements, greater transparency and reporting on drug pricing, and allowing reimportation.
- D. PhRMA gears up for coming fights on drug pricing:** In response to recent reports of the problems posed by increasing prescription drug prices and the resulting consumer and political backlash, PhRMA is increasing its resources to defend itself. On October 25th it was reported that they increased their dues by 50 percent, increasing their annual budget to more than \$300 million. PhRMA has already spent over \$100 million toward defeating the California ballot measure to cap drug payments to VA prices and seem committed to dedicating major resources to defeat any state and federal measures they view as a threat. It is notable however, that a USC/LA Times poll from mid-September showed that 66 percent of registered voters still support the ballot initiative despite PhRMA spending throughout the summer to defeat the measure.

AVENUE SOLUTIONS

JPS

*Jennings Policy Strategies Inc.
601 13th Street, N.W.
Washington, D.C. 20005*

- E. CMS confirms Mylan overcharged for EpiPen:** On October 5th, CMS Acting Administrator Andy Slavitt confirmed in a letter to Finance Committee ranking member Senator Wyden that it had overpaid for EpiPen for several years due to Mylan’s misclassification of EpiPen as a generic rather than a brand. CMS received a rebate of 13 percent rather than 23 percent. Some analysts have estimated that this resulted in hundreds of millions of dollars in overpayment for the product across the country. Mylan maintains that it did nothing improper and pointed to a 1997 letter from CMS to Dey Laboratories, which Mylan subsequently purchased, saying that it was proper to classify the EpiPen as a generic. In a separate letter to the Attorney General, Senators Blumenthal, Grassley, and Klobuchar stated that the company “may have knowingly misclassified EpiPens.” It is likely that significant Congressional and regulatory agency scrutiny of Mylan will continue for the foreseeable future.
- F. National Academy of State Health Policy releases proposals to slow rising drug costs:** On October 18th, the National Academy of State Health Policy released a [report](#) outlining 11 solutions for rising drug prices. These included proposals on utilizing shareholder activism with state pension funds to influence pharmaceutical company activism, transparency, bulk purchases of broadly needed drugs that protect public health, reimportation, and utilizing state trade and consumer protection laws to address high prices.
- G. CalPERS Implications:** Studies continue to demonstrate that drug prices are a significant driver of costs and a concern for all payers, including consumers, labor, businesses, health plans and federal and state governments. The increased scrutiny is driving some companies within the industry to think of alternative positioning strategies (e.g., Allergan’s commitment to moderating pricing practices and Merck’s recent value purchasing agreement with Aetna). While these signals are encouraging, they have not yet seemed to impact the overall drug pricing trends that purchasers remain concerned about. Failure to find success in moderating these Rx drug cost trends will translate into higher premiums for which medications take up an increasing percentage of the overall health care spend.
- H. CalPERS Next Steps:** Since the upward prescription drug cost trend shows no signs of abating, we will continue to work with CalPERS staff to shed light on the implications of problematic pricing practices and support policies and other interventions to moderate this trend. We will also continue to advocate for tools that empower CalPERS as a purchaser. Moreover, CalPERS staff and consultants will continue to seek out and consider supporting efforts designed to lower overall prescription drug cost growth.

II. CADILLAC TAX UPDATE

- A. White House economic advisor warns against repealing Cadillac tax:** Chief Economist of the White House Council of Economic Advisors, Matt Fiedler, warned against repealing the Cadillac tax at an event at the Mercatus Center on October 11th. He stated that it

AVENUE SOLUTIONS

JPS

*Jennings Policy Strategies Inc.
601 13th Street, N.W.
Washington, D.C. 20005*

remains a way of addressing distortions such as discouraging payment reforms caused by the tax exclusion of employer sponsored health insurance. He further said that at the least, the tax should not be repealed until a suitable replacement is developed. The Administration continues to largely support the Cadillac tax but Fiedler did state that he believed that it could be further improved.

- B. CalPERS Implications:** While it has been clear that the Obama Administration is highly unlikely to make any significant further changes to the Cadillac tax, an incoming Administration is very likely to attempt to repeal or make changes to the Cadillac tax. The Clinton campaign has indicated that Secretary Clinton would repeal and likely replace the Cadillac tax. The Trump campaign does not have a specific policy for the Cadillac tax, but the repeal of major parts of the ACA would almost certainly include a repeal of the Cadillac tax. Speaker Ryan's "A Better Way" health care proposal, would cap the tax exclusion of employer sponsored health insurance. The Speaker Ryan proposal has been met with significant hostility from employer and labor groups with the ERISA Industry Committee concluding that the policy would ultimately result in "lower pay" for workers. As such, continued efforts to raise concern and urge action is advisable. Regardless, much discussion and debate will continue on this issue, particularly after the 2016 election and as we get closer to 2020, regardless of which party wins the Presidency.
- C. CalPERS Next Steps:** Continue to review, develop and promote helpful regulatory and legislative reform interventions that would mitigate against any negative impact on CalPERS plans and keep the Board informed of opportunities in this regard.

III. DELIVERY REFORM DEVELOPMENTS:

- A. CMS Mandatory models continue to face Congressional scrutiny:** Earlier this month, 178 House Republicans and one House Democrat sent a letter to Andy Slavitt, Acting CMS Administrator and the Center for Medicare and Medicaid Innovation (CMMI) Director Patrick Conway about the three mandatory demonstration projects including knee and hip replacement bundling, the proposed Medicare Part B demonstration, and the Cardiac Bundled Payment Model. The House members stated that they believed that these large scale projects went beyond the scope afforded to CMMI and that they would impact a large number of patients before knowing if they are helpful in improving quality and cost. They demanded that CMMI stop these and any future mandatory demonstrations. Many Republicans, and some conservative Democrats have long opposed CMMI and a draft House Appropriations Committee funding bill last year initially sought to defund CMMI. The mandatory programs such as the part B drug pricing demonstration have further attracted the attention of some moderate and even fairly liberal Democrats.

AVENUE SOLUTIONS

JPS

*Jennings Policy Strategies Inc.
601 13th Street, N.W.
Washington, D.C. 20005*

- B. MACRA final rule released:** On October 14th, CMS released the final Medicare Access and CHIP Reauthorization Act (MACRA) rule. The rule replaces the sustainable growth rate (SGR) payment formula. In the final rule, CMS allows a more gradual introduction to the new requirements under the law than some provider and hospital groups had feared. This includes using 2017 as a transitional year where practices only have to submit a minimal amount of data, for example reporting on one quality measure, but do have the option of taking further steps including joining an advanced alternative payment model (APM) and receiving significant incentive payments. According to the regulation, about 600,000 providers are impacted (about 380,000 providers are exempt due to falling below the threshold of 30,000 in Medicare Part B charges or 100 Medicare patients) and, by 2018, 25 percent of providers will participate in an Advanced APM. The flexibility and streamlining of reporting requirements was received positively by the majority of the provider community, but other analysts questioned if the amount of flexibility in the law would impede health reform efforts.
- C. Strong second year performance of Comprehensive Primary Care (CPC) initiative:** On October 17th, CMS announced largely positive results of the second year of its CPC initiative which encompasses 481 practices serving 376,000 Medicare beneficiaries and 2.7 million patients overall in 2015. Gross savings of the program nearly doubled from 2014 and showed improved quality outcomes including lower than expected hospital admission and readmission rates and positive patient experience measure outcomes. Their performance also exceeded benchmarks on preventive health measures.
- D. CalPERS Implications:** The implementation of MACRA is the most critical tool since the Affordable Care Act for moving physicians from a volume-based to a value-based system. CMS' announcement that it will phase-in changes addresses concerns raised by the physician community that the timeframes for reporting were too short. However, it delays potential movement by physicians into advanced APMs established by the law and increases the importance of payers remaining vigilant in urging the agency to continue to advance delivery system reform. On the CMMI front, strong results from programs such as the Comprehensive Primary Care initiative will help shield them from overly strong Congressional action, but the organization is still likely to face significant Congressional scrutiny.
- E. CalPERS Next Steps:** To continue to review proposed demonstrations to ensure they are consistent with CalPERS' current initiatives and urge the agency to move quickly and prudently in encouraging movement of providers towards value-based arrangements. In addition, review the findings of these delivery demonstrations once they are available and consider their implications to ongoing work and potential for further application to system contracting with plans and providers participating in CalPERS.

AVENUE SOLUTIONS

JPS

*Jennings Policy Strategies Inc.
601 13th Street, N.W.
Washington, D.C. 20005*

IV. MISCELLANEOUS UPDATES

- A. Part B premium increase:** On October 18th, it was announced that the cost of living adjustment (COLA) for Social Security would be 0.3 percent for next year. This small increase is likely to significantly raise part B premiums for about 30 percent of Medicare beneficiaries, including those dually eligible for Medicare and Medicaid (though they will be largely shielded as state Medicaid programs pay their premiums) as well as higher income, and newly enrolled beneficiaries. The exact increase is expected to be announced in November. The other 70 percent of Medicare part B beneficiaries are included in a “hold harmless” group and will only see their premiums increase by the same amount as their Social Security benefit increases. Following the announcement about the small COLA increase, Senate Finance Committee Ranking Member Ron Wyden stated that he would be looking at every option to ensure that Medicare beneficiaries premiums were affordable. A similar situation happened last year but most large increases were averted by a one year fix by Congress; however, that will not apply this year. As such, a new solution will be required and both parties are aggressively looking at options to address.
- B. HHS announces exchange premium increases for 2017:** On October 24th HHS announced that premiums for benchmark plans would increase 25 percent on average for the 39 states on the federal exchanges. The Kaiser Family Foundation pointed out that there was a significant difference between states with plans in Phoenix Arizona increasing 145 percent and plans in Cleveland Ohio actually decreasing 2 percent (KFF used major cities as a proxy for rates in the states). Plans in Los Angeles increased 5 percent.

Supporters of the law were quick to point out that only 6 percent of Americans get their health insurance in the individual market and about half of those receive subsidies that largely blunt these increases. Nevertheless Republicans, including Donald Trump, were quick to highlight this news as evidence that the Affordable Care Act was failing. The Clinton campaign pointed to fixes they have proposed including more generous tax credits, prescription drug cost containment, increasing enrollment in the exchanges, and public options. There will be significant attention paid to what happens during open enrollment which starts on November 1st and ends January 31st of 2017. HHS has projected that enrollment will grow by approximately 1 million and has announced a major push to increase enrollment with younger Americans and those in the “gig economy” working for companies such as Uber to improve the risk pool. Others, such as S&P, are projecting that enrollment will be relatively flat.