October 25, 2011

How to Save $5 Billion in Three Easy Steps: Regulatory Reductions Cut Through Healthcare's Red Tape

That is the expectation of the Centers for Medicare & Medicaid Services, which released three new rules in response to the Obama administration's directive to cut through healthcare's red tape. The combined rulemaking is intended to remove or revise outdated, duplicative, overly burdensome and unnecessary regulations, thereby saving the healthcare system an expected $1.1 billion per year and more than $5 billion over five years.

Earlier this year, President Obama instructed federal healthcare agencies to streamline regulations that impede flexibility, unnecessarily burden resources, reduce efficiency, increase costs and decrease quality of care. The result is CMS' rulemaking trilogy.

First, CMS has issued a proposed rule to significantly revamp numerous portions of the Medicare and Medicaid Conditions of Participation for hospitals. The revisions generally allow for greater flexibility in hospital governance and management, reduce certain reporting requirements and timelines, streamline medical staff membership matters, undo the burdens imposed by certain existing nursing regulations, and reduce redundancy in transplant regulations. CMS estimates that these changes could result in more than $900 million per year in cost savings.

The second proposed rule retools the Medicare and Medicaid Regulations applicable to nonhospital providers and suppliers, providing an expected annual savings of $200 million. By eliminating automatic deactivation from Medicare for those who have not submitted a claim in 12 consecutive months, removing the specific list of emergency equipment that ambulatory surgical centers (ASCs) must have on hand, updating obsolete e-prescribing technical requirements, and removing other outdated and overly prescriptive requirements, CMS has endeavored to improve transparency and help providers operate more efficiently.

CMS also issued a third, finalized rule aimed at amending the ASC Patient Rights Conditions for Coverage to change the date that ASC patients need to be informed of their rights, from in advance of the procedure date to the same day as the procedure. CMS expects this change to save ASCs $50 million per year by allowing for more same-day surgeries.

In announcing these rules, Health and Human Services Secretary Kathleen Sebelius said "[o]ur new proposals eliminate unnecessary and obsolete standards and free up resources so hospitals and doctors can focus on treating patients." However, whether the expected savings and efficiencies called for by the Obama administration will actually be achieved through these new rules remains to be seen. Many aspects of the proposed and finalized rules include sweeping changes that are widely expected to further the Obama administration's goals, while others only make regulations consistent with current practice and update language to reflect newly adopted standards. The rules themselves acknowledge that the actual savings amounts "are uncertain" and, therefore, "could obviously be much higher or lower."

The proposed rules are now open for comment through December 23, 2011. For more information on how the new regulations could affect you, please feel free to contact Edward Sturchio of the Life Sciences and Healthcare practice group or the attorney in the firm with whom you are regularly in contact.