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Department of Health and Human Services to Release Medicare System Data

Last week, the Department of Health and Human Services (HHS) announced that they will begin to publicly release Medicare system data, including payment and utilization rates, for the 880,000 physicians currently participating in the Medicare program. This development will bring significant changes to the Medicare community, as newer payment policies direct providers to be compensated based on their quality of care, rather than the quantity of services they provide. In addition, accessibility to this data will provide the opportunity for analyses on services and procedures provided to patients, as well as payments received by individual health care providers.

Beginning April 9, the Centers for Medicare and Medicaid Services (CMS) released data, including procedures, payment/charge data, and site of service for physicians and other health care providers by National Provider Identifier (NPI). For each NPI/Healthcare Common Procedure Coding System (HCPCS) combination, the additional data includes the number of services, the average charge and standard deviation in charge, the average payment and standard deviation in payment as well as the number of unique patients treated. Steps will be taken to protect patient-identifiable information in cases where data represents fewer than 11 patients.

This release of data on individual physician payments results from a recent decision by a federal judge in Florida to vacate a 1977 injunction barring the release of physician-specific Medicare data. Under the Freedom of Information Act (FOIA), HHS was required to release the data, deciding to do so publicly after “frequent” requests were made for the information. However, it is not the first time HHS has released Medicare data. Earlier this year, CMS began releasing quality data on the Physician Compare website after HHS identified several requirements of the Affordable Care Act (ACA) that require the Secretary of HHS to develop Physician Compare tools on performance and permits “certain qualified entities” to obtain Medicare claims data for the purposes of “creating, reviewing and publishing performance reports about individual providers.”

Following the earlier release of similar data, the *Wall Street Journal* identified instances of fraud, waste and abuse in the Medicare system in its “Secrets of the System” series. In its communication, HHS cites the *Consumers’ Checkbook Center for the Study of Services v. HHS* ruling in which the U.S. Court of Appeals for the District of Columbia Circuit ruled that if there was evidence that the release of data could be used to identify fraud, waste, and abuse, the release could be proper.

As predicted, the release of this data has shown that the top 1 percent of Medicare providers accounted for 14 percent of Medicare payments in 2012. The highest-paid providers came from oncology and ophthalmology, both specialties with high rates of Medicare beneficiaries. The raw data provided by CMS does not include information regarding the patient diagnosis, outcome or even dates of service. Many groups, including the American Medical Association who had previously challenged the release, remain critical of the lack of context. In fact, the data sets are vast spreadsheets requiring the end-user, most likely the media and large payor groups, to produce meaningful content. Health policy analysts

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believe the release of this information and focus on individual physician utilization will compel hospitals, health systems and policymakers in Washington to encourage physicians to limit certain high-cost services or incentivize patients to see lower-cost providers.

This document is intended to provide you with general information regarding the release of data by HHS. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorney listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.

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