

**Buchanan
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Year in Review Reimbursement and Payment Issues

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Introduction

- Broad Topic
 - Focus on key areas
- ACA
- MSSP
- 340-B Program
- CMS rule-making/telehealth
- Regulatory Burden Reduction
- Trends/Predictions

Affordable Care Act

- *Texas v. U.S.*
- Background
 - Challenge to individual mandate
 - Prior litigation
- Texas court's decision
 - 2 parts

ACA (continued)

- Decision regarding individual mandate
 - Background regarding shared-responsibility tax
 - Unconstitutionality if based on taxing power of Congress
- Future of individual insurance marketplace?

ACA (continued)

- Texas court also ruled regarding the severability of the mandate from the rest of ACA
- Mandate “entirely inseverable” for “straightforward reasons”
- Court’s rationale

ACA – Further Developments

- Formal stay (12/30/18)
- Appeal to Fifth Circuit
- HHS statement of 12/17/18

ACA – Implications?

- Individual mandate
 - Impact on market-place
- Inseverability holding?
 - Entire ACA called into question
 - Examples

Medicare Shared Savings Program

- Final Rule (12/31/18)
 - General observations
- 2 Tracks (Basic/Enhanced)
- BASIC
 - “Glide path” to risk
- ENHANCED
 - Assumption of risk
 - Higher reward

MSSP (cont.)

- Beneficiary alignment
- Beneficiary engagement
- Telehealth
- Is this the future?

340-B Program

- Introduction
- 2018 OPPS Rule
 - Prior note → ASP plus 6%
 - New rate → ASP minus 22%
- Effective date: 1/1/2018

340-B Program

- Legal challenge to HHS' 2018 rule
 - *AHA v. Azar* (Civil Action No. 18-2084(RC))
- 12/27/2018 ruling
 - HHS exceeded its authority when it substantially reduced the payment for 340-B drugs
- Plaintiffs argued that while minor adjustments are within the government's discretion, substantial adjustments exceed HHS' authority

D.C. Court's Decision

- Court held that HHS could not utilize its adjustment authority to fundamentally alter the statutory scheme for reimbursement.
- The reductions magnitude and wide applicability “inexorably lead” to conclusion that statutory scheme was fundamentally altered.
- The court did not, however, vacate the rule.
 - No specific remedy ordered.
- Court was concerned regarding retroactive increase
 - Budget neutrality implications

340-B Program Implications of Court Decision

- Unclear at this time due to additional proceedings
- CMS will (for now) continue to pay the reduced payment per the 2018 OPPS rule
- Express refusal by court to address 2018 payments

CMS Rule-Making

- Numerous changes contained in CMS' various final rules for IPPS, OPPS, MPFS and other rules
 - Non-excepted off-campus HOD
 - Stark
 - Quality-data reporting
 - Readmission reduction program
 - Add-on payments for new technologies

Telehealth

- Medicare Physician Fee Schedule Rule
 - 83 Federal Register 59452 (11/23/2018)
- Expanded to include payment for “communication-technology based services”
 - Virtual check-ins
- Evaluations of recorded video (G 2010)
- ESRD patients
- Medicare Advantage
- MSSP

Regulatory Burden Reduction

- Background – 2017 Remarks of CMS Administrator Seema Verma
- Meaningful Measure Initiative
- Patients over Paperwork
- Evaluation and Management Codes
 - MPFS final rule

Trends and Predictions

- Affordable Care Act
- Value-based reimbursement
 - MSSP
 - BPCI Advanced
 - Other new programs
- Medicaid value-based programs
- Further expansion of telehealth
- Regulatory burden reduction
- “Disrupters”