Additional Hospital Groups Deny Fraudulent ‘Upcoding,’ Congress Eyes Funds for Doc-Fix Offset

The Federation of American Hospitals (FAH) and the Association of Academic Health Centers (AAHC) have joined the American Hospital Association in challenging CMS’ assertion that hospitals are using upcoding to “game the system” and overcharge Medicare. The Obama Administration on September 24 sent a “strongly worded” letter to the American Hospital Association and other hospital groups warning that CMS will consider using its authority through its payment rules. The Administration’s letter from HHS Secretary Kathleen Sebelius and Attorney General Eric Holder said that there are “troubling indications” that some providers are using EHR systems to “game the system.” The AHA responded that HHS should offer more clarity, not more “duplicative audits” that divert resources from patient care. The FAH and AAHC have denied any wrongdoing and said that HHS’ lack of guidance is largely responsible for coding confusion. FAH wrote that EHRs allow hospitals to more accurately code patient encounters and are not used for potentially
fraudulent spending. FAH wrote that better patient data
results in more efficient and effective care. The AAHC
responded that is concerned by the absence of “clear and
useful guidance” on coding for evaluation and
management services. AAHC also requested a meeting
with CMS to discuss the issue.

The dispute over “upcoding” may prompt Congress
to act. CMS earlier estimated that upcoding resulted in a
5.8 percent increase in hospital payments in 2008 and
2009. In response, CMS applied payment reductions in
FY 2011 and FY 2012 to recoup the funds. For FY 2013,
CMS proposed to impose an additional 1.9 percent
reduction and an additional 0.8 percent reduction for
case-mix issues, which together would have recovered
$850 million from hospitals. While CMS did not finalize
its proposal, congressional staff reportedly is
investigating if the $850 million could be applied to an
offset to cover the cost of preventing the scheduled 27
percent cut in Medicare physician payments.

President Signs Six-Month Stopgap Funding Bill

President Obama on September 28 signed a
continuing resolution that will fund the government
through March 27, 2013. The funding measure delays
the need for Congress and the White House to address
funding for the remainder of FY 2013 until after the
November elections. Should President Obama win re-
election, the FY 2013 spending likely will be addressed
in December. If Mitt Romney wins the election,
Republicans likely will not open negotiations until early
next year.

In related news, the New York Times reports that
Senate leaders are working on a framework for

addressing the “fiscal cliff” during the lame-duck
session of Congress. While the details are still being
determined, the framework involves a three-step
process. First, lawmakers would agree on a deficit
reduction target, which the Times reports may be $4
trillion over 10 years. This would be achieved through
revenue raised by an overhaul of the tax code, savings
from changes to Medicare and Social Security, and cuts
to federal programs. If the framework is approved,
lawmakers would vote to issue expedited instructions
to the appropriate congressional committees to draft the
details. The third part of the plan would be to vote to
delay the automatic spending cuts and the tax increases
that are scheduled to be implemented in January.
Additional details are available here.

Nurse Practitioners, Physician Groups Spar over
Scope-of-Practice Issues

The American Academy of Nurse Practitioners has
asked both presidential candidates and other elected
officials about their stances on allowing nurse
practitioners to “practice at the top of their skill levels.”
AANP said that nurse practitioners are “highly skilled
clinicians” who provide care that is more cost-effective and of better quality than other providers. The group said that restrictive scope-of-practice laws are a cost driver to the health care system and contribute to a shortage of primary care providers. The letter comes as physician groups have pushed back against broader scope-of-practice laws. For example, the American Academy of Family Physicians said that implementing physician-led, patient-centered medical homes would be a better way to address the inefficiencies in the health care system. Such medical homes would push the health care delivery system to evolve into a “team-based approach,” and that relaxing scope-of-practice requirements would be based on a flawed understanding of health care workforce issues and the education requirements for providers. An AANP statement is additional here. An AAFP letter is available here.

Providers, Brokers Consider Health Insurance Cooperatives

Health care providers and brokers reportedly are interested in the new health insurance cooperatives. Established as part of the Affordable Care Act, the tax-exempt cooperatives are required to use profits to lower premiums, improve benefits, or improve the quality of care provided to its members. Martin Hickey, CEO of a CO-OP in New Mexico, said that the plan intends to share savings with providers. “We’re working very closely with brokers to attract small businesses. It’s no secret that brokers are worried that with the exchange, the playing field is going to be different, but we find them … very interested in our services and our approach to care.” Other CO-OP executives report that provider reaction has been “extremely positive” and that the CO-OPs will “share responsibility” with providers and “do business a different way.”

IOM Report: Health IT Systems Need Public Venue for Comparison

The Institute of Medicine (IOM) released a report that found that a lack of vendor comparisons has stifled the use of health information technology (HIT). The researchers believe that the Office of the National Coordinator for Health Information Technology (ONC) should create a database that compares user experiences with HIT, and use that data to create a website that would serve as an impartial venue for reporting user experiences and problems. Researchers found that purchasers of HIT systems cannot properly evaluate the products before purchasing them. Furthermore, some HIT vendors apparently prohibit users from communicating with others regarding problems they have experienced with their products. The IOM recommended the comparative database should contain the following metrics: performance on test measures; real-time point-of-use reporting; data mining of use patterns; third-party administered user surveys; direct user-to-public reporting; and a system of hazards reporting. The IOM report, “Comparative User Experiences of Health IT Products: How User
Community Health Centers Receive Grants to Become Medical Homes

HHS announced on September 27 the award of nearly $45 million to 810 community health centers to help them become patient-centered medical homes. Each center will receive $55,000 to implement practice changes, improve care coordination and management, and increase cervical cancer screenings. According to the CDC, an estimated 12,000 new cases of cervical cancer and more than 4,000 deaths will occur across the U.S. in 2012 as a result of this disease. Patients who receive health care from a patient-centered practice have been shown to receive a higher rate of preventive services, including cervical cancer screening. The list of awardees is available here.

PCORI Seeks Public’s Advice to Prioritize Research Projects

The Patient Centered Outcomes Research Institute (PCORI) is seeking public input to help it define its national priorities, which will be the basis for future funding for comparative clinical effectiveness research. PCORI particularly is interested in public feedback regarding experiences in the prevention, diagnosis, and treatment options of diseases. In addition, PCORI is seeking input regarding ways to improve healthcare delivery, address disparities in health care, or improve the communication of research findings. The request for public input is part of PCORI's effort to refine its National Priorities for Research and Research Agenda. Additional information and instructions regarding the comment process is available here.
California Soliciting Comments on Draft QHP Solicitation

The California Health Benefit Exchange released its draft qualified health plan (QHP) solicitation on September 25. According to the draft, it appears that California will operate under long-term contracts (up to three years) with the health insurers it selects. The state released a Notice of Intent to Bid on October 2; public comments on the draft QHP will be accepted until October 4. The revised draft solicitation will be released on October 11. Health plans interested in bidding must submit letters of Intent to Bid no later than October 12. The exchange will release its final QHP solicitation on October 18. In related news, officials in Oregon and Washington have said that their states are expected to release their qualified health plan RFPs soon. California’s draft QHP solicitation is available here. Additional information on the California Health Benefit Exchange is available here.

Avalere Health Study Finds States’ Benchmark Plans Generous in Prescription Drug Coverage

According to a study conducted by Avalere Health, 17 states including the District of Columbia have chosen essential health benefit (EHB) benchmark plans. Avalere studied brand and generic medicines in nine therapeutic classes of drug coverage in eight of those plans and found that on average, those eight plans covered 62 percent of the drugs available under their drug classes, with a wide range among the plans. The study found that coverage available under those plans is “well beyond the HHS’ proposed one drug per class minimum.” The Avalere study, “Drug Coverage in Essential Health Benefits Benchmark Plans: Formulary Analysis,” is available here.
Regulatory News

CMS Says Funding May Affect Manual Reviews for Therapy Claims

CMS held a Special Open Door Forum on September 26 to discuss manual medical review of rehabilitative therapy claims, and said that manual medical pre-approval reviews for physical, speech and occupational therapy that meet the $3,700 threshold will continue to be subject to manual review as long as the funds earmarked for the program last. After the fund is depleted, CMS said, the reviews will treated as though the cap was never reached. The Medicare Administrative Contractors (MACs) have 10 days from the date they receive the application for coverage to provide a response. If the MAC is unable to conduct a review within those 10 days, the therapy will be automatically approved. The therapy cap will apply to all Part B outpatient therapy settings and providers. In addition, beginning this year, the therapy cap will also apply to therapy services provided in hospital outpatient departments until December 31, 2012. A transcript and audio recording of this Special ODF will be posted to the Special Open Door Forum website available here.

OIG Urges CMS to Implement Surety Bond Requirement for Home Health Agencies

The HHS Office of Inspector General (OIG) on September 28 issued a report that recommended that CMS require home health providers to purchase surety bonds in the amount of $50,000. CMS in January 1998 promulgated a final rule requiring each home health agency (HHA) to obtain a surety bond in the amount of $50,000, or 15 percent of the annual amount paid to the HHA by Medicare, whichever is greater. However, this regulation remains unimplemented after nearly 15 years. Based on a review of Medicare overpayments to HHAs from 2007 to 2011, the OIG concluded that the surety bond requirement would have helped CMS recover at least $39 million in overpayments. OIG also recommended that CMS increase the surety bond requirement to more than $50,000 for home health providers with high Medicare payments. CMS said it is “carefully evaluating the best way to implement a HHA surety bond.” The OIG report is available here.

CMS Announces New Program to Reduce Avoidable Hospitalizations

CMS announced seven cooperative agreement awards to implement the Initiative to Reduce Avoidable Hospitalizations among Nursing Facility Residents. The initiative will test models to improve the quality of care and help reduce avoidable hospitalizations among nursing facility residents by funding organizations that provide enhanced on-site services and supports to these

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*Washington Post:* Many States Not Prepared for Healthcare Law

### Federal Register

CDC published a notice announcing the establishment of the National Public Health Surveillance and Biosurveillance Advisory Committee. The notice is available [here](#) and appeared in the October 3 Federal Register.

CMS published a notice that a proposed collection of information project entitled “New Freedom Initiative—Web-based Reporting System for Grantees” has been submitted to the OMB for review and approval. Comments will be accepted for 30 days following publication. The notice is available [here](#) and appeared in the September 28 Federal Register.

### Additional Reading

- **HHS Office of Inspector General:** [FY 2013 HHS OIG Workplan](#)
- **Health Affairs:** [Making Greater Use of Dedicated Hospital Observation Units for Many Short-Stay Patients Could Save $3.1 Billion a Year](#)
- **Kaiser Family Foundation:** [The U.S. Department of Defense and Global Health](#)
- **Kaiser Health News:** [Analysis: Access to Health Care Beginning to Look Like Airline Travel](#)
- **Kaiser Health News:** [Study: States, Feds Recover Billions in Medicaid Drug Fraud Settlements](#)
- **Los Angeles Times:** [Filmmakers Turn Cameras on America's Ailing Healthcare System](#)
- **Medpage Today:** [CDC on Obesity: Public Health or Politics?](#)
- **Washington Post:** [Looking Past Entitlements, Senior](#)
Federal Register Continued

CMS published a notice that a proposed collection of information project entitled “Early Retiree Reinsurance Program Survey of Plan Sponsors” has been submitted to the OMB for review and approval. Comments will be accepted for 60 days following publication. The notice is available here and appeared in the September 28 Federal Register.

CMS published a notice entitled “Medicare Program; Medicare Appeals; Adjustment to the Amount in Controversy Threshold Amounts for Calendar Year 2013.” This notice becomes effective January 1, 2013. The notice is available here and appeared in the September 28 Federal Register.

CMS published a notice announcing technical corrections to a final rule entitled “Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2013 Rates; Hospitals' Resident Caps for Graduate Medical Education Payment Purposes; Quality Reporting Requirements for Specific Providers and for Ambulatory Surgical Centers [CMS-1588-CN2]” that published in the August 31, 2012 Federal Register. The notice is available here and appeared in the October 3 Federal Register.

CMS put on display a notice correcting technical errors in the final rule entitled “Administrative Simplification: Adoption of a Standard for a Unique Health Plan Identifier; Addition to the National Provider Identifier Requirements; and a Change to the Compliance Date for the International Classification of Diseases, 10th Edition (ICD-10-CM and ICD-10-PCS) Medical Data Code Sets” that was published in the September 5 Federal Register. The notice is available here and is scheduled to appear in the October 4 Federal Register.

FDA published a notice that a proposed collection of information project entitled “Environmental Impact Considerations” has been submitted to the OMB for review and approval. Comments will be accepted for 60 days following publication. The notice is available here and appeared in the September 28 Federal Register.

FDA published a notice that a proposed collection of information project entitled “Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents” has been submitted to the OMB for
FDA published a notice that a proposed collection of information project entitled “Guidance: Emergency Use Authorization of Medical Products” has been submitted to the OMB for review and approval. Comments will be accepted for 60 days following publication. The notice is available here and appeared in the October 1 Federal Register.

FDA published a notice announcing the availability of draft guidance for industry entitled “Draft Guidance for Industry on Complicated Intra-Abdominal Infections: Developing Drugs for Treatment.” To ensure consideration, comments should be submitted within 90 days of publication. The guidance is available here and appeared in the October 1 Federal Register.

FDA published a notice announcing an upcoming public workshop entitled “Clinical Development Programs for Disease-Modifying Agents for Peripheral Neuropathy.” The workshop will be held February 11-12, 2013 at the FDA White Oak Campus in Silver Spring, MD. Preregistration is required. The notice is available here and appeared in the October 1 Federal Register.

FDA published a notice announcing the availability of draft guidance for industry entitled “Guidance for Industry on Acute Bacterial Exacerbations of Chronic Bronchitis in Patients with Chronic Obstructive Pulmonary Disease: Developing Antimicrobial Drugs for Treatment.” The notice is available here and appeared in the October 1 Federal Register.

FDA published a notice announcing an upcoming public workshop entitled “Clinical Development Programs for Disease-Modifying Agents for Peripheral Neuropathy.” The workshop will be held February 11-12, 2013 at the FDA White Oak Campus in Silver Spring, MD. Preregistration is required. The notice is available here and appeared in the October 1 Federal Register.

FDA published a notice announcing the availability of draft guidance for industry entitled “Initial Completeness Assessments for Type II Active Pharmaceutical Ingredient Drug Master Files Under the Generic Drug User Fee Amendments of 2012.” To ensure consideration, comments should be submitted within 60 days of publication in the Federal Register. The notice is available here and appeared in the October 2 Federal Register.

FDA published a notice of requirement entitled “Generic Drug Facilities, Sites and Organizations.” The FDA is notifying generic drug facilities, and certain sites and organizations identified in a generic drug submission, that they must provide identification information to the FDA. This information is required to be submitted to
the FDA annually under the Generic Drug User Fee Act Amendments of 2012 (GDUFA) included in the Food and Drug Administration Safety and Innovation Act (FDASIA). This notice is intended to help organizations ascertain if they need to self-identify with the FDA, determine what information they are required to submit, and familiarize themselves with the means and format for submitting the required information. For fiscal year 2013, identification information must be submitted by December 1, 2012. For each subsequent fiscal year, identification information must be submitted, updated, or reconfirmed on or before June 1 of the preceding the fiscal year. The notice is available [here](#) and appeared in the October 2 Federal Register.

FDA published a notice announcing the availability of guidance for industry entitled “Acute Bacterial Otitis Media: Developing Drugs for Treatment.” The notice is available [here](#) and appeared in the October 2 Federal Register.

FDA published a notice announcing that the FDA’s Center for Drug Evaluation and Research/Office of Medical Policy and the Duke University Office of Continuing Medical Education are cosponsoring a 3-day training course for clinical investigators on scientific, ethical, and regulatory aspects of clinical trials. This training course is intended to provide clinical investigators with expertise in the design, conduct, and analysis of clinical trials; improve the quality of clinical trials; and enhance the safety of trial participants. The course will be held November 13-15, 2012 in College Park, MD. Registration is required no later than October 22, 2012. The notice is available [here](#) and appeared in the October 3 Federal Register.

FDA published a notice announcing the opening of a public docket to make available to the public a report of the pediatric studies of sodium nitroprusside that were conducted in accordance with the Public Health Service Act and submitted to the Director of the National Institutes of Health and the Commissioner of Food and Drugs. Comments will be accepted for 30 days following publication. The notice is available [here](#) and appeared in the October 3 Federal Register.

HHS published a notice announcing a series of upcoming public meetings of the President’s Advisory Council on Faith-Based and Neighborhood Partnerships. The meetings will be held via telephone conference on: Thursday, October 18 from 4:00 -5:30 p.m.; Thursday, November 15 from 4:00 -5:30 p.m., and December 13 from 4:00 -5:30 p.m. Preregistration is required. The notice is available [here](#) and appeared in the October 2 Federal Register.

HHS put on display a final rule entitled “Possession, Use, and Transfer of Select Agents and Toxins; Biennial Review.” In accordance with the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, the CDC has reviewed and
updated the list of biological agents and toxins that have the potential to pose a severe threat to public health and safety. This final rule becomes effective between 60 and 180 days following publication (see the notice for clarification on effective dates for specific sections). The notice is available [here](#) and is scheduled to appear in the October 5 Federal Register.

HHS published a notice announcing the requirements and registration information for the Blue Button Video Challenge. Submissions for this contest will be accepted through November 13, 2012. Please refer to the [http://BlueButtonVideo.challenge.gov](http://BlueButtonVideo.challenge.gov) web site for the most up-to-date information about the contest and deadlines since they are subject to change. The notice is available [here](#) and appeared in the October 3 Federal Register.

HHS published a notice announcing an upcoming public meeting of the HIT Standards Committee Advisory Committee. The meeting will be held on October 17, 2012 in Washington, DC. The notice is available [here](#) and appeared in the October 3 Federal Register.

HRSA published a notice that a proposed collection of information request entitled “Healthy Weight Collaborative Evaluation” has been submitted to the OMB for review and approval. Comments will be accepted for 30 days following publication. The notice is available [here](#) and appeared in the October 2 Federal Register.

IRS published a notice announcing an upcoming public hearing entitled “Additional Requirements for Charitable Hospitals.” The hearing is regarding proposed regulations (REG-130266-11) that provide guidance regarding the requirements for charitable hospital organizations relating to financial assistance and emergency medical care policies, charges for certain care provided to individuals eligible for financial assistance, and billing and collections. The hearing is scheduled for October 29, 2012 in Washington, DC. The notice is available [here](#) and appeared in the October 1 Federal Register.

NIH published a notice that the comment period has been extended on a proposed collection of information project entitled “CareerTrac” that was published in the June 1, 2012 Federal Register. The comment period has been extended an additional 30 days following publication. The notice is available [here](#) and appeared in the September 28 Federal Register.

SAMHSA published a notice that a proposed collection of information project
entitled “Site Visits with Grantees Integrating HIV Primary Care, Substance Abuse, and Behavioral Health Services” has been submitted to the OMB for review and approval. Comments will be accepted for 60 days following publication. The notice is available here and appeared in the September 28 Federal Register.

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