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Hospitals Would Likely Bear The Brunt Of More Medicare Cuts

By **Rachel Slajda**

Law360, New York (January 04, 2013, 8:19 PM ET) -- The first months of the 113th Congress, with looming fights over the debt ceiling and the deficit, are all but certain to include even more cuts to Medicare, experts say, cuts that likely will fall largely on hospitals as lawmakers try to squeeze out savings by trimming their reimbursement rates wherever they can.

Congress' 11th-hour deal to avert the fiscal cliff, which included multibillion-dollar cuts in hospital reimbursements, ensured that the battles aren't over. Lawmakers gave themselves two months to come up with \$1.2 trillion in spending cuts to avert the sequester. Congress also is expected to need to raise the debt ceiling again in the first quarter, with Republicans signaling that they won't play along without significant spending cuts and entitlement reforms.

It's clear, experts say, that Medicare is still on the chopping block. The question, as ever, is what exactly will come under the knife.

Although Republicans have recently demanded substantial reforms to entitlement programs like Medicare, it's unlikely that a divided and gridlocked Congress will achieve, or even seriously attempt, a major overhaul. That leaves lawmakers to continue tweaking and trimming in an effort to come up with another several billion dollars in savings.

"I think in the immediate future we'll see more of what we just saw, which is picking at it, mostly on the provider side," said Stephen Weiner, chairman of the health law practice at Mintz Levin Cohn Ferris Glovsky & Popeo PC. "If the proposition is that savings have to be eked out of Medicare, and if there's not major restructuring, then it's micro detail, each producing some savings which, accumulatively, is pretty significant."

That leaves a few scenarios for lawmakers, all of which include more cuts to provider payments, the biggest chunk of which goes to hospitals. Whether Congress spreads the pain around, to physicians or smaller Medicare players such as drug companies and managed care plans, or even to beneficiaries — a politically fraught concept — remains to be seen.

"There is going to have to be shared pain. Although the hospitals are unhappy and worried, and I fear that they're right, that they will have other cuts, there will be cuts from other folks too, because it has to happen that way," said Sheree Kanner, former general counsel at the Centers for Medicare & Medicaid Services and a partner at Hogan Lovells LLP, naming pharmaceutical companies and physicians as potential targets.

"They're just going to be searching everywhere," Kanner said.

It's unclear, at this point, where exactly provider cuts might fall. Lawmakers often turn to recommendations by the Medicare Payment Advisory Commission, or MedPAC, which advises Congress on Medicare payment policy. For example, a \$10.5 billion reduction in hospital reimbursements included in the fiscal cliff deal jibed with a MedPAC recommendation that Congress reduce payments to make up for \$11 billion in overpayments resulting from a recent change to calculations.

Using recommendations from the nonpartisan MedPAC can give lawmakers political cover, Kanner noted.

Ideas also come from the inspector general, the Government Accountability Office, and from CMS itself. The list is long, and ever-growing, but certain things tend to come up again and again, experts say.

One is a reduction in payment rates for evaluation and management, or E&M, services, provided in a hospital outpatient setting. MedPAC has said the payments should be brought down to the same rates as the same services provided in a physician's office, noting that increased hospital acquisition of physician practices is creating more E&M billing. The hospital industry has fought such cuts, saying the higher payments are justified because they see sicker patients.

The cuts were reportedly discussed, but eventually dropped, in the fiscal cliff talks, but could easily pop up again.

Other potential targets include the price Medicare will pay for oncology and other drugs used in hospitals, as well as its reimbursements for bad debt carried by hospitals when patients cannot or do not pay for treatment, Kanner said.

The pain to providers could be less if lawmakers dare to propose trimming benefits, although such proposals have been derided on both sides in recent years as balancing Medicare's budget on the backs of seniors, according to Chuck Clapton, the former health policy director for the Republican side of the Senate Health, Education, Labor and Pensions Committee.

"Things that impact beneficiaries directly, those tend to be very politically difficult," said Clapton, who joins Hogan Lovells as a partner Monday. "Without bipartisan support, members would be very wary of approaching it. ... But that's the last place [that hasn't been subject] to change."

Such changes could include increasing beneficiary cost-sharing for drugs or services or altering the benefit structure in some way to produce savings.

--Editing by John Quinn and Chris Yates.

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