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Regulatory update

ACA repeal bill gets changes; HHS cut 18%; EPM programs delayed

Last-minute changes to the Obamacare replacement bill, a huge budget cut for HHS and a three-month delay of new episode payment models (EPMs) are among the top health care stories from Washington.

- **Amendments to AHCA add aid to 50 to 64 year olds and tax delays.** The House committees on Energy & Commerce and Ways & Means amended the American Health Care Act (AHCA), the Obamacare replacement that's struggling through Congress, to include a proposal to

*(see **Regulatory update**, p. 4)*

Billing

New data on X modifiers show they sometimes beat modifier 59 — but be careful

Despite a lack of recent official guidance on the X modifiers that were developed to provide more specifics than modifier **59** (Distinct procedural service), in some cases Medicare providers have seen lower denial rates using the new modifiers, according to CMS data obtained by *Part B News*.

The CMS data shows denial rates for the 16,996 codes that were claimed at least once with the X modifiers — **XE** (Separate encounter), **XP** (Separate practitioner), **XS** (Separate structure) and **XU** (Unusual non-overlapping service)

*(see **X modifiers**, p. 6)*

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Regulatory update

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"provide the Senate flexibility to potentially enhance the tax credit for those ages 50 to 64 who may need additional assistance" with premiums under the new law.

The amendments also move up the date of repeal for a Medicare tax increase and move back the implementation date of the "Cadillac tax" on high-end insurance plans from 2025 to 2026.

At press time, House GOP leaders also were reportedly trying to kill the essential health benefits mandated by the Affordable Care Act (ACA) (*PBN 12/3/12*).

Those and other changes are meant to appease the hardline "Freedom Caucus" House members who have objected to the AHCA on grounds that it doesn't go far enough to reverse the Affordable Care Act (ACA), says Harry Nelson, managing partner at law firm Nelson Hardiman in Los Angeles. But in appeasing those members, the House risks losing in the Senate. "The bill remains in jeopardy," Nelson says.

- **Trump budget has huge cuts for HHS.** President Donald Trump's "skinny budget" — an outline from which Congress is expected to craft budget legislation for 2018 — includes a $15.1 billion, 17.9% cut to the HHS budget. The cut comes from discretionary spending and does not include spending mandated for Medicare, Medicaid or the 21st Century Cures Act. Along with cuts to the National Institutes of Health (NIH) and the Community Services Block Grants (CSBG) that help fund programs such as Meals on Wheels, the budget also defunds HHS' health professions and nursing training programs.

The NIH cuts' impact will be felt in its research division, but also will "have a big impact operationally on academic centers who get the grants for this research under the NIH and also for the inclusion of patients in various clinical trials," says Theresa Hush, CEO and founder of Roji Health Intelligence, a health care consultancy in Chicago. "At academic centers, there may be cuts in provider and research staff and loss of patients who come there for their academic prowess."

Some HHS programs would get more funding, however: The Health Care Fraud and Abuse Control (HCFAC) program, whose efforts returned $1.6 billion to the HHS budget in 2016, largely from the hides of providers, would get a $70 million raise to $751 million (*PBN 2/14/17*). And an extra $500 million would be used "to expand opioid misuse prevention efforts and to increase access to treatment and recovery services." The opioid spend is at odds with the administration's plans to do away with the Affordable Care Act, says Damon Raskin, M.D., an internist with a board certification in addiction medicine and chief medical advisor to Cliffside Malibu rehabilitation center in Malibu, Calif. (*PBN 3/20/17*). "You can't cut 24 million people from access to medical insurance, including addiction treatment services, but throw a few bucks at 'opioid misuse prevention efforts' and expect an impact on substance abuse," he says.

- **EPM program delayed.** The Trump administration has postponed the debut of four new payment models that conflict with the health care philosophy of new HHS Secretary Tom Price.

Under the Obama administration, a final rule released Jan. 3 implemented three new Medicare EPMs and a Cardiac Rehabilitation (CR) Incentive Payment model, as well as changes to the existing Comprehensive Care for Joint Replacement (CJR) model (*PBN 1/2/17*). The new EPMs would require hospitals in certain geographic areas to be paid for treatment of myocardial infarction, coronary artery bypass graft and surgical hip/femur fractures, as well as 90 days of post-discharge care, on an episodic basis; the cardiac rehab model would pay retrospective incentives for beneficiary utilization of cardiac rehabilitation in the 90-day post-discharge period.

But Price has a long record of opposition to episodic payment models, such as CMS' bundled payment model for hip and knee replacement program, especially when they are not voluntary (*PBN 1/18/17, 12/15/16*). Price's aversion may explain why the new programs' debut and the changes to the CJR program, which were to start on July 1, have been pushed to Oct. 1 by a March 21 interim final rule.

"This additional three-month delay is necessary to allow time for additional review, to ensure that the agency has adequate time to undertake notice and comment rulemaking to modify the policy if modifications are warranted," says the rule. CMS seeks comments on the possibility of "a longer delay" on these models, possibly to Jan. 1, 2018. — *Roy Edroso (redroso@decisionhealth.com)*

(continued on p. 6)

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Resources:

- Ways & Means Committee press release: *https://waysandmeans.house.gov/house-republicans-announce-updates-strengthen-american-health-care-act*
- Jan. 3 episode payment model rule: *https://downloads.cms.gov/files/cmmi/epm-finalrule.pdf*
- March 21 interim final rule: *www.federalregister.gov/documents/2017/03/21/2017-05692/medicare-program-advancing-care-coordination-through-episode-payment-models-epms-cardiac*

X modifiers

(continued from p. 1)

or some combination thereof — during the year beginning on July 1, 2015, and ending June 30, 2016.

Overall denial rates on the four modifiers suggest that they were not much more likely to result in denials than 59 (*PBN 3/20/17*). The new data show some codes that did even better — but also some codes that providers who consider using the X modifiers should watch out for.

CMS did not provide utilization numbers for the codes billed with X modifiers, so *Part B News* compared them with the utilization of and denial rates for 59 with those codes in 2015, the most recent Medicare figures available, to give a rough idea of X modifiers' success versus that of the modifier they usually replace.

You can go online to *http://pbn.decisionhealth.com/Articles/Detail.aspx?id=524004* to see an Excel spreadsheet of the denial rates for the X modifiers, along with those codes' denial rates with 59 (thanks to DecisionHealth editor Laura Evans). Note that the data show only the codes to which the X modifier was appended, not any other codes on the same claim.

Mixed results with X modifier use

Some of the codes often used with 59 did better when X modifiers were used.

For example, **83036** (Hemoglobin A1C level) was billed 180,297 times with 59 and was denied 28% of the time — while XU (13%), XE (16%) and XS (22%) all did better. Note that XP got those claims rejected 100% of the time, perhaps owing to the difficulty of convincing contractors of the necessity of using a separate provider.

On the other hand, **11719** (Trimming of fingernails or toenails) billed with XP had a 0% denial rate, and the denial rates for 11719 with XE, XU, XS and a combo of XS and XU also beat the denial rate of 11719-59 of 12%.

X modifiers underperformed 59 for denials on **11100** (Biopsy of single growth of skin and/or tissue) and, except for XE, for **11721** (Removal of tissue from 6 or more finger or toe nails). But for **17003** (Destruction of 2-14 skin growths), every X modifier except XE or combination of X modifiers won lower denials than 59.

Among the four codes with which 59 was used more than a million times, X modifiers sometimes did better