Agenda

• Health System Movement from Volume to Value
  - MACRA (MIPS and Alternative Payment Models)
• MedPAC Proposals on Unified PAC PPS
• Regulatory Relief in Post-Acute Care
• Medicare Therapy Caps Repealed
• IRF, SNF, IPF final rules
  – Quality Reporting & Payment
• H.R. 626, the Access to Inpatient Rehabilitation Therapy Act of 2017
• DMEPOS Issues
• Rehabilitation Research
• Appropriations & Omnibus Issues
• Opioids
• Medicare Audits and Appeals
• Impact of Midterm Election Results
Delivery and Payment Reform

• Health care system continues to transform delivery of care
• Payment systems moving toward value-based care and away from volume-based care
• Change prompted by both Affordable Care Act (ACA) and Medicare Access and CHIP Reauthorization Act (MACRA), but now, private sector has adopted these strategies
• Major changes in both acute care and post-acute care
• Overall impact of these continued changes:
  – Limited cost savings
  – Restricted access to services for patients
MACRA – Medicare Access and CHIP Reauthorization Act

• 2015 Law that repealed Sustainable Growth Rate (SGR) formula for physician reimbursement & instituted broad payment reforms in Medicare

• Streamlines several quality payment programs. Physicians choose between:
  – **Merit Based Incentive Payment System (MIPS)**
    • Pay for Performance model, provides opportunity for clinicians to earn bonuses for reporting quality results and related performance
    • Bonuses range from 4-9% annually (physicians and therapists)
  – **Advanced Alternative Payment Models (APMs)**
    • Provides clinicians a lump sum 5% bonus payment on Medicare Part B payment for 2019 through 2024 for participating in risk-based payment models
    • Incentivizes clinicians to participate in value-based payment
MACRA – Medicare Access and CHIP Reauthorization Act – FY ‘19 PFS Proposal

FY 2019 Physician Fee Schedule proposed rule offers a number of significant changes to the MIPS and AAPM components of MACRA:

- MIPS Expanded to new clinician types, including physical therapists, occupational therapists, clinical social workers, and clinical psychologists
- ‘Low volume’ threshold: Third option for physicians who provide fewer than 200 covered professional services to Part B patients

Additional proposed changes:
- Consolidation of evaluation and management (E/M) codes and payment rates for levels 2 through 5
  - Increases $ for simple visits and decreases $ for complex patients
  - Change is strongly opposed by most physician groups
Bundled Payment Models

• Significant changes to Medicare bundled payment programs
  – CMS scrapped cardiac bundled payment model
  – CMS significantly rolled back comprehensive joint replacement bundled payment model
  – Introduction of Bundled Payment for Care Improvement Advanced (BPCI-A)
    • Eliminated model where PAC provider serves as the bundle holder

• BPCI-A qualifies as APM under MACRA – increased bonus potential
  – Physician group practices and acute care hospitals provide comprehensive coordinated care across 90-day episodes, aim to keep spending below spending threshold & to meet select quality measures
  – Major Flaw: Model lacks meaningful measures on functional improvement, quality of life, or patient satisfaction
Bundled Payment Models (continued)

- Significant concerns from patient and provider groups that bundled payment systems may stint on patient care, particularly rehabilitation services and devices

  - June 1, 2018 letter from over 40 national organizations & members of three coalitions to CMS called for functional outcome quality measures to be included in BPCI-A

  - Letter points out previous results from bundled payment demonstrations that showed significantly reduced use of institutional PAC and increased use of home health

- Easy to save money under bundled payment systems if patients are being diverted away from more intensive, more costly care.
MedPAC Proposals on Unified PAC PPS

- MedPAC continues to develop PAC value-based purchasing model
- Model would create a two-tier, uniform payment across all settings, with adjustments for medically complex patients requiring high intensity care
- MedPAC has focused on development of uniform outcome measures
  - Discharge to community,
  - combined admissions and readmissions measures, and
  - Number of days between leaving home and returning after hospitalization and/or PAC
  - A patient-experience measure
- Phase-in, blended transition (combining old and new payment models)
PAC Value-Based Purchasing (VBP)

• PAC value-based purchasing efforts on Capitol Hill have fizzled
• Key Committee (House Ways & Means) has shifted focus away from the issue
• Previously, bipartisan consideration of PAC VBP bill, with regulatory relief offered as a sweetener
  – Bill (H.R. 3298) was seen as controversial in light of ongoing IMPACT Act implementation
• Now, shift in focus toward Regulatory Relief only
Regulatory Relief

- HHS leading regulatory relief initiative to reduce provider burden
- House Ways & Means Committee leading effort in Congress on “Red Tape Regulatory Relief” project
- Effort intended to reduce legislative and regulatory burdens on Medicare providers to improve the efficiency and quality of Medicare services
- Committee indicated it will continue exploring other solutions & continue accepting feedback from stakeholders. Strong interest in Stark Law
- Recent W&Ms Committee report suggested Open Door Forums for IRFs
- ATRA tried (and continues to try) to get Committee to adopt H.R. 626
Medicare Therapy Caps Repealed

• February 2018 budget deal included key Medicare policy changes
• Permanently repealed the caps on Medicare-covered outpatient therapy services, including cap on PT/ST and OT
• New policy includes a lower threshold for targeted medical review, which will be decreased from $3,700 to $3,000.
• Repeal is retroactive to January 1, 2018
• Exceptions process is no longer in effect but reporting on this threshold is still required
IRF FY 2019 Final Rule

• Increase in payments to IRFs of 1.3%, total of $105 million increase over FY 2018, despite MedPAC recommendation of 0% update and -5% rebasing

• CMS is removing the Functional Independence Measures (FIM) October 1, 2019 and replacing FIM with new case-mix groups (CMGs) based on function data from the Quality Indicators section of IRF-PAI
  – IRF community, including ATRA, sought delay but CMS decided to press forward. CMS did agree to include 2 years (rather than 1) of data in linking CMGs to new payment levels

• Rule continues to implement IMPACT Act quality indicators but eliminated Influenza and MRSA measures
H.R. 626, the Access to Inpatient Rehabilitation Therapy Act of 2017

• Bipartisan House bill sponsored by Reps. GT Thompson (R-PA-5) and GK Butterfield (D-NC-1)
• Would help Medicare beneficiaries obtain recreational therapy in IRFs by counting rec therapy toward the “3-hour rule”
• Legislation supported by patient, provider, and accrediting groups, including:
  – American Academy of Physical Medicine & Rehabilitation (AAPM&R)
  – American Medical Rehabilitation Providers Association (AMRPA)
  – American Academy of Orthotists and Prosthetists (AAOP)
  – Association of Rehabilitation Nurses (ARN)
  – Brain Injury Association of America (BIAA)
  – Commission on Accreditation of Rehabilitation Facilities (CARF), International
  – Christopher and Dana Reeve Foundation
  – Council on Brain Injury
  – United Spinal Association
H.R. 626 (cont.)

• H.R. 626 is gaining awareness on Capitol Hill under the regulatory relief agenda
• In August, House Ways and Means Committee staff met with ATRA and AAPM&R to discuss the bill
• Meetings set up with CMS senior staff and other members of the W&Ms Committee to build support
• Recent letter of support from rehab stakeholders is persuasive
• However, as of now, no additional cosponsors and Democrats are reluctant to support regulatory relief
SNF FY 2019 Final Rule

• Increase in payments to SNFs of 2.4% as required by statute; total of $820 million increase over FY 2018, despite MedPAC recommendation

• Finalized replacement for the existing case-mix methodology, the Resource Utilization Groups, Version IV (RUG-IV) model, with a revised case-mix methodology called the Patient-Driven Payment Model (PDPM)
  – Effective October 1, 2019
  – Adjusts Medicare payments based on each aspect of a resident’s care, including PT, OT, SLP, Nursing, non-therapy ancillaries.
  – CMS appears to treat recreational therapy under the “nursing” category despite ATRA’s comments that it should under therapy
  – PDPM would de-emphasize incentives to provide significant therapy (“ultra”) in SNFs.
IPF PPS FY 2019 Final Rule

• Increase in payments to IPFs of 1.1%, total of $50 million increase over FY 2018
• Corrections to regulation language (e.g. updating to reflect ICD-10-CM)
• For FY 2019, CMS is finalizing removal of 5 IPFQR Program measures, including:
  – Alcohol use screening
  – Tobacco use screening
  – Electronic health record use
  – Assessment of patient experience of care
  – Influenza vaccination coverage among healthcare personnel
• CMS retaining three measures originally proposed for removal:
  – Physical restraint use
  – Seclusion use
  – Tobacco Use Treatment at Discharge
DMEPOS Issues

• DMEPOS Proposed Rule from July 19, 2018 would:
  – Extend 50/50 blend pricing in rural and non-contiguous non-competitive bidding program areas (non-CBAs) through 2020
  – Implement significant changes to CMS’s competitive bidding program including “lead item pricing”
  – Gap filling: CMS taking comments on how to better set reasonable fee schedule amounts
  – Major advocacy effort to get CMS to cover seat elevation and standing power wheelchairs

• Orthotics & Prosthetics:
  – Interagency Workgroup on Lower Limb Prosthetics finally released report
  – Retired Draft LCD on Lower Limb Prosthetics
  – Retired the Dear Physician Letter re: Recognition of Clinical Notes of Prosthetists/Orthotists
Rehabilitation Research

• ATRA is an active member of the Disability and Rehabilitation Research Coalition (DRRC)
  – Coalition of 24 national non-profit organizations committed to improving the science of rehabilitation, disability, and independent living.
  – Goal: Maximize the return on the federal investment in medical rehabilitation research.
  – S. 800/Sec.2040 of 21st Century Cures Act (PL 114-255)
    • Enhances and better coordinates medical rehabilitation research at the National Institutes of Health (NIH)
  – Advocated for increased funding for NIH, NIDILRR (National Institute for Disability, Independent Living, and Rehabilitation Research)
FY 2019 Appropriations

- House and Senate have both passed Labor-HHS-Education spending bills and other “mini’-bus” bills passing this week
  - VA, Military Construction bill passed yesterday.
  - “Early action on spending bills is rare in today’s political climate
  - Appropriators meeting behind the scenes to resolve differences
  - NIH slated for another $2 billion increase in funding

- Overall Appropriations Forecast
  - President had threatened to shutdown government over funding for wall along southern border of US, but this was punted until early December
  - Election year politics complicate the story
  - Short-term CR until December 7th being prepared for bills not passed by October 1st.
FY 2018 Health Policies from Spending Bills

• Therapy Cap Repeal
• Orthotist’s & Prosthetist’s clinical notes provisions
• Extension of the Children’s Health Insurance Program (CHIP) for 10 years
• Medicare extenders including:
  – Home health policies including use of telehealth, payment reform, eligibility
  – Demonstration programs including Independence at Home
  – Home infusion therapy transitional payments
  – Extensions of funding for Community Health Centers
  – Permanent Coverage of speech-generating devices (the Steve Gleason Act)
House and Senate Addressing Opioid Crisis

- House and the Senate have taken separate paths on opioid crisis
- Little coordination between chambers
- Senate floor vote expected soon. House and Senate are expected to reconcile bills after the election.

**House bill:**

- H.R. 6, the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act
  - Package of over 60 individual bills addressing various aspects of opioid crisis including:
    - Medicaid, Medicare, public health, research, justice system provisions
    - Passed the House in June 2018

**Senate bill:**

- Expected to be combination of several Committee-level bills from:
  - HELP Committee
  - Finance Committee
  - Judiciary Committee
  - Medicaid, Medicare, public health, research, justice system provisions – unclear how many similarities/differences between House package and Senate exist
Medicare Audit and Appeal Issues

• Global IRF Settlement Discussions
• Backlog of ALJ Appeals and New Developments
• New RAC Issue Proposed for IRFs and SNFs
• Enforceability of the Medicare Benefits Policy Manual (MBPM)
• Quality Reporting Program Penalties
Political Considerations

• Polling experts and pundits believe there is a good chance for Democrats to win the House
• The Senate will be a close call and much harder for Democrats to become the Majority
• White House turmoil, ethics troubles, and Russia investigation continue to put pressure on Republicans’ chances
• Most important mid-term election in years
• If Democrats win one or both chambers, the President will have a much more difficult time getting legislation through Congress
• Investigations on a variety of topics will dominate news
Questions?

Contact me:

Peter W. Thomas, JD
Powers Pyles Sutter & Verville, PC
1501 M St NW, Suite 700
Washington DC 20005
Peter.Thomas@PowersLaw.com