



May 21, 2013

**CMS SAYS SEQUESTRATION DOES NOT MANDATE REDUCTIONS
IN PAYMENTS TO CONTRACTED PROVIDERS UNDER MEDICARE
ADVANTAGE PLANS AND PRESCRIPTION DRUG PLANS**

By: Brian M. Foley, Esq.

As a result of the Budget Control Act of 2011 and the process known as “sequestration”, effective April 1, 2013, federal funding for Medicare programs, including the funding for Medicare Advantage Organizations (MAOs) and Medicare Prescription Drug Plans (PDPs), was reduced by 2%. Many questions were raised as to how the sequestration would affect providers under these plans. Some MAOs and PDPs indicated the 2% reduction in reimbursement would be passed through to the providers in the form of reduced payment rates. The MAOs and PDPs also asserted that providers who are reimbursed based on Medicare reimbursement methodology or based on the Medicare rates, would be subject to the same sequestration reduction. Many providers objected and requested clarification from the Centers for Medicare and Medicaid Services (CMS).

On May 1, CMS issued guidance, providing additional information about the application of sequestration. The guidance noted that the federal cuts to MAOs and PDPs, as a result of sequestration, cannot be passed through to contracted providers unless the provider’s contract allows for the pass through. Specifically, CMS observed:

“Section 1854(a)(6)(B)(iii) of the Social Security Act prohibits CMS from interfering in the payment arrangements between MAOs and contracted providers. The statute specifies that CMS ‘may not require any MA organization to ... require a particular price structure for payment under such a contract ...’ Thus, whether and how sequestration might affect an MAO’s payments to its contracted providers are governed by the terms of the contract between the MAO and the provider. ... Similarly, the question of whether and how sequestration might affect a Part D plan sponsor’s payment to its contracted providers is governed by the payment terms between the plan sponsor and its network pharmacy providers.”

CLIENT ALERT

May 21, 2013
Page 2

Many providers' contracts with MAOs and PDPs do not allow the pass through of the sequestration cuts to the providers. The mere fact that the reimbursement terms of such a contract are based on Medicare methodology or Medicare rates does not mean that the provider must bear the burden of the sequestration cuts. The amount of the funding changed, but neither the reimbursement methodology nor the rates have changed. If such organizations are attempting to pass through the reductions in their payments to contracted providers, then the contracts should be reviewed to evaluate whether they have the right to do so.

DISCLAIMER: This Legal Alert is designed to keep you aware of recent developments in the law. It is not intended to be legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of the client. If someone you know would like to receive this Legal Alert, please send a message to Brian M. Foley Esq. at bmf@spsk.com. Mr. Foley is co-chair of Schenck, Price, Smith & King's Health Care Law Practice Group.

FLORHAM PARK

220 Park Avenue
PO Box 991
Florham Park, NJ 07932
Tel: 973-539-1000
www.spsk.com

PARAMUS

Country Club Plaza
115 West Century Road
Suite 100
Paramus, NJ 07652
Tel: 201-262-1600

SPARTA

351 Sparta Avenue
Sparta, NJ 07871
Tel: 973-539-1000

NEW YORK

116 West 23rd Street
Suite 500
New York, NY 10011
Tel: 212-386-7628