

# UPDATES FROM BARATZ & ASSOCIATES, P. A. FOR THE HEALTHCARE INDUSTRY

April 2010  
Issue 18

## HEALTHCARE REFORM, WHAT DOES IT MEAN?

Over a two week period in March, what could turn out to be the most significant change ever in healthcare became law. What does this mean? I am not sure that anyone really knows but over the next several months, years, and decades we will learn what really was the outcome of this huge new law.

To begin to explore some of the impact, we will summarize what we think the law enacts in a number of areas of interest. It is likely that changes in interpretation or application will occur as regulations are developed and case law begins to arrive. In the meantime, the following is a sample of what we think the law addresses:

- Section 6409 requires CMS to develop a Stark Self Referral Disclosure Protocol within six months of enactment (March 23, 2010). The Department of Health and Human Services (DHHS) Secretary must collaborate with the Office of Inspector General (OIG) in developing the protocol and this must be displayed on the Centers for Medicare and Medicaid Services (CMS) website. This is clearly an attempt to fill the void left by the OIG withdrawal from accepting Stark self-disclosures a year ago. The section authorizes the DHHS Secretary to compromise payment and penalty amounts due and owing for violations of the Stark Law. More specific details must appear on CMS website by late September 2010.
- Section 6003 requires patient disclosure for certain in-office ancillary services under Stark, applicable to MRI's, CT's, PETScans and other designated health services specified in Section 1877(h)(6)(D) of the Social Security Act that the DHHS Secretary deems appropriate. That section refers to "radiology services including magnetic resonance imaging, computerized axial tomography scans, and

ultrasound services." Therefore it appears that the DHHS can only expand this new requirement to other radiology services and not other DHS.

- Section 3403 establishes an Independent Payment Advisory Board (IPAB), composed of fifteen members. The purpose of IPAB is to submit proposals to reduce per-capita Medicare spending if that spending increase exceeds the growth rate of CPI measures, for a five-year period that ends in 2013. If the spending increase does occur, then in 2014 the IPAB will submit annual proposals to MedPAC, Congress and the President. In addition, for payments made under MA plans and Medicare Part D, the proposals for reduced spending would have to be automatically implemented by the DHHS, unless Congress passed an alternative package that met the same savings targets proposed. The section also prohibits the IPAB from submitting any idea that would ration care, raise taxes, or change benefits.
- Section 1107 of HR 4782 (the reconciliation bill) sets the assumed utilization rate for the practice expense portion of certain advanced diagnostic imaging services (such as MRI, CT) at 75%, as opposed to the current 50% rate and the MedPAC proposed 90% rate, starting in 2011. This will in effect further reduce reimbursement for those services.

The above are just a few of the coming changes. With such a large piece of legislation it will take time to understand the new law and its impact and is impossible to cover in one sitting. Look for more information in the future and take time to research areas that may impact on you and your organization.

## IRS NATIONAL RESEARCH PROJECT, WHAT IS THAT?

The new year has brought a number of new government initiatives and this one has been glossed over by most onlookers but could have a very significant impact on not only those caught up in the project, but also well into the future. The IRS announced in Headliner Volume 2009 released on November 9, 2009 that "In February 2010, the Internal Revenue Service will begin its first Employment Tax National Research Project in 25 years. Business practices regarding employment tax issues may have changed significantly since the last IRS employment tax study in the 1980's, necessitating the need for this study." "The results will allow the IRS to gauge more accurately the extent to which businesses properly comply with employment tax law and related reporting requirements. When completed, this information will help the IRS select and audit future employment tax returns with the greatest compliance risk. As part of this project the IRS will randomly select 2,000 taxpayers each year for the next three years. These audits will be "comprehensive in scope" and will likely go into great detail while reviewing areas such as payroll taxes, fringe benefits, independent contractors, expense reimbursements and other related payroll issues. The two main goals noted by the IRS are:

- To secure statistically valid information for computing the Employment Tax Gap and;
- To determine compliance characteristics so IRS can focus on the most noncompliant employment tax areas.

The audits will occur across the country and will target both large and small taxpayers, public and private companies, for profit and non-profit tax filers. It has been suggested that the IRS will audit 330 governmental entities during the process.

Make no mistake, if you get selected, it will not be a pleasant or painless experience and it would be naïve to believe that the results of this three year project will be anything other than heightened scrutiny and more focused targeting of suspected non-compliers. The age of data mining will allow the IRS to more carefully identify potential risk areas and go after them quicker and more effectively. Make sure that your professional advisors give you the most current information on tax compliance so that you will be in the upper tier of compliant tax filers where pain and suffering is less likely.

## ANOTHER HOSPITAL SETTLES WITH THE DOJ

On March 19, 2010 the Department of Justice for the District of New Jersey issued a press release noting that Robert Wood Johnson University Hospital Hamilton has agreed to pay \$6.35 million to settle allegations that the hospital defrauded Medicare. Two lawsuits were brought under the qui tam, or whistleblower, provisions of the False Claims Act alleging that the hospital fraudulently inflated its charges to obtain supplemental outlier payments for cases that were not extraordinarily costly and for which outlier payments should not have been paid. The United States intervened in both lawsuits in January 2008. Under the Civil Settlement announced, the whistleblowers will receive \$1,111,250 of the total recovery.

Various sources were used in developing the above articles including American Health Lawyers Association alerts and newsletters, IRS bulletins and the recently enacted Healthcare reform legislation.

NOTE: FOR ADDITIONAL INFORMATION AND RESOURCES MAKE SURE YOU CHECK OUT OUR WEBSITE: <http://www.baratzcpa.com>

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