

**CENTER FOR MEDICARE ADVOCACY, INC.**

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**MEDICARE IN CHANGING TIMES**

September, 2011

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**[www.medicareadvocacy.org](http://www.medicareadvocacy.org)**

# MEDICARE UPDATES

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- **Affordable Care Act (ACA / Health Care Reform)**
- **President's Plan**
- **Ryan Budget**
- **Super Committee**
- **Two Hot Topics**
  - **Improvement Standard**
  - **Observation Status**

# MEDICARE BASICS

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- Medicare covers services that:
  - Are reasonable and necessary
    - For diagnosis or treatment of illness or injury
    - Or to improve the functioning of a *malformed body member*

# MEDICARE BASICS (Cont.)

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## Eligibility for Medicare

- Age 65 or older
- Under 65 but receive Social Security Disability benefits for 24 months
  - Bills being considered to eliminate/phase out
  - Waiting period is waived for people w/ ALS
  - ESRD : After transplant or 3 months of regular dialysis

# AFFORDABLE CARE ACT (ACA)

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- *Patient Protection and Affordable Care Act of 2010 (PPACA) and the Health Care and Education Reconciliation Act of 2010 (HCERA)*
  - Together called the *Affordable Care Act (ACA)* and “Health Care Reform”
- Legislative status?
- Litigation status?

# AFFORDABLE CARE ACT STRENGTHENS MEDICARE

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- Extends life of Medicare Trust Fund by 9 years (CBO) – 12years (CMS Actuary)
  - Reduces funding for Medicare Advantage plans
    - But provides quality bonuses
  - Reduces updates in payments to other providers, not cuts in current payment amounts
  - Independent Payment Advisory Board (IPAB)

# ACA (Health Care Reform): FOCUS ON PREVENTION & ADDS BENEFITS

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- Eliminates cost-sharing for most preventive services
- Gives Secretary greater latitude to add preventive services to Medicare
  - Example: Smoking cessation counseling
- Adds new annual wellness visit and “personalized prevention plan”

# IMPROVES PART D (DRUG) BENEFIT

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- Increases number of Part D plans that qualify as “Benchmark Plans” for individuals with low-incomes
- Helps keep people at home: Reduces Rx cost-sharing for community-based dually eligible people in need of institutional (nursing home) level-of- care (2012)
- Requires Part D plans and MA-PD plans to use standard, uniform exceptions, and appeals systems
  - And standard forms if feasible

# IMPROVES MEDICARE PART D BENEFIT (Cont.)

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- Gradually Closes Part D “Donut Hole” coverage gap in coverage (Completely closed by 2020)
  - 50% reduction in cost of Brand Rx and 14% Generics (2012)

# MEDICARE ADVANTAGE: ADDS CONSUMER PROTECTIONS

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- Limits out-of-pocket costs (2011)
- Can't charge more for certain services than traditional Medicare (2011)
  - SNF, Chemotherapy, Renal Disease care
- Requires plans to maintain a Medical Loss Ratio (MLR) of at least 85% beginning in 2014

# INCREASES COSTS FOR SOME “HIGHER INCOME” INDIVIDUALS

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- Freezes income levels for increased Part B premiums until 2019
  - Single: \$85,000/ yr. – Pay higher premium
  - Couple: \$170,000/ yr. – Pay higher premium
- Income-based Part D premiums (2011)
- Increases Medicare tax (2013)
  - Single Filer: Wages > \$200,000
  - Joint Filers: Wages > \$250,000

# ENROLLMENT PERIODS

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- Annual Enrollment Period (AEP) changed to:
  - October 15 – December 7 (2011)
- New Medicare Advantage Disenrollment Period (MADP)
  - 45 days, beginning January 1, 2012 through Feb. 14th
  - Can return to traditional Medicare
  - Can get Drug/Part D coverage even if leaving MA-only
- Open Enrollment Period (OEP) eliminated

# ACA REGULATIONS FOR HOME HEALTH, HOSPICE

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- Part of the effort to reduce fraud and abuse
- Face-to-face encounter with patient to order home health or hospice (Dr., P.A., A.P.R.N.)
  - Home health – 90 days before, or w/in 30 days after, start of home care
  - Hospice – No more than 30 days prior to start of 3<sup>rd</sup> certification period

# ACA REGULATIONS FOR HOME HEALTH COVERAGE

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- Clarifies that Medicare *can* be available for medical services and rehab. therapies that are necessary to *maintain* an individual's condition
- Rules of thumb, such as **lack of restoration potential should not be used to deny coverage**
- **Improvement is not required**

**Federal Register 11/17/2010 – 42 CFR 409.44**

# HELPS FAMILIES

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- Allows “kids” up to age 26 to be covered under their parents’ plans
- Prohibits plan rescission and coverage denials for children 18 yrs. or younger with pre-existing conditions
- *Will* prohibit coverage denials and rescissions for all with pre-existing conditions

# PRESIDENT'S PLAN 9/19/2011

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- Includes \$248 billion in savings from Medicare.
  - 90% of the savings, \$224 billion, comes from reducing Medicare overpayments
  - Savings that affect beneficiaries do not begin until 2017
  - Does NOT change the eligibility age

# PRESIDENT'S PLAN: PROS & CONS

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## Pros:

- Does NOT increase eligibility age
- Rx rebates for lower income people (duals and LIS)
- Reduce MA overpayments – Meaning? Per WH Fact Sheet: “waste, fraud and improper payments”

## Concerns:

- HH co-pay (2017) – Will have the biggest impact on vulnerable people with long-term/chronic conditions, essentially they'd have \$600 of new OOP/year costs (\$100/ Episode if no prior hospital stay and more than 5 visits)
- Limiting use of Rehab. hospital care; perhaps pretending that SNFs provide same level of care, for specified conditions, as IRFs
- Increasing Part B deductible and Medigap costs to encourage “skin in the game;” allegedly therefore reducing use of unnecessary health care
- Further income-basing Medicare premiums for Parts B & D
- Strengthen Independent Payment Advisory Board (IPAB)

**Missing:** Does not negotiate Rx prices or eliminate private MA plan subsidies

# PRESIDENT'S PLAN (Cont.)

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Would veto any bill that takes from Medicare without asking for revenues from wealthiest individuals and biggest corporations

# PRESIDENT'S PLAN: CONCLUSION

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- Far better than Republican Voucher plan and other proposals. (Example: Lieberman/Cochran)
- Still need more details but **IF** President's Medicare changes are part of package w/ revenue increases, probably supportable – with caveats.
- Biggest concerns: Will result in significantly greater cost-shifting to beneficiaries, particularly those who have long-term conditions. We need more information about this, about the new Part B cost-sharing, and about cuts to Medicare Advantage.

# RYAN/REPUBLICAN BUDGET

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- Eliminates Medicare Program in 2022
- Replaces it with individual vouchers
  - To purchase private health insurance
  - Approximately \$8,000 / year
  - Would apply to people now 55 or younger
- Passed House (Party Lines) 4/2011
- Speaker Boehner: Cut Spending, No new revenue

# SUPER COMMITTEE

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- Pass budget savings by Thanksgiving
- Or automatic across-the-board cuts
  
- What combination of President and Ryan/Republican proposals?

# CENTER'S SIX POINT PLAN

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1. Lower the eligibility age for Medicare to 55 so that younger, healthier people who typically need less care and fewer services can add revenue to the program through premiums and other cost-sharing.
2. Require the Secretary of HHS to use Medicare's negotiating power with pharmaceutical companies to lower the cost of prescription drugs.
3. Stop paying private insurers who run Medicare Advantage plans any more money than the cost of providing the same coverage in traditional Medicare.

# CENTER'S SIX POINTS (Cont.)

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4. Include a drug benefit in traditional Medicare, like other services in Part B, to encourage participation in the lower cost, traditional Medicare program.
5. Extend drug rebates to poorest Medicare beneficiaries, including those eligible for Medicaid or the Medicare Part D Low Income Subsidy
6. Fully fund and implement ACA (Health Care Reform), including all the many provisions that reduce Medicare and health care costs

# OVER-RIDING PRINCIPLE

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Avoid further cost-shifting to Medicare beneficiaries, who already spend more of their income on health expenses than people with other health insurance.

# TWO MEDICARE “HOT TOPICS”

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- Improvement Standard
  - *Jimmo vs. Sebelius*, (D. VT //2011)
    - Challenges denials for failure to improve, “chronic & stable,” “maintenance only”
    - Class Action: 6 individuals and 7 organizations

# IMPROVEMENT STANDARD

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## Particular Problem for

### People With Long Term & Chronic Conditions

- Required: Individualized assessment regarding eligibility for coverage
- Restoration potential *not* the deciding factor
- Skilled therapy and other services can be covered to:
  - Prevent further deterioration
  - Preserve current capabilities
- Home Care can be long term
  - No time limit if continue to meet qualifying criteria

# OBSERVATION STATUS

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- Hospital patients determined to be “observation status” rather than admitted as inpatients
  - Even tho stay overnight, receive care, meals, tests, etc.
  - Paid for under Part B, not Part A
- Harmful to beneficiaries
  - Not considered to have required prior hospital stay so can’t get Medicare SNF coverage
  - May have Rx and other costs not covered by Part B
  - Difficult to appeal

# RESOURCES

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- Center for Medicare Advocacy, Inc.
  - [www.medicareadvocacy.org](http://www.medicareadvocacy.org)
  - CT/(860)456-7790 • DC/ (202)293-5760
  - Chiplin, Stein, et al, *Medicare Handbook*; Aspen Pub. Co. (12<sup>th</sup> Edition 2011)
  
- Centers for Medicare & Medicaid Services (CMS)
  - [www.medicare.gov](http://www.medicare.gov) & [www.cms.gov](http://www.cms.gov)
    - CMS Policy Manual can be found on [www.hhs.cms.gov](http://www.hhs.cms.gov)

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