

Future of Medicare Part B Payment Demo Under Republican Held Congress

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There has been much controversy over the **Medicare Part B** payment demonstration [proposed](#) by the **Center for Medicare and Medicaid Innovation (CMMI)** in March 2016. As we await the release of the final rule, the fate of this demonstration will be in the hands of a Republican-held Congress and **President-Elect Trump**. To move forward, not only will CMMI need to finalize the implementing regulations, but the Part B payment demonstration will also need to survive review under the Congressional Review Act (CRA).

CMS proposed the Part B payment demonstration to align payment incentives with the promotion of high quality and cost-effective purchasing of Part B drugs. The demonstration, as proposed, is to be implemented in two phases. The first phase would update the payment methodology for Part B drugs. Currently, Medicare pays providers Average Sales Price (ASP) plus a 6% add-on fee for Part B drugs. Phase one of the demonstration would update the pricing such that providers will be paid ASP plus 2.5% and a flat fee of \$16.80. The second phase would involve the use of one or more value-based purchasing tools with the goal of testing approaches that would shift the market from a volume-based payment system to one based on improving patient outcomes.

As mentioned in previous [blogs](#), the Part B payment demonstration has been criticized by patient and physician groups and has been in hot water on Capitol Hill. It was one of the demonstrations targeted by Representative Tom Price in his [letter](#) condemning CMMI's authority. It has also received criticism from members of the Senate Finance Committee and leading House Republicans, including, Rep. John Shimkus, one of the leading candidates for Chairman of the Energy & Commerce Committee.

The CRA requires federal agencies to submit a copy of final regulations to Congress for review. Congress then has 60 session days to introduce a joint resolution of disapproval for all major rules. The President has the opportunity to veto the joint resolution, and if vetoed, Congress has 30 session days to override the veto.

Even if the Part B payment demonstration rule is finalized before the end of 2016, it will be subject to a review period in 2017 by a Republican-controlled Congress and President Trump. In fact, as a

result of the CRA, many of the agency rules promulgated in the last six months can be revisited by Congress. Should CMS actually move to finalize the demonstration, a Republican-controlled Congress could nullify this rule shortly after its release. Accordingly, the likelihood of the Part B payment demonstration coming to fruition appears to be extremely low.

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