

# ALERT

GOVERNMENT REGULATION / HEALTH LAW

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## Hospitals Benefit from Medicare and Medicaid Giveback Legislation

On December 15, 2000, the House and Senate passed the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 ("BIPA"). President Clinton is expected to sign the legislation, which will yield financial and regulatory relief to hospitals participating in the Medicare program.

### Financial Relief For Hospitals

BIPA provides an estimated \$35 billion in additional funding for Medicare providers over five years. According to congressional staff, approximately 40% of the additional Medicare funding provided in BIPA will be specifically allocated to hospitals in order to minimize the burdens imposed by the Balanced Budget Act of 1997. Such relief will include the following:

- Restoration of the full "market-basket increase" in Medicare reimbursement for inpatient and outpatient hospital services furnished in connection with prospective payment in fiscal year 2001;
- A decrease in the scheduled reduction of Medicare disproportionate share ("DSH") payments for fiscal year 2001;
- An increase in Medicare reimbursement for inpatient services furnished in rehabilitation facilities in fiscal year 2002;
- An increase in the Medicare national cap and target amount for long-term care hospitals in fiscal year 2001;

- An increase in Medicare incentive payments to psychiatric hospitals for inpatient services in fiscal year 2001;
- An increase in the floor for Medicare direct graduate medical education payments beginning in fiscal year 2000; and
- Authorization for rehabilitation facilities to elect immediate Medicare reimbursement through the forthcoming prospective payment system.

### Regulatory Relief For Hospitals

BIPA also affords hospitals substantial regulatory relief. The principal source of relief is a delay in implementation of the new requirements for obtaining provider-based designation for hospital outpatient departments. If a hospital treated a facility as "provider-based" prior to October 1, 2000, it may continue to do so until October 1, 2002 without obtaining a formal designation from the Health Care Financing Administration and without observing the augmented ownership, licensure, administrative, clinical, or geographic location requirements of the regulations. Similarly, the restrictions relating to joint ventures, management contracts, and the provision of services "under arrangement" codified in the regulations need not be observed until October 1, 2002. It should be noted, however, that such outpatient facilities will be subject to new restrictions under the Emergency Medical Treatment and Active Labor Act for cost reporting periods beginning on or after January 10, 2001.

BIPA also relaxes the geographic-proximity requirement that will be applied to outpatient facilities seeking provider-based status. Specifically, a facility will be deemed to meet the geographic proximity requirement if:

- It meets the requirements enumerated in the hospital outpatient prospective payment rule (42 C.F.R. § 413.65(d)(7));
- It is located within 35 miles from the main hospital campus; or
- It is owned or operated by a hospital that maintains a DSH adjustment level greater than 11.75% and such hospital is:
  - Owned by a state or local government;
  - A public or private nonprofit that “is formally granted governmental powers” by a unit of state or local government; or
  - A private hospital which contracts with a state or local government to operate clinics in a defined area in order to provide access to low-income individuals not entitled to Medicare or Medicaid.

BIPA contains a wide array of additional provisions affecting hospitals. Please contact us if you would like to discuss this legislation further:

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