If you give a regulator a cookie...

By Stephanie Zaremba | July 1, 2016

Physicians who bill Medicare may want to familiarize themselves with the popular children's book, "If You Give a Mouse a Cookie." Here's a recap for the uninitiated: A boy gives a cookie to a seemingly innocent mouse. The mouse needs milk to go with his cookie, then a straw to drink the milk, and a mirror to avoid a milk mustache, some scissors to trim his hair, etc. Each time the boy gives the mouse what he wants, it prompts another request, until the mouse is reminded that...he wants a cookie.

This is a quintessential example of a genre of story known as a "circular tale," where the narrative is repeated indefinitely and the last element leads inevitably back to the first. As someone who spends my days in the storybook land known as government, this narrative feels eerily familiar.

The setup for our regulatory tale is the flawed Sustainable Growth Rate (SGR) formula, which since the late 1990s has threatened annual Medicare rate cuts, forced Congress to enact regular "doc fix" legislation to prevent the SGR from taking effect, and resulted in a growing budget deficit. Last year, Congress finally ended the madness by passing the Medicare Access and CHIP Reauthorization Act, or MACRA. This replaced the SGR with 200-plus pages outlining a new Medicare reimbursement scheme, designed to set rates on a more stable and value-based trajectory.

Here's how I see our MACRA tale unfolding from here:

If you give CMS an intricate, 200-plus page framework for an entirely new and supposedly-more-reasonable Medicare reimbursement program, the agency will propose nearly 1,000 pages of overwhelmingly complex regulation to implement that program (which it did in May of this year).

After CMS publishes overly complicated MACRA regulations, the majority of physicians will struggle to meet program requirements by the proposed January, 2017 start date (which CMS has heard consistently from physician groups and others in recently submitted comments).

If the majority of physicians struggle to navigate the complex MACRA rules and fail to perform well against myriad measures, they will face negative adjustments to their Medicare reimbursement rates.

In the face of looming cuts to Medicare reimbursement rates, physicians will call on Congress to pass a new version of “doc fix” legislation to prevent the cuts from taking effect.

And if Congress acts to ensure that physicians do not face Medicare cuts (and Congress will, because no one wants to go back to their home state and explain why they penalized physicians caring for seniors), the budget-neutrality of MACRA will fly right out the window.

If MACRA is not a budget-neutral program, the deficit will grow, until...you guessed it, the healthcare industry calls on Congress to repeal the flawed MACRA framework in favor of something more reasonable.

CMS can still avoid ending this sordid tale exactly where we started. The comment period on the MACRA proposed rule just closed, and CMS has until November to finalize the details before the start of the first MACRA performance year in 2017. The agency can, and should, simplify its impenetrable proposed rule so that physicians in all practice sizes and settings can understand what is takes to succeed.

It may be too late at this point to take back the cookie from CMS, but it’s not too late to push back on the milk.

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