



AMERICAN
BANKRUPTCY
INSTITUTE

2018 Winter Leadership Conference

Keeping the Patient Alive: Avoiding Administrative Insolvency in Health Care Cases

*Hosted by the Business
Reorganization, Health Care
and Secured Credit Committees*

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**KEEPING THE PATIENT ALIVE:
AVOIDING ADMINISTRATIVE
INSOLVENCY IN HEALTHCARE CASES**



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WINTER LEADERSHIP CONFERENCE

December 6-8, 2018

Scottsdale, Arizona

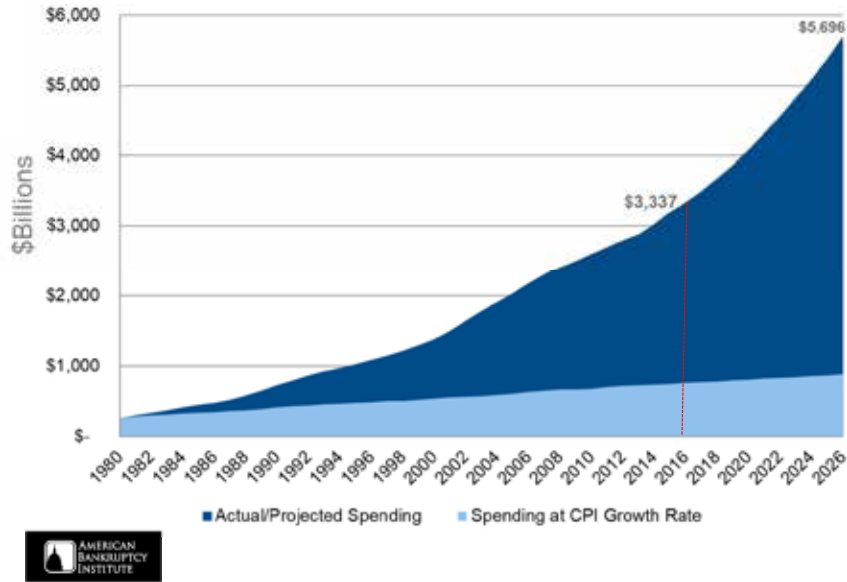


**KEEPING THE PATIENT ALIVE:
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**Healthcare:
Inside the Numbers**

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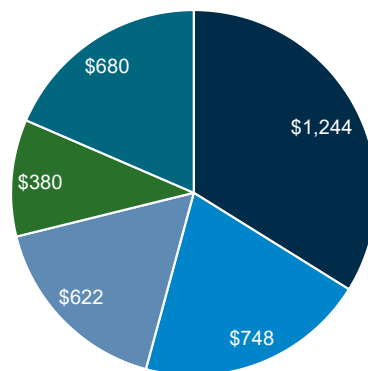
NATIONAL HEALTH EXPENDITURES FORECAST TO INCREASE BY \$2.3 TRILLION IN ONLY TEN YEARS!



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U.S. NATIONAL HEALTH EXPENDITURES BY PAYER

2018: \$3,675 Billion

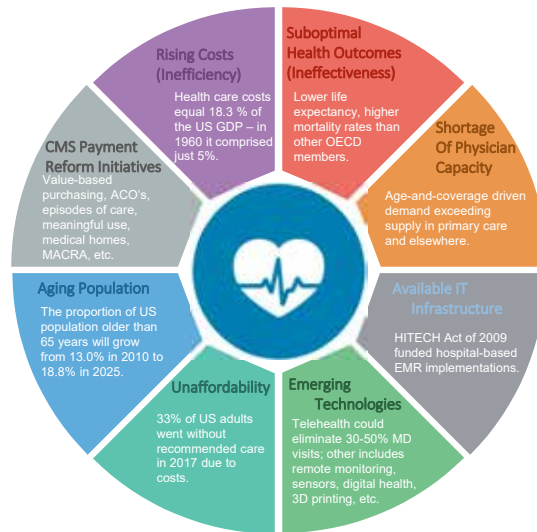


■ Private ■ Medicare ■ Medicaid ■ Out-of-pocket ■ Other



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THE INCREASE IN HEALTHCARE COSTS, COMBINED WITH RISING UNAFFORDABILITY MAKES HEALTHCARE TRANSFORMATION INEVITABLE



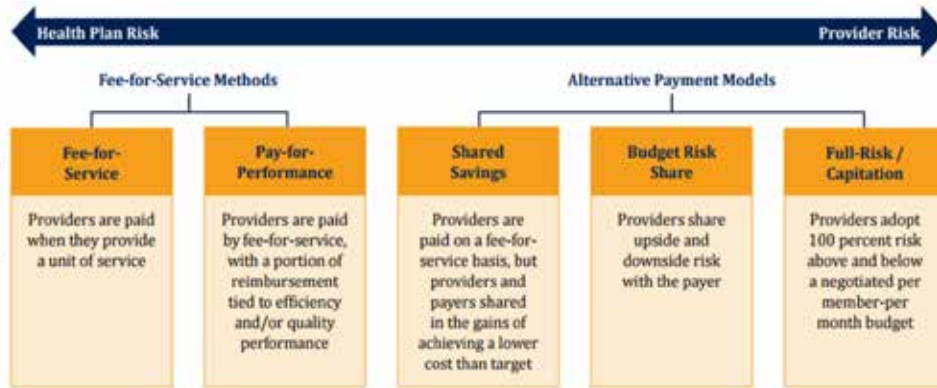
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- **The Centers for Medicare & Medicaid Services (CMS), f/k/a The Health Care Financing Administration (HCFA)**
 - A federal agency under the US HHS
 - It administers Medicare
 - Also works with various state governments to administer Medicaid and other programs
 - Note: Medicare Part A projected to be insolvent by 2026



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CMS IS DRIVING THE CHANGE IN REIMBURSEMENT FROM VOLUME TO VALUE



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SETTING THE STAGE



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WHY ARE MORE HEALTHCARE COMPANIES FINANCIALLY DISTRESSED?

- More Challenging Environment because:
 - Flat to decreasing reimbursement in some sectors
 - Increased regulatory burden both prospectively and retrospectively
 - Note: Health spending is about 18% of GDP; will be approaching 20% by 2026



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CUTS IN REIMBURSEMENT



- Physicians and hospitals continue to see flat or lower reimbursements
- About 70% of doctors are accepting new Medicaid patients, while about 80% are accepting new Medicare patients or private coverage
- There are about 1.25 million Medicare providers

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CUTS IN REIMBURSEMENT

CMS operating payments to hospitals decreased approximately .6% in fiscal year 2015 compared to the prior year

CMS anticipates cuts in both fiscal years 2018 and 2019

There are various penalties and other reductions in reimbursements for physicians and hospitals that can negatively impact the bottom line (e.g. failure to timely provide meaningful use data)

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WAYS IN WHICH HEALTHCARE IS DIFFERENT

Funding the Typical Healthcare Business

- Provider Agreements with Medicare/Medicaid: beware of assuming or rejecting
- Recoupment – it trumps the automatic stay
- The “Strumpf”/Administrative Freeze – Temporary Halt to Medicare/Medicaid Reimbursements Pending Investigation of Overpayments and Setoff Rights

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WAYS IN WHICH HEALTHCARE IS DIFFERENT

Patients

- Protection of patient information under non-bankruptcy law (HIPAA , Pub. L. 104-191; <http://www.hhs.gov/ocr/hipaa>)
- Protection of patient records under applicable law (storage and disposal – Section 351)
- Patient Care Ombudsman - Section 333
- Transfer of Patients – Section 704(a)(12)

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WAYS IN WHICH HEALTHCARE IS DIFFERENT

Healthcare Specific Provisions

- Healthcare Business defined - Section 101 (27A)
- Healthcare Business Closures – Section 503(b)(8)
- Compliance with state law – Section 363(d)(1) and 1129(a)(16)
- Conversion from non-for-profit to for-profit in compliance with state law - Section 541(f)

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WAYS IN WHICH HEALTHCARE IS DIFFERENT

Administrative Solvency Drivers

- Payroll Taxes
- False Claims Act Claims/Overpayments
- Closure Costs
- Storage/Disposal of Medical Records
- Ombudsman Fees
- Vendors – 503(b)(9) Claims and Critical Vendors

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