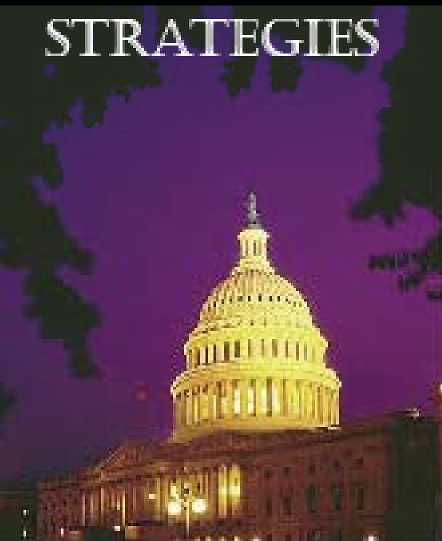
HART HEALTH STRATEGIES



Health Policy Briefing

January 4, 2010

Congress Recesses but Staff Carries Health Reform Efforts Forward

Given the enactment of the Defense Appropriations legislation (P.L. 111-118) containing the LHHS and other spending bills as reported earlier, last week the President pocket vetoed the continuing resolution for FY 2010 that was passed as a fail-safe in case the Senate did not finish its appropriations business before the prior CR expired on December 23. Although the House will not return until January 12th, House and Senate staffers are busy reconciling the differences between the House and Senate passed health insurance reform bills (H.R. 3962 and H.R. 3590, respectively) in an attempt to have members sign a conference report in early February.

Prospects for a Successful Conference on Health Reform

While House members do not want to become a rubber stamp for the Senate-passed health reform bill, there is increasing acknowledgement that the House will have to bend to the will of the Senate in conference on key Senate provisions. For example, **Rep. Chris Van Hollen,** Chairman of the DCCC and Assistant to the House Speaker, said "We're not going to rubber-stamp the Senate bill. On the other hand, we recognize the realities in the Senate…." and that the House could probably find an acceptable alternative to the public option in the House bill if it provides insurance policies that are affordable. Perhaps a more troubling issue will be reconciling the House's more strict abortion coverage provision with the Senate provision contained in **Senate Majority Leader Harry Reid's** manager's amendment. **Rep. Bart Stupak**, who authored the House language, has already indicated that the Senate language is insufficient, but that he will work with the conferees in an attempt to resolve the issue. Although there are other significant differences between the two bills, these issues are unlikely to stall the conference process.

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Health Reform Update

Key Differences in House and Senate Health Reform Bills

- Insurance Exchanges: House has national exchange, Senate has state-based exchanges;

- Medicaid Eligibility: House 150% of FPL, Senate 133% of FPL (governors complain of unfunded mandates, especially in California which considers FMAP unfair to the state because of the high level of eligibility);

- SCHIP: House would end program in 2013 and Senate reauthorizes through 2015;

- Individual Mandate (some exceptions for certain ministers and others): House has mandate or penalty of either 2.5% of AGI or the average cost of insurance premiums available on the health care exchange, Senate phase-in penalties would begin at $95 in 2014 and rise to $495 in 2015 and to $750 in 2016 (indexed thereafter);

- Individual Subsidies: House has more generous subsidies for those with incomes less than 250% of FPL, Senate is more generous for those with incomes up to 400% of FPL;

- Employer Mandate: House has 8% of payroll pay or play rule with exception for firm payrolls under $500,000 and phase-in for $500,000-$750,000, Senate cliff is 50 employees or more and penalty up to $750 per employee;

- Small Business Tax Credits: House has credits for firms with 10 or fewer employees and $25,000 or less in average wages, Senate has sliding scale credit up to 50% for employers with up to 25 employees and average annual wages of less than $50,000;

- Individual Tax Payfors: House has a surtax of 5.4% on singles with AGI's of more than $500,000 and joint filers with an income of $1+ million, Senate has an excise tax on "Cadillac" plans;

- Medical Device Tax: House has 2.5% tax on domestic sales, Senate would tax device manufacturers $2 billion annually from 2011 until 2017 and $3 billion thereafter;

- Insurer Fee: House--none, Senate, with certain exceptions, has an annual nondeductible health insurance provider fee of $2 billion for 2011, $4 billion for 2012, $7 billion for 2013, $9 billion for 2014 through 2016, and $10 billion thereafter;

- Drug Industry Tax: House--none, Senate has a $2.3 billion yearly tax on the pharmaceutical industry;

- FSAs: House caps employee contributions at $2,500 per year and use of FSA funds for nonprescription drugs and medical supplies would no longer be permitted, Senate--similar;

- Employer Part D Subsidy: House would eliminate the tax deduction for employers that receive a government subsidy for providing retiree prescription drug coverage, Senate--similar;

- Medical Expense Deduction: House--no change, Senate raises individual deduction for medical expenses from 7.5% to 10% of AGI;

- Tanning Tax: House--none, Senate has new 10% excise tax on indoor tanning services.

Meaningful Use of EHRs

CMS has issued an NPRM for "meaningful use" criteria for electronic health records pursuant to the ARRA's Health Information Technology for Economic and Clinical Health Act provisions (HITECH) in an effort to provide a nationwide, interoperable, secure, and private electronic health information system. Meaningful use would be phased-in under three stages for hospitals and eligible physicians between 2011 and 2015. Also, the Office of the National Coordinator for Health Information Technology published an interim final rule for initial standards, implementation specifications and certification criteria for electronic health record technology. The interim final rule will take effect 30 days after it is published on January 13 and comments are due 60 days thereafter.

HHS Health Quality Measures for Children

Pursuant to the Children's Health Insurance Program Reauthorization Act, HHS has released a core set of children's health care quality measures. The measurements, to be used on a voluntary basis under the Medicaid and SCHIP programs, range from the frequency of ongoing prenatal care and childhood immunization status to the number of well-child care visits and emergency department utilization. HHS said it is seeking "to help determine which measures should remain in the core set, which measures may need further development to enhance their validity and feasibility, and the nature of technical assistance and other resources required before State Medicaid and CHIP programs and health care providers can be expected to implement and report on these measures." Comments are due by March 1, 2010.