



House/Senate Democrats Agree on Medicare MD Payment/COBRA Extension

Medicare MD Fix/COBRA Extension

The temporary extender package freezing Medicare physician payments and extending COBRA subsidies passed by Congress on April 15, H.R. 4851, ends on May 31st. Last week, the House and Senate Democrat leadership agreed to include “extenders” for these measures in the “American Jobs and Closing Tax Loopholes Act of 2010,” H.R. 4213. The House Rules committee is expected to take up the unemployment and other extenders on May 25th with Senate consideration to follow the House vote. Whether the near \$200 billion bill passes both chambers before the Memorial Day recess remains up to Democrat Blue-Dogs and Republicans in the House and to deficit hawks in the Senate who have previously objected to similar legislation without offsets for nearly two-thirds of the bill’s cost. The bill includes the following Medicare changes:

(1) a \$65 billion Medicare physician payment increase of 1.3% from June 1st until December 31, a 1% increase in 2011 and for 2012 and 2013 the payment increases would be based on the target growth rate formula in H.R. 3961, legislation passed by the House in 2009 which allows for spending growth of GDP plus 2% for primary care services and GDP plus 1% for all other services (a zero floor would be put in place for 2012-13 to

ensure that no group of physicians gets a payment cut below zero; also in 2012-13 physicians in accountable care organizations can be subject to ACO-specific spending targets in lieu of national spending targets; in 2014 and beyond, the physician payment system would revert back to current law which could result in a payment cut as much as 37%);

(2) a bundling of services by hospitals which would reduce their payments by \$4.5 billion;

(3) an extension of hospital geographic reclassifications authorized under section 508 of the Medicare Prescription Drugs, Improvement, and Modernization Act (Pub. L. 108-173) which would cost

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Health Reform Update

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of \$300 billion over 10 years;

(4) a repeal of the delay until October 1, 2010 of the implementation of Version 4 of the Resource Utilization Groups (RUG IV) for purposes of reimbursing skilled nursing facilities under Medicare and a provision allowing RUG IV to go into effect on October 1, 2010 consistent with the final SNF payment regulation for FY 2011;

(5) \$175 million to allow CMS to reprocess certain provider claims for 2010 back to January 1st;

(6) a provision allowing CMS to collaborate with the IRS to help identify potentially fraudulent providers by determining whether providers applying to enroll or re-enroll in Medicare have failed to file federal tax returns or have delinquent tax debts (resulting in \$400 million of savings over 10 years);

(7) a clarification of the so-called three-day payment window for hospitals under Medicare.

The bill would also extend for six months the ARRA increase in federal Medicaid matching funds beyond year-end (at a cost of \$24 billion over 10 years). If enacted, the legislation would extend the ARRA 65% COBRA subsidy until year-end at a cost of \$7.79 billion. In addition, the bill would expand the 340B safety-net provider drug discount program to the inpatient setting for patients who are uninsured or who

have insurance that does not coverage prescription drugs. Congress may have to act again before year-end on other Medicare/Medicaid issues, including extending the PPACA adjustment for rural physician fees and occupational/speech therapy caps.

Budget/Appropriations Issues

Last week **Senate Budget Chairman**

Kent Conrad said passing an FY 2011 budget resolution may not be possible and that he and Senate Democratic leaders are instead considering the inclusion of a deeming resolution in the \$59 billion emergency supplemental spending package to be taken up in the Senate. The resolution would set federal discretionary spending levels for FY 2011 and allow appropriation committees to pass the 12 annual federal funding bills. He said that he would like to pursue the \$1.124 trillion in discretionary funding that was part of the budget resolution passed by his committee last month.

VA Spina Bifida Bill Passes Senate

Following in the steps of the House, last week the Senate passed H.R. 5014, legislation designed to ensure that the Department of Veterans Affairs "Spina Bifida Health Care Program" (established in 1996 to cover children with spina bifida and other birth defects connected to their mothers' service in Vietnam or Korea between 1967 and 1971) meets "minimum essential coverage" requirements set out under the PPACA. The bill is expected to be signed into law by the President.

Health Reform Update

New CRS Reports on the PPACA

The CRS has recently issued several reports on PPACA provisions. One outlines the potential penalties for large employers. It says that beginning in 2014, the PPACA does not explicitly mandate that employers offer acceptable health insurance, but that certain employers with

at least 50 full-time-equivalent employees will face penalties of \$2,000 per employee (after the first 30) if at least one full-time employee obtains a premium credit through an exchange. In a second report, CRS says that legislation in at least 39 states has been introduced to limit,

change or oppose various parts of the PPACA, including the individual mandate to purchase health insurance. It also describes the legislation passed in Florida and other states to contest the constitutionality of the new law.

IRS Guidance on Small Business Health Tax Credits

Last week the IRS issued Notice 2010-44, constituting comprehensive guidance on the PPACA's small-employer tax credit. The notice addresses four primary issues--the effect of state subsidies on the federal credit, how add-on insurance is treated, how to calculate the hours worked by employees and some transition issues small businesses may face. The guidance clarified that the federal credit will never be reduced because an employer is receiving a state health care subsidy.

NIH Issues

New NIH Conflict of Interest Rules--NIH has proposed new rules under which researchers funded by the NIH would have to disclose substantially more information about their financial relationships with private industry. The public will have 60 days to comment on the 112-page notice. **NIH Director Francis Collins** said that as scientific research moves forward, partnerships with private industry are needed and that "At the same time we need to be clear that in order to preserve the public trust and the objectivity of biomedical and behavioral research, all research has to be conducted without bias and with the highest scientific and ethical standards...."

PPACA Reduces Inpatient Hospital Payments

Last week CMS proposed a supplemental rule pursuant to the PPACA which would reduce aggregate Medicare payments across all inpatient hospitals by \$820 million in FY 2011. The supplemental proposed rule would generally be effective for discharges occurring on or after October 1st, 2010.

CMS Rule on Hospital Telemedicine Providers

CMS has issued a proposed rule which changes the conditions of Medicare/Medicaid hospitals to streamline the credentialing and privileging process for providers who practice telemedicine. Comments are due no later than July 26.

Health Related Hearings this Week

Senate HELP Committee, to hold a business meeting May 26 to consider S. 2781, to change references in federal law to mental retardation to references to an intellectual disability, and to change references to a mentally retarded individual to references to an individual with an intellectual disability.

House Energy and Commerce, Subcommittee on Health, to hold a hearing May 27, “Promoting the Development of Antibiotics and Ensuring Judicious Use in Humans.”

House Oversight and Government Reform to hold hearings May 27 regarding the circumstances surrounding the recall of popular children’s medicines..

House Veterans’ Affairs to hold a hearing May 27 on H.R. 4062, Veterans’ Health and Radiation Safety Act; and H.R. 4505, to enable state homes to furnish nursing home care to parents any of whose children died while serving in the armed forces.

Recently Introduced Health Legislation

S. 3378 (MILITARY HEALTH), to authorize health care for individuals exposed to environmental hazards at Camp Lejeune and the Atsugi Naval Air Facility, to establish an advisory board to examine exposures to environmental hazards during military service, and for other purposes; AKAKA; from the Committee on Veterans’ Affairs; placed on the calendar, May 17.

S. 3393 (COBRA), to provide for extension of COBRA continuation coverage until coverage is

available otherwise under either an employment-based health plan or through an American Health Benefit Exchange under the Patient Protection and Affordable Care Act; BROWN of Ohio; to the Committee on Health, Education, Labor, and Pensions, May 20.

H.R. 5354 (DIABETES), to establish an Advisory Committee on Gestational Diabetes, to provide grants to better understand and reduce gestational diabetes, and for other purposes; ENGEL; to the Committee on Energy and

Commerce, May 20.

H.R. 5364 (MEDICAID), to amend Title XIX of the Social Security Act to require states to provide oral health services to aged, blind, or disabled individuals under Medicaid, and for other purposes; STUPAK; to the Committee on Energy and Commerce, May 20.