



Five year doc fix?

During the annual meeting of the American Hospital Association, **Rep. Chris Van Hollen** (D-MD), a member of the House Democratic leadership team, stated that the House may pursue a five-year reform of the sustainable growth rate (SGR) in the Medicare program. “If you can’t get a permanent fix . . . at the very least we hope to enact a five-year fix, which certainly would be better than the month-to-month and the year-to-year approach,” Van Hollen said. “And that would be a five-year fix as we then look forward to enacting a permanent fix.”

While a five-year extension would not require offsets under recent pay-as-you-go rules, there are currently no pending legislative proposals for a longer reform for Medicare physician payment. However, the Congressional Budget Office (CBO) has prepared a menu of options for reforming the SGR, with options including those that retain the current cliff in funding, provide a clawback option to eliminate the cliff (which may or may not include recoupment), and to completely restructure the SGR. In examining the potential increase of physician payments, the options have centered around three proposals – 0%

update, 2% update, or an update based on the Medicare Economic Index or MEI (which varies from 0.7 to 1.8%, according to CBO estimates). The current short-term SGR fix extends payments for physicians through the end of May — at which time the cuts would be reinstated unless the payments are extended again.

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Health Reform Update

Opting out

As of Friday, 11 States have notified the Department of Health and Human Services that they will not set up a new health insurance pool for individuals with pre-existing conditions (e.g., Georgia, Hawaii, Idaho, Indiana, Louisiana, Minnesota, Mississippi, Nebraska, Nevada, Tennessee and Wyoming), while 21 States and the District of Columbia will do so. As of 12:30 p.m. Friday, these are the states that will operate a program: Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Illinois,

Kansas, Kentucky, Maine, Maryland, Michigan, Missouri, Montana, New Jersey, North Carolina, Ohio, Oklahoma, Rhode Island, South Dakota, Vermont and Washington. All states faced a deadline of April 30 for advising the federal government on whether they intend to take part and begin the process of implementation, but not all States had officially notified HHS. If States opt not to form their own high risk pool, then the federal government will establish one for those States.

Beating up on insurers

Continuing the mantra against insurers, after getting several insurers (i.e., WellPoint, Humana, United, Aetna, Kaiser, Coventry, Blue Cross Blue Shield, Cigna, Geisinger, Health Partners, and Group Health of Seattle) to agree to cover children up to age 26 before the required deadline, Secretary Sebelius this week turned to pushing insurers to

end health insurance rescissions (or the cancellation of a health insurance contract by the insurer generally following the diagnosis of an expensive-to-treat illness in the patient) before the deadline of September 23 in the Affordable Care Act. So far, Wellpoint and UnitedHealthCare have agreed to comply before the law's deadline, and late Wednesday the America's Health Insurance Plans (AHIP)

announced that health insurers in general would commit eliminating rescissions when individuals become ill. In related news, Secretary Sebelius was proud to announce on April 29 that Anthem is withdrawing its proposed 39 percent rate hike, which would have affected approximately 800,000 Californians.

Additional implementation of the health care reform law

This week, the Administration announced the implementation of additional provisions of the Patient Protection and Affordable Care Act, including (1) eliminating the Practicing Physicians Advisory Council (per section 3134(b)(2)); (2) announcing new IRS policies that allow for pre-tax employee contributions for children under 26-years old; (3) outlining a new organizational structure of insurance watchdog within the Department of Health and Human Services (HHS), the Office of Consumer Information and Oversight, which will be headed by

Jay Angoff; and (4) submitting a notice regarding the collection of information likely required for HHS's internet portal (required by July 1, 2010) to help individuals and small groups identify coverage options in their states. Under this notice, HHS has identified specific information that insurers and States will need to provide, with some information being phased in and required after the July 1 implementation date.

AstraZeneca and J&J fined for off-label promotion

Federal officials announced on Tuesday that AstraZeneca Pharmaceuticals has agreed to pay \$520 million to settle government charges that it illegally marketed the anti-psychotic drug Seroquel by promoting off-label uses of the drug by (1)

marketing to physicians who do not normally treat mental disorders, (2) influencing the content of, and speakers, in company-sponsored continuing medical education programs, (3) engaging doctors to give promotional speaker programs on off-label uses for Seroquel ,

and (4) recruiting doctors to serve as authors of articles that were ghostwritten by medical literature companies. AstraZeneca then used those studies and articles as the basis for promotional messages about off-label uses of Seroquel.

Rising health care costs

At the opening session of the White House National Commission on Fiscal Responsibility and Reform on Tuesday, **Rep. Paul D. Ryan** (R-WI) explicitly included Medicare, Medicaid and the new health care overhaul law in the mix to address reductions in federal spending. While the analysis of the Congressional Budget Office suggested that the measure would not increase the federal deficit, a different analyses from the **Centers for Medicare and Medicaid Service chief actuary Richard Foster** released on suggests otherwise – including a report

of the Senate-passed legislation from January 8 and a revised report taking into consideration the full reconciliation measure released April 22. Given the differences between the two estimates, Republicans have asked for additional hearings on the issue. Meanwhile Senate budget planners on Monday officially introduced their new fiscal 2011 budget resolution (S Con Res 60), while the House budget negotiators continue discussions.

Hearings of note

At a hearing of the House appropriations committee, **Francis Collins**, the Director of NIH, discussed NIH spending in light of the President's proposal to increase NIH's budget by \$1 billion to \$32.2 billion, voicing concerns regarding the impact of not having an appropriate transition for the two-year \$10.4 billion funding provided through the American Recovery and Reinvestment Act (i.e., stimulus funds that expire at the end of the fiscal year in September). Separately, during a House appropriations committee focused on drug safety issues, Sen. Grassley discussed the need for a new independent drug safety office. Responding to concerns regarding

antibiotic resistance, the House Energy and Commerce Health Subcommittee held a hearing with two witnesses – **CDC Director Thomas Frieden** and **NIAID Director Tony Fauci**, who stated that efforts are needed not only to develop new antibiotic drugs but also new vaccines, to create diagnostics that pinpoint when one product works better than another, and to fund basic research regarding how microbes develop resistance. In addition, witnesses discussed the overprescribing of antibiotics for viral infections and the need to reduce the spread of resistant organisms in health care institutions, in the community and in agriculture. On Thursday, the House Veterans' Affairs Health

Subcommittee held a hearing on rural contracted care outside of the Veterans Administration, followed by a markup of three veterans' health bills for chiropractic care (HR 1017) and continuing professional education (HR 5145). A Senate Homeland Security and Governmental Affairs subcommittee examined contract management at the Centers for Medicare and Medicaid Services, focusing on problems recently identified in a GAO report as well as the management and oversight of the Medicare Secondary Payer Recovery Contractor (MSPRC).

Schedule for next week

Next week the Senate will continue debating the Finance Reform legislation (S. 3217). In addition, the Senate Appropriations Committee will discuss NIH appropriations (May 5), while the Senate Veterans' Affairs Committee will hold a hearing regarding traumatic brain

injury (May 5).

On Monday, the House will be in a pro forma session; at this time, no further details of its activities are available. Next week, the Energy and Commerce subcommittees will be particular busy, with a mark up on May 5 with respect to three health bills

(HR 4700, Transparency in All Health Care Pricing Act of 2010; HR 2249, Health Care Price Transparency Promotion Act of 2009; and HR 4803, Patients' Right to Know Act) followed by an oversight subcommittee hearing regarding FDA and food safety (May 6).

Quality selection and Medicare Advantage

On Thursday, Avalere Health, a Washington consulting firm, released a report that found many Medicare

Advantage enrollees are not enrolled in the plans judged highest in quality on the government's website. Specifically, the analysis

found that nearly half are enrolled in plans with ratings of three stars or below.

FDA Issues

Advisory committee changes – Moving away from statements of approvability. On Monday, the U.S. Food and Drug Administration announced that it will change the way its expert panels review and discuss information during public hearings on medical devices under review for premarket approval, effective May 1, 2010. Specifically, those changes, prompted by the increasing number of medical device advisory panel meetings, include (1) only voting the safety and effectiveness of the device and its risk versus benefit (not the approvability), (2) voting by a ballot (instead of a show of hands), and (3) having information presented by the reviewers focus on the range of scientific opinion, not a unified, consensus analysis. In addition, beginning May 1, 2010, reviewers from the FDA's Center for Devices and Radiological Health (CDRH) will no longer be allowed to comment on approvability, either in briefing documents or during the advisory committee hearings, but focus on risk versus benefit.

Medical device failure - FDA warned consumers on Tuesday that about 280,000 external defibrillators may malfunction during attempts to rescue people in sudden cardiac arrest. Faulty components in defibrillators manufactured by Cardiac Science Corp. of Bothell, WA, may cause the devices to fail to properly deliver a shock, along with other problems.

Additional stem cell lines

On Wednesday, NIH announced that 13 additional human embryonic stem cell lines have been approved for Federal funding and will be available through the NIH Stem Cell Registry, bringing the total number of lines up to 64. One hundred additional lines are pending NIH approval.

H.R. 5145. (HEALTH CARE TRAINING) A bill to amend title 38, United States Code, to improve the continuing professional education reimbursement provided to health professionals employed by the Department of Veterans Affairs; MCNERNEY; to the Committee on Veterans' Affairs, April 27.

S. 3274. (CONTROLLED SUBSTANCES) A bill to amend the Controlled Substances Act to address the use of intrathecal pumps; CORNYN, BROWN; to the Committee on the Judiciary, April 28.

H.R. 5185. (ARMED

SERVICES; VETERANS HEALTH) A bill to amend titles 10 and 38, United States Code, to increase the maximum age for children eligible for medical care under the TRICARE program and the CHAMPVA program; DEFAZIO, DONNELLY and MARSHALL; to the Committee on Armed Services, and in addition to the Committee on Veterans' Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned, April 29.

H.R. 5187. (LONG TERM CARE) A bill to require the

Secretary to establish a commission that is designed to construct a comprehensive national strategy on how to increase the affordability, accessibility, and effectiveness of long-term care and community services; HASTINGS and others; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned, April 29.