



House Lobs Medicare MD Fix/Extenders-Jobs Bill to a Senate on Memorial Day Recess

Senate Delays House-Passed Medicare MD Fix/Jobs Bill

After a skirmish with House Blue Dogs over the cost of the American Jobs and Closing Tax Loopholes Act of 2010 (H.R. 4213), House Democrat leaders rallied enough votes to send the unemployment/Medicare “Doc Fix” legislation to the Senate last Friday. However, the Senate had already recessed for the Memorial Day holiday and will not return to consider the bill until June 7th at the earliest. To reduce the bill’s initial near \$200 billion cost and gain the necessary votes, House leadership stripped the COBRA subsidy extension to year-end (\$7.79 billion) and the six month extension of the ARRA increase in federal Medicaid matching funds beyond year-end (at a cost of \$24 billion over 10 years). In addition, the Medicare physician payment fix was trimmed from \$65 billion providing payment increases until 2014 to a \$22.9 billion fix providing 2.2% increase for the remainder of 2010 and a 1% increase for 2011. A separate vote of 245-171 was recorded on this provision which would still result in a 33% physician payment cut beginning January 1, 2012. These and other trimmings, including extending unemployment benefits only through November, brought the cost of the legislation to about \$116 billion, resulting in an increase in the federal deficit of about \$54 billion over ten years. The lack of

Senate action on the House bill will result in a 21% cut in Medicare physician payments beginning June 1st. However, CMS has instructed Medicare contractors to hold up processing claim reimbursements for 10 business days from June 1. It appears that a long-term fix for the SGR will have to wait another year at least. The Senate must still wrestle with the two-year doc fix which was exempted from PAYGO rules, thus setting up a confrontation with deficit hawks in the Senate.

Supplemental Includes Health Funding

Last week the Senate passed H.R. 4899, war and disaster relief supplemental appropriations which
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includes \$220 million for HHS relief efforts in Haiti, \$45 million for continuing funding for global influenza pandemic preparedness and \$2 million for FDA food safety monitoring in response to the Gulf of Mexico oil spill. The Senate has requested a conference with the House to resolve differences in the two versions.

Health Hearings and Markups

Before recessing the House Judiciary Committee marked up H.R. 847, legislation to provide compensation for 9/11 responders and others with resulting health conditions. The House also passed H.R. 1017, the Chiropractic Care Available to All Veterans Act, which requires a program under which the Secretary of Veterans Affairs is to provide chiropractic care and services to veterans through all VA medical centers and clinics by December 31, 2012. The Senate HELP Committee also reported S. 2781, Rosa's Law, which amends GINA, the PHSA and other federal laws and regulations to change references to "mental retardation" to references to "an intellectual disability."

Obama Asks Congress for Enhanced Rescission Authority

Responding to critics of expanding federal spending and increasing deficits, last week the President sent to Congress a proposal authorizing so-called "enhanced rescission authority" which would give the President 45 working days after a bill is enacted to send Congress a package of funding the Administration wants cut or rescinded. The legislation would require the House to vote first, up or down, on the package of spending cuts within 25 working days. **Speaker Pelosi** said "We look forward to reviewing the President's proposal and working together to do what's right for our nation's fiscal health and security, now and in the future...."

Budget Resolution?

Last week **Senate Budget Chairman Kent Conrad** said he hopes to pass a five-year budget resolution through the Senate by the Fourth of July recess. If this move fails, the Senate may have to resort to a so-called "deeming resolution" which would set the discretionary appropriations levels for FY 2011 and allow the appropriations subcommittees to report their respective measures.

Republicans Introduce PPACA "Repeal and Replace" Legislation

Last week **Rep. Wally Herger** (for all House Republicans) introduced H.R. 5424, the Reform Americans Can Afford Act "to repeal the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act

of 2010 and enact the Common Sense Health Care Reform and Affordability Act (H.R. 4038)."

House Ways and Means ranking member Dave Camp said "Instead of raising taxes, increasing the deficit and adding new mandates on families and small businesses,

we should be lowering the cost of health care for families and employers. This bill repeals the Democrats' health care law and replaces it with common sense provisions that will reduce premiums without raising taxes or cutting Medicare."

Health Reform Update

PPACA Implementation Issues

According to a new report released by the Kaiser Family Foundation Commission on Medicaid and the Uninsured, it found that the federal government will pay \$443.5 billion or 95.4% of the cost of the expansion from 2014 to 2019 while states will contribute about \$21.1 billion. In another study, released by the National Institute for Health Care Reform, it was estimated that as many as 7 million Americans may qualify for the high-risk pool program created under PPACA, but that the \$5 billion allocated under the law may provide coverage for as few as 200,000 people annually. After HHS Secretary asked the NAIC to provide the agency with policy proposals by June 1 on what types of expenses should be defined as medical expenses and what expenses should be considered administrative costs for medical loss ratio purposes, the

NAIC said it will miss the June 1st date but will respond by year-end as allowed under the statute. The NAIC also said it may be necessary to lower the medical loss ratio requirement for the individual market in the years leading up to full implementation of the law. Last week **HHS Secretary Kathleen Sebelius** said that federal officials will work with states to “watch very carefully what’s happening both with provider rates [and] with overhead costs” to ensure that insurers do not raise rates in an attempt to thwart the intent of the new medical loss ratio requirements. HHS also announced that about 80,000 checks for \$250 will be mailed out to Medicare Part D beneficiaries beginning June 10 to implement the PPACA provision designed to phase out the Medicare prescription “doughnut hole.” Ultimately, about 4 million beneficiaries are

expected to be eligible. HHS has also sent out to Medicare beneficiaries an information bulletin extolling the provisions of PPACA for seniors. Republicans were critical of the move. Last week the IRS issued Notice 2010-39 outlining new requirements for tax-exempt hospitals under the PPACA and asked for comments on the appropriate requirements for a community health needs assessment and what constitutes “reasonable efforts” to determine eligibility for assistance under a financial assistance policy for billing and collection purposes. In related news, the AMA has released 10 code of conduct principles (involving minimum loss ratios, quick claims processing, etc.) for health insurers that it is asking them to follow, although many of the provisions have been superseded by the PPACA.

Feds Respond to Virginia Challenge to PPACA

Last week the Department of Justice filed a formal response to the Virginia AG’s lawsuit seeking to block application of the PPACA individual health coverage mandate to the commonwealth’s residents. The DOJ filing contends that the federal individual insurance purchase mandate is a matter of interstate commerce, in part because it seeks to end uncompensated care that raises costs for health care providers, plans, health insurers and consumers and taxpayers nationwide. The state law the Virginia AG wants upheld would therefore violate the Constitution’s commerce clause according to the response. In addition, the DOJ maintained that the Virginia law conflicts with an act of Congress in violation of the supremacy clause of the Constitution. DOJ also argued that the state has no standing to sue, because Virginia itself would not be harmed by the individual purchase mandate and because the mandate does not take effect until 2014.

Final Rule Modifies Regulations Allowing Greater Medicaid Cost-Sharing

Last week CMS issued final regulations allowing states greater flexibility to structure new arrangements for Medicaid premiums and cost-sharing to take into account concerns about protecting beneficiary access to services. The original regulations were published Nov. 25, 2008, but never were implemented because the Administration reopened them for review before they took effect. The final rule takes effect July 1 and comments on it are due by July 27.

S. 3397 (CONTROLLED SUBSTANCES), to amend the Controlled Substances Act to provide for take-back disposal of controlled substances in certain instances, and for other purposes; KLOBUCHAR; to the Committee on the Judiciary, May 24.

S. 3401 (AIDS), to provide for the use of unobligated discretionary stimulus dollars to address AIDS Drug Assistance Program waiting lists and other cost containment measures impacting state ADAP programs; BURR; to the Committee on Health, Education, Labor, and Pensions, May 24.

S. 3407 (NURSING HOMES), to improve the quality of care in nursing homes, help families make informed decisions, and for other purposes; FEINGOLD; to the Committee on Health, Education, Labor, and Pensions, May 25.

S. 3413 (MEDICARE), to amend Part D of Title XVIII of the Social Security Act to require the secretary of health and human services to negotiate covered Part D drug prices on behalf of Medicare beneficiaries; FEINGOLD; to the Committee on Finance, May 25.

S. 3415 (MEDICARE), to amend the Federal Food, Drug, and Cosmetic Act with respect to the importation of prescription drugs and to amend Part D of Title XVIII of the Social Security Act to require the secretary of health and human services to negotiate covered Part D drug prices on behalf of Medicare beneficiaries; FEINGOLD; to the Committee on Health, Education, Labor, and

Pensions, May 25.

S. 3419 (MEDICAL DEBT), to exclude from consumer credit reports medical debt that has been in collection and has been fully paid or settled, and for other purposes; MERKLEY; to the Committee on Banking, Housing, and Urban Affairs, May 25.

H.R. 5385 (VETERANS' HEALTH), to amend Title 38, United States Code, to direct the secretary of veterans affairs to establish a toll-free hotline to assist mental health professionals at institutions of higher learning, to provide training to mental health professionals at institutions of higher learning, and for other purposes; CARNEY; to the Committee on Veterans' Affairs, May 25.

H.R. 5389 (MEDICARE), to amend Title XVIII of the Social Security Act to provide for coverage of clinical pharmacist practitioner services under Part B of Medicare; HEINRICH; jointly, to the committees on Energy and Commerce and Ways and Means, May 25.

H.R. 5392 (HEALTH EDUCATION), to establish the Council on Integration of Health Care Education, to provide for implementation of the recommendations of the Council, and for other purposes; KENNEDY; jointly, to the committees on Energy and Commerce and Education and Labor, May 25.

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nursing homes, help families make informed decisions, and for other purposes; FEINGOLD; to the Committee on Health, Education, Labor, and Pensions, May 25.

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to the committees on Energy and Commerce and Education and Labor, May 25.

H.R. 5403 (MILITARY HEALTH), to direct the secretary of defense to temporarily adjust the reimbursement rates for TRICARE claims in Alaska; YOUNG of Alaska; to the Committee on Armed Services, May 26.

H.R. 5417 (MEDICAID/ MEDICARE), to amend titles XIX and XVIII of the Social Security Act, as amended by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, with respect to payment of disproportionate share hospitals (DSH) under Medicare and

Medicaid; EDDIE BERNICE JOHNSON of Texas; jointly, to the committees on Ways and Means and Energy and Commerce, May 26.

H. RES. 1400 (HIV/AIDS AWARENESS), supporting the goals and ideals of National Caribbean American HIV/AIDS Awareness Day, and for other purposes; LEE of California; to the Committee on Energy and Commerce, May 26.