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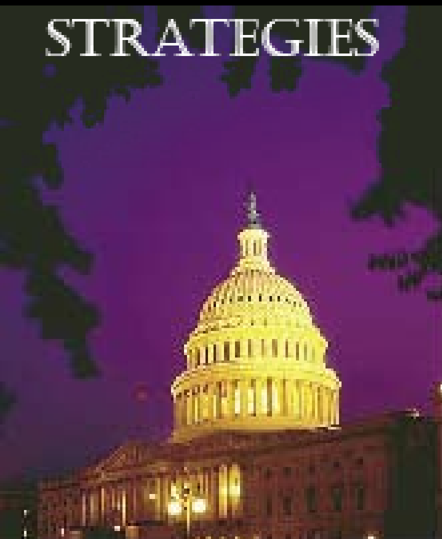

Health Policy Briefing

June 8, 2010

Congress Returns to Take Up Medicare MD Fix/ Extenders-Jobs Bill

Senate To Consider House-Passed Medicare MD Fix/ Jobs Bill

The Senate returns on Monday and is expected to take up the House-passed "Extenders" legislation, the American Jobs and Closing Tax Loopholes Act of 2010 (H.R. 4213) on Monday or Tuesday. The $114 billion bill containing a "Doc Fix" ($22.9 billion to provide a 2.2% increase for the remainder of 2010 and a 1% increase for 2011) will be subject to intense debate, particularly from Senate deficit hawks who may insist that the Doc Fix be paid for through revenue increases or spending reductions. The AMA has put on a full court press to encourage the Senate to act quickly and favorably on this provision, given that as of June 1st the 21% Medicare physician payment reduction went into effect (however, CMS has held up processing payments for 10 business days so Congress can act retroactively to block the reduction). States and the SEIU are also actively encouraging the Senate to restore a six month extension of the ARRA increase in federal Medicaid matching funds beyond year-end (at a cost of $24 billion over 10 years).

House to Consider Supplemental Appropriations

While the Senate has passed H.R. 4899, supplemental appropriations for the wars in Afghanistan and Iraq and including health funding--$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--the House Appropriations Committee has not acted but is expected to mark up legislation this week.

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President Ramps Up Efforts to Extol Benefits of PPACA

This Tuesday the President and **HHS Secretary Sebelius** will hold a town hall meeting to discuss the PPACA's Medicare provisions, including the first mailing to Part D beneficiaries of $250 rebate checks to help close the "doughnut hole." The White House also remains involved in the law's implementation, stressing its importance to the Administration's political agenda in this election year. It was reported that at least twice weekly the **White House Office of Health Reform Director Nancy-Ann DeParle** is meeting with the departments of HHS, Labor and others to develop and fine-tune the rules and regulations required under the law. The meetings include **HHS Office of Health Reform Director Jeanne Lambrew, Labor Department ERISA Assistant Secretary Phyllis Borzi and Stephanie Cutter,** who is responsible for the White House's health reform public outreach campaign. Spats between OMB and CBO on the costs of the legislation, e.g. **CBO's Director Douglas Elmendorf** saying that the law does little to control unsustainable health spending, gives new fodder for Republicans who continue to pursue their "repeal and replace" strategy.

New PPACA Offices

A new Office of Consumer Information and Insurance Oversight (OCIIO) has been designated to manage the law's overhaul of the private insurance market. Appointees include: **Jay Angoff,** a former Missouri insurance commissioner who is serving as OCIIO's director; **Steve Larsen**, former Maryland insurance commissioner; **Karen Pollitz,** former Georgetown University professor; and **Richard Popper,** who currently manages Maryland's insurance program for people with pre-existing conditions. This year the office is expected to develop rules defining "unreasonable premium increases," establishing coverage for people with pre-existing conditions and ensuring that health insurers comply with consumer protections.

NAIC Issues Warning on MLRs

Last week the NAIC sent a letter to **HHS Secretary Sebelius** stating that the group needs more time to consider the issues involved in defining "minimum loss ratios" under PPACA. The letter said "The medical loss ratio and rebate program….have the potential to destabilize the marketplace and significantly limit consumer choices if the definitions and calculations are too restrictive….Equally, the medical loss ratio and rebate program could be rendered useless if the definitions and calculations are too broad….Only through an open, deliberative process can we hope to reach a reasonable consensus that meets the dual objectives of protecting consumers and preserving competitive markets…." The NAIC has pledged to complete its work on the definition well before the law's year-end deadline.

Potential Medicare Advantage Cuts under Scrutiny

Last week **Senate Finance Committee Chairman Max Baucus, Senate Finance Health Subcommittee Chairman John D. Rockefeller IV, House Ways and Means Committee Chairman Sander Levin, House Ways and Means Health Subcommittee Chairman Pete Stark, House Energy and Commerce Committee Chairman Henry Waxman and House Energy and Commerce Health Subcommittee Chairman Frank Pallone Jr.,** sent a letter to the HHS Secretary asking that CMS perform comprehensive reviews for all Medicare Advantage plan bids to ensure that any alterations in service are justified. The letter stated "Health care reform strengthened Medicare and made Medicare Advantage more competitive, but it is critical that we don't let private insurance companies use these changes as an excuse to raise premiums or cut benefits for seniors to bolster their own bottom line…." In related news, the CRS has issued a report, Medicare Provisions in the Patient Protection and Affordable Care Act (PPACA), summarizing the law's provisions, such as: payment rate changes affecting Medicare fee-for-service providers, payment and administrative changes affecting the Medicare Advantage program (Part C) and changes affecting the Part D prescription drug program.

New FMAP Methodology

According to a new report released by the Kaiser Last week HHS released its proposed methodology for recalculating federal Medicaid matching funds for states with disproportionate employer pension or insurance fund contributions. If counted, such disproportionate contributions increase state personal income which in turn reduces the federal medical assistance percentage (FMAP) for a state. However, the Children's Health Insurance Program Reauthorization Act (Pub. L. No. 111-3) requires the recalculation of FMAPs disregarding any disproportionate employer pension or insurance fund contributions. The notice says a significantly disproportionate employer contribution will be defined as "any identifiable employer contribution towards pension or other employee insurance funds that is estimated to accrue to residents of such state for a calendar year if the increase exceeds 25 percent of the total increase in state personal income." HHS said it will be up to the states to identify any disproportionate contributions and the department then will verify them.

Physician Supervision Requirements for Hospital Outpatients

CMS has issued a transmittal clarifying its policies requiring physician supervision of diagnostic and therapeutic services provided to hospital outpatients. As updated under 2010 OPPS and ASC rules, "physician assistants, nurse practitioners, clinical nurse specialists, and certified nurse midwives who operate within the scope of practice under state law may order and perform diagnostic tests" outlined in the Medicare manual and previous guidance. However, they "are not permitted to function as supervisory 'physicians' for the purposes of other hospital staff performing diagnostic tests."

Multi-payer Medical Home Demonstrations

CMS has invited states to apply to participate in a patient-centered medical home demonstration project that will bring together public and private payers. Under the Multi-payer Advanced Primary Care Practice Demonstration, Medicare, Medicaid and private insurers will pay for state-sponsored efforts to improve care coordination and quality. As part of the three-year demonstration, CMS will provide an enhanced Medicare payment to participating advanced primary care (APC) practices "commensurate with other participating payers in exchange for providing continuous, comprehensive, coordinated, and patient-centered health care…." CMS said this demonstration is an example of the types of programs it will implement through the Center for Medicare and Medicaid Innovation, which was authorized under PPACA.

HHS Initiative to Improve Community Health

Last week HHS and the Institute of Medicine announced the launch of the Community Health Data Initiative (CDHI), a new national program that will use health data to develop innovative software that aims to improve people's health. The Community Health Data Initiative was the result of a March 11 roundtable between HHS and IOM to determine whether the HHS health data would be useful for developing consumer-based electronic health care applications.

HHS Grants for Understanding Care Options

HHS has announced the availability of $60 million in PPACA grants to states and communities to help individuals and their caregivers better understand and navigate their health and long-term care options. CMS and the Administration on Aging will work together in assessing applications.

DOJ/DOL Seek Narrowing of ERISA Preemption of State Law

A brief filed by acting Solicitor General Neal K. Katyal urged the U.S. Supreme Court to deny review of an appeals court decision upholding the validity of key provisions of a San Francisco health care ordinance mandating health coverage which was challenged as being preempted under ERISA (Golden Gate Restaurant Ass'n v. City & County of San Francisco, U.S., No. 08-1515, solicitor general's brief filed 5/28/10). Reversing the previous Administration's argument upholding ERISA preemption, the Obama Administration explains that, after the U.S. Court of Appeals for the Ninth Circuit rejected DOL's previous position, the agency "began to reexamine its views and was considering the promulgation of a regulation clarifying when state and local health care programs result in the creation of ERISA plans." DOL has put the proposed regulations on hold, the brief said, for the same reason that the high court should deny review in this case: enactment of comprehensive federal health care legislation in the Patient Protection and Affordable Care Act (PPACA) and the Health Care and Education Reconciliation Act (HCERA) "significantly reduces the potential that state or local governments will choose to enact health care programs like [the San Francisco program] and may also affect the question whether such programs are preempted by federal law."

Recently Introduced Health Legislation

H.R. 5457 (MEDICARE/ MEDICAID), to provide supplemental payments to nursing facilities serving Medicare and Medicaid patients and to amend Title XIX of the Social Security Act to assure adequate Medicaid payment levels for services; CASTOR of Florida; jointly, to the committees on Energy and Commerce and Ways and Means, May 28.

H.R. 5461 (MEDICARE), to amend Title XVIII of the Social Security Act to cover screening computed tomography colonography as a colorectal cancer screening test under Medicare; DAVIS of Illinois; jointly, to the committees on Energy and Commerce and Ways and Means, May 28.

H.R. 5462 (BIRTH DEFECTS), to authorize the secretary of health and human services, acting through the director of the Centers for Disease Control and Prevention, to establish and implement a birth defects prevention, risk reduction, and public awareness program; DELAURO; to the Committee on Energy and Commerce, May 28.

H.R. 5466 (MENTAL HEALTH), to amend titles V and XIX of the Public Health Service Act to revise and extend substance use disorder and mental health programs, and for other purposes; KENNEDY; to the Committee on Energy and Commerce, May 28.

H.R. 5471 (MEDICAID), to amend the American Recovery and Reinvestment Act of 2009 to extend for 6 months the increase provided under that act in the Medicaid federal medical assistance percentage (FMAP); PINGREE of Maine; to the Committee on Energy and Commerce, May 28.

H.R. 5474 (MEDICARE), to amend Title XVIII of the Social Security Act with respect to reclassification of hospitals as rural referral centers under Medicare; SCHAUER; to the Committee on Ways and Means, May 28.

Public Law

H.R. 5014, to clarify the health care provided by the Secretary of Veterans Affairs that constitutes minimum essential coverage, signed May 27 (Pub. L. 111-173).