



## Speaker Moves Health Reform to House Floor; FY 2010 CR Runs thru December 18

### *FY 2010 Appropriations Again Delayed*

Last week the House and Senate passed the \$32.2 billion, FY 2010 Interior-Environment Appropriations bill that includes a continuing resolution to fund programs for which spending bills have not been approved at FY 2009 levels through December 18th. Thus, health spending under the HHS and Labor departments will remain at 2009 levels until the LHHS bill or an omnibus spending bill is enacted. **Senate Appropriations Chairman Daniel Inouye** said he hopes to pass all the bills separately, but conceded there may not be enough time to do so. The December 18 date was dictated to allow the Senate to fully consider the health reform bill being fashioned by **Senate Majority Leader Harry Reid** while the House is expected to begin debate this week on the Affordable Health Care for America Act, H.R. 3962. **Senator Harry Reid** said the Senate will be scheduled to be in session for the entirety of this week and this coming weekend if necessary, as well as the entire week of November 16 and on Mondays and Tuesdays as well.

### *Ryan White Extension Act, The Law*

Last week **President Obama** signed into law the Ryan White HIV/AIDS Treatment Extension Act of 2009 reauthorizing for four years this program that provides medical and support services for HIV/AIDS patients. The law reauthorizes funding through September 2013 and increases funding authorizations by 5%

each year.

### *Regina Benjamin Confirmed as U.S. Surgeon General*

Last week the Senate confirmed **Dr. Regina Benjamin** as the new U.S. surgeon general. If the current House version of health reform survives the congressional process, the Surgeon General would be the chair of the Health Benefits Advisory Committee which would have the initial say on what constitutes the minimum “essential benefits package” under health reform.

### *H1N1 Spreading*

Last week **President Obama** declared a national emergency with respect to the H1N1 influenza pandemic.

## *Inside*

President Ramps Up Push for Health Reform	2
Senate Majority Leader Reid Says Senate Reform will Include Public Plan/State-Opt-Out	2
House Health Reform Unveiled	3-4
NIH Director Collins on Comparative Effectiveness Research and Personal Medicine	4
Medicare Physician Payment Fix	5
Update to Home Health Prospective Payment System	5
Rule Providing Higher Penalties for HIPAA Violations	5
Payment Increase for Hospital Outpatient Care	5
Recently Introduced Health Legislation	6-7

## Health Reform Update

### President Ramps Up Push for Health Reform

Last week **President Obama** addressed members of the U.S. Chamber of Commerce, National Federation of Independent Business and other small business owners and organizations from across the country on the Administration's plan to help small businesses, including increased access to capital and health reform. He urged the passage of health care reform that would benefit small businesses, calling out opponents of reform for using "misleading figures and disingenuous arguments." The President also commended **House Speaker Nancy Pelosi** and the Democratic Caucus for their leadership in unveiling H.R. 3962, stating that "They forged

a strong consensus that represents a historic step forward. This bill includes reforms that will finally help make quality insurance affordable. Importantly, this bill is also fully paid for and will reduce the deficit in the long term...." Further touting the cost-saving benefits of health reform last week, **Christine Romer**, chair of the Council of Economic Advisers, suggested that measures to achieve this include the excise tax on expensive insurance plans in the Senate Finance Committee bill, Medicare payment reforms, a stronger reform advisory panel and the option for a government-created insurance plan to compete with private plans.

### Senate Majority Leader Reid Says Senate Reform will Include Public Plan/State-Opt-Out

Last week **Senate Majority Leader Harry Reid** said that health care reform legislation to be considered on the Senate floor will contain a government-run health insurance option to compete with private insurers, but that states would be able to opt out of the plan until 2014. The bill is expected to also contain the Senate Finance provision allowing states to establish cooperatives. The White House said that the President is pleased that the Senate decided to include a public option for health coverage. **Republican Senator Olympia Snowe** said "I am deeply disappointed with the Majority Leader's decision to include a public option as the focus of the legislation....I still believe that a fallback, safety net plan, to be triggered and available immediately in states where insurance companies fail to offer plans that meet the

standards of affordability, could have been the road toward achieving a broader bipartisan consensus in the Senate." Reid's move may jeopardize Senator Snowe's vote for cloture and/or passage of the Senate bill. More trouble for **Senator Reid** was the statement by **Senator Joseph Lieberman** (I-Conn.) that the inclusion of a public option would force him to vote against reform legislation (although he may vote to proceed to debate on the bill). The White House suggested Democrats and Republicans voting against health care reform "will be held accountable by their constituents who want to see health care reform enacted this year...." The Senate Minority Leader said "our view is that cloture on the motion to proceed to the bill—is a vote to endorse a half a trillion dollars in Medicare cuts, \$400 billion in new taxes, and

higher health insurance premiums for everyone else...." In another development, a letter signed by Senators Conrad, Lincoln, Landrieu, Bayh, Warner, Nelson, and Lieberman asked Senator Reid to drop the Senate HELP Community long-term care provision, the Living Assistance Services and Supports program, because they said it would add to the federal deficit in its second 10 years and beyond. On a positive note for the Finance bill which includes the tax on so-called "Cadillac health plans," CBO said the plan would increase the federal budgetary commitment to health care by about \$11 billion in 2019, but that in subsequent years, the effects of the bill that would tend to reduce federal commitments would grow faster than those that would increase them.

## Health Reform Update

### House Health Reform Unveiled

In a Capitol steps unveiling of the 1,990-page \$ 894 billion Affordable Health Care for America Act, H.R. 3962, that would expand coverage to 96% of Americans (reducing the uninsured by 36 million, leaving 18 million uninsured), **House Speaker Nancy Pelosi** said “Today we are about to deliver on the promise of making affordable, quality health care available for all Americans....” She pledged to provide a 72-hour viewing period for the bill as well as a manager’s amendment which would push floor consideration of the bill to later this week, at the earliest. The net cost of \$894 billion reflects a gross total of \$1.055 trillion in subsidies (\$605 billion), increased net outlays for Medicaid and SCHIP (\$425 billion) and tax credits for small employers (\$25 billion). The costs are partly offset by \$167 billion in individual and employer penalties and over 10 years, the net cost of the coverage expansions would be offset by \$426 billion in spending reductions, such as those to Medicare and Medicaid, as well as revenue provisions, such as a surtax on high income earners that would bring in \$572 billion (5.4% on singles with an AGI of more than \$500,000 and joint filers with an AGI of \$1 million or more). According to CBO, the bill would result in a net reduction in federal budget deficits of \$104 billion during the 10-year window, although the reduction reflects the inclusion of the Community Living Assistance Services and Support program, a new voluntary long-term care benefit, that would

bring in more in premiums than it would pay out in benefits during the first 10 years with the reverse happening thereafter.

The bill includes a public option under which provider payments would be negotiated (rather than paid at Medicare+5% rates) and which CBO estimates would cover only 6 million of 30 million covered under the new exchange.

The Blue Dog Coalition may not be convinced that the bill “bends the cost curve” and will likely seek further CBO guidance on this issue. The bill’s individual mandate would have non-compliance penalty equal to the lower of 2.5% of adjusted gross income above the filing threshold or the average premium offered through the insurance exchange. In 2013, businesses with up to 25 employees could enter the exchange and by 2015 firms with up to 100 employees could enter the exchange with further expansion possible later on. Subsidies would be available to those with incomes up to 400% of the FPL on a sliding scale basis. Those with incomes below 133% of the FPL would be eligible for a subsidy if they have contributed 1.5% of their incomes toward premiums. At the highest end of the income scale, an individual or family would have to contribute 12% of their income toward a premium before they would qualify for a subsidy.

The bill would expand

eligibility for Medicaid to all those with incomes below 150% of the FPL. Beginning in 2015 states would be responsible for 9% of the costs of the Medicaid expansion costs. In 2010, the bill would end insurance rescissions, reduce the window that insurance plans can look back for pre-existing conditions from six months to 30 days and prohibit insurance companies from placing lifetime caps on coverage.

Beginning in 2013, the bill would prohibit insurance companies from discriminating based on pre-existing health conditions and would prohibit insurers from charging higher rates due to health status or gender, or other factors, and permit premiums to vary based on age by a ratio of only 2-to-1.

The bill would also create an immediate high-risk pool providing financial assistance for those who are uninsured because of a pre-existing condition.

For accountable care organizations, HHS would be required to set benchmarks for their expansion. The legislation would establish medical home pilots, a Center for Medicare Innovation to allow CMS to experiment with additional payment and delivery system reforms and would create a prevention and wellness trust fund.

Waste, fraud and abuse under Medicare would also be targeted. Two Institute of

*continued page four*

*from page three*

Medicine studies would make recommendation to eliminate geographic variations in Medicare payments and shift the system toward one that rewards value over volume. So-called Stark rules would be amended to prohibit physician ownership in hospitals that are new as of January 1, 2009 and grandfather those operating prior to that date.

The bill's provision to eliminate the Part D coverage "doughnut hole," beginning with a \$500 reduction in 2010 and completing the phase-out by 2019, would be paid for by requiring drug manufacturers to provide Medicaid rebates for drugs used by full dual Medicare/Medicaid eligibles. HHS would also be given authority to negotiate Part D drug prices.

The bill would also create an FDA licensure pathway for "biosimilar" generic biological products, allowing these products to come to market and compete with brand-name biologics.

House Democrats dropped the Medicare physician reimbursement fix from the bill in order to come under the \$900 billion cost demanded by the President (however, see below for separate legislation introduced on this issue).

Employer groups immediately objected to

the weakening of ERISA under the legislation, the inclusion of the 8% of payroll Pay-or-Play employer mandate (payrolls under \$500,000 being exempt), the public option and the minimum benefit standards that would force employers to curtail other benefits and limit employer flexibility.

Device manufacturers quickly opposed the \$20 billion tax from 2013 to 2019 on their industry.

Republicans immediately jumped to criticize the bill, with Ways and Means ranking member **Dave Camp** complaining that "From the folks that brought us the AMT, we now have the surtax...." **Rep. Joe Barton** said in a letter to **Energy and Commerce Chairman Henry Waxman** that a hearing is needed so that members and the public "have an opportunity to understand the legislation and its implications." Whether the Speaker will allow amendments to the tax or other provisions of the bill remains to be seen. One potential hang-up to final passage could be the unhappiness of pro-life Democrats who say the bill does not do enough to block the use of federal funds for abortion. **Rep. Bart Stupak**, a co-chair of the Congressional Pro-life Caucus, said he thinks at least 40 Democrats would vote against a rule on the bill if the legislation does not address their concerns or allow an amendment on the issue to be offered on the floor.

## NIH Director Collins on Comparative Effectiveness Research and Personal Medicine

**T**he Departments of Labor, HHS and Treasury plan to release rules by the end of the year that would implement the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Pub. L. No. 110-343). The MHPAEA, which became law October 3, 2008 and which goes into effect for most plans this January, requires group health plans for businesses

with 50 or more employees to provide care for mental health and substance abuse disorders that are in parity with other covered medical conditions. EBSA staff say that the very likely will finalize the anti-abuse proposed rule at 29 C.F.R. Section 2590.732(a)(2) (69 Fed. Reg. 68,800), which was issued December 30, 2004, under HIPAA. This proposed rule states that all medical care

benefits made available by an employer or employee organization (including a board of trustees of a multiemployer trust) are generally considered to constitute one group health plan. Under the anti-abuse rule, separate plans are aggregated to the extent necessary to prevent the evasion of any legal requirement.

## Medicare Physician Payment Fix

**A**fter House Democratic leaders stripped a permanent fix to the Medicare physician payment system from health care reform legislation (H.R. 3962), a stand-alone bill, H.R. 3961, was introduced last week. Under H.R. 3961, the sustainable growth rate (SGR) formula would be replaced with a new formula that removes items such as drugs and laboratory services not paid directly to practitioners from spending targets; would allow the volume of most services to grow at the rate of the Gross Domestic Product plus 1 percentage point per year; and would allow the volume of primary and preventive care services to grow at GDP plus 2 percent

per year. It is expected that the Medicare Physician Payment Reform Act of 2009 will be considered in the House under a procedure which will add the text of H.R. 2920, the Statutory PAYGO Act of 2009, as passed by the House on July 22 before being sent to the Senate. **House Majority Leader Steny Hoyer** said that he and **Speaker Pelosi** made it very clear that a permanent SGR fix must be paid for, or statutory PAYGO must be passed. The Senate health reform bill is not expected to include a doc-fix, and **Senate Majority Leader Harry Reid** said the Senate will return to the issue after health care reform legislation is finished.

## Update to Home Health Prospective Payment System

**L**ast week CMS released a final rule calling for a 2% percent marketbasket update to the Medicare home health prospective payment rates for calendar year 2010. The rule also caps home health outlier payments at 10% per home health

agency (HHA) for 2010, while total aggregate outlier payments will be targeted at 2.5% of all home health prospective payments. The rule also reduces CMS's national standardized 60-day episode payment rates and nonmedical supply factors by 2.75% for

2010, the third year of a four-year payment system adjustment. The reduction will help offset any increase in home health not associated with any change in patient condition.

## Rule Providing Higher Penalties for HIPAA Violations

**A**n interim final rule released by HHS amends the HIPAA enforcement regulations for civil monetary penalties by significantly increasing potential civil penalties for HIPAA violations and establishing a tiered penalty structure based on categories of violations. The rule becomes effective November 30 and applies to violations occurring on or after February 18, 2009 when the HITECH Act became effective. Although an interim final rule, HHS will accept comments on the new regulations until December 29th.

## Payment Increase for Hospital Outpatient Care

**L**ast week CMS announced that most hospitals will receive an inflation update of 2.1% in their payment rates for services furnished to Medicare beneficiaries in hospital outpatient departments (HOPDs) under the outpatient prospective payment system (OPPS) for 2010. The final rule updates payment policies and rates for both hospital outpatient departments and ambulatory surgical centers (ASCs) for next year.

**S. 1837 (MEDICARE)**, to amend Title XVIII of the Social Security Act to cover hearing aids and auditory rehabilitation services under Medicare; BROWN; to the Committee on Finance, Oct. 22. S. 1843 (FRAUD), to provide increased penalties for health care fraud; SPECTER; to the Committee on the Judiciary, Oct. 22.

**S. 1857 (MENTAL HEALTH)**, to establish national centers of excellence for the treatment of depressive and bipolar disorders; STABENOW; to the Committee on Health, Education, Labor, and Pensions, Oct. 22.

**H.R. 3911 (HEALTH INSURANCE COVERAGE)**, to amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for qualified individuals for bone mass measurement (bone density testing) to prevent fractures associated with osteoporosis; MALONEY; jointly, to the committees on Energy and Commerce and Education and Labor, Oct. 22.

**H.R. 3917 (MEDICARE)**, to amend Title XVIII of the Social Security Act to modernize and improve the Medicare payment methodology for radiopharmaceuticals under the hospital outpatient prospective payment system and to ensure equitable payment and patient access to certain low volume, high cost radiopharmaceuticals; STUPAK; jointly, to the

committees on Energy and Commerce and Ways and Means, Oct. 22.

**H.R. 3925 (CLAIMS PROCESSING)**, to amend the Employee Retirement Income Security Act of 1974 to preclude preemption of a state cause of action relating to a denial of a claim for benefits under a health care plan; McDERMOTT; to the Committee on Education and Labor, Oct. 26.

**H.R. 3930 (COBRA)**, to extend for six months the maximum COBRA continuation coverage period for individuals who were involuntarily terminated between April 1, 2009, and Dec. 31, 2009, and to amend the American Reinvestment and Recovery Act of 2009 to extend the eligibility period and maximum assistance period for COBRA premium assistance under such Act; SESTAK; jointly, to the committees on Education and Labor, Energy and Commerce and Ways and Means, Oct. 26.

**H. CON. RES. 202 (THORACIC SURGEONS)**, celebrating the goals and ideals of 20th anniversary of The Society of Thoracic Surgeons National Database; BOUSTANY; to the Committee on Energy and Commerce, Oct. 22.

**H. RES. 857 (PHARMACIES)**, expressing support for designation of the week of Oct. 25, 2009, through Oct. 31, 2009, as American Pharmacy Educator Week; McGOVERN; to the Committee on Oversight and Government Reform, Oct. 22.

**H. RES. 863 (PNEUMONIA)**, recognizing the scourge of pneumonia, urging the United States and the world to mobilize cooperation and prioritize resources to fight pneumonia and save children's lives, and recognizing Nov. 2 as World Pneumonia Day; SHEA-PORTER; to the Committee on Foreign Affairs, Oct. 23.

**H.R. 3937 (HEALTH INSURANCE COVERAGE)**, to establish a health benefits program, based on the federal employees health benefits program, to provide health insurance coverage for the President, Vice President, and Members of Congress, and citizens not eligible for coverage under the Federal employees health benefits program; TERRY; jointly, to the committees on Energy and Commerce, Oversight and Government Reform, Education and Labor and Ways and Means, Oct. 27.

**H.R. 3939 (MEDICAL MARIJUANA)**, to amend Title 18, United States Code, to provide an affirmative defense for the medical use of marijuana in accordance with the laws of the various States, and for other purpose; FARR; to the Committee on the Judiciary, Oct. 27.

**H.R. 3942 (VETERANS' HEALTH)**, to provide for the issuance of a veterans health care stamp; BURGESS; jointly, to the committees on Oversight and Government Reform and Veterans' Affairs, Oct. 27.

**H. RES. 871 (MEDICAL MALPRACTICE REFORM)**, directing the Attorney General

to transmit to the House of Representatives certain documents, records, memos, correspondence, and other communications regarding medical malpractice reform; SMITH of Texas; to the Committee on the Judiciary, Oct. 27.

**S. 1963 (VETERANS' HEALTH)**, to amend Title 38, United States Code, to provide assistance to caregivers of veterans, to improve the provision of health care to veterans, and for other purposes; AKAKA; read the first time, Oct. 28.

**S. 1966 (REPRODUCTIVE HEALTH)**, to provide assistance to improve the health of newborns, children, and mothers in developing countries, and for other purposes; DODD; to the Committee on Foreign Relations, Oct. 28.

**H.R. 3955 (CHILDREN'S HEALTH)**, to amend the Public Health Service Act to authorize grants to 10 states for demonstration projects for the expansion of state registries on childhood immunization or health to include data on body mass index (BMI), collected and submitted to the state by health care providers; CARNEY; to the Committee on Energy and Commerce, Oct. 28.

**S. 2128 (FRAUD)**, to provide for the establishment of the Office of Deputy Secretary for Health Care Fraud Prevention; LEMIEUX; to the Committee on Health, Education, Labor, and Pensions, Oct. 29.

**H.R. 3961 (MEDICARE)**, to

amend Title XVIII of the Social Security Act to reform the Medicare SGR payment system for physicians; DINGELL; jointly, to the committees on Energy and Commerce and Ways and Means, Oct. 29.

**H.R. 3962 (REFORM PROPOSAL)**, to provide affordable, quality health care for all Americans and reduce the growth in health care spending, and for other purposes; DINGELL; jointly, to the committees on Energy and Commerce, Education and Labor, Ways and Means, Oversight and Government Reform, the Budget, Rules, Natural Resources and the Judiciary, Oct. 29.

**H.R. 3970 (REFORM PROPOSAL)**, to protect the doctor-patient relationship, improve the quality of health care services, lower the costs of health care services, expand access to health care services, and for other purposes; KIRK; jointly, to the committees on Energy and Commerce, the Judiciary, Ways and Means, Education and Labor, Appropriations and Financial Services, Oct. 29.

**H.R. 3971 (TAX POLICY)**, to amend the Internal Revenue Code of 1986 to expand the permissible use of health savings accounts to include health insurance payments and to increase the dollar limitation for contributions to health savings accounts, and for other purposes; FLAKE; to the Committee on Ways and Means, Oct. 29.

**H.R. 3974 (DISEASE MANAGEMENT)**, to amend the

Public Health Service Act to direct the secretary of health and human services to establish, promote, and support a comprehensive prevention, education, research, and medical management referral program for viral hepatitis infection that will lead to a marked reduction in the disease burden associated with chronic viral hepatitis and liver cancer; HONDA; to the Committee on Energy and Commerce, Oct. 29.