



Senate Enters Second Week of Debate on Health Reform; Appropriations Omnibus

Appropriations Omnibus

in Sight--With the FY 2010 appropriations continuing resolution (including LHHS spending) set to expire on December 18 and the number of legislative days in 2009 fast declining, the House may be forced to consider an omnibus appropriations bill or bills to provide funding for the seven outstanding appropriations measures. The move could come this week or next. The LHHS bill

will likely be included in an omnibus package containing all but the Defense bill which will be taken up separately. Democrat leaders are discussing whether to also include the Medicare physician payment legislation designed to fix the SGR in the long term and prevent the 21% reimbursement cut in 2010 (H.R. 3961). The Defense appropriations bill could also become a vehicle for other riders, including an increase in the federal debt limit.

Obama Christmas Present?

Senate Majority Leader

Harry Reid kept the Senate in session this past weekend in an attempt to bring the debate on his health reform bill to a vote by Christmas. With several contentious issues--including abortion coverage, the public option, etc.--continuing to thwart **Senator Reid's** efforts to obtain the 60 votes for passage, the President was

scheduled to again meet with the Senate Democrat Caucus last Sunday to urge compromise. The stalling by Republicans, notwithstanding, **Senate Finance Chairman Max Baucus** offered his opinion that the bill would be passed this year and without having to resort to the budget reconciliation process to pass the bill.

Public Option Remains Stumbling Block

Senators Collins, Lieberman and Lincoln have reiterated their earlier statements in opposition to the public option. In response, **Senator Reid** has encouraged **Senators Carper, Lincoln and Landrieu** to come up with a compromise that could garner the 60 votes needed to pass. **Senator Snowe** has stated her opposition as well, but remains open to a "trigger" for a public option in states without adequate affordable coverage. **Senators Coburn and Vitter**, opponents of the public option, said they would offer an amendment to require members

of Congress to participate in the public option.

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Health Reform Update

Senate Amendments to H.R. 3590

Last week the Senate began debate and the amending process on Senator Reid's initial health reform framework, the \$849 billion Patient Protection and Affordable Care Act. Over 40 amendments have already been filed, but Republicans have been slow to give their ok to time agreements to take up amendments, thus slowing the process. Approved by a 98-0 vote was an amendment by **Senator Sheldon Whitehouse** which expresses a Sense of the Senate that surpluses generated by the bill for the Social Security Trust Fund be reserved for Social Security, and that savings created by the Community Living Assistance Services and Support (CLASS) program be reserved for that program. The Senate defeated an amendment, 51-47 (60 votes needed for passage), by **Senator John Thune** which would strike the CLASS Act (voluntary long-term care federal insurance program) from the bill. Defeated on a 41-57 vote was an amendment by **Senator Hatch** which would remove the \$120 billion in Medicare Advantage program cuts from the bill. However, a Stabenow amendment was approved on a 97-1 vote which would assure Medicare Advantage enrollees that they would not lose guaranteed Medicare benefits under the bill. Triggered by the public outrage

of the HHS U.S. Preventive Services Task Force recommendation, the subject of a House Energy and Commerce Committee hearing last week, that women under age 50 forego preventive breast cancer mammography, **Senators Mikulski and Snowe** offered an amendment to give HHS the authority to direct insurers to cover the cost of the preventive screenings and services for women (at a 10-year cost of \$940 million). The amendment passed on a 61-39 vote. By unanimous consent the Senate accepted a secondary provision that would bar the Task Force's recommendations on breast cancer screening from being used for coverage determinations. Also, last Thursday, the Senate voted 42-58 against the motion by **Senator John McCain** to send the bill to the Senate Finance Committee to restore the \$491 billion in Medicare spending cuts; however, after the defeat, they voted 100-0 vote to adopt a separate amendment by **Senator Michael Bennet** which would guarantee existing Medicare services. Republicans argued that the Medicare cuts would not be used for Medicare, but to finance non-Medicare health reforms, and called out AARP for their support for the Medicare Advantage and other Medicare spending cuts.

Importation Amendment

A Dorgan amendment likely to be considered would allow the importation of lower-cost prescription drugs from certain countries, including Canada. The amendment tracks the Dorgan/McCain/Snowe bill, S. 1232, which would allow U.S.-licensed pharmacies and drug wholesalers to import FDA approved drugs from Canada, Europe, Australia, New Zealand and Japan. It would also allow individual consumers to purchase prescription drugs for personal use from safe, reliable, FDA-inspected Canadian pharmacies. **Senator Reid** has previously stated his intent to allow a vote on the provision, either under health reform or as separate legislation.

Abortion Coverage Controversy

Senators **Ben Nelson and Orrin Hatch** announced that they would introduce an amendment that would mirror the abortion language contained in the House bill, authored by **Rep. Bart Stupak**. If the amendment fails, which is likely, it remains unclear whether **Senator Nelson** will vote for final passage, absent an acceptable compromise.

Health Reform Update

Cost Control

Although Democrats hailed a CBO state-by-state analysis of the cost of health insurance premiums under the bill that found an average adult could purchase health insurance for \$512 to \$732 less in 2009 dollars under the reform proposal than in the individual market today with savings up to twice as much for low income individuals who would be eligible for federal subsidies. CBO also said the public option would have only a marginal effect on premiums offered by private insurers, enroll as many as 4 million individuals, create competition with private plans but lower private premiums only “to a small degree.” On the other hand, the Blue Cross Blue Shield Association released a report finding that five years after implementation of H.R. 3590, the average annual medical claims in the individual insurance market would increase by 54% compared with today. Also, **Senators Collins, Lieberman and Specter** announced they will attempt to offer an amendment intended to help improve cost control, as

follows: require insurers to provide individuals a statement showing the percentage of claims denied and overturned; move up to 2012 the Medicare pilot program on bundling provider payments; a requirement for CMS to submit a plan to Congress outlining the effectiveness of current demonstration programs and pilots with an aim toward eliminating those that are not effective; increase from 1% to 2%, the penalty for hospitals with the worst rate of hospital-acquired infections and move up the start of the penalty to 2013; and make physician quality reporting more available by establishing a Physician Compare website. A proposed amendment by the **Senators Udall** and ten others would (1) require the use of pay-for-performance models for Medicare providers other than physicians and hospitals, such as hospices, ambulatory surgical centers and psychiatric hospitals, (2) require HHS to modernize Medicare data systems to allow better sharing of data among providers and patients and promote greater access to telehealth, as well

as access to care in rural areas; (3) connect Medicare payment reform efforts with private sector initiatives, such as allowing ACOs to work with private plans to align public and private strategies, requiring HHS to develop a methodology for measuring health plan value, and allowing the new Centers for Medicare & Medicaid Services Innovation Center to work with private plans to align public and private strategies and requiring health insurance policies offered in the insurance exchanges to provide information on quality and cost; and (4) broaden the scope of the Independent Medicare Advisory Board to examine total health system spending and make non-binding recommendations to control costs; and (5) require HHS to use administrative simplification measures to streamline electronic exchange of information among insurers, providers, and patients; use technology to combat health care fraud; and study identifying regulatory barriers to improving care.

New Revenues for Medicare

An amendment proposed by **Senators Lincoln, Lautenberg and Menendez** would cap the tax deductions for executive compensation at health insurance companies at \$400,000—down from the current limit of \$1 million for all other businesses—and redirect the revenue to the Medicare Trust Fund to extend its solvency.

Medicare Advisory Board Scrutiny for Hospitals

Senator **Grassley** announced he will attempt to have considered amendments that would put hospitals and hospices under the scrutiny and recommendations of the Independent Medicare Advisory Board.

Repeal of McCarren-Ferguson?

Senator Patrick Leahy, Chairman of the Senate Judiciary Committee, announced he will offer an amendment, based on S. 1681, to repeal the health insurance and medical malpractice insurance industry exemption from federal antitrust laws. He said “this amendment will prohibit the most egregious anticompetitive conduct—price fixing, bid rigging and market allocations—conduct that harms consumers, raises health care costs and for which there is no justification...” A similar provision was included in the House bill.

SCHIP Extension

Senator Robert Casey said he plans to introduce an amendment that would preserve SCHIP through 2019 and protect the program from being added to a national health exchange for at least 10 years. The House bill would phase out SCHIP and provide children’s coverage through Medicaid or a health exchange.

MedPAC on Medicare Regional Service Disparities

In a MedPAC report to Congress released last week, the panel said that the amount of Medicare services provided to beneficiaries with similar needs varies substantially in different parts of the country. The extremes in use are in Dade County, Florida, the area with the greatest Medicare service use, and nonmetropolitan Hawaii, which is the region with the least service use. The MedPAC

paper emphasized that regional variation in service use “is not equivalent to regional variation in Medicare spending,” adding that the two should not be confused. Service use in higher-use areas was found to be about 30% greater than in lower-use areas. The MedPAC report said that “Many factors drive service use, such as differences in physician practice patterns and care decisions and differences

in beneficiaries’ predilection for seeking care (including differences in supplemental insurance)...” The report warned against confusing regional variation in service use with regional variation in Medicare spending, but that while spending is used to arrive at service use, payment factors are separate issues.

PET Scan Coverage Denial Proposed

CMS announced a proposed decision stating that Medicare will not cover positron emission tomography (PET) scans to identify bone metastasis of cancer, but that use of such imaging scans for patients enrolled in certain clinical studies will be covered.

HHS Health IT Grants

HHS announced that it will award a total of \$235 million in grants to 15 communities that already have begun adopting electronic health records and implementing health information exchanges in an effort to strengthen existing health IT infrastructures that could later serve as models for other communities. Named “beacon communities,” the grantees will include nonprofit organizations and government entities in rural and urban regions that already have begun building health IT infrastructures and have EHR adoption rates among providers that are higher than the national average.

NIH Approves First Embryonic Stem Cells Eligible for Research

The National Institutes of Health has approved the first set of human embryonic stem cell lines now eligible for federally funded research under guidelines that implement **President Obama's** Executive Order signed earlier this year. **NIH Director Francis Collins** said NIH has placed the first 13 lines into the NIH Human Embryonic Stem Cell Registry, with 96 more lines in the review pipeline. Despite this announcement, **Reps. Diana DeGette and Michael Castle** who sponsored stem cell research legislation vetoed by **President Bush** in 2005 and 2007 said they plan to continue their efforts to pass embryonic stem cell research legislation.

Federal Matching Rates for SCHIP/Medicaid

HHS has published the FY 2011 Medicaid federal matching rates. The FMAPs range from 50% to nearly 75% in Mississippi. HHS also published the enhanced FMAP levels for state SCHIP and some Medicaid expenditures for children.

JCHA OK as a Deeming Authority

Last week CMS announced that it has approved the continuation of deeming authority for the Joint Commission on Hospital Accreditation as a hospital accreditation program for another four years, through July 15, 2014.

Recently Introduced Health Legislation

H.R. 4160 (MEDICAL RESEARCH), to amend the Public Health Service Act to authorize the National Institute of Environmental Health Sciences to conduct and coordinate a research program on hormone disruption, and for other purposes; **SLAUGHTER**; jointly, to the committees on Energy and Commerce and Rules, Dec. 1.

H.R. 4161 (MEDICAL RESEARCH), to amend the Public Health Service Act to authorize the National Institute of Environmental Health Sciences to develop multidisciplinary research centers regarding women's health and disease prevention, and for other purposes; **SLAUGHTER**; jointly, to the committees on Energy and Commerce and Rules, Dec. 1.

H. CON. RES. 216 (HIV/AIDS), supporting the goals and ideals of World AIDS Day; **LEE** of California; jointly, to the committees on Energy

and Commerce and Foreign Affairs, Dec. 1.

S. 2828 (MEDICAL RESEARCH), to amend the Public Health Service Act to authorize the National Institute of Environmental Health Sciences to conduct a research program on endocrine disruption, to prevent and reduce the production of, and exposure to, chemicals that can undermine the development of children before they are born and cause lifelong impairment to their health and function, and for other purposes; **KERRY**; to the Committee on Health, Education, Labor, and Pensions, Dec. 3.

H.R. 4190 (MEDICAL RESEARCH), to amend the Public Health Service Act to authorize the National Institute of Environmental Health Sciences to conduct a research program on endocrine disruption, to prevent and reduce the production of, and exposure to, chemicals that

can undermine the development of children before they are born and cause lifelong impairment to their health and function, and for other purposes; **MORAN** of Virginia; to the Committee on Energy and Commerce, Dec. 3.

H.R. 4199 (PHARMACY BENEFIT MANAGEMENT), to ensure patient choice in pharmacies by regulating pharmacy benefit managers and to establish a program to improve access to prescription drugs for certain individuals; **BUTTERFIELD**; jointly, to the committees on Energy and Commerce and Ways and Means, Dec. 3.

H.R. 4204 (MENTAL HEALTH), to establish national centers of excellence for the treatment of depressive and bipolar disorders; **KENNEDY**; to the Committee on Energy and Commerce, Dec. 3.