



Administration Requests Shift in Funding for High Risk Pools and other Health Initiatives

FY 2011 Health Appropriations Requests

The OMB has requested that Congress provide \$400 million more in funding for PPACA state high-risk health insurance pools (\$55 million), health care workforce enhancement (\$250 million) and the Disease Control, Research and Training account for domestic HIV/AIDS prevention and research (\$35 million), state AIDS Drug Assistance Programs (ADAPs) that have waiting lists (\$30 million) and the Health Insurance Consumer Information account (\$30 million). However, the Administration said the increases should be fully offset by reducing funding from other federal programs and by using excess funds (e.g. \$184 million from the Centers for Disease Control and Prevention's Disease Control, Research and Training account for Public Health Emergency Preparedness grants; a \$103 million decrease in budget authority for CDC occupational safety and health activities, which would be offset by a corresponding increase in Public Health Service Act Evaluation Funds to support the activities; a \$103 million decrease in the NIH Buildings and Facilities account; and a \$10 million decrease in the CMS Program Management account for research, demonstrations and evaluation projects). Also, the OMB request suggests decreasing the Public Health Service Act Evaluation Funds for Patient-Centered Health Research within the Agency for Healthcare Research and Quality and that \$200

million be transferred from the prior BioShield Special Reserve Fund to the Department of Defense to establish a Technical Center of Excellence for Advanced Development and Manufacturing. In addition, the request suggests authorizing the creation of a new strategic investment corporation with up to \$200 million by transferring funds from the BioShield Special Reserve Fund within HHS.

Senate Hearing to be Held on Court Halting of Federal Stem Cell Funding

Last week, in a decision by **Chief Judge Royce Lamberth**, the U.S. District Court for the District of Columbia held that the Dickey-Wicker Amendment to the Balanced Budget

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Downpayment Act of 1996, P. L. 104-99, prohibits the use of federal money to fund any research involving embryonic stem cells (ESCs), including research that occurs after the ESC's are removed from human embryos. As a result, the court held that guidelines issued by NIH that allowed for funding

of projects that did not involve a step that destroyed the embryo were contrary to law and issued a preliminary injunction. NIH responded with a notice on its stem cell website that it has suspended all embryonic stem cell activity, but **NIH Director Francis Collins** said grants that have already been awarded can continue. The Department of Justice announced

that the Administration will appeal the ruling. **Senate LHHS Appropriations Subcommittee Chairman Tom Harkin** reacted by scheduling a hearing for September 16 to examine federal funding for stem cell research. He said "this ruling should be appealed and I fully believe that it will be overturned...."

White House and Republicans at Odds over PPACA

Nancy-Ann DeParle, Director of the White House Office of Health Reform, **Ezekiel Emanuel**, special adviser on health policy at OMB and **Robert Kocher**, who until July was special assistant to President Obama for health care and a member of the National Economic Council said in their *Annals of Internal Medicine* article, "The Affordable Care Act and the Future of Clinical Medicine: The Opportunities and Challenges," that providers who embrace, rather than resist, PPACA "are likely to deliver the greatest benefits to their patients, the health system, and themselves. Physician

practices that accept the challenge will be rewarded in the future payment system. Once we accomplish this transformation, the U.S. system will be more reliable, will be more accessible, and will offer higher-quality and higher-value care...." However, **House Minority Leader John Boehner** has called for repealing the new law and replacing it with a far less ambitious initiative, and suggested a first step would be to repeal the provision that will require businesses to report to the IRS any vendor who receives more than \$600 a year (a move likely to be first taken up in the Senate on a jobs bill when Congress returns in September).

NAIC Approves PPACA Insurer Compliance Form

Last week HHS and the Treasury and Labor Departments issued notices announcing interim procedures for federal external reviews for self-insured group health plans. Newly available is EBSA Technical Release No. 2010-01, which provides an interim enforcement safe harbor for non-grandfathered, self-insured group health plans that are not subject to a state

external review process but which are subject to a federal external review process. While the interim enforcement safe harbor is in effect, DOL and the IRS will not take enforcement action against any plan that voluntarily complies with state external review procedures that would not otherwise be applicable. In the case of health insurance coverage offered in connection with a group health

plan, the health insurer has primary responsibility for complying with the interim final regulations. The interim enforcement safe harbor applies to plan years beginning on or after September 23rd until it is superseded by future guidance on the federal external review process which is expected to be issued no later than July 1, 2011.

California to Establish PPACA Conforming Insurance Exchange

Last week the California state legislature gave final approval to the second of two bills to establish the California Health Benefit Exchange, paving the way for California

to become the first state in the nation to create a health insurance exchange compliant with the rules established under the PPACA. Governor Schwarzenegger is supportive and is expected to

sign the legislation into law. As many as 8.3 million residents of California are expected to be eligible for coverage.

CBO Estimates 10-Year Cost of Medicare MD Payment Fix

In a letter to **Senator Mike Crapo**, last week CBO said that adopting a 10-year Medicare payment fix for physicians would cost \$330 billion, taking into account the 2.2% temporary payment increase for June-November 2010. Congress will likely take action in a lame-duck session to address Medicare physician payments that would otherwise decrease by 21% in 2011.

HHS Funding for Rural Telehealth and other Health Programs

Last week HHS announced that more than \$32 million in federal funding is being made available by HRSA for rural health programs, including health information technology telehealth projects, quality improvement in critical access hospitals, augmentation of the rural care workforce and services for veterans.

Coverage of Ventricular Assist Devices for Non-transplant Patients

CMS also issued a memorandum which proposes coverage of implantable ventricular assist devices (VADs) for destination therapy patients who are not eligible for heart transplants and who meet a certain set of criteria. The memo said “the evidence is adequate to conclude that VAD implantation as destination therapy improves health outcomes and is reasonable and necessary when the device has received [FDA] approval for a destination therapy indication and only for patients with New York Heart Association (NYHA) Class IV end-stage ventricular heart failure who are not candidates for heart transplant.”

Coverage for Tobacco Cessation Counseling Programs

CMS has issued a final decision memorandum which will expand Medicare coverage of evidence-based tobacco cessation counseling. The memo said CMS “has determined that the evidence is adequate to conclude that counseling to prevent tobacco use, which is recommended with a grade of A by the U.S. Preventive Services Task Force (USPSTF) for all adults and pregnant women who use tobacco, is reasonable and necessary for prevention of illness or disability and is appropriate for individuals entitled to benefits under Part A or enrolled under Part B.”