

April 23, 2010

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### NEXT WEEK IN WASHINGTON...

\* On April 28, the Health Subcommittee (Chairman Pallone, D-NJ) of House Energy and Commerce Committee will hold a hearing on antibiotic resistance and the threat to public health.

## 1. PRESIDENT NOMINATES DR. DONALD BERWICK FOR ADMINISTRATOR OF CMS

On Monday, April 19, President Obama nominated Donald Berwick, MD, to be Administrator of the Centers for Medicare and Medicaid Services (CMS). Dr. Berwick currently serves as President and CEO of the Institute for Healthcare Improvement and is a professor at Harvard Medical School and the Harvard School of Public Health. Well-known in the health care field, he is a pediatrician. Berwick is slated to take over the agency that will have the primary responsibility implementation of the health care law, and which has not had a confirmed Administrator for several years. On Friday, April 23, the AAFP issued a statement of support for Dr. Berwick's nomination.

## 2. SENATE TO CALL FOR MORE FUNDING CUTS THAN THE PRESIDENT'S BUDGET

The Senate Budget Committee approved a draft fiscal 2011 budget resolution on a party-line vote of 12-10 to begin what will be a contentious election-year process. Budget Chairman Kent Conrad (D-ND) would like to pass an aggressive fiscal blueprint that shows lower deficits than those in the plan President Obama released in February. House leaders have said they will produce a budget but have yet to set a timetable.

The Senate Committee-passed resolution assumes the cost of extending Medicare physician payments at current levels through December 31, 2014. This funding level is consistent with what is available for Medicare in the *Statutory Pay-As-You-Go (PAYGO) Act*, which allows the Congress to exempt the cost of freezing physician payment rates at 2009 levels for five years from the requirement that it be offset by comparable budget savings or revenue increases.

The Senate resolution also aims at deficit reduction primarily by using lower-than-projected spending. However, for discretionary health spending, the resolution assumes increased funding for community health centers, National Health Service Corps, Title VII health professions programs, and the National Institutes of Health.

An amendment offered to the budget resolution by Sen. John Ensign (R-NV) to instruct the Judiciary Committee to find \$13.6 billion in savings by cracking down on frivolous medical malpractice lawsuits failed 13 to 10.

### **3. HHS SECRETARY TESTIFIES ON FY 2011 BUDGET REQUEST**

On Wednesday, April 21, HHS Secretary Kathleen Sebelius testified before the House Appropriations Subcommittee that funds HHS. In response to questions from Republicans, Secretary Sebelius assured members that the administration's top priorities for the new reform law, such as extending coverage to more people and raising the quality and safety standards of care, was to be covered by the budget request.

### **4. HOUSE PASSES CHILDHOOD OBESITY LEGISLATION**

The House approved, by voice vote, the *Fitness Integrated with Teaching (FIT) Kids Act* (HR 1585) on April 21. The bill would require annual state and local educational agency report cards to include specified information on school health and physical education programs. It includes grant programs that support school counseling, smaller learning communities, community learning centers, and parental involvement in their children's education.

### **5. HEALTH CARE FORUM EXAMINES PROCESS AND IMPLEMENTATION**

Reflecting on the enactment of health reform at a forum sponsored by *The Atlantic* on Tuesday, April 20, House Energy and Commerce Committee Chairman Rep. Henry A. Waxman (D-CA) expressed confidence that Americans would support the new health reform law. Chairman Waxman compared health reform's one-sided vote to the partisan vote for the Medicare prescription drug plan noting that Part D is now a success. He described the process as a "Perils of Pauline endeavor" which he thought would fail a number of times. However, he noted that the motivation for Democrats was that they would be faced with the loss of their majority in the House this November if they had failed to pass comprehensive health care reform.

### **6. FamMedPAC PARTICIPATES IN REPUBLICAN SENATE HEALTH CARE ROUNDTABLE**

Government Relations staff attended a "healthcare roundtable" fundraising event for the National Republican Senatorial Committee. Sens. John Cornyn (R-TX), the Chair of the NRSC, and Sen. Jon Kyl (R-AZ), the Republican Minority Whip, attended. Also participating was Sen. John Barrasso (R-WY), who is an orthopedic surgeon. The senators focused the discussion on the recently passed health reform legislation. Sen. Kyl acknowledged that it will be tough politically to repeal it but hopes to amend some key provisions before they are implemented. Sen. Barrasso mentioned the 44-day wait in Massachusetts to see a family doctor and referred to Don Berwick's quote about "rationing care with eyes open" and lamented the fact that there will be \$500 billion of cuts in Medicare used to fund a new entitlement.

There was some discussion of the Medicare SGR "fix" issue. Sen. Kyl believes it should not have to be paid for. But he believes he is a loner in the Republican conference. Sen. Kyl said the political situation in Congress must soften before anything can get done. Perhaps after the mid-term election, they may be able to do something in a lame-duck session. But generally, he believes the Democrats have to provide the Republicans some reason to tackle the SGR.

### **7. MEDICAL MALPRACTICE FUNDS MISUSED**

A Pennsylvania court decided that the General Assembly cannot use \$808 million from the state's medical liability fund—funded by doctors and hospitals—to balance the state budget.

The majority opinion was that the money collected for the fund is not tax dollars and therefore belongs to the provider and not generally to the Commonwealth. Governor Ed Rendell (D) plans to file an appeal with the state Supreme Court. In January, the New Hampshire Supreme Court also handed a victory to physicians fighting against the state government's attempts to solve budget shortfalls by tapping into a state-created medical liability insurance fund.

The Wisconsin Supreme Court is considering a similar case, after Governor Jim Doyle (D) transferred \$200 million from the Patients Compensation Fund to the Medical Assistance Fund in 2007. For the past two fiscal years, the fund's balance has been negative. Concerned that the use of the Fund in this manner will increase medical liability insurance premiums and encourage physicians to leave the state, the Wisconsin Academy of Family Physicians has urged members to contact state legislators asking them to preserve the Fund.

## **8. COLORADO PREPARES FOR REFORM, ENACTS NEW HEALTH CARE LAWS**

On April 20, Colorado Governor Bill Ritter (D) signed an [executive order](#), creating a new inter-agency task force to recommend specific strategies as the state begins to implement the new federal health reform laws. In addition to the executive order, the governor also signed three bills into law to advance the state's reform initiatives. These bills:

- standardize health insurance policy forms and explanations of benefits to help consumers better understand their coverage;
- require all health policies issued in the state to be written in plan language; and
- improve existing loan programs for healthcare professionals who practice in rural and underserved communities.

## **9. IOWA TO REVIEW INSURANCE PREMIUM RATE INCREASES**

Governor Chet Culver (D) signed into law a measure requiring state insurance regulators to hold public hearings when insurance rate increases are proposed. Under the new law, insurance companies also must give 30 days' notice before increases take effect. Legislators approved the measure after Wellmark Blue Cross and Blue Shield announced an average 18 percent increase for 80,000 Iowa customers.

## **10. MAINE COURT UPHOLDS REGULATORS' PREMIUM RATE REDUCTIONS**

The Maine Superior Court this week upheld a decision by the state insurance superintendent to reduce premium rate increases proposed by Anthem Blue Cross Blue Shield of Maine. The court found that regulators acted within their authority by striking an 18.9 percent premium increase for individual health plans down to 10.9 percent, effective July 1, 2009, as well as in considering the economy and Anthem's profitability across all insurance offerings when making the reduction. Anthem's proposed 22.9 percent increase in premiums for two individual health plan offerings, to take effect on July 1, 2010, is pending.