

August 13, 2010

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NEXT WEEK IN WASHINGTON...

* Both chambers of Congress are in recess. The Senate will reconvene on September 13. The House will return on September 14.

1. HIGHER FEDERAL SUPPORT OF MEDICAID NOW AVAILABLE THROUGH JUNE 2011

President Obama signed into law a bill (HR 1586) that included \$16.1 billion in additional federal Medicaid funding on Tuesday, August 10 after the House earlier in the day approved a state aid package by a 247-161 vote. The new law extends through June 2011 the temporary increase in Medicaid's Federal Medical Assistance Percentage (FMAP) to help financially strapped states pay for additional coverage. It allows for payments to states on a sliding scale, starting with a 3.2 percent increase in the first quarter of 2011 and a 1.2 percent increase in the second quarter.

Two House Republicans joined all but three Democrats to approve the measure, which also provides \$10 billion in funding for states to create or retain education-related jobs. Republicans had raised concerns that the change to foreign tax provisions used to pay for the new spending could harm the economic recovery.

2. HOUSE FIGHTS OFF GOP RESOLUTION TO PREVENT LAME-DUCK SESSION

The House has defeated an effort by Rep. Tom Price, MD (R-GA) to prevent the consideration of any bills except "in the case of an unforeseen, sudden emergency requiring immediate action from Congress" during the lame-duck session. Although Congress has postponed the need for action on the Medicare SGR formula until November 30, to prevent a 23 percent cut on December 1, they will need to enact another SGR patch during a lame-duck session between the November 2 mid-term elections and the start of the 112th Congress in January. The resolution offered by Rep. Price was rejected on a procedural vote of 236 to 163.

3. CMS ISSUES FINAL RULE FOR PAYMENT ERROR RATE IN CHIP, MEDICAID

The Centers for Medicare and Medicaid Services announced a final regulation for calculating payment error rates in the Children's Health Insurance Program and in Medicaid on Tuesday, August 10. The rule carries out a provision of the 2009 CHIP reauthorization law (PL 111-3)

extending the error rate calculation to that program and also revises standards for its calculation in Medicaid, in which it already exists. The rate has long been used in the Medicare program.

The error rates measure the percentage of payments that are made incorrectly. They reflect both underpayments and overpayments that may have been made incorrectly, but not necessarily fraudulently. Thus, a payment might be counted as erroneous if not properly documented, even if it was made for a medically necessary covered service to an eligible beneficiary. The purpose of the rates is to establish a baseline for improvement in payments leading to less waste of taxpayer dollars. The Medicaid calculation involves state-by-state calculations, but only for 17 states per year.

4. NEW YORK GOVERNOR ACTS ON HEALTH CARE LEGISLATION

Governor David Paterson (D) signed legislation ([SB 8227](#)) allowing patients to agree to HIV testing as part of a general signed consent to medical care. The bill also requires health care providers to offer testing to patients between 13 and 64 years of age, allows oral consent to "rapid HIV tests," and facilitates authorization for testing in cases of occupational exposures to HIV infection. The New York chapter supported the bill to streamline HIV testing in the state and to protect health care providers and emergency responders by allowing anonymous testing of patients for HIV in cases of potential occupational exposure.

Another recently signed bill makes New York the 16th state to allow midwives to operate independently. [AB 8117](#) eliminated the requirement for written practice agreements with a physician or hospital. By vetoing separate legislation, [AB 1719](#), the Governor prevented nurse practitioners in the state from issuing do-not-resuscitate orders. His veto message said, "I am not convinced that this is an appropriate function to be carried out by nurse practitioners. Decisions of life and death should be made by physicians, not nurse practitioners."

5. ENACTED NORTH CAROLINA BILL TO PREVENT MEDICAID FRAUD

North Carolina Governor Bev Perdue (D) recently signed the Medicaid Anti-Kickback law ([SB 675](#)), part of her proposed package of initiatives to fight fraud, waste and abuse in the state's Medicaid system. Expected to save the state millions, the legislation explicitly prohibits providers from receiving or giving any kickbacks to patients who receive Medicaid-eligible services. The state uncovered several cases of fraud from as early as 2005, most of which involved pharmaceutical manufacturers or supply companies. The North Carolina Academy of Family Physicians supported this measure to prevent fraud within the program but worked to ensure the bill did not set onerous requirements on family physicians.

6. WISCONSIN FAMILY PHYSICIAN APPOINTED TO HEALTH REFORM COMMITTEE

The office of Wisconsin Senator Fred Risser (D) announced that a member of the Wisconsin chapter, Jeff Huebner, M.D. was appointed to the state's Special Study Committee on Health Care Reform Implementation. Senator Risser is a co-chair of the state's Joint Legislative Council, which created the 21-member committee to make recommendations on changes needed to state statutes and administrative rules in response to the Affordable Care Act. The committee is directed to study all aspects of the federal legislation that affect Wisconsin including insurance market reforms, coverage for uninsured persons, preventive care, taxation, quality improvement, and health workforce issues.