

January 30, 2009

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1. House and Senate have different stimulus bills
2. Children's Health Insurance Program is almost ready for President's signature
3. Legislation would reorganize the Food and Drug Administration

## The week ahead:

- The Senate will likely begin consideration of the economic stimulus bill.
- The Senate Finance Committee may schedule a confirmation hearing for former Senator Tom Daschle for appointment as Secretary of Health and Human Services.
- Congress will probably reach final agreement on the Children's Health Insurance legislation and send it to the President for his signature.

## 1. HOUSE AND SENATE STIMULUS BILLS DIFFER ON KEY HEALTH ASPECTS

The *American Recovery and Reinvestment Tax Act* (HR 1), an \$819 billion economic stimulus bill, won a lopsided vote in the House of 244 to 188 with no Republican votes on Wednesday, January 28. The House bill contains a mix of spending and tax cuts aimed to cushion the blow from the recession and make investments in energy, health care and infrastructure. The House-passed measure directs \$600 million to be used for the training of nurses and primary care physicians and dentists. This level effectively doubles the spending on the Health Professions Grants for Primary Care Medicine and Dentistry.

The bill includes some \$20 billion in funding for Health Information Technology (HIT) programs and grants. The HIT provisions accomplish four major goals:

- Require the government to take a leadership role to develop standards by 2010 that allow for the nationwide electronic exchange and use of health information to improve quality and coordination of care.
- Invest in health information technology infrastructure and Medicare and Medicaid incentives to encourage doctors and hospitals to use HIT to electronically exchange patients' health information.
- Save the government \$10 billion, and generate additional savings in the health sector, through improvements in quality of care and care coordination, and reductions in medical errors and duplicative care.
- Strengthen federal privacy and security law to protect identifiable health information from misuse as the health care sector increases use of HIT.

The Congressional Budget Office estimates that as a result of this legislation, approximately 90 percent of doctors and 70 percent of hospitals will be using comprehensive electronic health records within the next decade.

There are several provisions of particular interest to family physicians.

#### Medicare providers

- The bill would provide up to \$41,000 over 5 years for each physician in a practice that uses approved HIT.
- In a given year, a physician is eligible for 75 percent of his or her Medicare allowed charges, or the applicable HIT payment cap in that year. For example, if a physician has at least \$20,000 in Medicare allowed charges, then he or she would be eligible for the full payment incentives because the first year cap is \$15,000. If a physician had \$10,000 in allowed charges in the first year of the HIT incentive cycle, then he or she would be eligible for \$7,500 in HIT incentives.
- Specifically, the payment limit would be \$15,000 in the first payment year; \$12,000 in the second payment year; \$8,000 for the third payment year; \$4,000 for the fourth payment year, and \$2,000 for the fifth payment years.
- These figures are phased down for eligible professionals adopting HIT after 2013. For those adopting HIT after 2015, there is no incentive payment.
- These payments do not apply to hospitals-based professionals.
- Payments can be made in a single consolidated payment or in periodic installments, as determined by HHS.
- Payment years are defined as beginning with 2011. Nevertheless, physicians could begin using HIT in 2011, 2012 or 2013.
- Demonstration of “meaningful use” of HIT may mean an attestation, submission of appropriate coding, a survey, reporting, other means.
- HHS must develop standards that determine which HIT system is defined as “qualified electronic health records.”
- The incentives do not differentiate between existing systems or new systems. However, they do not allow physicians to “pre-pay” to upgrade existing systems.
- Funding available under the low-interest state-based grants/loans program is more flexible in that these funds can be used both to purchase systems or upgrade existing systems.
- For physicians not using meaningful HIT after 2015, the following changes to Medicare reimbursement will apply: 99 percent for 2016, 98 percent for 2017; 2018 and any subsequent years; 97 percent.
- The Secretary is permitted to exempt eligible professionals if compliance would “result in a significant hardship, e.g., someone in a rural area without sufficient Internet access.”

#### Medicaid “high volume providers”

- High volume Medicaid providers are defined as those practices that are not hospital-based and have at least 30 percent of their patients covered by Medicaid.
- Providers must decide whether they will receive either Medicare or Medicaid incentive payments.
- Medicaid will contribute 85 percent of allowable costs for adoption and implementation of HIT up to \$75,000 over five years. This means that Medicaid will pay as much as \$64,000 per physician. These payments are for purchase of HIT (for which the payments cannot exceed \$25,000 for the first year) and for operation and maintenance of the HIT (for which payments may not exceed \$10,000 in any year). There are no payments after five years.
- States must ensure that the payments are given directly to the providers without deduction; the Medicaid provider must “meaningfully” use certified HIT; the technology must be compatible with state or federal management systems;

## **Stimulus Bill in the Senate**

The Senate stimulus package (S. 1) considered by the Senate Finance and Appropriations Committees this week, totals \$888 billion. The Senate includes a “patch” to prevent the alternative minimum tax from hitting millions of taxpayers in 2009 not in the House bill.

On Tuesday, January 27, the Senate Appropriations Committee approved its stimulus measure by a vote of 21 to 9. Regrettably, while the Senate bill would provide \$600 million to HRSA to address health professions workforce shortages through scholarships, loan repayment, grants to training programs for equipment and activities to foster cross-state licensure agreements. Title VII, Section 747 – Primary Care Medicine and Dentistry Training – is not included in the Senate bill.

Anticipating the exclusion, AAFP Board Chair Jim King, MD, FAAFP, wrote to the Chairmen of the Senate Appropriations and Finance Committees expressing disappointment that the Senate Appropriations Committee failed to increase the appropriation for Health Professions Grants for Primary Care and Dentistry and urging Senators to include it in the stimulus legislation.

The Senate Finance Committee also finished work on its portion of the economic recovery package and passed it on a vote of 14 to 9 on January 27. The Finance Committee’s provisions include approximately \$522 billion in job-creating tax cuts, incentives, and other investments in the nation’s economy. Among the bill’s many provisions are: approximately \$180 billion in investments to create jobs in health information technology, a 65 percent COBRA premium subsidy to help out-of-work Americans pay for their health care coverage, and a temporary Federal Medical Assistance Percentage (Medicaid FMAP) increase.

The Finance committee legislation has HIT goals similar to those in the Senate. Specifically, the bill requires HHS to begin the development and adoption of HIT standards. Regarding Medicare, the bill provides incentives for physicians to begin using HIT in a “meaningful” fashion; lowers Medicare reimbursements for those who do not ultimately do so; and allows for “hardship” exceptions for small providers unable to use the Internet. Regarding Medicaid, the bill offer similar incentives for “high volume” Medicaid providers (those with 30 percent or more Medicaid patients) to support, maintain, or upgrade certified HIT systems. HHS will determine what is “meaningful” use of a certified HIT system.

The Finance Committee’s stimulus measure will be combined with the Appropriations Committee legislation for consideration by the full Senate, beginning next week.

## **Grassroots Actions**

On Monday, January 26, the AAFP sent a Speak Out alert to members asking them call their U.S. Representative regarding economic stimulus legislation. Members urged their Representatives to support key health care provisions of the package. A similar alert will go to members early next week before the Senate acts.

## **2. SENATE APPROVES CHILDREN’S HEALTH INSURANCE EXTENSION**

The Senate on Thursday, January 29, voted 66-32 to approve the *Children’s Health Insurance Program Reauthorization Act* (HR 2) that would reauthorize SCHIP and expand coverage to about four million additional children over the next four-and-a-half years. Under the bill, children in families with incomes of up to three times the federal poverty level would qualify for the program. The bill also would eliminate a five-year waiting period for documented immigrant children and pregnant women to become eligible for the program.

The measure, which would increase SCHIP spending by \$32.8 billion over the four-and-a-half-year period, would be funded by a 62-cent-per-pack increase in the federal cigarette tax. The

Congressional Budget Office estimates that the bill would provide coverage for the additional four million children by 2013, while continuing coverage for seven million children already in the program.

The bill now moves to the House. House Majority Leader Steny Hoyer (D-MD) said that because the House and Senate versions of the bill are so similar, the House would clear the Senate bill and send it to President Obama without holding a conference on the legislation. The Senate bill does not include a provision included in the House version that would have prevented new physician-owned hospitals from opening.

### **3. HOUSE MEMBERS INTRODUCE FDA REFORM LEGISLATION**

Bolstered by the recent discovery of salmonella in some peanut butter products, Reps. John Dingell (D-MI), Frank Pallone (D-NJ) and Bart Stupak (D-MI) reintroduced legislation on Wednesday, January 28, that would increase funding to the Food and Drug Administration (FDA) to boost the number of food inspections, as well as monitor safety of imported drugs and devices. Entitled the *Food and Drug Administration Globalization Act* (HR 759), the bill also would establish industry registration fees for drug, device and food manufacturers, which unsurprisingly, are drawing low marks from these manufacturers.