

October 16, 2009

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### NEXT WEEK IN WASHINGTON...

\* The Senate may consider the *Medicare Physician Fairness Act* to repeal the SGR.

## 1. SENATE FINANCE COMPLETES WORK ON HEALTH BILL; FLOOR DEBATE AHEAD

The Senate Finance Committee on Tuesday, October 13 approved its version of health reform legislation, the *America's Healthy Future Act* by a vote of 14 to 9. Senator Olympia Snowe (R-ME) provided the lone Republican vote for the measure which the Congressional Budget Office has said would provide coverage to 29 million people but leave 25 million, one third of whom are illegal immigrants, uninsured by 2019. CBO scored the bill as fully covering the estimated cost of \$829 billion dollars and predicted that it would reduce the federal deficit by \$81 billion within first ten years.

The Senate Finance Committee vote sets up a floor debate beginning as early as the last week of October once Democratic leadership merges the Finance measure with the version approved by the Senate Health, Education, Labor and Pensions Committee.

## 2. SENATE TO VOTE ON MEDICARE SGR REPEAL

Working closely with the White House, both the Senate and the House are expected to consider legislation to repeal the Medicare physician payment sustainable growth rate (SGR) formula separately from overall health reform.

In the Senate, the *Medicare Physician Fairness Act* (S 1776) was introduced by Senator Debbie Stabenow (D-MI) on October 13, 2009. The bill would repeal the SGR formula currently used to establish annual Medicare physician payment updates. Future updates would be set at zero—as a placeholder—and to provide a foundation for creating a new payment formula. By resetting the budget baseline, S 1776 would erase the accumulated SGR debt which has been the chief obstacle to Medicare physician payment reform.

This strategy sets up difficult votes in the House and the Senate. Senate Budget Committee Chairman Kent Conrad (D-ND) has argued that another short term physician payment bill

should be enacted to allow momentum to build in the Congress to fully offset the cost of SGR repeal. Senator Conrad has said he would vote against the physician payment bill next week.

In the House, fiscally conservative “Blue-Dog” Democrats are also expected to balk at voting for legislation to prevent cuts in Medicare payments to physicians unless it is paid for or the deficit-fighting “pay-as-you-go” rule becomes law first. Speaker Pelosi and Majority Leader Hoyer pledged [in a letter](#) not to bring a SGR bill to the Floor unless a bill to codify the federal “PAYGO” is enacted or is attached to the legislation.

### **3. WAYS & MEANS PREPARES HEALTH REFORM FALLBACK PLAN**

The House Committee on Ways and Means Thursday approved a procedural measure to send HR 3200, the *America’s Affordable Health Choices Act* to the House Committee on the Budget with reconciliation instructions. Ways and Means Committee Chairman Charles B. Rangel (D-NY) took this step to preserve the option of advancing health reform legislation in a manner that would allow a simple majority of the Senate to pass health reform.

### **4. SENATE JUDICIARY HEARING EXAMINES INSURANCE INDUSTRY ANTITRUST**

On Wednesday, October 14, the Senate Judiciary Committee held a hearing titled “Prohibiting Price Fixing and Other Anti-Competitive Conduct in the Health Insurance Industry.” Chairman Patrick Leahy (D-VT) called the hearing on a bill he introduced last month, *Health Insurance Industry Antitrust Enforcement Act* (S 1681).

In a rare move highlight the bill’s importance, Senate Majority Leader Harry Reid (D-NV) testified as a cosponsor of Senator Leahy’s bill that the insurance industry’s exemption from federal antitrust laws provided by the 1945 McCarran-Ferguson Act is a “sweet deal” for them, but bad for the American public. “Since 1945, the insurance industry has enjoyed exemption from federal antitrust laws because of the McCarran-Ferguson Act,” Mr. Reid said. “Pat McCarran, who was the senior senator from Nevada at the time, lent his name to this piece of legislation. Although we’re both Nevadans, I’m not sure what Pat McCarran had in mind when he pushed this bill. And if Pat were around today, he couldn’t be happy with the state of the insurance industry.”

The Obama Administration’s top antitrust official at the Justice Department, Christine Varney, also testified in support of Senator Leahy’s bill to repeal the federal antitrust exemption enjoyed by the health insurance and medical malpractice insurance industries.

Describing insurance pricing as an “inherently difficult task,” Lawrence S. Powell, associate professor of insurance and financial services, College of Business, University of Arkansas at Little Rock, testified that repealing the McCarran-Ferguson Act would make it more difficult for new competitors to enter the insurance market.

### **5. CBO ANALYSIS: LIABILITY REFORM WOULD CUT HEALTH SPENDING**

The Congressional Budget Office released their letter to Senator Orrin Hatch (R-UT) on medical liability reform which can be found at [http://cbo.gov/ftpdocs/106xx/doc10641/10-09-Tort\\_Reform.pdf](http://cbo.gov/ftpdocs/106xx/doc10641/10-09-Tort_Reform.pdf).

The CBO director said tort reform could affect health care cost both directly and indirectly: directly, by lowering premiums for medical liability insurance; and indirectly, by reducing the use of diagnostic tests and other health care services when providers recommend those services principally to reduce their potential exposure to lawsuits. CBO now estimates that implementing a typical package of tort reform proposals nationwide could reduce federal budget deficits by roughly \$54 billion over the next 10 years.

## 6. VA HEALTH PROGRAMS TO BE FUNDED BY ADVANCE APPROPRIATIONS

The Senate cleared a bill Tuesday to put veterans' health care programs on a two-year budget cycle. The *Veterans Health Care Budget Reform and Transparency Act of 2009* (HR 1016), cleared by voice vote, would authorize appropriations for Veterans Affairs Department medical care programs one year in advance of the start of each fiscal year. The authority would start in fiscal 2011 for three Veterans Health Administration medical care accounts: medical services, medical support and compliance, and medical facilities. The bill now goes to President Obama for his signature.

## 7. MANDATED VACCINATION FOR NEW YORK HEALTH CARE WORKERS

The state of New York adopted a [regulation](#) mandating that all health care workers with direct patient contact receive influenza vaccinations—including both seasonal flu and H1N1. Those working in a health care setting that refuse a vaccination will not be permitted to participate in direct patient care. According to state health officials, this regulation affects 500,000 health care workers and volunteers across the state. To date, New York has the only statewide mandate, although a number of hospitals also require employees to receive flu shots.

## 8. CALIFORNIA GOVERNOR ACTS UPON HEALTH CARE LEGISLATION

The California Legislature recently passed several health care bills. Governor Arnold Schwarzenegger (R) vetoed:

- [AB 2](#) calling for independent review of decisions by insurers to rescind coverage.
- [AB 120](#) strengthening and speeding up the system for disciplining doctors.
- [SB 674](#) establishing accreditation standards and rules for operation of fertility clinics and cosmetic surgery centers.
- [SB 820](#) allowing for earlier involvement by the Medical Board of California.
- Increasing health insurance coverage for mental illness ([AB 244](#)), maternity care ([AB 98](#)), orally administered drugs ([SB 161](#)) and lactation consultation ([AB 513](#)).

The Governor also signed a number of bills into law, including:

- [AB 108](#) prohibiting a health plan from rescinding or canceling a contract after 24 months.
- [AB 119](#) preventing health plans and insurers from charging men and women different rates for the same insurance policies in the individual market.
- [AB 1383](#) attempting to impose a fee on most hospitals to draw down additional federal funds to increase payments to hospitals and health care coverage to children.
- [AB 1544](#) streamlining the approval process for outpatient primary care clinics operated by hospitals.