

December 18, 2009

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NEXT WEEK IN WASHINGTON...

* The Senate will be in session to finish work on health reform legislation, with final votes occurring possibly late December 24 or early December 25.

* No more votes are expected in the House for the rest of the year.

1. THE SENATE ATTEMPTS TO FINISH WORK ON HEALTH REFORM

The Senate rejected, 51 to 48, an amendment offered by Sen. Byron Dorgan (D-ND) that sought to allow the importation of prescription drugs. A compromise amendment offered by Sen. Frank Lautenberg (D-NJ), which would have permitted the importation of drugs if federal health authorities declared them safe, also failed by a 56-43 vote. Both amendments needed 60 votes to pass.

The Senate Majority Leader has announced that the chamber will continue working on health reform legislation until it is finished, even if votes must be taken on Christmas. He will introduce the final version of the bill today and will attempt to close debate and secure a final vote by December 24. But procedural obstacles may make that difficult.

2. HOUSE POSTPONES MEDICARE CUT, GIVES TIME FOR REFORM TO PROCEED

Legislation to prevent the 21 percent Medicare physician payment cut from taking effect on January 1 passed the House on Wednesday, December 16 by a vote of 395 to 34. The vehicle for the two-month extension of the Medicare physician payment schedule was the Defense appropriations bill for fiscal year 2010 (HR 3326). Congress is expected to include some type of long-term fix in the health reform bill early next year. This extension does nothing to the changes that CMS included in the final physician payment rule. The Senate could vote on the bill as early as Friday. If the Senate passes and the President signs a bill with this provision, CMS will be able to eliminate consultation fees and use the updated practice expense numbers that will allow for better payment to primary care for at least two months.

3. TEXAS ATTEMPTING TO BAN DISCRETIONARY CLAUSES

The Texas Office of Public Insurance Counsel (OPIC) filed a petition for the adoption of a rule banning discretionary clauses with the state Department of Insurance. A discretionary clause gives the insurer broad discretion to interpret policy terms and evaluate an insured's claim for benefits. These provisions often leave little room for reviewing courts to rule against insurers.

OPIC argues these clauses are harmful to consumers as they nullify a carrier's promise to pay benefits owed.

Twenty-two states have enacted legislation, adopted rules, or issued bulletins prohibiting the use of discretionary clauses. Since 2004, the National Association of Insurance Commissioners has recommended its members adopt the Discretionary Clause Prohibition Act. The commissioner of the Texas Department of Insurance has a December 28 deadline to decide whether the agency will start writing rules to limit or ban discretionary clauses.

4. BUDGET CUTS TO STATE HEALTH SERVICES CONTINUE

- Following orders from Governor Brad Henry (D) and the state Legislature for all state agencies to reduce budgets by 5 percent, Oklahoma's Medicaid program, SoonerCare, must reduce spending by \$17 million. Most of the reductions pertain to co-payment increases and changes to covered mental health services. Legislators have indicated that in the upcoming session further budget cuts are likely—including a 1 percent cut in payments for Medicaid providers.
- The South Carolina Budget Board plans to reduce funding for the state's Medicaid programs by \$20 million for the current fiscal year. Although the state General Assembly approved \$973 million in budget cuts last year, South Carolina finished the fiscal year in June \$98 million short after wiping out two rainy day accounts. Further cuts may occur to account for state revenue shortfalls and an anticipated deficit for the state's Department of Health and Human Services; however, state legislators passed a budget during the last legislative session preventing the Department from reducing most payments to Medicaid providers.