

## HEALTH LAW UPDATE

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### THE PRESIDENT'S FY 2011 BUDGET REQUEST -- A HEALTH REFORM WORKAROUND?

Characterizing healthcare costs as "the single biggest threat to our Nation's fiscal future," President Obama outlined his \$3.8 trillion FY 2011 budget request to Congress this week. From a fiscal perspective, the budget document assumes enactment of specific provisions from the now-stalled health reform legislation, saving an anticipated \$150 billion over ten years. With regard to the immediate concerns of state Medicaid budgetary shortfalls, the President's budget request extends the temporary Federal Medical Assistance Percentage (FMAP) increase provided under the American Recovery and Reinvestment Act of 2009 (ARRA) for six months, resulting in an additional \$25.5 billion to the states. It also seeks to extend COBRA premium assistance for 12 months and provides for a 10-year fix to the statutorily mandated payment reduction under the Medicare physician fee schedule.

With health reform sputtering in Congress, physician advocacy groups quickly realized that doctors soon would be subject to the 21 percent payment cut looming under the Medicare sustainable growth rate (SGR) formula. As an initial step for addressing their concerns, congressional leaders last week agreed to except out legislative efforts aimed at averting cuts to the physician fee schedule for five years from the "pay-as-you-go" rules for new spending. As discussed in the [January 21 issue of the Health Law Update](#), separate legislation to prevent the payment reduction from becoming effective still must be passed by Congress prior to March 1, 2010. Watch for physician groups to continue to push for immediate reformation of the SGR budgetary mandate with another freeze following the expiration of the February deadline.

While the administration's budget proposal for FY 2011 does not appear to contemplate additional cuts in Medicare, the President has asked Congress to create "a bipartisan fiscal commission charged with identifying additional policies to put our country on a fiscally sustainable path . . . by 2015." With analysts projecting an unprecedented 17.3 percent share of the nation's gross domestic product for healthcare, expect Medicare spending cuts to remain high on the nation's policy agenda in the coming years.

With the fate of comprehensive health reform legislation still in question, the budget document shows that the administration continues to pursue delivery system and payment reforms. To that end, the budget document allocates \$268 million for comparative effectiveness research and an increase of \$110 million to the Centers for Medicare and Medicaid Services (CMS) for "modernizing the Medicare and Medicaid programs by making CMS a leader in value based purchasing."

Chief among the budget proposal's revenue enhancers is a renewed focus on healthcare fraud prevention and program integrity, described as a "top priority for the President." The budget document provides \$561 million in HCFAC discretionary funding and infuses the joint HHS-DOJ HEAT task force with an additional \$250 million for investigative and enforcement initiatives. With HCFAC funding levels at \$1.7 billion for FY 2011, it is clear that the administration intends making significant inroads on fraud prevention and program integrity during the next fiscal year.

The President's budget document includes support for public health advancements, including HIV/AIDS prevention and treatment as well as funding for genomics, translational research and biomedical research under the National Institutes of Health. Additional dollars also are allocated for maternal and child health block grants, autism and developmental disorders, cord blood stem cell bank, emergency medical services for children, children's mental health services and efforts to combat childhood obesity.

Reforms? Yes, they are coming still and likely will surface in a multitude of vehicles -- not only via the budget and "must pass" legislation, but also through regulation and by executive order. As demonstrated by the President's budget request,

the healthcare industry can ill afford to take a collective breather to rest and reflect now that a comprehensive reform bill appears to be hanging in the balance. Providers, physicians, suppliers and others must remain sensitive to continuing policy and payment changes, anticipated delivery system reforms and aggressive program integrity efforts so they may respond appropriately to ensure continued viability and success.

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