

HEALTH LAW UPDATE

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HEALTH REFORM -- NEW ACTIVITY AND EXPIRED DEADLINES

Administration Introduces Plan; Holds Bipartisan Summit on Healthcare Reform

In anticipation of his White House Reform Summit, President Obama released an 11-page summary of the administration's \$950 billion health reform plan that proposes to extend insurance coverage to more than 31 million Americans. While the President's plan was substantially based on the Senate's Patient Protection and Affordable Care Act (H.R. 3590), it "incorporates the work the House and the Senate have done and adds additional ideas from Republican members of Congress."

Additions reflected in the administration's proposal include a new Health Insurance Rate Authority charged with providing "needed [federal] oversight" of insurance market behavior, 100 percent Federal Medicaid Assistance Percentage (FMAP) to the states through 2017 for expanding Medicaid and nine new anti-fraud and abuse proposals including technology for real-time claims data and payment analysis. Other important elements include a delay in the excise tax on high-cost "Cadillac" plans until 2018, a new 2.9 percent assessment on unearned income in the Medicare payroll tax for individuals and families making more than \$200,000 and \$250,000, respectively, and increased tax credits for health insurance premiums.

The administration's proposal set the stage for a bipartisan Summit on Healthcare Reform held by the President on February 25, 2010. During the televised event moderated by President Obama, issues central to insurance reforms, cost containment, coverage expansion and deficit reduction were debated by the invitees that included congressional leaders from both sides of the aisle. Although clarifying the philosophical divide between the parties over the role of government in healthcare, the daylong Summit ended without achieving a bipartisan accord. By letter to Congress, the President expressed a willingness to accommodate certain Republican policy initiatives -- tort reform, Medicaid payment, health savings accounts and enhanced fraud deterrence -- discussed during the Summit in his final health reform bill. Reconciliation has emerged as the preferred path forward by congressional Democrats for passing a comprehensive health reform bill in the face of continuing Republican opposition.

House Moves on Insurer Antitrust Bill

In what could be a parallel strategy to convert certain segments of the House and Senate health reform bills into a series of bite-size initiatives, the House of Representatives acted to repeal the antitrust exemption for health insurance companies from the McCarran-Ferguson Act with a robust bipartisan vote (406-19). Citing the need for this legislation because "95% of health insurance markets are highly concentrated," the bill's sponsors, Reps. Tom Perriello (D-Va.) and Betsy Markey (D-Colo.) characterize the Health Insurance Industry Fair Competition Act (H.R. 4626) as "a very important step for fiscal responsibility." While the House reform measure contains a similar provision, the Senate version does not. As a result, subsequent passage of the Health Insurance Industry Fair Competition Act in the Senate likely will face tougher sledding.

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Expired Deadlines Prompt Action by Congress and CMS

Meanwhile, a provision passed under the U.S. Department of Defense Appropriations Act to delay a 21 percent payment cut for physicians mandated by the Medicare sustainable growth rate formula expired February 28, 2010. See the [January 21, 2010, issue of the Health Law Update](#). The Centers for Medicare & Medicaid Services (CMS) has instructed its contractors to hold claims for services paid under the Medicare Physician Fee Schedule (MPFS) for the first ten business days of March "to avoid disruption in the delivery of health care services and payment of claims." The MPFS claims hold will affect only those claims with dates of service March 1, 2010, and forward, according to the agency.

This week, President Obama signed into law the Temporary Extension Act of 2010 (H.R. 4691) as a stopgap measure to forestall lapsing deadlines affecting unemployment and COBRA healthcare subsidies. Relevant for physicians, non-physicians and other providers of services paid under the MPFS, the new law delays the 21.2 percent payment reduction until the end of the month. Other deadlines temporarily extended by the new law include COBRA premium assistance subsidies signed into law by President Obama under the American Recovery and Reinvestment Act (ARRA) and the cap on Medicare Part B outpatient therapy services that became effective January 1, 2010.

New legislation introduced by Senate Majority Leader Harry Reid (D-Nev.) and Finance Committee Chair Max Baucus (R-Mont.) on March 1, 2010, would further delay cuts in the MPFS to September 30, 2010. The proposed American Workers, State, and Business Relief Act of 2010 (H.R. 4213), introduced as a substitute amendment to the Tax Extenders Act passed by the House last year, additionally would (1) continue the increased FMAP for states made available by ARRA for an additional six months from January 1, 2011, to June 30, 2011, (2) reverse the outpatient cap on Medicare Part B outpatient therapy services until the end of the year, and (3) extend COBRA premium assistance subsidies through December 31, 2010.

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