

HEALTH CARE REFORM UPDATE

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Senate

This past Tuesday, the Senate Finance Committee voted on its health care reform package (“America’s Healthy Future’s Act of 2009”). The measure passed out of committee largely along party lines with the only Republican vote for the bill by Senator Olympia Snowe (R-ME). Of note about this bill, legislation would allow for physician payments under the ‘Consumer Operated and Oriented Plan (CO-OP)’ program to be established through independent negotiations between physicians and plans. Of all the current health care reform packages currently under consideration, the ASA considers this the most efficient and equitable mechanism for establishing payments.

The non-partisan Congressional Budget Office (CBO) found the sweeping measure will cover 94% of non-elderly legal U.S. residents, up from about 83% currently. Despite the expansion of coverage at a cost of \$829 billion over 10 years, the CBO said 25 million people – about 1/3 of them illegal immigrants – would still be uninsured in 2019. In all, the bill is projected to cut the deficit by \$81 billion over the next 10-year period, owing to trims in Medicare spending and new taxes.

In recent development Sens. Debbie Stabenow (D-MI) and John Kyl (R-AZ) had introduced S. 1776 (“Medicare Physician Fairness Act of 2009”) which abolishes the sustainable growth rate (SGR) and raises Medicare provider reimbursement rates by \$247 billion over the next ten years and \$3 trillion over the next 75. Though this would have achieved the goal of doing away with the flawed SGR constructs and avoiding the scheduled -21.5% cut to provider reimbursement rates, its silence on future updates to provider rates means that statutory or regulatory changes would be necessary in the future to increase rates. Additionally, its extraction from a comprehensive health care reform package has been seen by some as a political maneuver by the administration to add \$247 billion in deficit health care spending one week, and then turn around and claim their health care plan is deficit neutral the next. This measure was brought for consideration on Wednesday, October 21st and failed by a bipartisan majority of 53-47. Twelve Democrats and one independent joined all 40 Senate Republicans in defeating a motion by Reid to begin debate on the doctors fix bill on Wednesday.

During consideration of the Baucus bill (i.e. ‘mark-up’) there were close to 500 amendments offered, two of which would have created a public option into the bill. These two measures, introduced by Senators John Rockefeller (D-WV) and Charles Schumer (D-NY) were summarily defeated on votes of 15-8 and 13-10, respectively. Chairman Baucus (D-MO) was one of the three Democrats to vote ‘no’ on both proposals, not because he does not favor the public option but instead because he fears its inclusion would doom the bill to a Republican filibuster. Likewise, the Finance Committee also defeated GOP amendments aimed at strengthening limits on abortion coverage and medical services for illegal immigrants.

Other measures created within the bill include cuts to the current Medicare system. Though the majority of these cuts are relatively painless, one notable exception is Medicare Advantage, a program that pays private insurance companies to cover more than 10 million people, nearly a quarter of the 45 million Medicare recipients. Created to compete with the traditional program, the original idea was that for the Advantage plan to be more efficient, and therefore cost less, than traditional Medicare. However, Medicare Advantage has proved to cost, on average, 14% more than regular Medicare – and membership has been growing rapidly, attracting ¼ of seniors. Hence, this program has become far more costly per person than government-run coverage and is helping to drive Medicare toward bankruptcy. The Baucus

bill would slash the bulk of those overpayments - \$113 billion over the next decade. Many analysts, along with the CBO, agree that the Medicare Advantage cuts are likely to hurt, causing insurance companies to scale back popular extras such as dental coverage and gym memberships. They could also pull out of suddenly unprofitable markets, leaving seniors without a program, which flies in the face of President Obama's pledge that people who like their insurance can keep it.

Currently, under the leadership of Senate Majority Leader, Harry Reid (D-NV), and in consultation with Senate HELP Committee Vice-Chairman Chris Dodd (D-NJ) and Senate Finance Committee Chairman Max Baucus (D-MO), the two bills are being combined before a singular bill is brought before the full Senate for a vote. Though many compromises will have to be made to coalesce the two, it is believed that the Baucus Plan will form the framework of the final bill. Senator Reid, under significant political pressure due to his weakening home state popularity and 'toss-up' district in the 2010 election cycle, will have to strike a balance between the desires of the Democratic leadership and the voters of his moderate constituency. Aides to Senator Reid say he has not decided how to proceed. It is expected that if he doesn't include a public option, backers of a government plan will seek to amend the bill when it advances to the Senate floor, or during final negotiations with the House, where Speaker Pelosi (D-CA) remains a staunch advocate.

House of Representatives

H.R. 3200 ("America's Affordable Health Choices Act") has currently been reported out of all three committees of jurisdiction (Ways and Means, Energy and Commerce, Education and Labor). Due to significant compromise alterations of the bill in these committees, particularly in Energy and Commerce at the urging of the Blue Dog Coalition, the final 'votable' version of HR 3200 is being constructed prior to a full House floor vote. Speaker Pelosi (D-CA) has voiced her support for the public option and the more progressive members of the Democratic caucus are demanding its inclusion in the final version of the bill. Speaker Pelosi has indicated her intention to bring the bill for a vote within the next couple of weeks.

As introduced, HR 3200, provided for payment rates in the proposed public option within the health insurance exchange to be equal to Medicare rates plus 5%. An amendment adopted by the House Committee on Energy and Commerce would instead require negotiations and stipulate that rates could not be lower than Medicare rates and could not be higher in the aggregate than the average rates paid by other qualified commercial health benefit plans. The amendment also allows for use of innovative payment methods in connection with the negotiated rates. The amendment is favored by the ASA because it 'de-links' reimbursement payments for anesthesia services under the public option from those of the current Medicare payment constructs, which according to a 2007 GAO report, are around 33% of private insurance reimbursement rates.

Rep. Eddie Bernice Johnson (D-TX-30) has introduced an amendment to H.R. 3200 that would de-link anesthesia payments from Medicare rates under a public plan. Instead, the amendment would ensure that any public plan allows for payment at "not less than the average rate paid by Exchange-participating health benefits plans." This would level the playing field and ensure fair anesthesiology payments.

Though the public option has been the most contentious debating point thus far, there are several other components of the House bill that need to be worked on, including: regional disparities in Medicare reimbursement, funding for abortions, and coverage of undocumented immigrants, among others. Nor has the House settled on a package of tax increases and spending cuts to pay an insurance expansion. In July, the House Ways and Means Committee approved a surtax on income over \$350,000 as a primary source of funding, but Pelosi has since suggested that she would rather see the surtax applied only to millionaires. She has also said she is considering a Senate plan to impose a 35% excise tax on generous

“Cadillac” insurance policies. However, many other top Democrats are opposed to such a plan as it would preferentially effect a strong financial supporter, the labor unions.