

Health Care Debate Far from Over

A long and complicated process lies ahead for the *Patient Protection and Affordable Care Act* (H.R. 3590), passed by the Senate on Christmas Eve, and the House bill (H.R. 3962, *Affordable Health Care for America Act*) that was approved in November. After a short winter break – the House reconvenes January 12 and the Senate January 19 – representatives from each chamber normally would meet in a conference committee to iron out differences between the bills. Tentatively, the schedule is to have a bill prepared and passed before President Obama presents his State of the Union address in late January/early February, but many are speculating that the process will take much longer.

As of today, there also is speculation that the House and Senate may bypass a formal conference and instead work out an informal agreement between top Democrats as a way to avoid further Republican delay tactics in the Senate. Top Democrats probably will have the House incorporate any agreement into the Senate’s version of the health care bill via an amendment, and then send the legislation back to the Senate to be cleared. Senate Democrats would favor this plan because the process of going to conference requires three separate motions in the Senate, all of which can be filibustered by the Republicans.

The House bill, with a cost estimated by the Congressional Budget Office at \$1.1 trillion over the next decade, is projected to cover 36 million individuals by 2019 – about 96% of legal residents. The Senate bill, with an estimated cost of \$871 billion over 10 years, is projected to cover about 31 million people, or 94% of legal residents. Representatives Henry Waxman (D-CA), Charles Rangel (D-NY), and George Miller (D-CA), the chairs of the three committees with jurisdiction over health policy in the House, said in a statement that they "are committed to producing a final bill that incorporates the best reforms for middle class families, small businesses, seniors, and our fiscal health [and] stays true to the values of our members."

The House and Senate bills have a number of issues in common, such as establishing new rules requiring insurers to accept all individuals and employers that apply for coverage, eliminating rescissions, and preventing carriers from setting premiums based on health status. Some of the issues that will need to be reconciled include:

■ **Public insurance option**

Despite weeks of debate, the public insurance option was dropped from the final Senate bill. The House bill contains a public insurance option that requires the Health and Human Services (HHS) secretary to negotiate rates with healthcare providers as private insurers currently do. The Senate bill instead has a provision in which multi state private insurance plans would be offered under contract with the federal Office of Personnel Management, with at least one of the plans being a nonprofit entity.

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■ **Medicaid expansion**

Under the House bill, Medicaid would be expanded up to 150% of the federal poverty level (roughly \$16,245 for a family of four). The House bill provides 100% federal financing of Medicaid expansions through (Cont'd page 2)

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2014, and then 91% financing beginning in 2015. In the Senate bill, the rate of eligibility is 133%. It provides 100% federal financing of Medicaid expansions between 2014 and 2016. By 2017, most of the states would share in the cost of expanded coverage.

■ Physician care

The House bill calls for a 5% increase in fees for primary care services, and a 10% increase in those areas with shortages. The Senate bill calls for a 10% increase for primary care physician fees, along with the fees for general surgeons practicing in areas with shortages.

■ Paying for healthcare

The Senate bill includes a Medicare payroll tax increase of 0.9% (to 2.35%) for individuals earning more than \$200,000 or families making more than \$250,000. A tax also is included on high-cost or "Cadillac" plans: a 40% tax is proposed for employer-sponsored health coverage that exceeds \$8,500 a year for individuals and \$23,000 for families. The Senate also raises the threshold for deducting medical expenses from 7.5% to 10%. In the House bill, the tax rate for high income families would be increased, with a 5.4% income tax surcharge on individuals with incomes more than \$500,000 and families with incomes more than \$1 million.

■ Mandated coverage

Under both bills, most Americans will be required to have coverage or face paying penalties. Under the House bill, individuals must have coverage by 2013 or pay up to 2.5% of their income. In the Senate version, which would take effect by 2014, the penalty for not having coverage is \$95 in 2014 or 0.5% of an individual's income – whichever is higher. This penalty would climb in 2016 to \$750, or 2% of income – up to the cost of the cheapest health plan.

■ Health and wellness

Both bills call for establishing a fund to provide resources for community-based prevention programs, childhood obesity programs, and other similar public health programs. The Senate bill creates a new annual wellness visit, including a health risk assessment and personalized prevention plan, for Medicare beneficiaries.

Congress Approves Medicare Physician Payment Freeze

On December 19, the Senate passed by a vote of 88 to 10 a Defense Department spending bill (H.R. 3326) that includes a provision to freeze Medicare physician payments for two months, avoiding a 21% cut originally scheduled for January 1, 2010. The House approved the bill December 16, and President Obama signed it into law on December 19.

The Defense spending bill freezes reimbursement at current levels for Medicare physicians and some other providers through February 28, 2010, a stopgap measure providers and lawmakers say is needed to preserve access to care for beneficiaries. Some providers say they

would be unable to accept Medicare patients if their payment rates dip too low.

Senate Majority Leader Harry Reid (D-NV) stated that the Senate will begin working on a permanent fix for the formula when it reconvenes later this month. In a manager's amendment to the health reform bill Reid stripped from the reform legislation a one-year patch for the formula. Congress will be forced to take quick action on the issue in the new year because there will be no provision in place to block the payment cuts after the end of February.

CBO Says Medical Malpractice Reform Would Reduce Federal Deficit

In an analysis prepared for Senator Orrin Hatch (R-UT), the Congressional Budget Office (CBO) concluded that medical malpractice reform would reduce spending on federal health programs by \$41 billion over 10 years, increase federal revenues by \$13 billion (because lower medical costs would lead to higher taxable income for workers), and reduce the federal deficit by \$54 billion. The CBO also said that many analysts postulate that the current medical liability system encourages providers to increase the volume or intensity of the health care services they provide to protect themselves against possible lawsuits. Hatch said the analysis “. . . confirms that there is a growing problem regarding the costs of health care lawsuits . . .” and he called it “an important step in the right direction,” adding that the CBO’s numbers “. . . show that this problem deserves more than lip service from policymakers.”

CBO based the analysis on a package of medical malpractice reforms, including a cap of \$250,000 on non-economic damages awards and a cap of \$500,000 on awards for punitive damages, or two times the award for economic damages, whichever is greater. The package of medical malpractice reforms examined by CBO also included: modification of the “collateral source” rule to allow evidence of income from such sources as health and life insurance, workers’ compensation, and automobile insurance to be introduced at trials or to require that such income be subtracted from awards decided by juries; a statute of limitations – one year for adults and three years for children – from the date of discovery of an injury; and replacement of joint-and-several liability with a fair-share rule, under which a defendant in a lawsuit would be liable only for the percentage of the final award that was equal to his or her share of responsibility for the injury.

CBO estimated that the direct costs providers will incur in 2009 for medical malpractice liability (consisting of malpractice insurance premiums together with settlements, awards, and administrative costs not covered by insurance) would total approximately \$35 billion, or about 2% of total health care expenditures. “Therefore, lowering premiums for medical liability insurance by 10% percent would reduce total national health care expenditures by about 0.2%,” the analysis said.

“CBO now estimates, on the basis of an analysis incorporating the results of recent research, that if a package of proposals such as those described above was enacted, it would reduce total national health care spending by about 0.5% (about \$11 billion in 2009),” the analysis stated. “That figure is the sum of the direct reduction in spending of 0.2% from lower medical liability premiums . . . and an additional indirect reduction of 0.3% from slightly less utilization of health care services.”

Short . . .

Health Care Reform Prompts Interest in Medical Malpractice Reform

According to a Congressional Research Service (CRS) report issued in late October, the recent interest in medical malpractice reform is related to the efforts to overhaul the health care system. Such interest is usually spurred by “crisis” periods of high premiums and other problems, but the report, *Medical Malpractice and Insurance Reform*, points out that the market is not currently showing signs of crisis, such as out-of-reach premiums, lack of access to insurance, or decreasing numbers of providers. On the contrary, the report states “Over the past four years, losses incurred by medical malpractice insurers have dropped dramatically and premiums paid have fallen, albeit more modestly.

Problems with the affordability and availability of malpractice insurance persist but are less acute compared with other time periods.”

The report notes that, although comprehensive health reform legislation is a major focus in Congress, medical malpractice reform is receiving attention and “. . . Congress may decide to focus on how changes to the medical malpractice system might affect overall health reform.” CRS also said the three major areas to consider in medical malpractice policymaking are health care itself, the tort system, and insurance; and it highlighted the recent CBO analysis citing the reductions in national health care spending and the federal budget deficit that would result from tort reform.