

Washington Business Health Update

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- **PRESIDENT'S BUDGET WOULD DELAY MEDICARE PHYSICIAN REIMBURSEMENT CUTS FOR 2 YEARS**

This week, the President released his 2012 [budget](#) proposal which includes a provision to delay a phased 25% cut in Medicare physician reimbursements for 2 years. However, the President's budget does not pay for the additional \$315.4 billion necessary to delay the cuts beyond 2013.

The President proposes to pay for the \$62.2 billion cost provision by:

- Reducing the period of exclusivity from 12 to 7 years for brand biologic drugs before they face competition from follow-on biologics by \$2.3 billion;
- Ending “pay-for-delay” arrangements—deals between brand and generic pharmaceutical manufacturers to delay the market entry of generic drugs by \$8.8 billion; and
- Reducing the amounts States can tax providers for increased Medicaid funding and implementing other minor Medicaid and Medicare reforms by \$49.3 billion.

The budget also includes funding to implement the new health care law, including:

- \$1.029 billion (30.6% increase) for the Centers for Medicare and Medicaid Services (CMS);
- \$37 million in increased funding for the Medicaid expansion;
- \$38 million for “a one-stop shopping website” for consumers to understand their options under the health care law at www.healthcare.gov;
- \$28 million to enforce the insurance mandates on individuals, plans and employers;
- \$236 million for the state health insurance exchanges (technical assistance to States, exchange development in states that choose not to establish their own, and IT systems);
- \$20 million to reduce healthcare-associated infections;

- \$1 billion for the Prevention and Public Health Fund (grants for public health infrastructure; community and State prevention; and tobacco and obesity prevention); and
- \$120 million to fund the implementation of the voluntary Community Living Assistance Services and Supports (CLASS) Act benefit.

The Justice Department's portion of the budget also includes \$250 million in new mandatory spending over the next 5 years to "provide incentives for state medical malpractice reform."

This week, the Republican-controlled House of Representatives will consider a bill to continue funding the federal government beyond March 4 that would cut \$58 billion from current government spending levels, but it does not address Medicare physician reimbursements. The House may also approve an amendment by Representative Steve King (R-IA) to deny certain federal agencies funding to implement the health care law.

IMPACT ON EMPLOYERS AND EMPLOYEES: Avoiding Medicare physician reimbursement cuts will reduce the pressure for physicians to shift costs to employers, employees and other private payers to make up for the shortfall, but exacerbates the long-term threat to Medicare's fiscal unsustainability, increases out-of-pocket costs for employees and the threat of higher Medicare payroll taxes. Medicare should quickly move away from fee-for-service to physician payment based on performance and improved health outcomes to accelerate more effective care delivery and the program's fiscal sustainability.

Retirees will also pay higher Part B premiums as Congress restores Medicare physician reimbursement cuts. Since more doctors are closing their practices to new Medicare patients, and would do even more so if the cuts were really enacted, not cutting doctors' fees will help stave off more defections. With baby boomers aging into Medicare, and a shrinking primary care physician pool, now would be a bad time for Congress to cut physicians' fees without considering payment reform that would improve payments for doctors providing primary and specialty care where there are shortages (e.g., general surgeons).

Employer plans and employees would greatly benefit from the earlier availability of lower cost follow-on biologics and generics, particularly since spending on specialty pharmacy products is growing much faster than overall spending on prescription drugs.

OUTLOOK: The House Ways and Means Committee will consider overhauling the way Medicare reimburses physicians later this year.

Differences between the President and the House Republicans' budgets and funding proposals will likely result in a compromise agreement on minor funding reductions or continuing current government funding, but a government shutdown remains unlikely.

BACKGROUND: Recently, the President signed into law a short-term delay of the Medicare physician reimbursement cuts until January 1, 2011 that also provided a 2.2% rate increase by reducing some Medicare reimbursements for physical and occupational therapists as a temporary measure until Congress could enact a longer delay.

The 1997 Balanced Budget Act required Medicare to reduce reimbursements to physicians by 4-6% over a period of several years, beginning in 2000. Each year, however, with the exception of 2002, Congress delayed the cuts and, as a result, the amount the federal government needs to cut in future years grows.

Beginning in 2015, the new health care law requires CMS to implement a value-based, budget neutral, payment adjustment for all Medicare physician reimbursements based on the quality of care relative to cost.

NATIONAL BUSINESS GROUP ON HEALTH'S VIEW ON THIS ISSUE: The Business Group urges Congress to tie physician reimbursements to performance on quality and safety and use of health information technology in any reform of Medicare's physician payment system and along with any restoration of planned reimbursement cuts. The Business Group also supports increased physician payment for care coordination, prevention, and primary care.

The Business Group supports eliminating the barriers to timely access to affordable, clinically effective biologic, follow-on biologic and generic drugs and fostering a more competitive prescription drug market while at the same time encouraging innovation.

We believe that "pay for delay" agreements go against the market rules agreed to in the Hatch-Waxman legislation and the spirit of competition. As a result, patients, employers, insurers and the government pay a heavy price in dollars and some people may forego needed medications.

➤ **BILLS WOULD REMOVE THE HEALTH CARE LAW'S FSA CAP, PRESCRIPTION REQUIREMENT TO USE HEALTH ACCOUNTS FOR OTC MEDICATIONS**

Recently, Senator Kay Bailey Hutchison (R-TX) and 7 Republican cosponsors introduced a bill that would remove the health care law's:

- \$2,500 cap on how much money employees will be able to contribute to flexible spending accounts (FSAs) beginning in 2013; and
- The current ban on using health accounts (FSAs), health reimbursement arrangements (HRAs), or health savings accounts (HSAs) to pay for over-the-counter (OTC) medications unless they have prescriptions.

Representative Erik Paulsen (R-MN) has introduced an identical bill in the House.

<p>IMPACT ON EMPLOYERS AND EMPLOYEES: Removing the FSA cap and the prescription requirement for OTC drug purchases would allow more employers to offer health accounts to their employees and lower employees' out-of-pocket costs.</p>
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OUTLOOK: *Both the Senate and the House may pass the measures.*

BACKGROUND: Beginning January 1, 2011, under the Affordable Care Act, people can no longer use FSAs, HRAs or HSAs to pay for OTC medications, unless prescribed by physicians. In addition, on January 1, 2013, the Affordable Care Act limits the annual

maximum employee contributions for FSAs to \$2,500 (adjusted for inflation beginning in 2014).

Link to the Business Group's Public Policy Alerts on the Affordable Care Act's Health Account Requirements:

<http://www.businessgrouphealth.org/members/secureDocument.cfm?docID=3020>

<http://www.businessgrouphealth.org/members/secureDocument.cfm?docID=3001>

<http://www.businessgrouphealth.org/members/secureDocument.cfm?docID=2877>

NATIONAL BUSINESS GROUP ON HEALTH VIEW AND ACTION ON THIS ISSUE:

The Business Group supports eliminating the barriers to using health accounts to offer affordable, effective benefits that help to lower employees' out-of-pocket health care costs.

The Business Group sent a support letter for Senator Hutchison and Congressman Paulsen's bill.

Link to the letter:

<http://www.businessgrouphealth.org/pdfs/021611%20Support%20Letter%20to%20Senator%20Hutchison%20and%20Rep%20Paulsen.pdf>

If you would like more details on these or other issues or would like a phone briefing on legislation, or want to express concerns about specific issues, please contact Steve Wojcik, Vice President, Public Policy at Wojcik@businessgrouphealth.org or 202-558-3012. **Also, as part of our "Ask a Benefits Question" service, we are happy to respond within 24 hours to any health benefits question on policy, regulations or legislation.**

This material is provided for information purposes only and is not a substitute for legal advice.

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