

# Washington Business Health Update

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## IN THIS ISSUE:

- **PRESIDENT'S FISCAL COMMISSION CO-CHAIRS RECOMMEND TAXING EMPLOYER-SPONSORED COVERAGE**
  - **DOCTORS SEEK TO DELAY MEDICARE PAYMENT CUTS FOR 1 YEAR**
  - **KEY HOUSE REPUBLICAN OUTLINES HEALTH CARE PRIORITIES**
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- **PRESIDENT'S FISCAL COMMISSION CO-CHAIRS RECOMMEND TAXING EMPLOYER-SPONSORED COVERAGE**

An 18-member fiscal commission, appointed by the President and co-chaired by former Clinton Chief of Staff Erskine Bowles (D) and former Senator Alan Simpson (R-WY), released a preliminary summary of initial recommendations to balance the federal budget. While the proposals represent an agreement between the panel's two co-chairs, the panel will not likely reach a consensus (14 of 18 members) on recommendations for the final report on December 1 because many of the 12 congressional members of the panel are unlikely to sign on (6 Democrats and 6 Republicans). The President's former budget director, Peter Orszag, had suggested that the commission's real goal was to produce a bipartisan "chairman's report" to begin discussion in Congress of the difficult cuts necessary to balance the federal budget.

The co-chairs' initial health care recommendations include:

- Taxing (fully or partially) employer-sponsored coverage (to finance social security);
- Capping the income tax exclusion for employer-provided coverage at the amount of the actuarial value of the Federal Employees Health Benefits Program's (FEHBP) standard BlueCross BlueShield option;
- Implementing an across-the-board "haircut" for itemized deductions, employers' health tax exclusion, and general business credits that would take effect in 2013 if Congress does not pass tax reform;
- Enacting comprehensive health care liability reform to cap non-economic and punitive damages;
- Adopting comprehensive tort reform;
- Paying Medicare doctors and other providers less in 2015, improving efficiency, and rewarding quality by speeding up payment reforms;
- Expanding Medicare cost sharing and capping catastrophic costs;

- Identifying an additional \$200 billion savings in federal health spending from a variety of reforms that were included in the passage of the Patient Protection and Affordable Care Act (Affordable Care Act), such as expanding Accountable Care Organizations (ACOs), bundling payments, cutting Medicare Advantage payments, establishing national standards for regulating and administering health insurance, etc.,
- Increasing drug rebates as a condition of participating in Medicare Part D;
- Expanding successful cost containment demonstrations by 2015;
- Setting a global target for total federal health expenditures after 2020 (Medicare, Medicaid, CHIP, exchange subsidies, employer health exclusion), and reviewing costs every 2 years (holding growth to GDP+1%);
- Requiring the President to submit and the Congress to consider reforms to lower spending if costs have grown faster than targets (on average of previous 5 years), including: increasing Medicare premiums or cost-sharing; overhauling the Medicare fee-for-service system; developing a premium support system for Medicare; adding a “public plan” option and/or all-payer system in the exchange; or expanding the authority of the Independent Payment Advisory Board (IPAB);
- Eliminating first-dollar coverage in Medigap plans;
- Converting the Medicaid long-term care program into a capped allotment (i.e., block grant); and
- Strengthening the Independent Payment Advisory Board (IPAB) by:
  - Implementing a “back-up sequester” that would increase premiums and reduce provider payments if Congress does not block IPAB recommendations (or equivalent savings);
  - Eliminating the trigger that could turn off the IPAB in 2019;
  - Applying any IPAB changes to the exchanges; and
  - Requiring IPAB cost-saving recommendations even when spending does not exceed the target growth rate.

The IPAB will submit proposals to Congress to reduce per capita growth rate in Medicare spending if it exceeds targeted growth rate, beginning in 2014. The Secretary of Health and Human Services (HHS) must implement these proposals unless Congress blocks them by enacting alternative legislation.

**IMPACT ON EMPLOYERS:** Eliminating the tax exclusion would likely raise employers’ costs for providing health benefits, decrease their ability to cross-subsidize, and could lead to a reduction or elimination of benefits, reducing the number of people covered by employer plans.

**IMPACT ON EMPLOYEES:** Taxing employers’ contributions toward employees’ health care benefits would reduce employees’ incomes overall; would have a disproportionate impact on older workers, employees covered by small employers and employees

residing in states with comparatively high health costs or less efficient health care systems and would likely reduce or eliminate benefits, and some employees may discontinue their coverage.

**OUTLOOK:** *It is unlikely the Commission's final report will include the recommendation to tax employer-sponsored coverage. Even if it does, Congress is not likely to pass a law eliminating the income tax exclusion.*

**BACKGROUND:** During consideration of the Affordable Care Act, Senate Majority Leader Harry Reid (D-NV) and outgoing House Speaker Nancy Pelosi (D-CA) stated they would not support legislation that would tax employer-sponsored coverage. President Obama originally opposed the taxation of employer-sponsored coverage, but became open to the idea if it would provide the necessary funding for the Affordable Care Act.

Presidents Bush, Clinton and Reagan created similar deficit commissions with many of the same recommendations to reform the tax code and failed to gain any traction in the Congress.

**NATIONAL BUSINESS GROUP ON HEALTH VIEW ON THESE ISSUES:** The Business Group supports maintaining the current tax treatment of employer-sponsored health coverage for over 176 million Americans, which helps make health care more affordable for employees, reduces the uninsured and keeps employer risk pools intact so employers can cover people of every age group and health status.

#### ➤ **DOCTORS SEEK TO DELAY MEDICARE PAYMENT CUTS FOR 1 YEAR**

Recently, the American Medical Association (AMA) recommended that Congress pass an approximately \$20 billion, 1 year (13 months) delay of a planned 24% cut to Medicare physician payment rates scheduled for December 1.

HHS Secretary Kathleen Sebelius stated that the President wants to work with physicians to avert the cuts. However, congressional Republican leaders are unlikely to compromise with the current Democratic leadership until they regain control of the House of Representatives in January. The incoming House Speaker John Boehner (R-OH) has expressed opposition to additional federal spending.

The AMA, Administration and congressional lawmakers have yet to propose a way to pay for the delay, which current congressional rules require, that will gain bipartisan support.

**IMPACT ON EMPLOYERS:** Avoiding Medicare physician reimbursement cuts will reduce the pressure for physicians to shift costs to employer and other private payers to make up for the shortfall, but exacerbates the long-term threat to Medicare's fiscal unsustainability 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 the effectiveness of care delivery and the program's fiscal sustainability.

**IMPACT ON EMPLOYEES:** As the government reduces the pressure for physicians to shift costs to the private sector, employees avoid paying more in out-of-pocket costs, but increase their risk for Medicare payroll tax increases. As Medicare delays improving the way it pays for health care, employees do not reap the benefits of a more effective and efficient health care system. Retirees will pay higher Part B premiums as Congress restores Medicare physician payment cuts.

**OUTLOOK:** *Congress will likely pass a 1-month delay of the scheduled Medicare cuts to physician payments and will revisit the issue when Republicans gain control of the House in January.*

**BACKGROUND:** The 1997 Balanced Budget Act required Medicare to reduce payments 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. As a result, the current required cuts equal 24.9%.

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

### ➤ **KEY HOUSE REPUBLICAN OUTLINES HEALTH CARE PRIORITIES**

In addition to the Republicans' mainly symbolic bills to repeal the Patient Protection and Affordable Care Act (Affordable Care Act), the incoming Chair of the House Ways and Means Committee, Representative Dave Camp (R-MI), recently re-stated plans to consider the following:

- Create more insurance options in the individual and small group market, including association health plans and allowing people to purchase of coverage across state lines;
- Provide a new above-the-line deduction for Americans in the individual and small group markets who do not receive tax-favored, employer-sponsored health coverage, regardless of whether they itemize their taxes or take the standard deduction;
- Enact medical liability reforms, including:
  - Instituting a 3-year limitation on lawsuits, except in cases of fraud, intentional concealment, or if a foreign body is left in a patient;
  - Limiting the amount of non-economic damages, or "pain and suffering" awards, to \$250,000;
  - Only permitting punitive damages if an actual economic judgment is rendered, and then limiting the amount to no greater than twice the economic damages; and

- Allowing courts to ensure any unjustified portion of the patient's recovery is not directed to attorneys.
- Provide more flexibility/enhancements for health accounts, including:
  - Expanding the Saver's Tax Credit, currently for voluntary contributions to employer-sponsored retirement plans or to individual retirement arrangements (IRA), to employees' "qualified Health Savings Account (HSA) contributions";
  - Allowing people to use HSAs to pay for high deductible health plan (HDHP) premiums; and
  - Allowing people to use HSAs to pay for expenses incurred before they had HSAs if these expenses occurred 60-days after their HDHPs began.
- Allow states to voluntarily create health plan finder websites in lieu of exchanges; and
- Make the Affordable Care Act's mandatory auto-enrollment requirement for new full-time hires, set to begin in 2013, voluntary for employers.

Representative Camp's bill also incorporated a number of the changes included in the final Affordable Care Act:

- Extend dependent coverage (to age 25 instead of age 26);
- Eliminate pre-existing condition exclusion clauses;
- Create an approval process for biosimilar drugs;
- Increase the voluntary wellness program exceptions to the Health Insurance Portability and Accountability Act (HIPAA) nondiscrimination rules from 20% up to 50% of total plan coverage costs; and
- Repeal the federal coordinating council for comparative effective research.

Recently, Senator John Cornyn (R-TX) also introduced bills that would:

- Repeal the Affordable Care Act's Independent Payment Advisory Board (IPAB). (hospitals are also pushing to defund or repeal the IPAB); and
- Require the federal government to field public comments on all regulations related to the Affordable Care Act. Ten of the 12 Affordable Care Act's rules issued this year by HHS came in the form of "interim final rules," which do not include a public comment period before issuing a final rule/regulation.

**IMPACT ON EMPLOYERS:** Changes in the health care legal system would reduce the amount of employer dollars diverted from paying for needed, quality care toward frivolous lawsuits and defensive medicine. Unnecessary tests and screenings for defensive medical practices also puts patients at risk and increases harm.

Increased flexibility for HSAs would increase the ability of employers to offer additional coverage choices to their employees, encourage effective health care spending and provide a potential retiree health savings vehicle.

More credible comparative information on treatment alternatives will reduce employers' health care costs as less effective and duplicative health care services are eliminated, quality and safety improved, and plan sponsors use evidence to decide covered benefits.

**IMPACT ON EMPLOYEES:** Employees could expect improved access to and reduced out-of-pocket costs for health care, especially for high-risk services from changes in the health care legal system.

Employees with additional access to HSAs will receive additional coverage options, a potential retiree health savings vehicle and increase their knowledge of health care spending.

Employees will have more useful information to make better decisions among treatment options and could expect to pay less for their share of health care costs as quality improves and less effective and duplicative care is reduced.

***OUTLOOK: With divided branches of government, we will likely see limited congressional action on health care in 2011. We do expect 1. More regulatory flexibility; 2. Possible delays of some of the Affordable Care Act's provisions; 3. Possible defunding for implementation of some provisions; 4. Possible reductions or eliminations of some of the fees or taxes; and 5. Additional investigations and oversight. Newly elected Republican governors may also increase their influence over their state's health care exchanges and their opposition to expanding their Medicaid programs.***

**BACKGROUND:** Despite Republican campaign rhetoric to "repeal and replace" the new health care law, the conservative Tea Party's adamant opposition to it, and President Obama's recent stated willingness to "tweak" it, it is unlikely that Congress will enact any major changes to the law in the near future.

First, the President is unlikely to sign onto legislation making big changes in his signature law. The "tweaking" he has talked about refers mainly to a tax provision unrelated to health care though it is a nuisance for business. Second, Congress must make the economy and jobs its number one focus and Republicans know that spending the next year fixated on undoing the health care law is not the message that voters sent to Washington on Tuesday. Finally, the big changes, the individual mandate that spurred such angst two summers ago and fueled the Tea Party, the employer mandate, the exchanges, tax credits, and the "Cadillac" tax don't come on line for several years. Thus, Congress has time and a Presidential election before it may deal with the big provisions.

**NATIONAL BUSINESS GROUP ON HEALTH VIEW ON THESE ISSUES:** The Business Group supports reforms to the health care legal system that would improve patient safety, eliminate frivolous lawsuits, cap non-economic damages; establish a 3 year statute of limitations after the date of injury or one year after injury discovery; restrict attorney contingency fees; limit attorney fees based on award value; require federal jurisdiction for health care litigation and strengthen criteria for the expert witness rule to ensure accurate medical opinions.

As health care costs escalate and consumerism becomes increasingly important, the Business Group supports expanding HSAs and opposes adding administrative hassles.

The Business Group supports full tax equity for the purchase of individual coverage.

The Business Group believes that the federal government needs to expand the capacity for independent, comparative effectiveness studies significantly to produce reliable information on medical treatments through a transparent and accountable process.

Link to the Business Group's recent health care law implementation forum slides for additional information regarding the Affordable Care Act and health care issues in the new Congress:

<http://www.businessgrouphealth.org/members/secureDocument.cfm?docID=2955>

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 Steven Wojcik, Vice President, Public Policy at [Wojcik@businessgrouphealth.org](mailto:Wojcik@businessgrouphealth.org) or 202-585-1812. **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.**

*We provide this material for information purposes only and it is not a substitute for legal advice.*

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