

# Washington Business Health Update

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- **CONGRESS AGAIN DELAYS CUTS, THIS TIME UNTIL JANUARY, AS IT CONSIDERS PERMANENT MEDICARE PHYSICIAN REIMBURSEMENT “FIX”**

This week, the House of Representatives passed a bill that would delay legally-required 24.9% cuts in Medicare physician reimbursement rates until January 1. Instead, Congress will provide a 2.2% rate increase as a temporary measure until the new Congress can enact a longer delay while it considers overhauling the way Medicare reimburses physicians. The “lame duck” Congress only has a few weeks to act in December before the 1-month delay ends. In order to pay for the \$1 billion cost of the bill, Congress would reduce some Medicare reimbursements for physical and occupational therapists. The measure awaits the President’s signature.

At a recent congressional hearing, the Centers for Medicare and Medicaid Services (CMS) Administrator, Dr. Donald Berwick, stated that the scheduled cuts are “not acceptable” and that the Administration supports a long-term fix to the problem. However, he did not provide a plan on how to pay for the changes. The incoming House Speaker, John Boehner (R-OH), has expressed opposition to additional federal spending to delay the cuts in the absence of comprehensive medical liability reforms.

Senate Finance Committee Chair Max Baucus (D-MT) and Ranking Member Charles Grassley (R-IA) are working on a 12-month (\$19 billion) delay, possibly tied to an extension of the expiring 2001 and 2003 Bush-era income tax cuts.

The Senate also failed to pass amendments this week from Senators Baucus and Mike Johanns (R-NE) that would have repealed a provision in the Patient Protection and Affordable Care Act (Affordable Care Act) requiring businesses to file 1099 forms with the IRS for all vendors to whom they pay \$600 or more.

<b>IMPACT ON EMPLOYERS:</b> Avoiding Medicare physician reimbursement cuts will reduce the pressure for physicians to shift costs to employers and other private payers
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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 more effective 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:** *The President will soon sign the 1-month delay into law. Congress may also pass an additional short-term delay and consider a longer delay along with modifications to a few of the provisions in the Affordable Care Act (1099 reporting, individual mandate, flexibility for state exchanges, free rider assessment, excise tax) when Republicans re-gain control of the House in January.*

**BACKGROUND:** 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. The current required cuts equal 24.9%.

Beginning in 2015, The Affordable Care Act requires that CMS implement a value-based, budget neutral, payment adjustment for all Medicare physician reimbursement based on the quality of care relative to cost.

**NATIONAL BUSINESS GROUP ON HEALTH'S VIEW ON THESE ISSUES:** 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.

➤ **SENATORS INTRODUCE PROPOSAL FOR STATES TO WAIVE THE INDIVIDUAL MANDATE AND OTHER KEY PROVISIONS OF THE NEW HEALTH CARE LAW**

Senators Scott Brown (R-MA) and Ron Wyden (D-OR) introduced the first bipartisan bill that would modify, rather than repeal, the Affordable Care Act. The bill would allow any state, including Massachusetts, Oregon and Vermont, which already have alternative health coverage programs for low-income families not eligible for Medicaid to opt-out of the individual coverage mandate and other provisions of the law, beginning in 2014, when the mandate takes effect, as long as the states offer plans that meet the minimum coverage requirements established by the Department of Health and Human Services (HHS). Currently, the Affordable Care Act allows states to apply for mandate waivers in

2017. Depending on the specifics, the Affordable Care Act allows states to waive out of certain provisions for up to 5 years, including the:

- Individual mandate;
- Employer penalty for not providing coverage (free rider assessment);
- "Qualified" health plan requirements; and
- Health insurance exchanges.

States can also design alternative uses for the tax credits.

States with waivers could collect all of the federal money—the subsidies for premiums and cost sharing for eligible individuals and the tax credits for small businesses—and put the money into financing coverage for qualified individuals in other ways.

The bill would require the HHS Secretary to start accepting state waiver applications within 6 months.

Separately, Senator Ben Nelson (D-NE) recently asked the Government Accountability Office (GAO) to study alternatives to the Affordable Care Act's individual coverage mandate.

**IMPACT ON EMPLOYERS:** Allowing state waivers to set up alternative coverage programs could result in a patchwork of conflicting and confusing programs for employers and raise costs.

**IMPACT ON EMPLOYEES:** Similarly, employees eligible for tax credits or covered by exchange plans may have different benefits depending on where they live and when they move.

**OUTLOOK:** *Congress may consider this bill in January. It has bi-partisan support.*

**BACKGROUND:** Under the Affordable Care Act, States must establish health insurance exchanges that facilitate the purchase of "qualified health plans" in 2014. States must also expand Medicaid eligibility in January 2014 to families making up to 133% of federal poverty (\$24,352 for a family of 3).

**NATIONAL BUSINESS GROUP ON HEALTH'S VIEW AND ACTION ON THESE ISSUES:** The Business Group believes that state waivers could lead to a confusing variety of health programs, including exchanges, that make it difficult and costly for people and employers to navigate. We believe that the federal government should set up exchanges as uniformly as possible across all states. The Business Group believes that the individual coverage requirement is essential to the health care law and it will provide protection from catastrophic financial loss for people who feel they are healthy and are more likely to take the risk of not having coverage and will stabilize the functioning of health insurance risk pools by including more healthy people who currently do not have coverage.

To help assure uniformity in exchanges and to assure that large employers can continue to operate uniform benefit plans nationally, the Business Group has established a project to develop a plan for a model exchange and also will continue to weigh in with recommendations on the exchanges to promote national uniformity in exchange

standards and processes. If you are interested in joining our work on the model exchange, please contact Steven Wojcik (contact information listed below). In addition, the Business Group public policy staff will meet next week with staff of the incoming Republican House Speaker, John Boehner, to emphasize this viewpoint as well as the importance of ERISA to employer plans and the importance of maintaining ERISA preemption of state law.

Link to the Business Group's comment letter to HHS on the establishment of state exchanges:

<http://www.businessgrouphealth.org/pdfs/100410%20-%20Comment%20Letter%20on%20Exchanges.pdf>

### ➤ **SENATOR ORRIN HATCH (R-UT) PROPOSES STATE WAIVERS FOR INSURANCE EXCHANGES**

Senator Orrin Hatch (R-UT) plans to introduce a bill in January that would ensure that Utah's low-cost health insurance exchange qualifies in 2014 as an exchange under the Affordable Care Act. This bill would permit states to waive federal standards for exchanges and devise their own standards. Utah's exchange gives insurers wide leeway to design benefits rather than requiring standardized benefit packages. Employers provide contributions and employees select from a menu of various plans and prices.

<p><b>IMPACT ON EMPLOYERS:</b> Allowing states to set their own exchange standards would likely increase employers' administrative costs and hinder their efforts to offer and maintain uniform benefit plans across state lines for their employees and retirees.</p>
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**IMPACT ON EMPLOYEES:** Employees would likely face increased costs if states set their own exchange standards and different benefits depending on where they live and if they move.

**OUTLOOK:** *Congress will likely consider bills that would increase flexibility for the state exchanges in January.*

**BACKGROUND:** The Affordable Care Act creates state-based exchanges in 2014 where eligible individuals and small businesses can buy coverage. States that want to operate exchanges must demonstrate their ability to do so and obtain certifications to that effect by January 1, 2013 or the federal government will establish exchanges in their states.

In 2009, Utah created a health insurance exchange that allows employers to make contributions for employees to purchase health insurance on their own, rather than providing workers with specified coverage. Employers in Utah with 2-50 employees may enroll in exchange plans on January 1, 2011. The state is conducting a pilot program for large employers with more than 50 employees.

**NATIONAL BUSINESS GROUP ON HEALTH VIEW AND ACTION ON THESE ISSUES:** The Business Group supports national consistency across the exchanges (standardization, a national exchange, uniform rules, and administrative simplification). For states that choose not to operate exchanges and where HHS establishes federal

exchanges, we recommend that the federal government form a single national exchange option for those states, rather than operating separate state exchanges.

To help assure uniformity in exchanges and to assure that large employers can continue to operate uniform benefit plans nationally, the Business Group has established a project to develop a plan for a model exchange and also will continue to weigh in with recommendations on the exchanges to promote national uniformity in exchange standards and processes. If you are interested in joining our work on the model exchange, please contact Steven Wojcik (contact information listed below). In addition, the Business Group public policy staff will meet next week with staff of the incoming Republican House Speaker, John Boehner, to emphasize this viewpoint as well as the importance of ERISA to employer plans and the importance of maintaining ERISA preemption of state law.

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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.**

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

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