

Tuesday, January 10, 2012

Congress Returns to Renewed SGR Fix Discussions

Next week, the House will return to session following its holiday recess, and the Senate will reconvene the following week. With their return, lawmakers will again face the challenge of how to avert the looming 27.4% Medicare reimbursement cut to physicians under the sustainable growth rate (SGR) formula.

The reimbursement for physicians under Medicare was scheduled to take a 27.4% cut January 1, 2012, but was temporarily delayed by Congress until March 1, 2012. Due in large part to the hard work of community-based oncology, a reduction in the average sales price (ASP) reimbursement for Medicare Part B drugs was not used as a “pay for” or budgetary offset for this temporary fix. This two-month fix was part of a larger proposal that also gave a two-month extension for unemployment benefits and a Social Security payroll tax reduction, all funded by changes in mortgage fees charged by Fannie Mae and Freddie Mac.

Now Congress is once again looking at several areas in Medicare, including cuts to the ASP reimbursement formula for Medicare Part B, to pay for the looming SGR cuts now scheduled to take effect on March 1st of this year. A permanent solution to the flawed SGR would cost the government over \$300 billion, a two-year freeze would cost \$38 billion, and a one-year freeze would cost \$22 billion.

As part of the legislative agreement reached between the parties in December, both chambers have selected a bipartisan group of 20 members to serve on a conference committee to negotiate extending the SGR patch as well as year-long solutions to extend the payroll tax holiday and unemployment benefits.

Selected House conferees are Rep. Dave Camp (R-MI), Rep. Fred Upton (R-MI), Rep. Kevin Brady (R-TX), Rep. Greg Walden (R-OR), Rep. Tom Price (R-GA), Rep. Tom Reed (R-NY), Rep. Renee Ellmers (R-NC), Rep. Nan Hayworth (R-NY), Rep. Sandy Levin (D-MI), Rep. Xavier Becerra (D-CA), Rep. Chris Van Hollen (D-MD), Rep. Allyson Schwartz (D-PA) and Rep. Henry Waxman (D-CA). Senate conferees are Sen. Max Baucus (D-MT), Sen. Jack Reed (D-RI), Sen. Benjamin Cardin (D-MD), Sen. Bob Casey (D-PA), Sen. Jon Kyl (R-AZ), Sen. Michael Crapo (R-ID) and Sen. John Barrasso (R-WY).

The conference committee is expected to begin meeting next week to work on a longer-term SGR fix, and is reported to be targeting a one to two-year solution.

While both Democrats and Republicans agree that doctors should not receive the scheduled payment cuts, the two parties have been unable to agree on the offsets needed to avoid them. House Republicans are on record having voted for a \$38 billion, two-year SGR fix paid for with payment cuts to the Affordable Care Act (ACA) and other Medicare provisions (not including ASP reductions). Senate Democrats and some Senate Republicans have supported a permanent SGR formula fix using the budgetary funds available from the drawdown of our overseas military operations, which most of the House Republicans find unacceptable arguing that it is a budget gimmick.

A majority of conferees from both the House and the Senate will need to approve a conference report in order to send it for floor vote in each chamber. As conference negotiations get underway we will continue to closely monitor and report on these developments.

Cancer Drug Shortages Drawing Increasing Attention in 2012

According to recent reports, the House Energy and Commerce Committee is anticipated to develop a comprehensive package intended to address the national shortages of cancer, anti-infection and anesthesia drugs. The committee is expected to contemplate economic incentives as well as regulatory reforms as part of short-term and long-term solutions for the shortages.

This effort follows a number of [recent committee hearings](#) and an [executive order](#) on the shortages. In addition, legislation has been introduced in both chambers to require early notification of potential shortages from manufacturers; other bills are in development to address the “gray market” practices of suppliers with access to scarce drugs selling them at exorbitant prices; and Sen. Orrin Hatch (R-UT) is reportedly working on legislation to change reimbursement of these drugs to wholesale acquisition cost instead of average sales price to encourage additional production. *(Continued on page 2)*

Tuesday, January 10, 2012

Cancer Drug Shortages Drawing Increasing Attention in 2012 (*cont'd*)

On December 21, The Heritage Foundation policy analyst Kathryn Nix posted an article on the drug shortages entitled “How Medicare Price Controls Have Contributed to Drug Shortages.”

The article noted that oncology has the largest share of shortages, impacting more than 500,000 cancer patients, and that a major contributor to the problem is that Medicare reimbursement for drugs covered under Part B is too low. The current payment mechanism based on the average sales price, according to Nix, is encouraging manufacturers to stop making certain generic drugs in order to avoid growing economic losses.

Nix writes that recent initiatives to address the shortage, including legislation requiring early notification and President Obama’s executive order, will target only the symptoms and not the causes of the issue. “Congress should apply the market forces that have successfully contained costs and maintained access to prescription drugs in Medicare Part D to the rest of Medicare,” Nix writes. “When it comes to drug coverage, combining Part B and Part D would go a long way to restoring access and appropriate pricing for drugs currently covered under Part B.”

As an alternative to such structural payment reform, Nix writes that Congress should update Part B payments to better reflect the actual costs for individual drugs.

Click [here](#) to read the article.

Opening Briefs Filed in Supreme Court Health Care Reform Case

On January 6, representatives for the Obama Administration and those representing states and individuals challenging the Affordable Care Act (ACA) filed briefs to the Supreme Court in advance of oral arguments to be heard in March.

Lawyers for the Obama Administration stated in their brief that the ACA’s individual coverage mandate is indeed constitutional, both under the Commerce Clause and the constitutional taxing power given to Congress.

In one filing, attorneys for the 26 state plaintiffs argued that the test of whether the legislation can forge ahead if the individual coverage mandate is struck down is to ask whether Congress would have passed the legislation without it – and Congress would not have passed the ACA without the coverage mandate, it said.

In a separate filing, lawyers for the National Federation of Independent Business (NFIB) and two private individuals maintained that if the high court determines the individual mandate to be unconstitutional, the entire health care reform law must be struck down.

Before oral arguments are heard, other briefs will be filed on all four of the issues the Court will be ruling on – the constitutionality of the individual mandate; the severability of the law; whether a tax act prohibits the court from considering the case and whether the law’s Medicaid expansion provision is valid.

Downturned Economy Leads to Slowed Health Care Spending

According to a Centers for Medicare and Medicaid Services (CMS) report issued January 9, U.S. health care spending rose only 3.9 percent in 2010, a near record low which has been attributed to the nation’s weak economy.

The report, which was also released online in *Health Affairs*, found that health care spending reached \$2.6 trillion, or \$8,402 per person, in 2010, and that health care spending grew only 3.8 percent in 2009.

The nation’s weakened economy has contributed to the slower rise in health care spending, according to the report, as consumers are cutting back on health care services.

This slower rise in health care spending was exhibited throughout the health care system, including hospital care, physician care, prescription drugs, and Medicare and Medicaid spending.

Click [here](#) to read the *Health Affairs* report.

Tuesday, January 10, 2012

American Cancer Society Report Shows Continuing Declines in Most Cancer Rates

On January 4, the American Cancer Society (ACS) released its annual [report](#) on cancer incidence and mortality rates in the United States, which estimates that over the past two decades approximately 1 million cancer deaths have been avoided.

According to the report, from 1990/1991-2008, cancer death rates decreased by 23% for men and by 15% for women. Cancer death rates only fell by 1.8% per year in men between 2004 and 2008 and by 1.6% per year in women, however.

The report noted measurable improvements in mortality rates associated with the cancers responsible for the largest numbers of deaths: Lung, colon, breast and prostate. According to Dr. Ahmedin Jemal, senior author of the new report, these decreases "largely reflect improvements in prevention, early detection and treatment."

In the cases of some of the less-common cancers, such as pancreatic, liver, thyroid, kidney, melanoma and others, incidence rates continue to increase, according to the report. Experts remain uncertain of the reasons behind these increases, but many argue that the growing obesity epidemic could be responsible for the increase in incidence for at least some of these cancers.

Additionally, the ACS data indicate that there remain some disparities in incidence and mortality rate improvements among whites and African Americans. The report notes that from 1990/1991-2008, African American men had a 15% higher incidence rate and a 33% higher death rate than white men. African American women had a 6% lower incidence rate but a 16% higher death rate than white women.

The report estimates that 1,638,910 new cancer cases and 577,190 deaths from cancer will occur in the U.S. in 2012. One-third of these will result from continued tobacco use, and another third will be the result of obesity and physical inactivity. Experts agree that Americans should be encouraged to take preventative measures such as regular colonoscopies, mammograms and pap screenings.

The annual report is based on the most recent data available from the National Cancer Institute (NCI) and the U.S. Centers for Disease Control and Prevention (CDC).

Click [here](#) to read more about the report.