



REP. TOM PRICE, M.D. (R-GA), CHAIRMAN
 PAUL TELLER, EXECUTIVE DIRECTOR
 424 CANNON HOUSE OFFICE BUILDING
 WASHINGTON, DC 20515

rsc.price.house.gov

ph (202) 226-9717 / fax (202) 226-1633

Legislative Bulletin.....December 9, 2010

Contents:

Senate Amendment to H.R. 4994 – Medicare and Medicaid Extenders Act of 2010

H.R. 4994 – Medicare and Medicaid Extenders Act of 2010 (*Levin, D-MI*)

Order of Business: The legislation is scheduled to be considered on Thursday, December 9, 2010, under a motion to suspend the rules and pass the bill.

Summary: The Senate took H.R. 4994, which passed the House [399-9](#) on April 14, 2010, and struck the language and replaced it with various Medicare extensions including a 12-month SGR patch and several changes to veterans', seniors', and children's health programs modified in the Patient Protection and Affordable Care Act (PPACA) and other legislation paid for by reducing funds in the Medicare Improvement Fund and increasing the maximum repayment amounts for insurance subsidies created under PPACA, in the case of overpayments to individuals.

Physician Payment Update ("Doc Fix"): The bill avoids the 25% physician reimbursement slated to occur on January 1, 2011 and instead provides a 0% increase or a "freeze" in payment levels from January 1, 2011 through December 31, 2011 with an increased funding cliff. *CBO estimates this will cost \$14.9 billion over ten years.*

Extension of Section 508 Reclassifications: PPACA extended Section 508 wage index reclassifications retroactively from October 1, 2009 to September 30, 2010. Section 508 reclassifications were originally created in Medicare Modernization Act and extended various times in subsequent legislation, as a way to boost qualifying hospitals' inpatient and outpatient Medicare reimbursement through moving to a higher nearby wage index area.

This provision extends section 508 reclassifications through FY 2011 (September 30, 2011) and specifies that the FY 2010 wage index values promulgated by the Secretary on August 16, 2010 (and any subsequent corrections) will be applied for FY 2011. Beginning April 1, 2011, the Secretary must include average hourly wage data of hospitals whose reclassification was extended only if including such data results in a higher wage index. *CBO has estimated that this provision would cost \$300 million over 10 years.*

Extension of Medicare Work Geographic Adjustment Floor: Extends by one year the additional payments for rural states through January 1, 2012. Although this provision is a straight patch, when it was last amended by PPACA, it was a last minute deal to increase providers and hospitals in rural areas. *CBO has estimated that this provision would cost \$500 million over 10 years.*

Medicare Therapy Caps Exceptions: Under current law, Medicare Part B outpatient physical and speech language therapy services have a combined cap of \$1,860 per year. This provision would extend the Medicare therapy caps exceptions process—in effect prior to the end of 2010—through December 31, 2011. *CBO has estimated that this provision would cost \$9 million over ten years.*

Extension of Payment for Technical Component of Certain Physician Pathology Services: Provides a straight one-year extension (through December 31, 2011) of the inclusion of speech-language pathology services as a service for which providers can bill Medicare directly, last extended in PPACA. *CBO has estimated that this provision would cost \$100 million over ten years.*

Extension of Ambulance Add-Ons: Provides a straight one-year extension (through December 31, 2011) of increased Medicare payments for Air Ambulance and Super Rural Ambulance services, last extended under PPACA. *CBO has estimated that this provision would cost \$100 million over ten years.*

Extension of Physician Fee Schedule Mental Health Add-On: Provides a straight one-year extension of increased Medicare payments for mental health services through December 31, 2011. The 5% payment increase above the fee schedule otherwise applicable for specified services was created under the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), and last extended under PPACA. *CBO has estimated that this provision would cost \$100 million over ten years.*

Extension of Outpatient Hold Harmless Provision: Provides a straight one-year extension (through December 31, 2011) of the temporary hold harmless treatment for certain rural hospitals, last extended and amended under PPACA. PPACA expanded the hold harmless provision to all sole community hospitals, regardless of bed size. *CBO has estimated that this provision would cost \$200 million over ten years.*

Extension of Medicare Reasonable Costs Payments for Certain Clinical Diagnostic Laboratory Tests Furnished to Hospital Patients in Certain Rural Areas: Provides a straight one-year extension (through July 1, 2011) for laboratory services performed in certain hospitals to be receive reasonable cost reimbursements, last extended under PPACA. *CBO has estimated that this provision would have no effect on direct spending.*

Extension of the Qualified Individual (QI) Program: The bill extends the Qualified Individual (QI) program, which assists certain low-income dual eligible individuals with Medicare Part B premiums, by one year, through December 31, 2012. The last one-year extension was enacted

under the so-called "stimulus" bill, the American Recovery and Reinvestment Act (ARRA). *CBO has estimated that this provision would cost \$600 million over ten years.*

Extension of Transitional Medical Assistance (TMA): The bill extends TMA, a program that allows those who want to go back to work to stay on Medicaid, by one-year, through December 31, 2011. The last one year extension was enacted under ARRA. *CBO has estimated that this provision would cost \$1 billion over ten years.*

Special Diabetes Program: Provides a 2 year extension of funding, through 2013, for Special Diabetes Programs (SDP) for Type I Diabetes and Special Diabetes Programs for Indians (SDPI) which includes American Indians and Alaska Natives. The SDP funding, was initially provided by the Balanced Budget Act of 1997, and is a collaborative program aimed at research, prevention, treatment, and a cure. The SDPI was created in response to the diabetes epidemic for American Indians and Alaska Natives and consists of three parts: community-directed diabetes programs, demonstration projects, diabetes prevention program and health heart project initiatives, and strengthening the diabetes data infrastructure. *CBO has estimated that this provision would cost \$600 million over ten years.*

Clarification of Effective Date of Part B Special Enrollment Period for Disabled TRICARE Beneficiaries: This provision clarifies the effective date for the 12-month special enrollment period (SEP) in Medicare Part B for disabled Medicare beneficiaries also eligible for TRICARE as established in PPACA. *According the Finance Committee summary, this provision will cost \$3 million over 10 years.*

Repeal of Delay of RUG-IV: Repeals a provision in PPACA that delayed the October 1, 2010 transition date for using Version 4 of the Resource Utilization Groups (RUG IV) from RUGs III until October 1, 2011. The need to revise this date is yet another example of how this is a poorly written bill that the Democrats never expected to be the final product, but were forced to bring it to the floor through reconciliation as they otherwise lacked the votes.

Skilled nursing facilities (SNFs) are reimbursed by Medicare through a prospective payment system that is based on payment categories or Resource Utilization Groups (RUGs) and adjusted by the Centers for Medicare & Medicaid Services (CMS) to allow for increases in the cost of goods and services each year. Repealing this provision allows for SNFs to align this transition with other CMS SNF payment regulations scheduled to be implemented on October 1, 2010. *CBO has estimated that this provision would have no effect on direct spending.*

Clarification for Affiliated Hospitals for Distribution of Additional Residency Positions:

This provision would make a technical correction to the redistribution of unused residency positions established under PPACA to clarify that residency positions that are being shared between teaching hospitals under an "affiliation agreement" would not be considered unused slots and thus available for redistribution to other hospitals. This will allow teaching hospitals to keep their slots that otherwise may have been taken away (as without the affiliation agreement they could be under their caps). *According the Finance Committee summary, this provision will save less than \$50 million over 10 years.*

Continued Inclusion of Orphan Drugs in Definition of Covered Outpatient Drugs with Respect to Children’s Hospitals Under the 340B Drug Discount Program: This provision carves out children’s hospitals from changes made to PPACA, through reconciliation, which excluded orphan drugs from the required 340B discounts to new entities. *CBO has estimated that this provision would have no effect on direct spending.*

Medicaid and CHIP Technical Corrections: The bill would make technical corrections to Medicaid and CHIP provisions in PPACA relating to certain individuals and entities excluded from Medicaid, income eligibility levels for children, measurement and public reporting of payment error rates, exceptions to exclusion of coverage for children of state employees, and electronic health records payments. *CBO has estimated that this provision would have no effect on direct spending.*

Funding for Claims Reprocessing: Certain provisions in PPACA required changes to Medicare payment policies retrospectively, causing CMS to re-process claims back to January 1, 2010. The bill would appropriate \$200 million for this purpose. *CBO has estimated that this provision would cost \$200 million over ten years.*

Revision to the Medicare Improvement Fund: The bill cuts money from the Medicare Improvement Fund for FY 2015 in order to offset the cost of the bill. The Medicare Improvement Fund was already depleted for FY 2014 under PPACA. *CBO estimates this will reduce direct spending by \$300 million over ten years.*

Limitations on Aggregate Amount Recovered on Reconciliation of the Health Insurance Tax Credit and the Advance of that Credit: The bill would increase the maximum repayment amounts established under PPAC, in the case of health insurance subsidy overpayments, from \$250 (individuals)/\$400 (families) at or below 400% of the federal poverty level (FPL) to \$300 (individuals)/\$600 (families) up to \$1,750 (individuals)/\$3,500 (families), on a sliding scale. Advanced premium credits are determined based on the most recent tax return, thus an overpayment could occur when an individual receives a raise, starts a job, etc. The Senate Finance summary has indicated that this provision would reduce the number of individuals receiving insurance subsidies by 200,000. Specifically, the recapture amounts would be as follows:

If the household income is:	The applicable dollar amount is:
Less than 200%	\$600
At least 200% but less than 250%	\$1,000
At least 250% but less than 300%	\$1,500
At least 300% but less than 350%	\$2,000
At least 350% but less than 400%	\$2,500
At least 400% but less than 450%	\$3,000
At least 450% but less than 500%	\$3,500

Although credits are only available to individuals with incomes under 400% FPL, those above 400% FPL who received them inappropriately, would still be subject to paying back all of the subsidy.

Rep. Camp offered a similar provision (to offset repealing the 1099 IRS forms) in the MTR on H.R. 5893, the Investing in American Jobs and Closing Tax Loopholes Act of 2010. However it was never voted on, as the bill was ultimately pulled from the floor. *CBO estimates this will reduce direct spending by \$16 billion over ten years while also increasing Revenue by \$3 billion, resulting in \$19 billion in savings.*

Potential Conservative Concern: Some conservatives may be concerned that this bill is yet another “fix-it” bill as it corrects mistakes and adds or extends costly items left out the Patient Protection and Affordable Care Act (PPACA) due to the Democrats’ rush to pass a government takeover of health care. Additionally, some conservatives may be concerned that this is yet another case of “kicking the can down the road” rather than dealing with the problem (this is the 6th patch this year alone). However, a longer term patch is needed in order to give the new Republican majority time to propose a real SGR reform.

Committee Action: H.R. 4994 passed the House on April 14, 2010 by a roll call vote. The Senate struck all of the House language and passed this legislation by unanimous consent on December 8, 2010. This is the first time this language has come to the House Floor, although numerous extension provisions have been seen before this year and in previous Congresses.

Administration Position: No Statement of Administration Policy (SAP) is available.

Cost to Taxpayers: CBO has estimated that the bill will increase direct spending by \$19.6 billion over ten years (including interactions) offset by reductions in direct spending of \$16.7 billion over ten years (including interactions) and increases in revenue by \$3 billion, resulting in a fully-paid for bill.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. The bill expands the 340B Drug Discount Program to include orphan drugs in its definition of covered outpatient drugs for children’s hospitals, extends various programs paid under Medicare, and provides over \$19 billion over 10 years in new mandatory spending. Simultaneously, the bill increases the maximum repayment amounts to the government for insurance subsidies created under PPACA, in the case of overpayments to individuals.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Though the bill contains no earmarks, and there’s no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

Constitutional Authority: A committee report stating constitutional authority is unavailable.

RSC Staff Contact: Emily Henehan Murry, emily.murry@mail.house.gov, (202) 225-9286