Healthcare Reform Update Conference Call VII

Sponsored by the Healthcare Reform Educational Task Force (a joint endeavor of the Healthcare Liability and Litigation; Hospitals and Health Systems; In-House Counsel; Medical Staff, Credentialing, and Peer Review; Payors, Plans, and Managed Care; Physician Organizations; Regulation, Accreditation, and Payment; and Teaching Hospitals and Academic Medical Centers Practice Groups)

Friday, October 23, 2009 · 2:00-2:45 pm Eastern

The Gloves Are Off:
The Battle For and Against Federal Healthcare Reform

Presenter:
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OVERVIEW

- Politics / Status of Legislation
  - Congressional sausage-making
  - CBO Scoring
  - Medicare Physician Fee Fix Vote

- The Latest Issues:
  - More Public Option Drama
  - Antitrust Exemption
  - ERISA
  - Affordability
  - Financing
STATUS OF LEGISLATION

Oct. 13, 2009, Senate Finance Committee approves S. 1769, America’s Healthy Future Act, 13-9, with one Republican vote

- During 7 days and more than 80 hours of mark-up, the Committee considered over 140 different amendments and voted on 103

CBO Score of SFC bill:

- Gross cost: $829B/10yrs, Spends on subsidies: $461B/10yrs, Reduce deficits: $81B/10yrs
- $71B less than President Obama’s target of $900B

Legislative language released on Oct. 19
STATUS OF LEGISLATION

- House:
  - Next Wed. 10/28/09? plan for House Bill release ceremony
  - Last night’s whip concluded there are **NOT** 218 votes for a “robust public plan” – Medicare fee + 5
  - Two reported CBO estimates
    - $871 billion over 10 years, 96% coverage, public plan tied to Medicare fee schedule, and deficit neutral at least for the budget window.
    - $895 billion, public plan permitted to negotiate rates directly with providers, as some moderates prefer. The CBO found that negotiating rates is likely to significantly increase the cost of a public plan, requiring other adjustments to drive costs back down (e.g., shifting 3 million more people into Medicaid).
STATUS OF LEGISLATION

- SFC bill must merge with HELP bill
  - Senate leaders met with WH on Oct. 14
  - Bills differ on public option, insurance premium subsidies and penalties for failure to purchase
- Every member of the Senate may offer amendments to the bill, but every amendment will require 60-votes – so it will be difficult to add or remove provisions
- Bill considered on Senate floor week of Oct. 26?
- Floor debate could take two weeks or more
STATUS OF LEGISLATION

- The House is expected to vote either the first or third week of November on its bill.
- The House and Senate will likely adjourn for the holiday recess by Friday, Dec. 18, 2009.
POLITICS OF HEALTHCARE REFORM

Medicare Physician Fee Fix

- Physicians continue to try to abolish the Medicare formula that threatens to cut their fees each year.
- Medicare reimbursement cuts will be 21.5% in 2010; 5.5% percent in each of the next four years.
- On 10/13/09, Senate Democrats pushed a bill to block the cuts and eliminate the existing formula, which defines a “sustainable growth rate” for Medicare spending on doctors.
POLITICS OF HEALTHCARE REFORM

- **Was Medicare Physician Fee Fix Vote The First Healthcare Reform Test?**
- The doc fee fix is in healthcare reform legislation:
  - **House bill:** $228.5 billion provision to avert cuts in Medicare payments to doctors and permanently replace the payment formula to provide annual increases.
  - **SFC:** $10.9 billion to avert the cuts for one year.
- By addressing these costs in a separate bill, Senate leaders attempted to reduce the costs of the reform bill.
- The bill failed on 10/21/09: 12 Dems, one independent voted with Republicans against the bill – no offsets.
- Demonstrates difference of voting without Senator Kennedy.
PUBLIC OPTION

House:
- Not enough votes for “robust” public option

Senate:
- Liberal Democrats v. Centrists and Olympia Snowe
  - Senator Carper’s Public Option + Trigger
ANTITRUST REPEAL

The McCarran-Ferguson Exemption

The Proposal to Repeal the Exemption: ‘Health Insurance Industry Antitrust Enforcement Act of 2009’

Nothing in [the “McCarran-Ferguson Act”] shall be construed to permit health insurance issuers or issuers of medical malpractice insurance to engage in any form of price fixing, bid rigging, or market allocations in connection with the conduct of the business of providing health insurance coverage or coverage for medical malpractice claims or actions.

Exemption and Repeal Proposal Are Narrow in Scope
ERISA

- Sleeping giant woke up.
- ERISA preempts any state law that relates to an employee benefit health plan. An action of a state health insurance exchange to mandate employer participation in some way may be preempted.
- Pay or play litigation: Fourth Circuit held that Maryland’s Walmart Law was preempted because it forced Walmart to restructure its health benefit plan to increase coverage; Ninth Circuit held that San Francisco ordinance was not preempted – before U.S. Supreme Ct.
AFFORDABILITY

Need to make insurance premiums more affordable:
- Increased tax credits for premiums
- Reduced annual out-of-pocket limits
- Affordability threshold for ESI (what percentage of income is acceptable?)
- Lower Individual Mandate Penalty
  - War with Insurers
FINANCING

- ??
QUESTIONS?

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