Details of AMA's Deal with Speaker Gingrich and the Republicans

In exchange for the AMA's support, House Republicans are proposing to fundamentally change Medicare's relationship with physicians. The Republican deal with the AMA enables doctors to improve their financial status at the expense of their patients. The Gingrich/AMA proposal:

- **Eliminates Balance Billing Protections.** Medicare beneficiaries who enroll in the new private fee-for-service or high deductible MSA plan would lose their current "balance billing" protection, which limits the amount that physicians can charge beneficiaries. Since there is no requirement that physicians remain in traditional fee-for-service Medicare, physicians could abandon regular Medicare and only see beneficiaries who are in plans where they can charge whatever they want.

- **Increases Physician Reimbursement.** The plan reduces the cut from physicians by at least $300 million, thus increasing cuts placed on other health care providers.

- **Relaxes Fraud and Abuse Enforcement Against "Bad Apple" Doctors:**

  -- **Physician Self-Referrals.** Virtually eliminates current provisions which prohibit doctors from referring patients to facilities in which the physician has ownership interest or any other type of financial relationship. Without these provisions, decisions about patient care are more likely to be influenced by profit motives.

  -- **More Lenient Anti-Kickback Statutes.** The current law prohibits any form of renumeration that is provided in exchange for patient referrals. The Republican plan would make it more difficult to prosecute these kick-back arrangements.

- **Exempts Physicians Lab Tests from Meeting Certain Federal Quality Standards.** Despite the fact that more quality problems have been identified in physician office labs than in other settings, the Republican plan would exempt physician office labs from meeting quality requirements, such as tests which evaluate the risk of heart disease and strokes and tests which detect anemia and other blood disorders.

- **Limits Malpractice Compensation.** Establishes a number of medical malpractice liability reforms, including a $250,000 cap on awards for non-economic damages. (Non-economic damages caps disproportionately impact the most severely injured who are, under current law, compensated for major lifestyle changes).

- **Creates Anti-Trust Exemptions.** Creates exemptions which could raise health care costs to consumers. The Republican plan establishes a broad anti-trust exemption for medical self-regulatory entities and substantially relaxes the anti-trust exemption for provider service networks. (The FTC and the Justice Department strongly object to these provisions because they believe they would encourage anti-competitive conduct and increase health care costs).

GINGRICH
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FAX

Health Division

Office of Management and Budget
Executive Office of the President
Washington, DC 20503

TO: Roz Miller for Chris Jennings

FROM: John Richardson

Fax Destination
Organization:
Phone Number: 6-7431

Number of Attached Pages: 4

Notes:

AMA/House Medicare bill memo, per your request.

HD Fax Number: *202/395-3910*
Voice Confirmation: *202/395-4922* *Health Division Front Office*
202/395-4925 *Health & Human Services Unit*
202/395-4926 *Health Programs & Services Branch*
202/395-4930 *Health Financing Branch*

October 27, 1995

Health Division

Office of Management and Budget
Executive Office of the President

Please route to: Nancy-Ann Min

Through: Barry Clendenin BC
Mark Miller

Subject: Budget Impact of the AMA's "Deal" with the House Leadership

From: John Richardson JR

Decision needed ___
Please sign ___
Per your request X
Please comment ___
For your information X

Informational copies for:
T. Hill, A. Tumlinson, HFB/HD Chrons.

Background. CBO scored the physician payment reductions in the original House Medicare bill as saving $26.4 billion over seven years. The Senate bill includes payment reductions scored at $22.6 billion over the same period.

On October 10, the American Medical Association (AMA) announced its support for the House majority's Medicare plan. Initial press reports described the AMA's endorsement as the result of "winning concessions worth billions of dollars in future fees for physicians." (*Wall Street Journal*, October 11, 1995, p. A2)

In contrast, Rep. Bill Thomas (R-Calif.) told reporters on October 10 "that the 'sum and substance' of the AMA deal would be '$200-$300 mil.' in the physician adjustment. ...Thomas asserted that the final CBO score for the bill 'will be above' $26 bil. He added that 'there's no way we're going that close to the Senate.'" (*Health News Daily*, October 12, 1995, p. 6)

The Final Numbers: A $300 Million "Deal." The attached table displays CBO's scoring of the physician payment reductions in the House Medicare bill as reported by the Ways and Means Committee and as passed by the House on October 19. The table illustrates three key points:

- total savings from physician cuts over seven years are only $300 million lower in the final bill than in the original bill;
- savings in FY 1996 are $300 million lower than in the original bill;
- savings in FY 2000-2002 are higher in the final bill.

Two Key Changes in Final House Bill. The final House bill makes two changes to the provisions of the original bill:

1. The 1996 conversion factor for all physician services is increased from $34.60 to $35.42. This is the same conversion factor found in the Senate bill, but the seven-year savings are not the same as the $22.6 billion in Senate bill. This is true because of the second change in the final House bill;

2. The floor on physician fee cuts is lowered in 1998 and after[1]. This change allows deeper physician fee cuts when spending for physician services exceeds spending targets (i.e., the volume performance standard). Based on the larger savings scored by CBO in 2000 and after, we presume that CBO projects deeper physician fee cuts in 2000-2002 in the final House bill than in the original bill.

The Physician Perspective: A Sure Benefit in 1996 and Uncertain (But Scorable) Costs in Future. By increasing the 1996 conversion factor from $34.60 to $35.42, the revised House bill increases the 1996 conversion factor by 2.4 percent compared to the original bill.[2] CBO has scored more savings in FY 2000-2002 because of the lower floor on payment reductions, but these savings will not materialize fully if physicians are able to keep increases in volume and spending growth below CBO's predictions.

Other Benefits for Organized Medicine in the House Medicare Bill. The House Medicare bill includes several other provisions supported actively by organized medicine:

- antitrust relief and ability to create provider sponsored organizations (PSOs) that could contract directly with Medicare beneficiaries to provide care. PSOs would have less stringent solvency and regulatory standards than traditional health insurers.

  PSOs would enable physicians (and allied providers) to bypass insurance companies and the associated "constraints" on the practice of medicine (e.g., Byzantine administrative processes, utilization review). Physicians also could create PSO fee-for-service products that are exempt from Medicare's balance-billing limits. PSOs also could increase adverse

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[1]Under current law, there is no limit on the upward "performance adjustment" (i.e., the adjustment made to the Medicare Economic Index (MEI) to reflect actual growth in physician spending relative to the target rate of growth). There is a lower limit of -5 percentage points.

Both versions of the House bill would set an upper limit of +3 percentage points on performance adjustments. The original House bill would have set a lower limit of -7 percentage points. In the final bill, the lower limit is set at -7 percentage points for 1997, -7.75 percentage points for 1998, and -8 percentage points for 1999 and after.

[2]Organized medicine seems to have accepted that the 1996 conversion factor will be cut, not just frozen. Compared to the three 1995 conversion factors for physician services, a single conversion factor of $35.42 is a cut of 10.2 percent for surgical services and a cut of 2.6 percent for primary care services. The conversion factor for all other services would increase by 2.3 percent. This pattern suggests little policy rationale for the $35.42 figure. In contrast, the President's proposal would increase the primary care conversion factor slightly and freeze the others at their 1995 levels.

risk selection because providers, with intimate knowledge of beneficiaries' health status, will be making insurance risk decisions about the same beneficiaries.

- a $250,000 limit on noneconomic damages in malpractice suits;
- medical savings accounts, which would require beneficiaries to set aside funds specifically for health care, would not have a managed care intermediary between the patient and provider, and would not have balance-billing limits;
- fewer restrictions on balance-billing in the expanded coverage options for Medicare beneficiaries, including authorized out-of-network services in managed care plans;
- lifting the physician self-referral ban from several health services currently subject to "Stark I and II" provisions, and creating new exemptions for services covered by the ban (e.g., direct supervision and shared facility exemptions);
- increase the government's burden of proof in anti-kickback criminal prosecutions; and
- eliminating almost all CLIA requirements for physician office laboratories.

Attachment

Medicare Physician Spending Cuts Under Two Versions of HR 2425

(CBO baseline and scoring, outlays in billions of dollars, by fiscal year)

	1995	1996	1997	1998	1999	2000	2001	2002	1996-2002
Baseline Spending	32.7	36.8	40.4	43.9	47.9	52.3	57.3	63.1	341.6
Growth	9.8%	12.4%	9.7%	8.7%	9.0%	9.3%	9.6%	10.1%	9.4%
HR 2425 Reported Out of Ways and Means Committee									
Spending Cuts	0	-0.7	-1.8	-2.9	-3.8	-4.7	-5.7	-6.8	-26.4
New Baseline	32.7	36.1	38.6	41.0	44.1	47.6	51.6	56.3	315.2
Growth	9.8%	10.3%	6.8%	6.3%	7.4%	8.1%	8.4%	9.1%	7.7%
HR 2425 Passed By the House									
Spending Cuts	0	-0.4	-1.3	-2.4	-3.6	-4.8	-6.1	-7.5	-26.1
New Baseline	32.7	36.4	39.1	41.5	44.3	47.5	51.2	55.6	315.5
Growth	9.8%	11.2%	7.3%	6.2%	6.6%	7.3%	7.8%	8.6%	7.3%
Difference Between Committee and House-Passed Bills									
New Baseline	0	0.3	0.5	0.5	0.2	-0.1	-0.4	-0.7	0.3

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