LEGISLATIVE DIGEST
HOUSE REPUBLICAN CONFERENCE | CHAIRMAN ADAM PUTNAM
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H.R. 6331 - The Medicare Improvements for Patients and Providers Act of 2008

FLOOR SITUATION

H.R. 6331 is being considered on the floor under suspension of the rules and will require a two-thirds majority vote for passage. This legislation was introduced by Representative Charles Rangel (D-NY) and Representative John Dingell (D-MI) on June 20, 2008. It was referred to the House Committee on Energy and Commerce and the House Committee on Ways and Means, but was not considered by either committee.

H.R. 6331 is expected to be considered on the floor of the House on June 24, 2008.

BACKGROUND

On July 1, 2008, Medicare payment rates to physicians are scheduled to decrease by 10.6 percent. This negative update is a result of the formula that is intended to keep spending on physician services consistent with a target based on the growth of the national economy. The sustainable growth rate (SGR) formula has resulted in physicians receiving a negative payment update since 2002. However, Congress has passed legislation each year to ensure that physicians are not faced with a negative payment update.

On June 11, 2008, the Senate began consideration of the Medicare Improvements for Patients and Providers Act of 2008 (S. 3101) that was introduced by Senator Max Baucus (D-MT). The bill includes several of the same provisions that the House will be considering as a part of H.R. 6331, including increasing payments to physicians, placing restrictions on Private Fee-For-Service Medicare plans, depleting the Medicare Stabilization Fund, and reducing Indirect Medical Education payments to Medicare Advantage plans. The Congressional Budget Office (CBO) estimates that S. 3101 would increase spending by $19.8 billion over five years and $62.8 billion over 10 years. The Senate failed to invoke cloture on S. 3101 by a vote of 54 to 39. (Record Vote 149)

The Administration issued a veto threat for S. 3101 because "This legislation unnecessarily expands the Medicare program and irresponsibly imperils the long-term fiscal soundness of Medicare and Medicaid, through which millions of Americans receive their healthcare services. The bill pays for these spending increases, in part, with inappropriate reductions in Medicare Advantage (MA) payments. S. 3101 includes policies that are not included in or are inconsistent with the President's Budget, increases Trust Fund spending, and includes budget gimmicks." (SAP for S. 3101)

Chairman of the Ways and Means Committee, Representative Charles Rangel (D-NY) and Chairman of the Energy and Commerce, Representative John Dingell (D-MI) introduced H.R. 6331 as companion legislation to the Medicare bill that failed in the Senate. This legislation did not go through the Committee process and was instead placed directly on the House floor.

SUMMARY

Provisions Relating to Medicare Advantage

Medicare Advantage Private Fee-For-Service Plans: The bill requires nearly all Medicare Advantage Private Fee-For-Service (PFFS) plans to contract with a network of health care providers, if they want to continue to operate in an area that has two or more networked plans. Currently, Medicare beneficiaries enrolled in

a PFFS plan can go to any Medicare eligible physician or hospital that will serve them and are not restricted to a specific network.

> **Note: Currently, 96 percent of counties have at least two networked Medicare Advantage plans, and this legislation would result in more than 2.2 million Medicare beneficiaries facing a disruption in their health care. There are nearly 2.3 million Medicare beneficiaries enrolled in a PFFS plan.*

Medicare Advantage Stabilization Fund: H.R. 6331 depletes the Medicare Advantage Stabilization Fund from $1.79 billion to a balance of $1 to offset the costs of this legislation.

Phase-Out Indirect Medical Education Payments to Medicare Advantage: Currently, Medicare makes both graduate medical education (GME) payments and indirect medical education (IME) payments to hospitals that train medical residents. In addition, the Medicare Advantage benchmark that plans bid against includes an IME adjustment for hospitals that treat individuals enrolled in Medicare Advantage, however the Medicare Advantage plan is not required to pass the IME payments they receive on to the hospitals. The bill phases out the duplicate payment to Medicare Advantage plans and retains the IME payments to hospitals by 2010.

Medicare Beneficiary Improvements

Medicare Outpatient Psychiatric Services: The bill phases out the Medicare copayment required for outpatient psychiatric services by 2014.

Marketing of Medicare Advantage Plans: It prohibits Medicare Advantage organizations from contacting potential enrollees without solicitation, selling non-health related products in conjunction with a Medicare Advantage plan, or providing meals to prospective enrollees.

Low-Income Programs: H.R. 6331 expands access to the low income subsidies by exempting from the asset determination the value of an individual's life insurance policy. In addition, the bill requires an increased amount of information to be distributed to seniors who are potentially eligible for the subsidies. The bill also eliminates the late enrollment penalty for subsidy eligible individuals.

Provisions Relating to Medicare Part A

Medicare Rural Hospital Program: The bill allows the Secretary of Health and Human Services to award grants to States for increasing the delivery of mental health services or other health for veterans returning from Operation Iraqi Freedom and Operation Enduring Freedom.

Provisions Relating to Medicare Part B

Physician Payment Update: The bill provides a 0.5 percent update to the Medicare physician reimbursement rate from July 1, 2008, through December 31, 2008, and a 1.1 percent update for fiscal year 2009. However, physicians would be facing a 20 percent cut in 2010.

Delay of Durable Medical Equipment Competitive Acquisition Program: The bill delays the implementation of the Durable Medical Equipment (DME) competitive acquisition program for eighteen months. In addition, the bill terminates all contracts that have been awarded under this program and requires the Secretary to conduct the first round of bidding in 2009. The second round of competitive bidding would be slated for 2011. This legislation also requires Centers for Medicare and Medicaid Services to inform the bidder if they are missing documents required for the covered document review, and the bid cannot be rejected because documents are missing or are not submitted on a timely basis. The cost of the delay of the DME competitive bidding program is offset by a 9.5 percent cut in the Medicare reimbursement rate for items and services that are qualified for the competitive bidding program.

Physician Quality Reporting Initiative: H.R. 6331 extends the PQRI through December 31, 2010, and increases the bonus payment to doctors to 2 percent for 2009 and 2010.

E-Prescribing: This legislation provides incentives to physicians for using a qualified e-prescribing system. It provides a bonus of 2 percent for 2009 and 2010, 1 percent for 2011 and 2012, and 0.5 percent for 2013. Physicians who are not e-prescribing by 2012 could have their Medicare payments reduced by up to 2 percent, however the Secretary may exempt certain physicians that would face a significant hardship in complying with the requirement.

Diagnostic Imaging: The bill requires that suppliers of advanced diagnostic imaging services be accredited in order to receive payment for their services.

Therapy Caps: The bill extends the exceptions process for Medicare Therapy Caps through December 31, 2009.

Kidney Disease Initiatives: The bill requires the Secretary to establish pilot projects that increase awareness of and screening for chronic kidney disease with a focus on prevention. It also allows Medicare to cover up to six sessions of kidney disease education services that are furnished to an individual with Stage IV chronic kidney disease and will require dialysis or a kidney transplant. H.R. 6331 also includes a 1 percent update for 2009 and 2010 for end stage renal dialysis and requires the Secretary to develop a bundled payment system for end stage renal dialysis that will be phased in over four years beginning on January 1, 2011.

Provisions Relating to Medicare Part D

Prompt Payments to Pharmacies: H.R. 6331 requires Medicare Prescription Drug plans to provide payment to pharmacies within fourteen days for electronic claims. This is inconsistent with the rest of the Medicare program where claims are required to be paid within 30 days, and no sooner than 14 days in order to protect against fraud.

Covered Part D Drugs: The bill requires barbiturates and benzodiazepines to be added to the list of medications covered by Medicare Part D effective January 1, 2013.

Other Provisions

Use of Part D Data: The bill authorizes the Secretary to use Medicare Part D claims data for "improving public health" and allows the data to be made available to Congressional support agencies for the purpose of conducting Congressional oversight, monitoring, making recommendations and analysis of the Part D program.

The bill requires the disclosure of highly sensitive and proprietary prescription drug prices. CBO and FTC have indicated that similar disclosures would lead to significantly higher drug prices.

Medicare Improvement Fund: H.R. 6331 establishes a $19.9 billion slush fund, the Medicare Improvement Fund, which can only be used on changes to the government run Medicare programs, Parts A and B. This fund could not be used to improve the prescription drug benefit, to reduce the cost of prescription drugs, to help seniors with their copayments or to close the doughnut hole, nor could it be used to help the more than 9.8 million seniors who have enrolled in a private Medicare plan. This fund would threaten the solvency of the Medicare program by raiding the Medicare Trust Funds.

Federal Payment Levy: The bill requires Medicare providers and suppliers to be included in the Federal Payment Levy Program.

**Note: The Federal Payment Levy Program allows the Internal Revenue Service to collect overdue taxes through a continuous levy on certain federal payments disbursed by the Financial Management Service (FMS).*

Medicaid

Transitional Medical Assistance (TMA) and Abstinence Education Program: The bill extends TMA and the Abstinence Education Program through June 30, 2009.

COST

The Congressional Budget Office has not released a score for H.R. 6331.

**Note: The Congressional Budget Office estimates that S. 3101, which is similar to H.R. 6331, "would increase spending on physicians' and other services by $19.8 billion over the 2008-2013 period and $62.8 billion over the 2008-2018 period; those amounts would be offset by reductions in payments to other providers (primarily Medicare Advantage plans). Taken together, the bill would reduce direct spending by $5 million over both the 2008-2013 and 2008-2018 periods, CBO estimates." (CBO Cost Estimate)*

STAFF CONTACT

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