November 21, 2009

To: HBMA membership
From: HBMA GR Committee
Re: Healthcare Reform Weekly Update

At approximately 8:00pm ET Saturday, November 21st, the United States Senate, by a vote of 60 – 39, approved a cloture motion on the motion to proceed to consideration of H.R. 3590, the Patient Protection and Affordable Care Act. All 58 Democratic Senators voted in favor of cloture, as did the two Independents (Lieberman and Sanders). All Republicans in attendance voted against cloture. Senator George Voinovich (R-OH) missed the vote but in a statement released before the vote, he stated that he would vote against the cloture motion.

This vote, while very important, merely allows the Senate to move to consideration of the bill (i.e. begin debate and offer amendments).

Now the real work begins.

Several Democratic Senators indicated in speeches leading up to the cloture vote, that they were going to vote for cloture to allow the Senate to move to consideration of the legislation but that they had serious reservations about the bill and would not vote for the bill in its current form. Most prominent among the issues raised were: the tax increases in the bill that will pay for healthcare reform, the public option, abortion and issues surrounding coverage for undocumented aliens.

This legislation represents a melding of two bills approved by the Senate Finance Committee and Senate Health Education Labor and Pensions Committee earlier this year. The bill is more than 2,000 pages long and incorporates provisions from both committee bills, as well as proposals that were never considered by either Committee. This is permissible under the rules of the Senate because technically, the "Patient Protection and Affordable Care Act" is an amendment to a bill previously approved by the House. That is why, you will notice, it has an "H.R." number rather than the more traditional "S." number.

If you would like to look at the bill, go to: http://democrats.senate.gov/ and click on the appropriate icon.

The legislation would prohibit lifetime or annual limits and rescission of insurance coverage by your insurance company, mandate coverage of certain preventive health services and extend dependent coverage to older children. In addition, the bill would eliminate pre-existing condition clauses from private insurance contracts. The bill would establish both individual and employer mandates for obtaining and providing insurance respectively. It would create a new public insurance product for low-income individuals, taxpayer funded subsidies to help low-income individuals purchase insurance, expand Medicaid eligibility and establish minimum health benefit packages.

The bill also contains an extensive section on administrative simplification.

HBMA has been working closely with several Senate offices to ensure that the administrative simplification (AS) provisions in the bill are meaningful, timely and effective. The healthcare community has waited far too long to realize the savings promised by HIPAA more than 15 years ago. It is hoped that should this legislation be enacted, the administrative simplification provisions in the bill will be successful in bringing about true administrative simplification. If you would like to review the AS provisions, they begin on page 57.

CBO Says…

As it has with all other healthcare reform proposals, the Congressional Budget Office (CBO) prepared an analysis of the Patient Protection and Affordable Care Act. The CBO analysis was released in the form of a November 18th letter to Senate Majority Leader Reid. This analysis is calculated assuming that everything in the bill is adopted and signed into law as introduced.

The CBO analysis is generally based upon the following:

> "Among other things, the legislation would establish a mandate for most legal residents of the United States to obtain health insurance; set up insurance "exchanges" through which certain individuals and families could receive federal subsidies to substantially reduce the cost of purchasing that coverage; significantly expand eligibility for Medicaid; substantially reduce the growth of Medicare's payment rates for most services (relative to the growth rates projected under current law); impose an excise tax on insurance plans with relatively high premiums; and make various other changes to the federal tax code, Medicare, Medicaid, and other programs."

According to CBO, the gross total cost of expanding insurance coverage as proposed in H.R. 3590 would be $848 Billion over the 10 year period covered by their analysis. The effect of this expenditure would be that by 2019, 31 million non-elderly individuals that would otherwise have been without insurance coverage will be covered by either private insurance or Medicaid. The net effect of these changes on the deficit would be $599 Billion. However, as explained below, due to savings from cuts in other government programs and additional revenues from new sources, the legislation will eventually reduce total federal outlays over current projections by approximately $130 Billion over the next 10 years.

The new revenues would come primarily from three sources:

1. A new excise tax on high-premium insurance plans (so-called Cadillac plans);
2. Penalty payments by uninsured individuals who opt to be uninsured despite a new federal mandate;
3. Penalty payments by employers who fail to provide adequate insurance coverage for their employees;

According to CBO, even with the 31 million newly insured individuals by 2019, there would still be 24 million non-elderly uninsured individuals. Approximately 1/3 of the uninsured will be undocumented aliens. The remainder will be individuals who for various reasons will opt to continue to be uninsured.

The 31 million newly insured would mainly fall into two categories – people who will purchase subsidized insurance through a newly created health insurance exchange (approximately 15 million) and individuals who will be newly eligible for Medicaid due to a change in the eligibility criteria allowing all individuals up to 133% of poverty to enroll in Medicaid (approximately 15 million).

All told, CBO estimates that 30 million people will purchase health insurance through the health insurance exchange and approximately 12.5% of these people will purchase the public option proposed in this legislation. CBO believes that roughly ½ of the people purchasing health insurance through the exchange will be people who would have had health insurance available to them through some other venue but who will choose to purchase insurance through the exchange.

Unlike the "public option" included in the House passed healthcare reform bill, the Senate proposal includes a state "opt out". Under this provision, a state could choose to exclude a public option from the health insurance options available in that state. CBO assumes that some states (it does not name any) will reject the public option and therefore, the agency projects that only 2/3 of the population will actually have the public option available.

As noted above, CBO assumes that enactment of the legislation will result in an increase in the federal spending of just under $600 Billion over the 10 years covered by their analysis. However, this does not take into account the provisions in the bill that will reduce federal spending in other programs, most notably Medicare and Medicaid nor the full effect of all of the new revenues called for in the bill. The main savings achieved by the bill are:

- Permanent reductions in the inflationary adjustments for most Medicare fee-for-service providers (except physician services). **Savings: $192 Billion over 10 years**.
- Reductions in Medicare Advantage payments. **Savings: $118 Billion over 10 years.**
- Reductions in Medicare and Medicaid Disproportionate Share Hospital payments. **Savings: $43 Billion over 10 years.**

The Patient Protection and Affordable Care Act would also establish a new "Independent Medicare Advisory Board (IMAB) which, beginning in 2013 would make recommendations on methods to control the rate of growth in Medicare spending in the future. IMAB "recommendations" would automatically go into effect beginning in 2015 unless overturned by Congress. CBO estimates that future recommendations by the Board will result in additional savings of **$23 Billion dollars between 2015 and 2019**.

In the end, the Congressional Budget Office projects that **if** the Patient Protection and Affordable Care Act is enacted **as introduced**, there will be a net reduction in federal budget deficits of $130 Billion over the 10 years covered by their analysis. This budgetary savings is achieved as follows:

Net increase in direct spending for insurance coverage:	$599 Billion
Net Savings from projected cuts in direct spending:	$491 Billion
Net NEW revenues:	$238 Billion
Total Net Savings:	$130 Billion

What About the SGR Problem?

Unlike the House, which removed an SGR fix from their healthcare reform bill, H.R. 3590 does provide another temporary "fix". Rather than the 21.5% reduction in the Conversion Factor (CF) that is slated to take affect on January 1, 2010, the Patient Protection and Affordable Care Act would authorize a .5% increase in the Conversion Factor.

Because the legislation does not provide a mechanism to "pay for" this temporary fix and in effect backloads the cost of the .5% increase in the CF, physicians are looking at a 23% reduction in the CF on January 1, 2011 unless Congress steps in to enact legislation to prevent that cut from taking place.

Where do things go from here?

As mentioned above, approval of the cloture vote was an important first step in that it allows the Senate to begin considering H.R. 3590. However this is likely the easiest 60 votes the Democratic leadership will have to get during the healthcare reform debate. It only gets harder from here.

Several Republican Senators have threatened to demand a full reading of the bill prior to commencing debate. Although Senate rules technically require that all bills be read prior to consideration, this requirement is routinely waived. Should the GOP follow through with the threat, the clerk(s) will be required to read all 2,074 pages of the bill before Senators can begin to debate the bill and offer amendments. Senator Reid has threatened to keep the Senate continuously in session (which would require at least one Senator from both the majority and minority party to be on the floor during the reading) should a reading be demanded.

Real debate on H.R. 3590 is expected to begin the week over November 30th.

In reality, action in Congress will be occurring on two fronts. There will be the public debate that you can watch on C-SPAN and then there will be the behind-the-scenes negotiations that will be taking place off the Senate floor. It is in these behind-the-scenes negotiations that such things as the public option, abortion, illegal immigrants and taxes will be hashed out (or not hashed out). At some point the public debate on these issues will occur, but not before there have been extensive negotiations behind-the-scenes.

At some point, the Democratic leadership will attempt to cut-off debate on the bill by filing a cloture motion. This motion would, if approved by 60 Senators, would set a timetable to end debate. A cloture motion would direct that a final vote shall occur at the conclusion of 30 hours of additional debate. Any amendment that is pending at the time cloture is filed could be brought up for a vote but debate time would still be limited to 30 hours (evenly divided between the majority and minority parties).

At this point, it appears that Senator Reid is willing to allow the debate to go on for at least a few weeks before he files a cloture motion. It is too early to tell just how long he will wait for that first motion but it will largely depend upon the pace of negotiations and the outcome of various amendments that will be offered in the first few weeks of debate.