Senate Finance Committee Releases Delivery System Reform Options As Congress Finalizes Budget Paving the Way for Health Reform

In the first step of a process intended to culminate in a formal markup of health reform legislation in June, the Senate Finance Committee released a set of policy proposals on health delivery system reform on Tuesday, April 28. A copy of the 48-page document is available on the Ropes & Gray Health Reform Resource Center and by clicking here. Meanwhile, Congress gave its final stamp of approval on Wednesday, April 29 to a FY 2010 budget resolution that includes "reconciliation" instructions, a procedural move that will allow the Senate to pass a health reform bill without the possibility of a filibuster. Although Congressional leaders claim that they will use the procedure only if they cannot achieve a 60-vote consensus on a bipartisan bill, the option of moving legislation with only a simple majority greatly increases the likelihood that a comprehensive reform measure will be adopted this year.

The release of the Finance Committee policy options is the first step in a carefully orchestrated process to develop a comprehensive reform bill in three major installments. In this first stage, the Committee is focusing on delivery system reform, which is viewed as an essential step in controlling costs and improving quality so that coverage can be expanded smartly and efficiently. The policy proposals follow on the heels of a roundtable discussion with health care industry experts convened by the Committee on April 21. Committee members commented on the options in a closed-door session on April 29.

The Committee will follow a similar process to develop the second and third components of reform: coverage expansions and financing. Two more roundtable discussions are scheduled in the coming weeks (coverage on May 5, and financing on May 14), each to be followed by another set of policy options and closed-door feedback sessions. The Committee intends to assemble a comprehensive health reform proposal based on the reaction to these papers in time for a Committee markup in June. Ropes & Gray will keep its clients informed about these developments as they occur. And our Health Reform Resource Center will provide up-to-the-minute access to health reform materials, including all of the Finance Committee policy papers as they are released, as well as other major bills, reports and analyses.

The health delivery system reforms proposed by the Finance Committee fall into five broad categories:

1. Medicare Payment Reforms to Improve Quality of Care and Promote Primary Care

The Finance Committee has proposed a range of reforms to Medicare payment systems designed both to improve quality and to increase the availability of primary care. Medicare payment reforms are viewed as likely to spur similar reforms among commercial, Medicaid and other payers, thereby prompting system-wide reform. The proposals would steer most Medicare payment systems to a value-based model, requiring reporting on quality measures where no such requirements currently exist (*e.g.*, inpatient rehabilitation facilities and long-term acute care hospitals) and paying for performance on quality measures for providers that are currently reporting quality data (*e.g.*, hospitals, home health agencies and skilled nursing facilities). In addition, the Committee proposes budget-neutral bonus payments for primary care physicians and rural-based general surgeons.

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2. Long-Term Medicare Payment Reform to Foster Care Coordination and Provider Collaboration

The paper also proposes Medicare payment reforms that will encourage reorganization of provider delivery systems to promote greater coordination and collaboration among providers. For example, payments for inpatient hospital stays would be bundled with post-acute care payments, and hospitals would eventually not be paid for preventable readmissions. "Accountable care organizations" would be established that would allow groups of providers to share in Medicare savings realized through achieving certain quality measures. The Committee also proposes a two-year fix to the flawed Sustainable Growth Rate (SGR) methodology for updating the physician fee schedule.

3. Investments in Health Care Infrastructure to Support Delivery System Reform

The Committee proposes a range of measures to address various aspects of the underlying health delivery system infrastructure, some of which build upon investments made in the recently enacted economic stimulus bill. For example, the Committee is considering expanding the scope of the health information technology (HIT) incentives and further measures to promote comparative effectiveness research. To support graduate medical education, the Committee proposes further redistribution of unused residency slots and greater flexibility for resident training programs. And the "whole hospital" and rural exceptions to the self-referral laws would be eliminated while grandfathering existing physician-owned hospitals.

4. Medicare Advantage Quality, Efficiency, and Care Management

The Medicare Advantage program would be reformed by, among other steps, tying payments to performance on quality measures, modifying the formula for establishing benchmark payment rates, providing additional payments for chronic care management, and imposing new requirements for offering extra benefits.

5. Combating Fraud, Waste and Abuse in Federally Funded Programs

The Committee is seeking to hold down health system costs through further program integrity efforts to reduce fraud, waste and abuse. These include an enhanced screening process for providers seeking to enroll in Medicare, creating a single program integrity ("One PI") database that will allow data sharing and matching across federal and state agencies, increasing and extending civil monetary penalties, and providing additional funding for both HHS and the Department of Justice for program integrity and anti-fraud activities.

For further information please contact your regular Ropes & Gray attorney or the attorneys listed below.

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