RSC Republican Study Committee

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Legislative Bulletin……………………………….………June 24, 2010

Contents:

H.R. 3962— Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (*Rep. Dingell, D-NY*)

Order of Business: H.R 3962 is being considered under suspension of the rules.

Summary: After several amendments and paring down, the Senate was still unable to pass its version of an extenders bill last week. Instead on June 18, 2010 the Senate passed, by unanimous consent, a 6 month "doc fix" paid for by pension funding relief and other minor health care provisions taken from the larger extenders bill, H.R. 4213, that passed the House 245-171 on May 28, 2010.

Title I – HEALTH CARE PROVISIONS

Changes Since the Last Time This Legislation Was Before the House: The Senate took H.R. 3962, which passed the House 220-215 on November 7, 2010, and struck the language and replaced it with 4 new provisions including a 6 month paid-for SGR patch, the CMS-IRS Data Match to identify fraudulent providers, and revisions to the 3-day payment window for hospitals as pay-fors.

Medicare Physician Update ("Doc Fix"), Sustainable Growth Rate (SGR): The bill provides a 2.2% increase in reimbursement levels from June 1, 2010 through November 30, 2010 with an increased funding cliff. CBO estimates this will cost $6.35 billion over ten years.

Background: Below is the summary of temporary SGR patches that the House has passed this year:

- The FY 2010 Defense Appropriations bill provided a temporary "patch" to the SGR formula, delaying the 21.2% cut to physician payments that otherwise would have occurred through February 28, 2010.
- The cut was again delayed by the Tax Extensions Act of 2010 and then by the Baucus amendment to H.R. 4851 through May 31, 2010.

- H.R. 4213, as passed by the Senate, would have extended the payment freeze with zero update through September 30, 2010. The House amendment to H.R. 4213, which passed on May 28, 2010 and was estimated to cost $22.9 billion over ten years, would have provided positive updates through 2011, reverting back to the current SGR system but with an even higher funding cliff. CBO had estimated that the formula would call for a 33% cut in 2012 with additional cuts after that.

Provisions That Were Maintained from H.R. 4213

Establish a CMS-IRS Data Match to Identify Fraudulent Providers: Currently, CMS and IRS are not authorized to exchange information for the purposes of Medicare fraud or screening purposes. The CMS-IRS Data Match program would require the IRS to share data on Medicare providers that have serious delinquent debt and allows CMS to use the information to not renew their billing privileges and recoup unpaid taxes from their Medicare reimbursement. This provision was added to PPACA in the reconciliation bill but removed in the Manager's Amendment as it would have been subject to the "Byrd Rule." CBO and JCT estimate this will save $425 million over 10 years.

Clarification of 3-Day Payment Window: Currently, all services related to an inpatient admission are included in the bundled payment except under the "72-Hour Rule." This rule allows hospitals to unbundle certain services if they were performed within 72 hours of an admission and were unrelated to that admission. This section would allow the Secretary to redefine "unrelated," thus effectively removing the ability to unbundle services and claims to gain separate / additional payments. CBO estimates that this provision reduces the deficit by $4.2 billion over ten years.

Title II – Pension Funding Relief

Title II of the legislation includes pension provisions that CBO estimates will reduce the deficit by $2.8 billion over ten years ($2.1 billion in higher revenues, $675 million in lower outlays), though it would likely increase the deficit beyond the ten-year window. This includes:

- **Extended period for single-employee defined benefit plans:** The legislation allows a single employer defined benefit plan sponsor to elect to extend from seven years to nine years (first two years interest free) the amortization period in the event of a funding shortfall. The sponsor could also elect a 15 year amortization period.
- **Optional 30-year and 10-year amortization periods:** Under current law, a pension plan has to amortize net investment losses over a 15-year period. This provision would permit plans (in certain cases) to amortize over a 30-year period. In addition, Multi-employer plans may also choose to average their assets over 10 years (instead of 5 years under current law).

It is worth noting that by at least one analysis, the pension provisions would be expected, over the long-term, to worsen the federal government's finances—and the $2.8 billion ten-year deficit reduction score from CBO only results from gaming the budget window (see Donald Marron's analysis here).

The reason the pension provisions score as increasing revenue in the short-term is because contributions to pension funds are tax deductible. This legislation would result in lower contributions to pension funds over the ten-year budget window, resulting in more corporate income being subject to taxes. But outside the budget window, the legislation would lead to lower revenues, as corporations have to increase their contributions again.

On the spending side, the legislation temporarily has the impact of increasing Pension Benefit Guarantee Corporation (PBGC) premiums, but also of exposing the PBGC to more losses outside of the budget window.

Committee Action: H.R. 3962 passed the House on November 7, 2009 by a roll call vote. The Senate struck all of the House language and passed this legislation by unanimous consent on June 18, 2010. This is the first time this language has come to the House Floor.

Administration Position: No Statement of Administration Policy (SAP) is available.

Cost to Taxpayers: CBO stated in a report dated June 18, 2010 that this legislation would result in increased revenues of $2.106 billion between 2010 and 2020 and increase outlays by $1.95 billion over the same period.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill provides $6.35 billion over 10 years in new mandatory spending.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No CBO report was available at press time.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: A committee report citing earmarks, limited tax benefits and tariff benefits is unavailable.

Constitutional Authority: A committee report citing constitutional authority is unavailable.

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