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Legislative Bulletin.....July 14, 2010

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H.R. 5712 – Veterans’, Seniors’, and Children’s Health Technical Corrections Act of 2010

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Order of Business: The legislation is scheduled to be considered on Wednesday, July 14, 2010, under a motion to suspend the rules and pass the bill.

Summary: H.R. 5712 consists mainly of provisions that were removed from the larger extenders bill, H.R. 4213, the *American Workers, State, and Business Relief Act* and not included in the separate SGR patch, H.R. 3962— *Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010*. The bill would make several changes to veterans’, seniors’, and children’s health programs modified in the Patient Protection and Affordable Care Act (PPACA) and other legislation.

New Provisions:

Clarification for Affiliated Hospitals for Distribution of Additional Residency Positions:

This provision would make a technical correction to the redistribution of unused residency positions established under PPACA to clarify that residency positions that are being shared between teaching hospitals under an “affiliation agreement” would not be considered unused slots and thus available for redistribution to other hospitals. This will allow teaching hospitals to keep their slots that otherwise may have been taken away (as without the affiliation agreement they could be under their caps).

Revision to the Medicare Improvement Fund: The bill cuts money from the Medicare Improvement Fund for FY 2015 and 2016 in order to offset the cost of the bill. The Medicare Improvement Fund was already depleted for FY 2014 under PPACA.

Changes Made From the Last Time We Saw These Provisions in H.R. 4213:

Extension of Section 508 Reclassifications: Just over three months ago PPACA extended Section 508 wage index reclassifications retroactively from October 1, 2009 to September 30, 2010. Section 508 reclassifications were originally created in Medicare Modernization Act and extended various times in subsequent legislation, as a way to boost qualifying hospitals' inpatient and outpatient Medicare reimbursement through moving to a higher nearby wage index area.

- This provision extends section 508 reclassifications through FY 2011 (September 30, 2011) and clarifies that the FY 2008 wage index values extended in previous legislation only applied for FY 2008 and FY 2009. CBO has estimated that this provision would cost \$300 million over 10 years.
- This bill removes the provision previously included in H.R. 4213 which allowed the Secretary to post on CMS's website a list of the areas and hospitals whose reclassifications will be extended and required affected hospitals to terminate or withdraw their application for reclassification status no later than 5 business days after the posting or June 18, 2010, whichever is later.

Funding for Claims Reprocessing: Certain provisions in PPACA required changes to Medicare payment policies retrospectively, causing CMS to re-process claims back to January 1, 2010. The bill would appropriate \$95 million down from \$175 million under H.R. 4213 (CBO previously estimate this provision to cost \$200 million under H.R. 4213).

Provisions Maintained From H.R. 4213:

Clarification of Effective Date of Part B Special Enrollment Period for Disabled TRICARE Beneficiaries: This provision clarifies the effective date for the 12-month special enrollment period (SEP) in Medicare Part B for disabled Medicare beneficiaries also eligible for TRICARE as established in PPACA. According the Democrat's summary for H.R. 4213, this provision will cost \$3 million over 10 years.

Repeal of Delay of RUG-IV: Repeals a provision in PPACA that delayed the October 1, 2010 transition date for using Version 4 of the Resource Utilization Groups (RUG IV) from RUGs III until October 1, 2011. The need to revise this date is yet another example of how this is a poorly written bill that the Democrats never expected to be the final product, but were forced to bring it to the floor through reconciliation as they otherwise lacked the votes.

Skilled nursing facilities (SNFs) are reimbursed by Medicare through a prospective payment system that is based on payment categories or Resource Utilization Groups (RUGs) and adjusted by the Centers for Medicare & Medicaid Services (CMS) to allow for increases in the cost of goods and services each year. Repealing this provision allows for SNFs to align this transition with other CMS SNF payment regulations scheduled to be implemented on October 1, 2010.

Continued Inclusion of Orphan Drugs in Definition of Covered Outpatient Drugs with Respect to Children's Hospitals Under the 340B Drug Discount Program: This provision carves out children's hospitals from changes made to PPACA through reconciliation which excluded orphan drugs from the required 340B discounts to new entities.

Medicaid and CHIP Technical Corrections: The bill would make technical corrections to Medicaid and CHIP provisions in PPACA relating to certain individuals and entities excluded from Medicaid, income eligibility levels for children, measurement and public reporting of payment error rates, exceptions to exclusion of coverage for children of state employees, and electronic health records payments.

Potential Conservative Concern: Some conservatives may be concerned that this bill is yet another “fix-it” bill as it corrects mistakes and adds costly items left out the Patient Protection and Affordable Care Act (PPACA) due to the Democrats’ rush to pass a government takeover of health care.

Committee Action: H.R. 5712 was introduced on July 13, 2010, and referred to the House Committees on Ways and Means, Energy and Commerce, and Budget which took no action.

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

Cost to Taxpayers: No CBO score is available. However, according to Democrat’s summary, the bill would result in less than \$50 million in savings due to taking money from the Medicare Improvement Fund to offset the nearly \$400 million in new costs.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. The bill expands the 340B Drug Discount Program to include orphan drugs in its definition of covered outpatient drugs for children’s hospitals.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Though the bill contains no earmarks, and there’s no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

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

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