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Congress Passes Temporary Extension of Payroll Tax Cut, SGR, UI

After initially rejecting its consideration, the House passed a bill by unanimous consent on December 23rd providing for a temporary, two-month extension of a payroll tax holiday, unemployment benefits, and a patch to the Sustainable Growth Rate (SGR), the formula that ties physician reimbursement under Medicare to economic growth. The patch avoided a scheduled 27% cut to reimbursements for Medicare providers.

The temporary extension is a Senate amendment to a House-passed bill (H.R. 3765) that had previously been under veto threat from President Obama. The House bill would have extended the payroll tax holiday and unemployment insurance for one year and offered a SGR patch for two years. The House version had contained changes to requirements for unemployment insurance, changes to benefits in Medicare, and \$30 billion in

cuts to discretionary spending over the next decade as a method of paying for the bill.

The Senate removed all of this, but did keep one provision favored by the House majority: a requirement that the President expedite a decision on whether to approve an oil pipeline running from Canada through the United States. When the Senate passed the amended, temporary legislation on December 17th, it was under the impression that a deal had been negotiated with the House to pass this compromise while the two bodies resolved differences on payment for the extensions. The Senate has been in recess since December 17th.

Following the Senate passage, the House initially voted against consideration of the Senate version of the bill and then to reject the Senate amendments while calling for the Senate to return to session for a conference on the different versions of the bill. However, as it became clear that this was unlikely, an agreement on the temporary extension was reached

Both chambers will now go to conference in order to produce year-long extensions of the payroll tax holiday and unemployment benefits. Conferees are hoping for a two-year patch to SGR or perhaps even a permanent fix to the formula.

NIHB is closely monitoring this situation and will provide new information as it develops.



ADMINISTRATION UPDATES

OPM Releases Dear Tribal Leader Letter on FEHB

In a “Dear Tribal Leader Letter” dated December 21st, the Office of Personnel Management (OPM) provided an update on Tribal access to the Federal Employees Health Benefits (FEHB) Program. Under the permanent reauthorization of the Indian Health Care Improvement Act (IHCA), Tribes and Tribal organizations operating programs under the Indian Self-Determination and Education Assistance Act are eligible to purchase health insurance for their employees under the FEHB Program.

Tribal employers may begin to enroll employees starting on March 22, 2012 with an effective coverage date of May 1, 2012. **All Tribes, Tribal organizations, and Urban Indian organizations wishing to participate in the FEHB program must notify OPM by February 1, 2012** via email at: tribalprograms@opm.gov or via phone at: 202-606-2530.

For more information, including the “Dear Tribal Leader Letter” and 2012 FEHB plans, click [here](#).

Obama Administration Submits First Brief Defending ACA to the Supreme Court

On January 6th, the Obama Administration defended the constitutionality of the Patient Protection and Affordable Care Act’s (ACA) individual mandate, which requires nearly every American to purchase health insurance or face a financial penalty levied by the Internal Revenue Service (IRS). In a brief submitted by the Justice Department, the Administration argued that the mandate falls well within Congress’ ability to tax and to regulate interstate commerce under the commerce clause. The Supreme Court will hear two hours of oral arguments on the constitutionality of the individual mandate on March 27, 2012.

To view the brief, click [here](#).

NIHB Submits Comments on FACA to IHS

The National Indian Health Board has submitted comments to the Indian Health Service (IHS) in response to a November 9th “Dear Tribal Leader Letter” regarding the Federal Advisory Committee Act (FACA) and IHS Advisory Groups. In particular, IHS was seeking advice on how to ensure that each group was FACA compliant.

Click [here](#) to read NIHB’s comments.

Click [here](#) to read the “Dear Tribal Leader Letter”

HHS Allows States to Define Essential Health Benefits

The Department of Health and Human Services recently released a bulletin outlining proposed policies that will give states more flexibility and freedom to implement the Affordable Care Act.

The Affordable Care Act ensures all Americans have access to quality, affordable health insurance. To achieve this goal, the law ensures that health insurance plans offered in the individual and small group markets, both inside and outside of the Affordable Insurance Exchanges (Exchanges), offer a comprehensive package of items and services, known as “essential health benefits.”

The bulletin describes an inclusive, affordable and flexible proposal and informs stakeholders about the approach that HHS intends to pursue in rulemaking to define essential health benefits. HHS is releasing this intended approach to give consumers, states, employers and insurers timely information as they work toward establishing Exchanges and making decisions for 2014. This approach was developed with significant input from the public, as well as reports from the Department of Labor, the Institute of Medicine, and research conducted by HHS

Under the Department’s intended approach, states would have the flexibility to select an existing health plan to set the “benchmark” for the items and services included in the essential



health benefits package. States would choose one of the following health insurance plans as a benchmark:

- One of the three largest small group plans in the state;
- One of the three largest state employee health plans;
- One of the three largest federal employee health plan options;
- The largest HMO plan offered in the state's commercial market.

The benefits and services included in the health insurance plan selected by the state would be the essential health benefits package. Plans could modify coverage within a benefit category so long as they do not reduce the value of coverage. Consistent with the law, states must ensure the essential health benefits package covers items and services in at least ten categories of care, including preventive care, emergency services, maternity care, hospital and physician services, and prescription drugs. If a state selects a plan that does not cover all ten categories of care, the state will have the option to examine other benchmark insurance plans, including the Federal Employee Health Benefits Plan, to determine the type of benefits that will be included in the essential health benefits package.

The policy proposed by HHS would give states the flexibility to select a plan that would be equal in scope to the services covered by a typical employer plan in their state. States and insurers would retain the flexibility to evolve the benefits package with the market as innovative plan designs are developed and advancements in care become available, and meet the needs of their citizens.

The bulletin addresses only the services and items covered by a health plan, not the cost sharing, such as deductibles, copayments, and coinsurance. The cost-sharing features will be addressed in future bulletins and cost-sharing rules will determine the actuarial value of the plan.

Public input on this proposal is encouraged. **Comments are due by Jan 31st** and can be sent

to: EssentialHealthBenefits@cms.hhs.gov.

For the essential health benefits bulletin, visit:

<http://cciio.cms.gov/resources/regulations/index.html#hie>

For a fact sheet on the essential health benefits bulletin, visit:

<http://www.healthcare.gov/news/factsheets/2011/12/essential-health-benefits12162011a.html>

UPCOMING EVENTS

HHS TRIBAL OUTREACH CALL ON ACA

DATE: JANUARY 10TH

TIME: 3:00 PM

CONFERENCE CALL #: 888-552-9182

PASS CODE: 1598939

Sign Up for Washington Report, at:

http://www.nihb.org/legislative/washington_report.php

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