The Health Care and Education Affordability Reconciliation Act of 2010

H.R. 4872

The legislative language for H.R. 4872, the "sidecar" or reconciliation bill to the Senate-passed healthcare reform bill (H.R. 3590) was released late Thursday, March 18, 2010. The House has cleared the way for a possible vote on both the Senate-passed bill and the reconciliation bill on Sunday, March 21st, if the Majority has secured the necessary 216 votes for passage. The Majority is expected to use a parliamentary rule which would consider the Senate-passed bill approved without an actual vote once the reconciliation, sidecar bill (H.R. 4872) is passed. The Senate bill would be sent to the President for signature, and the reconciliation bill would be sent to the Senate for consideration. The Senate Minority is mobilizing a strong opposition to the reconciliation bill.

The Congressional Budget Office (CBO) projected $138 billion in projected savings in the first 10 years and $1.2 trillion in the second decade. The revised health care package is projected to cost $940 billion and extend coverage to approximately 32 million individuals.

The following is only a preliminary summary of the highlights in the newly-released H.R. 4872 that may be of interest to Academy members. The complex nature of these amendments to the Senate-passed bill (H.R. 3590) and to current law will require further analysis. The highlights are the following:

Medicare Part D Coverage Gap ("Donut Hole") – The bill provides a $250 rebate for all Medicare Part D enrollees who enter the donut hole in 2010. It builds on pharmaceutical manufacturers' 50% discount on brand-name drugs beginning in 2011 to completely close the donut hole with 75% discounts on brand-name and generic drugs by 2020.

Medicare Advantage Payments – The bill provides for $202 billion in cuts to the MA program. It freezes Medicare Advantage (MA) payments in 2011. Beginning in 2012, the provision reduces MA benchmarks relative to current levels. Benchmarks will vary from 95% of Medicare spending in high-cost areas to 115% of Medicare spending in low-costs areas. The changes will be phased-in over 3, 5 or 7 years, depending on the level of payment reductions. The provision creates an incentive system to increase payments to high-quality plans by at least 5%. It also extends CMS authority to adjust risk scores in MA for observed differences in coding patterns relative to fee-for-service.

Medicaid Funding for States – The bill strikes the so-called "Cornhusker Deal" (a permanent 100% federal matching rate for Nebraska for Medicaid costs of newly eligible individuals). It expands to all states (except expansion states) the federal Medicaid matching payments for costs of services to newly eligible individuals at the following rates: 100% in 2014, 2015, and 2016; 95% in 2017; 94% in 2018; 93% in 2019; and 90% thereafter. In the case of expansion states, the bill reduces the state share of the costs of covering nonpregnant childless adults by 50% in 2014, 60% in 2015, 70% in 2017, 90% in 2018. In 2019 and thereafter, expansion states would bear the same state share of the costs of covering nonpregnant childless adults as non-expansion states.

Drug Rebates for New Formulations of Existing Drugs – For purposes of applying the additional rebate, the bill narrows the definition of a new formulation of a drug to a line extension (i.e., extended release formulations) of a single source or innovator multiple source drug that is an oral solid dosage form of the drug.

Medicare Prepayment Medical Review Limitations – The bill streamlines procedures to conduct Medicare prepayment reviews to facilitate additional reviews designed to reduce fraud and abuse by repealing Sec. 1874A(h) of the Social Security Act.

CMS-IRS Data Match to Identify Fraudulent Providers – The bill allows the Secretary of Treasury to share IRS data with HHS employees to help screen and identify fraudulent providers or providers with tax debts, and to help recover such debts. It provides strict controls on use of such information to protect taxpayer privacy.

Medicare Tax – The bill modifies the tax to include net investment income on the taxable base. Currently the Medicare tax does not apply to net investment income. The Medicare tax on net investment income does not apply if modified adjusted gross income is less than $250,000 in the case of a joint return, or $200,000 in the case of a single return. Net investment income is interest, dividends, royalties, rents, gross income from a trade or business involving passive activities, and net gain from disposition of property (other than property held in a trade or business). Net investment income is reduced by properly allocable deductions to such income.

Brand Name Pharmaceuticals – The bill delays the industry fee on sales of brand name pharmaceuticals for use in government health programs by one year to 2011, and increases revenue raised by the fee by $4,8 billion.

Health Insurance Providers – The bill delays the industry fee by 3 years to 2014 and modifies the annual industry fee for revenue neutrality. In the case of tax-exempt insurance providers, the bill provides that only 50% of their net premiums that relate to their tax-exempt status are taken into account in calculating the fee. The bill provides exemptions for voluntary employee benefit associations (VEBAs) and nonprofit providers more than 80% of whose revenue is received from Social Security Act programs that target low income elderly, or disabled populations.

Insurance Reforms – The bill extends the prohibition of lifetime limits, prohibition on rescissions, limitations on excessive waiting periods, and a requirement to provide coverage for non-dependent children up to age 26 to all existing health insurance plans starting six months after enactment. For group health plans, the bill prohibits pre-existing condition exclusions in 2014, restricts annual limits beginning six months after enactment, and prohibits them starting in 2014. For coverage of non-dependent children prior to 2014, the requirement on group health plans is limited to those adult children without an employer offer of coverage.

Drugs Purchased by Covered Entities – The bill repeals the underlying 340B expansion to inpatient drugs and exemptions to GPO exclusion. The bill exempts orphan drugs from required discounts for new 340B entities.