

# **PIMA SUMMER CONFERENCE**

## **Leg. & Reg. Report**

**July 2009**

This Newsletter Update is presented on behalf of the PIMA Legislative and Regulatory Action Group.

## **FEDERAL SCENE**

### **FEDERAL HEALTH REFORM**

The pace of committee action in July will be a major factor in determining whether congressional leaders achieve their goal of completing Senate and House floor action before the August recess.

#### **In the Senate**

##### *Timing in the Senate Finance Committee*

The following schedule has already begun to slip.

- Tuesday, July 7--CBO score expected and Democratic member walk-through
- Thursday, July 9--Bipartisan member walk-through
- Monday, July 13--Amendments due
- Tuesday, July 14--Opening statements preceding mark-up
- Wednesday, July 15--Markup begins
- Friday, July 17--Desired conclusion of markup.

##### *Proposals in the Senate Finance Committee*

Leaders of the Senate Finance Committee have outlined several policy options for providing affordable health coverage to all Americans. Eight areas in particular have received attention: (1) insurance market reforms; (2) making coverage affordable; (3) a public health insurance option; (4) the role of public programs; (5) shared responsibility; (6) prevention and wellness; (7) long term care services and supports; and (8) health disparities. Within these broad categories, the following are several notable policy options:

**Individual Coverage Requirement:** The document lists an individual coverage requirement as a policy option and discusses enforcement issues relating to such a requirement. One possible approach would impose an excise tax equal to a percentage of the premium for the lowest cost option available through the Health Insurance Exchange for the area where the individual resides. The excise tax would be phased-in and would equal 25 percent of the premium for the first year that the requirement is in effect; 50 percent of the premium for the second year; and 75 percent of the premium for the third and subsequent years.

**Federal Rating Rules:** This option would impose federal rating, issue, and other rules for the non-group and micro-group market. Guaranteed issue and guaranteed renewal rules would be imposed on all coverage offered in the non-group and micro-group market, and the exclusion of coverage for preexisting health conditions would be prohibited. Rates would vary based only on tobacco use, age, family composition, and geography.

State Option to Merge Individual and Small Group Markets: This option would give states the option of merging the pooling and rating rules for the non-group and small group markets.

Health Insurance Exchange: The document discusses an option to require state-licensed private insurers in the non-group and small group markets (and a public health insurance option, if applicable) to participate in a newly established Health Insurance Exchange. Another option would establish multiple, competing exchanges.

Public Plan Option: The document includes an option for establishing a public plan option and another option for not establishing a public health insurance option and instead relying on private health plan choices in a reformed and well regulated private market. The public plan option includes three possible approaches: (1) a “Medicare-like” public health insurance option to be offered through an Exchange and administered by a new HHS agency; (2) a public option administered through regional third-party administrators who would report to the HHS Secretary; and (3) a state-run public option that could allow individuals to purchase coverage through state employee plans. The document also includes a possible approach to establishing a temporary Medicare buy-in option for persons age 55-64.

Employer Mandate: This option would require all employers with more than \$500,000 in total payroll for a taxable year to either offer their full-time employees health insurance coverage or pay an assessment. The employer would be required to contribute at least 50 percent of the premium for the employer-sponsored health insurance.

Long-Term Care: The document outlines a series of options for increasing access to home and community based services under Medicaid, including increasing federal matching funds for such services and eliminating the existing institutional level-of-care requirement for Medicaid waivers.

Funding Sources: Leaders of the Senate Finance Committee are looking at three specific areas of potential funding sources for health care reform: (1) savings achieved from within the health care system from reductions in current levels of spending; (2) reevaluating current health tax subsidies; and (3) changes to non-health tax provisions.

### *Bad News from CBO*

After months of anticipation, the Senate Finance Committee changed its plans to mark up its health reform bill before the July Fourth congressional recess. The primary reason for the delay is that the committee received bad news from the Congressional Budget Office (CBO): a cost estimate indicating that its original draft bill would have a ten-year cost of \$1.6 trillion. Since then, committee leaders have been working to revise the draft bill, in an effort to reduce its overall cost.

Several options are being considered for scaling back the cost of the bill:

- providing premium assistance to individuals and families with incomes up to 300 percent of the federal poverty level, instead of 400 percent;
- expanding Medicaid to cover children and pregnant women with incomes up to 133 percent of the federal poverty level, instead of 150 percent; and
- reducing the actuarial value of the four benefit categories that would be established by the bill (e.g., from 93 percent to 90 percent of costs for the “platinum” category).

Other policy issues still in play include: insurance market reforms addressing guarantee issue, preexisting conditions, and adjusted community rating; the creation of state-based exchanges; an individual coverage requirement with exemptions if coverage is unaffordable and for hardship; and prevention and wellness initiatives. The responsibility of employers continues to be an open issue that remains unresolved.

### *Agreement Reached with Pharmaceutical Industry*

Sen. Max Baucus (D-MT), chairman of the Senate Finance Committee, announced that he has reached an agreement with the pharmaceutical industry to reduce drug prices in the coverage gap in the Medicare Part D prescription drug program in the health care reform process. Chairman Baucus indicated that under this agreement, pharmaceutical companies would provide a 50 percent discount on the costs of brand-name drugs covered by Medicare that currently fall into the coverage gap. This agreement also would authorize the HHS Secretary to create a new Medicare Prescription Drug Discount Program that would take effect on July 1, 2010 and would be administered by an independent third party. Baucus said that these and other elements of the agreement will be written into the health reform legislation he brings before the Senate Finance Committee in July.

### *Senate HELP Committee*

The Senate HELP Committee has begun marking up its draft bill, the “Affordable Health Choices Act.”

The first round of amendments focused on Title II of the bill, addressing the quality and efficiency of health care. After all amendments pertaining to Title II of the bill are considered, the committee will move next to Title III, addressing prevention and public health issues, and then to Title IV, addressing health care workforce issues. There has also been significant discussion about comparativeness effectiveness research and medical liability reform.

This bill is silent on several major issues, including a government-run health insurance plan, the responsibility of employers, non-discrimination in health care, and biologics.

### **In the House**

#### *House Democrats’ Tri-Committee Proposal*

The chairmen of the House Energy and Commerce Committee, the House Ways and Means Committee, and the House Education and Labor Committee released a discussion draft of legislation that will serve as the starting point for health reform markups in their respective committees in early July.

The House Democratic bill includes three major sections addressing: (1) insurance market reforms, including health care choices; (2) Medicare and Medicaid changes; and (3) public health and workforce development. The following are key elements of the House Democratic bill:

- A government-run health insurance plan would be established and offered through a new Health Insurance Exchange that would have authority to enforce insurance market reforms and consumer protections.

- Insurance market reforms include guarantee issue, no preexisting condition exclusions, no lifetime or annual limits, no premium variation based on health status or gender, and premium variation may be based only on age (no more than 2:1), geography, and family size.
- An Independent Advisory Committee would be charged with recommending a benefit package based on standards in the legislation.
- Premium assistance would be provided to individuals and families with incomes up to 400 percent of the federal poverty level.
- An individual coverage requirement would become effective after market reforms and premium assistance are implemented, with exemptions allowed in cases of hardship.
- Employers would be subject to a “pay or play” requirement, with an exemption for small businesses.
- The bill would require guaranteed issue to Medigap policies for disabled Medicare beneficiaries.
- Medicaid eligibility would be expanded to include individuals and families with incomes up to 133 percent of the federal poverty level.
- Medicare Advantage benchmarks would be phased down to 100 percent of FFS spending, starting in 2011 and fully implemented in 2013, and Medicare Advantage plans could earn quality bonuses of up to four percent.
- Medicare Advantage special needs plans would be extended for two years.

*HHS Secretary Sebelius Comments on the House Draft Bill*

On June 24, Secretary of Health and Human Services (HHS) Kathleen Sebelius testified on health reform issues at a hearing held by the House Energy and Commerce Committee.

Secretary Sebelius described the House Democrats’ draft bill as “an historic step forward” and said that it embraces President Obama’s principles for health reform. She said the President is open to new ideas, but that he is not open to increasing the federal budget deficit with health reform legislation. Sebelius emphasized that health reform will be deficit-neutral over ten years, and that the President has proposed \$950 billion in budget offsets.

While discussing the need for comprehensive reform, Sebelius said she sees reason for optimism because of the many examples of hospitals and physicians that are using technology to improve the quality of health care. She said the challenge is to take these best practices and spread them across the country. The Secretary cited Kaiser, Geisinger, and Intermountain Healthcare as leaders in the effort to advance quality improvements.

When asked about consolidation in the health insurance industry, Sebelius expressed concern that monopolies currently exist in some health insurance markets. She said that consumers have limited health plan choices in some areas of her home state of Kansas, and she suggested that market forces and competition would allow a government-run health insurance plan to lower costs for consumers. Sebelius also suggested that competition is often more effective than heavy-handed regulation.

## *House Republicans' Health Care Solutions Group*

The House Republicans' Health Care Solutions Group is expected to introduce legislation in late July. The basis of the legislation will come from a four-page outline, released in mid-June, that describes their plan for making health care more affordable, reducing the number of uninsured Americans, and improving health care quality.

The House Republican plan proposes tax credits to support the purchase of health insurance, a new small business tax credit, medical liability reforms, new pooling arrangements for small businesses, incentives for state-based programs to cover people with preexisting conditions, prevention and wellness initiatives, tax incentives for long-term care insurance, improvements to Health Savings Accounts (HSAs) and Flexible Spending Arrangements (FSAs), and increased flexibility in Medicaid and the Children's Health Insurance Program (CHIP).

The Solutions Group is chaired by Rep. Roy Blunt (R-MO) and its membership includes, among others, the ranking Republican members of the House committees that have jurisdiction over health care reform legislation.

### **Former Senate Leaders Announce Bipartisan Health Reform Proposal**

On June 17, three former Senate Majority Leaders – Howard Baker (R-TN), Tom Daschle (D-SD), and Bob Dole (R-KS) – announced that they have developed a bipartisan health care reform proposal.

Their proposal is discussed in the report, "Crossing our Lines," released by the Bipartisan Policy Center, that was prepared with assistance from Chris Jennings, a former Clinton Administration official, and Dr. Mark McClellan, a former Bush Administration official. The report outlines policy recommendations organized around four "pillars" of reform:

- *Promoting High-Quality, High-Value Care:* Initiatives in this area address health information technology, comparative effectiveness research, a quality measurement infrastructure, and medical liability reforms.
- *Making Health Insurance Available, Meaningful, and Affordable:* Initiatives in this area include insurance market reforms, a network of state or regional health insurance exchanges, minimum standards for coverage, premium assistance, and the option for states to establish health insurance plans or co-op plans.
- *Emphasizing and Supporting Personal Responsibility and Healthy Choices:* Initiatives in this area include an individual coverage requirement, and public health and wellness programs.
- *Developing a Workable and Sustainable Approach to Health Care Financing:* Initiatives in this area include Medicare and Medicaid payment reforms, limiting the tax exclusion for employer-sponsored health benefits, a fee imposed on certain employers that do not offer or pay for health benefits, and a budget-neutrality requirement for health reform.

The Leaders emphasize in their report that their proposals "are designed to be mutually reinforcing and are intended to function as a package," and they caution that extracting some of the proposals could undermine the structural soundness of the overall package.

Following the release of the report, press reports indicated that Daschle told reporters that the White House may need to forego a government-run health insurance plan in order to secure the votes needed

to achieve comprehensive health care reform. Daschle stated: “We've come too far and gained too much momentum for our efforts to fail over disagreement on one single issue.”

## **OTHER FEDERAL ISSUES**

### **FTC**

Notice issued announcing plans to review Telemarketing Sales Rules regulation 2013 pursuant to a 10 Year a schedule to review all its regulations.

### **“Michele’s Law”**

This federal legislation provides continuation for all health coverage, provided that a treating physician provides written certification stating that the child is suffering from a serious illness or injury, and that the leave of absence is medically necessary.

A health insurance issuer must provide a description of these terms for continuing dependent student coverage during medically necessary leaves of absence, with any notice regarding requirements for certification of student status for continuing coverage.

## **STATE ISSUES**

**The following contains information on proposed and approved legislation.**

### **Arizona:**

- **S 1229 and S 1230 – Prescription Drug History**

Would prohibit records relating to prescription information that contain patient-identifiable and prescriber-identifiable data not be licensed, transferred, used or sold by any pharmacy benefits manager, insurance company, electronic transmission intermediary, retail, mail order or internet pharmacy or other similar entity for any commercial purpose. Certain exceptions apply.

### **Arkansas:**

- **HB 2195 Mental Health Parity**

A health benefit plan that provides insurance coverage for a mental illness or substance abuse disorder shall provide benefits under the same terms and conditions as provided for the treatment of other medical illness and conditions, including without limitation: (a) duration or frequency of coverage; (b) dollar amount of coverage; or (c) financial requirements.

“Mental illnesses” and “Substances abuse disorders” mean those illnesses and disorders that are covered by a health benefit plan listed in the International Classification of Diseases Manual and the Diagnostic and Statistical Manual of Mental Disorders.

- **HB 1930 Hearing Aids**

A health benefit plan shall offer coverage for a hearing aid or hearing instrument sold by a professional licensed to dispense such hearing aid or instrument. Coverage shall not be less than one thousand, four hundred dollars (\$1,400) per year per three-year period.

A “hearing aid” means an instrument or device, including repair and replacement parts that (a) are designed and offered for the purpose of aiding persons with or compensating for impaired hearing; (b) is worn in or on the body; and (c) is generally not useful in the absence of a hearing impairment. Applies extraterritorially.

### **Connecticut:**

- **S 13**  
Rescinds Bulletin S 12, which established a \$15 limit at or below which a present would not be considered a gift.
- **S 135 – Pricing Prescription Drug History**  
Would prohibit the sale of physician prescription drug records.
- **SB 899**  
A marriage, or a relationship that provides substantially the same rights, benefits and responsibilities as a marriage, between two persons entered into in CT or in another state or jurisdiction and recognized as valid by such other state, will be recognized as a valid marriage in CT.
- **S 975 – Direct Response Telemarketing**  
Would provide for robo-calls and restrictions on automatic dialing announcing devices.

### **District of Columbia**

- **Fraud Notice Effective 4/1/09**  
All new filings of application for insurance and claims form must use one of the following fraud notices:

**“WARNING: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits, if false information materially related to a claim was provided by the applicant.” [DC CODE]**

**OR**

**“Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.” [NAIC MODEL]**

- **DC B18-103 “Insurance Claims Consumer Protection Amendment Act of 2009”**  
As initially drafted, this bill would create a private cause of action enabling any “insurance claimant” to bring action for damages against an insurer which has refused “to pay the amount due to the insurance claimant within 30 days of receipt of sufficient documentation of the insurance claimant’s loss, where such refusal to pay is wrong, mistaken, in error, or unreasonable, regardless of any insurer intent.” This initiative is intended to “apply to any adjuster, consultant, engineer, or other person who aids or abets, or provides material support and advice, to an insurer in furtherance of a violation.” Reportedly, the Chair of the Public Services & Consumer Affairs Committee does not intend to move forward with this version of the legislation.

### **Florida:**

- **SB 1324**  
Would establish a do-not mail state registry if people do not wish to receive direct mail marketing solicitations.

### **Hawaii:**

- **S 449**  
Would prohibit, with few exceptions, the use, transfer licensing or sale of a patient’s prescription information for any commercial purpose.
- **S 568**

Would establish an electronic prescription task force to develop a plan to implement a mandatory electronic prescription drug program by 1/1/11.

**Idaho:**

- **H 159 Group Life Insurance**

Effective 4/1/09 providers for NAIC model language allowing commissioner to approve non-traditional groups.

**Illinois:**

- **H 2572 – Privacy Prescription Drug History**

Would create the Prescription Record Privacy Act.

**Louisiana:**

- **S 29 Anti-Caller ID Spoofing Act**

Signed by the Governor on June 19, 2009. Creates the “Anti-Caller ID Spoofing Act,” which defines the unlawful acts that constitute “caller ID spoofing.” Makes it unlawful for a caller to knowingly insert false information into a caller identification system with the intent to mislead, defraud, or deceive the recipient of the call.

**Maine:**

- **SP 384 Domestic Partners**

The Main Insurance Related Laws are amended to repeal the provisions limiting marriage to one man and one woman and now authorizes marriage between two persons that meet other requirements of the law (i.e., Submitting an application for recording of their intentions of marriage).

Maine will also recognize that a marriage of a same-sex couple that is validly licensed and certified in another jurisdiction is recognized under the laws of the State of Maine.

**Maryland:**

- **Producer Compensation**

Insurance Commissioner in considering mandated producer compensation disclosure.

- **S 8 Limits on Gifts**

Effective 10/1/09 limit raised from \$10 to \$25.

- **S 417**

Prescription confidentiality act failed to pass.

**Minnesota:**

- **S 1044 and H 491 Privacy Prescription Drug History**

Would prohibit pharmacy benefit manager, insurance company, electronic transmission intermediary, among others from licensing, transferring, using, or selling records relative to prescription information that contain patient-identifiable and prescriber-identifiable data for any defined “commercial purpose”.

**Missouri:**

- **H 794 Privacy Prescription Drug History**

Would prohibit the transfer, use or sale of prescription information by insurance companies, pharmacy benefits managers and electronic transmission intermediaries.

**Montana:**

- **H 234 Autism: Group Disability Policy: Severe Mental Illness Coverage: Health Insurance**

Signed by Governor April 24, 2009. Requires each group disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended or modified in Montana to provide coverage for diagnosis and treatment of autism disorders for a covered child 18 years of age or younger. Defines what disorders are covered. Requires a policy or certificate of health insurance or disability insurance that is delivered, issued for delivery, renewed, extended or modified to provide a certain level of benefits. This bill does not apply to disability income, life insurance or long-term care policies. Effective Date January 1, 2010.

- **H 267 Prescription Drugs: Database: Fees: Administrative Sanctions: Civil Penalties: Government Immunity**  
Would create a prescription drug database and monitoring program. Would provide definitions. Would establish prescription drug reporting requirements. Would provide for the use of prescription drug information. Would provide for fees to fund the program. Would allow administrative sanctions and a civil penalty for falsely obtaining or knowingly disclosing database information. Would provide for government immunity.
- **H 394 Prescription Drugs: Marketing: Penalties**  
Would prohibit the use of individually identified prescribing information for marketing purposes. Would define various terms. Would provide penalties.

#### **New Hampshire:**

- **H 580 Privacy: Medical Information**  
Would set forth standards for access to health care information in possession of health care providers and the rights of an individual in regard to their health care information. Would allow a health care provider to disclose protected health information to an insurer provided an individual has not elected to prohibit its disclosure. Passed House on March 25, 2009. Sent to Senate.

#### **New Jersey:**

- **New Jersey AB 4108**  
Concerns taxation of certain lines of insurance and dedicates certain additional revenues to the Health Care Subsidy Fund. This bill revises the tax treatment of certain lines of insurance and dedicates the revenue realized from some of that revised tax treatment to the Health Care Subsidy Fund. The bill modifies the tax treatment of group accident and health insurance premiums. It increases the rate on those premiums from the current 1% to 2.25%. The bill also eliminates the "1/8 rule" for all accident and health insurance premiums. Currently, taxable premiums of an insurer are "Capped" at 12.5% of total premiums for any carrier whose taxable premiums in New Jersey exceed 12.5% of its total worldwide taxable premiums (The so-called "1/8 rule"). This change is being made simultaneously with the increase in the premium tax rate for group accident and health insurance, and for the same reason: to promote consistency in the taxation of different types of accident and health insurance carriers. (Signed by Gov 6/29/09)

#### **New York:**

- **Producer Compensation:**  
New York has a proposed regulation that would require all insurance agents (life, annuities, LTC, etc.) to disclose their actual compensation on the policy they are prescribing to the consumer. The regulation would apply to both individual and group products.
- **S 58, S 2836, A 158, A 5448, A 5891, A 6929: Privacy – Prescription Drug History**  
Includes troublesome provisions regarding the use, sale of prescription drug history.

#### **North Dakota:**

- **NB 1284**  
Legislation provides seniors with highest level of protection in the nation against a growing financial fraud that exposes seniors to potential legal liability and unexpected taxes.

**Ohio:**

- **3901-5-11**  
New rule on senior-specific designations and certifications used in the solicitation, negotiation or sale of life or health insurance or annuity products. Effective 7/1/09.

**Oregon:**

- **2009-3 New Filing Procedures for Life and Annuity Advertisements**  
Advertising material created by producers that identifies specific plan designs may be filed or self-certified by the insurer before use direct response materials that include an application need to be filed before use.

**Pennsylvania:**

- **S 423 Direct Response - Telemarketing**  
Would amend the Telemarketer Registration Act providing for definitions and unwanted telephone solicitation calls.

**Puerto Rico:**

- **PC 622 Autism**  
Would prohibit exclusions for autism in medical care plans.

**West Virginia:**

- **S 495: Group Life Insurance – Discretionary Groups**  
Would allow for approval of non-traditional groups.

**Wisconsin:**

- **A 100 - Disability Income**  
Would limit pre-existing condition exclusion to a maximum of one year.