

Special Alert Dec. 23, 2009

Open letter/memo to physicians

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Subject: AMA support for amended Senate health system reform bill

AMA decision to support H.R. 3590 as amended

After carefully evaluating the changes contained in the manager's amendment filed by Senate Majority Leader Harry Reid (D-Nev.), the AMA Board of Trustees voted to support passage of H.R. 3590. In a [letter of support to Sen. Reid](#), the AMA noted the need for additional changes in the final conference committee agreement that reconciles the differences between the House and Senate bills.

The AMA Board's decision to support passage of the amended version of H.R. 3590 is consistent with the recommendation from the AMA Council on Legislation that the AMA support H.R. 3590 while seeking additional changes in the House-Senate conference committee agreement.

AMA success on previous changes in the Senate bill

Before Sen. Reid's manager's amendment was filed, the AMA succeeded in:

- Blocking a proposed Medicare buy-in. The AMA mobilized media, grassroots and lobbying efforts that were a key factor in preventing the Medicare buy-in proposal for individuals ages 55-64.
- Eliminating a proposal to impose a 5 percent cut in Medicare payments to physicians in the top tenth percentile of resource utilization. This provision was in the Senate Finance Committee package but not included in H.R. 3590 as a result of AMA advocacy.

Key modifications the AMA secured in the manager's amendment

During the past few weeks, the AMA has been working seven days a week, around the clock, to modify provisions in the Senate health system reform bill. As a result of AMA lobbying, the manager's amendment filed by Sen. Reid included the following changes:

- Eliminating the budget neutrality adjustment for the primary care and rural surgery bonuses. Other physician services will not be cut to pay for these bonuses as result of this change.
- Eliminating the proposed tax on elective cosmetic surgery and medical procedures. The concept of federal taxation of medical services must be nipped in the bud. Once started, federal taxes could easily expand to cover other elective medical services that are labeled "noncovered" or "not medically necessary."
- Eliminating the proposed Medicare/Medicaid enrollment fee for physicians. We did

- not want to allow a new physician tax or user fee to be authorized that could be ratcheted up in the future to pay for new government initiatives.
- Modifying provisions to establish an independent comparative effectiveness research entity to secure greater representation for physicians on its governing board and to clarify that this entity cannot issue practice guidelines or make coverage, payment or policy recommendations

Further, by being engaged in the negotiation process, the AMA was able to review other proposals while the manager's amendment was being drafted and successfully modified or prevented legislative language that would have been harmful to physician practices.

Key elements in H.R. 3590 that the AMA supports

- Health insurance reforms to provide more choice and access to affordable coverage for individuals and small businesses (e.g. eliminate denials based on pre-existing conditions, discrimination based on health status and gender, annual and lifetime limits)
- Advanceable, refundable tax credits, inversely related to income, for low-income individuals to purchase health insurance
- Creation of health insurance exchanges to stimulate competition and offer more affordable choices
- Additional federal funding to improve the Medicaid safety net
- Coverage for prevention and wellness initiatives without co-payments or deductibles
- Administrative simplification provisions to streamline, standardize and lower the cost of processing health insurance claims

No public plan option

The revised bill does not contain a public plan option and, as noted earlier, the AMA played a key role in blocking the Medicare buy-in proposal.

Medicare physician payment

The AMA urged the removal of a one-year patch to the Medicare physician payment formula in H.R. 3590 that would have provided a 0.5 percent increase in 2010 but would also have led to a 23 percent cut in 2011. Eliminating the one-year patch freed up funds to offset the cost of removing the provisions dealing with budget neutrality, the cosmetic surgery tax and the enrollment fee.

A separate Department of Defense (DOD) appropriations bill passed by the House and Senate averts a Jan. 1 cut of 21 percent. The DOD bill provides for a 60-day extension of the 2009 conversion factor.

Permanent repeal of the sustainable growth rate (SGR) formula is essential to the stability of the Medicare program and to the success of any health reform initiative. The Obama administration, the House leadership and the Senate leadership are committed to passage of a permanent repeal of the SGR before the current two-month extension of the 2009 conversion factor expires on March 1.

On Dec. 19, Sen. Reid stated that after the holidays he will renew efforts to pass a permanent repeal of the SGR. Sen. Max Baucus (D-Mont.) also recently reaffirmed his

support for a permanent repeal of the SGR on the Senate floor.

Medical liability reform

The manager's amendment included a provision offered by Sen. Tom Carper (D-Del.) that authorizes \$50 million over five years for state demonstration programs for alternative medical liability reforms. This provision would allow for a broader array of demonstration projects than the provision in the House bill. It is similar in nature to the \$25 million initiative that President Obama directed the Agency for Healthcare Research and Quality to implement. The grant application process for that initiative closes in late January.

The amended bill also includes a Government Accountability Office study to determine if quality and payment policies create potential new causes of action or legal liabilities for physicians.

During conference committee negotiations, the AMA will be working to maximize the opportunity for alternative medical liability reforms while protecting current state tort reform laws that are effective. The AMA will work to block potential new causes of action that may arise as a result of new federal health policies.

Outstanding concerns with H.R. 3590

The AMA was not able to solve all of its concerns with the manager's amendment and will work vigorously during the House-Senate conference committee negotiations on the following issues:

Independent Payment Advisory Board

The AMA expressed opposition to the proposed Independent Payment Advisory Board in H.R. 3590. Physicians are already subject to a spending target under the Medicare physician payment formula. The proposed board would establish a new spending target that could subject physicians to multiple cuts in a given year. In addition, the Senate bill exempts hospitals and other providers from potential cuts in the first four years the board is in operation. The manager's amendment also expanded the scope of the board and authorized it to make advisory, nonbinding recommendations for private payers.

Additional changes are needed to allow adjustments for legitimate increases in Medicare spending as well as to assure that there is adequate accountability, transparency and physician input for this new body.

Legislation passed by the House does not include an Independent Payment Advisory Board, and several key House members recently signed a letter opposing the creation of such a board.

Cost/quality adjuster

The AMA has been working to modify a proposal authored by Sen. Maria Cantwell (D-Wash.) that proposes to adjust and redistribute individual physician payments based on cost and quality outcomes beginning in 2015.

The AMA supports the concept of value-based payments. The challenge is that some

policymakers want to implement new payment programs before proper measures and tools have been developed and tested. New payment methodologies must be based on scientific data that is accurate, valid and verifiable. The Cantwell proposal goes well beyond the existing state of the art. At this time, we do not have good cost and outcomes measures, and current risk adjustment and attribution methods at the individual physician level are woefully inadequate.

The Senate leadership has committed to working with the AMA during conference committee negotiations to modify the legislation to reflect the need for accurate, valid and verifiable data as the basis for any policy changes.

Medicare data release and quality improvement initiatives

The AMA was able to insert some important safeguards into a provision that would authorize the release of Medicare data that would be aggregated with private payment information to create public provider performance reports.

The AMA pressed Senate offices to be sure that the measures and data are accurate, valid and verifiable. In addition, physicians must be provided advance copies of information before it is publicly released and be given an opportunity to correct inaccurate information prior to the release of public reports.

H.R. 3590 as amended retains the provision that would impose penalties beginning in 2015 for physicians who do not participate in the Medicare physician quality reporting initiative (PQRI) program. The House bill would not impose any penalties on physicians for not participating in the PQRI program.

Physician-owned hospitals

For the past several years, the AMA has led the fight to block legislation to restrict physician ownership of hospitals. Physician-owned hospitals have received some of the highest quality ratings.

Unfortunately, provisions to ban new physician-owned hospitals are in both the House and Senate health reform bills. The Reid manager's amendment does provide a modest time extension, from Feb. 1 to Aug. 1, 2010. The AMA will continue to advocate for legislative modifications in the conference agreement to protect existing physician-owned hospitals.

House-Senate conference negotiations

The AMA has made it clear to senior White House staff, the Senate leadership and the House leadership that its support for a House-Senate conference agreement is contingent upon:

- Movement on a clear pathway for passage of legislation to permanently repeal the SGR by the end of February
- Modifications of the proposed Independent Payment Advisory Board
- Refinements of the quality improvement and Medicare data release provisions
- No new major problematic provisions surfacing in conference

While there were some earlier reports about efforts to circumvent the House-Senate

conference committee process, recent statements from the House leadership indicate that the House will not take the Senate bill as is or with minor changes. As noted earlier, the House bill does not include an Independent Payment Advisory Board, and 53 House members signed a letter objecting to that concept.

The AMA's strategy of constructively working for changes at each stage of the process has put it in a position to have significant influence in the House-Senate conference committee negotiations. The AMA retains the ability to withhold support for a conference committee agreement if it fails to achieve our priority objectives.

We still have not seen the final bill that the president hopes to sign into law. The AMA will be actively engaged throughout the conference committee negotiations to positively influence the key issues for medicine.

Conclusion

The Senate bill is not perfect. But the current health care system isn't perfect either. The pending health system reform legislation will achieve several of the essential elements for health system reform that we outlined last summer. We recognize there are some problems with pending provisions that must be corrected.

We are closer than ever to realizing a number of AMA goals, but we still have important work to do to secure additional changes in the final bill. With your help, input and support we can continue to advance health system reform policies that will benefit patients and physicians.

The AMA will provide you with regular updates on the House-Senate conference negotiations through the *Health System Reform Bulletin*, physician and patient grassroots alerts, the www.hsreform.org Web site and periodic conference calls.
