

## **Health Care Reform – Government Affairs Update (11)**

### **October 27, 2009**

The political winds on Capitol Hill are ever-changing. Over the past week, the policy winds on a major component within the health care reform debate switched direction. Pushed by recent polls showing almost 60% of Americans favor a public plan option, political missteps by organizations opposed to the public plan, and recent analysis that the public plan option is a key element to lowering costs in health care, Democratic leaders have made a number of announcements on the inclusion of a public plan option in the emerging health care reform legislation in Congress.

On Monday, October 26, Senate Majority Leader Harry Reid (D-NV) announced that the Senate had completed merging the Senate Finance Committee and Senate Health, Education, Labor and Pensions Committee bills on health care reform. The merged product will include a public plan option but allow individual states to opt out of a public plan option based on health care insurance exchange. The exact details and legislative language of the merged health care legislation have not been released publicly and are at the Congressional Budget Office (CBO) to be scored. It is expected that legislative language will be released in the coming days and that the Senate will begin its floor debate on health care reform as early as next week. The hope is to conclude Senate action with a vote by the Thanksgiving congressional recess.

Yesterday (Tuesday, October 27), House of Representatives Majority Leader Steny Hoyer (D-MD) announced that Democratic leadership will roll out the House version of health care legislation this week. The legislation will be a merged version of HR 3200, which has been reported out of the three committees of jurisdiction. Hoyer did not say which version of a public plan option would be included in this roll-out. Hoyer did indicate that he believed a "robust" option gets Democrats closer to the 217 votes needed for passage, but he suggested that a public plan option with negotiated rates would add some votes to that total. Releasing the bill this week would satisfy the requirement for 72 hours of review of the legislation before floor action and meet the Democratic leadership's desire to begin floor debate next week.

These two announcements chart a course for the next 3 weeks of floor debate on comprehensive health care reform legislation in Congress. Both chambers should vote prior to the Thanksgiving congressional recess and return to reconcile the two versions through a conference. A key indicator of the viability of completing health care reform in 2009 is the similarity between the final products in the US House and Senate. The recent announcements indicate the intent by the House and Senate to use the same map on some of the more sticky points, such as the public plan option.

As we saw during the August recess, the policy principle of a public plan option in the insurance market reform supported by Democratic leadership and the Obama

Administration is not without controversy or debate. The rowdy town halls of August showed significant opposition to a government-run option in the insurance exchanges. In addition, the support from the lone Republican to date on health care reform, Sen Olympia Snowe (R-ME), was in large part due to its replacement of the public plan option with health care cooperatives. Snowe has expressed disappointment with Reid's announcement, and her support is now in jeopardy. This shifts the focus on moving health care reform to a block of centrist or moderate Democrats in the US Senate. Reid will need to have unified support across his caucus to pass a cloture vote to proceed with debate on health care reform. This 60-vote threshold leaves no room for error or defection.

So if the course is charted, what is the projected sailing for physical therapy in the emerging legislation to reform the health care system in our country? We continue to see major progress on key principles that are important to physical therapy and the patients we serve. In the area of insurance reform, we have been able to see significant reforms to ensure guarantee issue, renewal, and choice in patients' ability to obtain meaningful health care coverage. Guarantee issue ensures that patients would not be denied meaningful coverage due to pre-existing conditions, guarantee renewal would ensure patients would not have their coverage terminated due to a change in health status, and guarantee choice ensures that patients have a choice in their health care insurance. We have also seen all legislation currently on the table include a fundamental principle for APTA that rehabilitation services, provided by licensed health care professionals, are an essential element of a standard benefits package in any proposal to reform the insurance delivery system. Rehabilitation is a critical part of the health care continuum and ensures that individuals can return to the highest function possible in their homes and communities. These issues and strong provider nondiscrimination clauses are critical to improving access, equality, and equity in physical therapy services in a reformed health care delivery system.

In addition to improving access, equality, and equity for physical therapy services in health care reform, APTA has worked diligently to ensure that payment systems to reimburse providers for services are properly structured. With this in mind, APTA is working to ensure that payments for outpatient services are adequate and not subjected to a projected 21% reduction and that the therapy cap exceptions process does not expire on January 1, 2010. Although varied in the exact legislative detail, all health care reform legislation addresses the fee schedule payment update and the therapy cap, with the majority of proposals focused on a 2-year update or extension of existing policy.

We will also be seeking for the inclusion of the limited provision on direct access that was added by amendment in the Senate Finance Committee. This amendment to *"provide greater efficiencies and timely access to outpatient services (including outpatient physical therapy services) through models that do not require a physician or other health care professional to refer the service or be involved in establishing the plan*

*of care of the service, when such service is provided by a health care professional who has the authority to furnish the service under state law”* is consistent with the objectives of health care reform and APTA’s objective to improve patient access through the removal of arbitrary barriers to high-quality physical therapist care.

The coming weeks will prove to have some rough waters as we move toward the destination of health care reform. The progress to date is a direct result of the focused and continued advocacy by physical therapists throughout the country. We will need you to continue to do your part to ensure that health care reform, if passed, is reform that advances our profession for the patients we serve. APTA has not taken a position of support for the overall legislative package on health care reform and appreciates that we have members on both sides of that debate. Health care reform will have an impact beyond our profession whether it is passed or defeated. APTA is continually assessing its ramifications on patients, taxpayers, and our country. Our goal is to continue to engage in the legislative process to ensure that physical therapy is best represented as a solution in whatever product develops.

Before closing, we wanted to also provide you a quick update on legislation that was taken directly to the Senate floor last week to replace the projected 21% reduction with a 0% update for the coming years. This legislation, S 1776 - Medicare Physician Fairness Act of 2009, failed on a procedural vote. The opposition was due primarily to the added burden of almost \$250 billion to the federal deficit. Although this initiative was overwhelmingly defeated, efforts to prevent the 21% reduction are included in health care reform, and it is expected that Congress will act to override this cut by January 1, 2010. We also expect that the final rule on the Medicare physician fee schedule will be released this Friday, October 30. This rule is expected to contain an update for physical therapists in their practice expense and regulations on cardiovascular and pulmonary rehabilitation. Although most of the debate on health care is occurring in Congress, significant developments (and possibly reforms) are ongoing within the federal agencies that implement payment policies in the US.