

ADVOCACY UPDATE

August 1, 2009

House Energy and Commerce Committee concludes health system reform mark up

The House Energy and Commerce met throughout the day on Friday to mark up H.R. 3200, the "American Affordable Health Choices Act of 2009," completing its work at 9:00 p.m. last night. The bill was approved by a vote of 31 to 28, with five Democrats voting against it.

The long anticipated Blue Dog agreement was adopted late in the day as an amendment offered by Rep. Mike Ross (D-Ark.). Highlights of that agreement include:

- [Public Plan Option](#): Requires the Secretary of Health and Human Services (HHS) to negotiate payment rates in the public plan, so that they would not be lower than Medicare or higher than the average rates paid by private plans in the Health Insurance Exchange. Requirements for physicians and other providers to opt-out of participating in the public plan are specified.
- [CO-OP](#): Establishes a Consumer Operated and Oriented Plan (CO-OP) program, through which grants and loans will be made for the creation and initial operation of not-for-profit, member-run health insurance co-ops that provide insurance through the exchange.
- [Subsidies and mandates](#): Those who are offered insurance by their employers would be ineligible for subsidies (affordability credits) in the exchange unless their premiums equal more than 12 percent of their income. More small businesses would be exempt from the pay-or-play mandate.
- [Medicaid](#): Reduces federal responsibility payments (FMAP) for required Medicaid expansions from 100 percent to 90 percent beginning in 2015.
- [End-of-life planning](#): Provides for dissemination of information on end-of-life planning by qualified health benefits plan (QHBP) entities, including option to establish advanced directives and physicians' orders for life-sustaining treatment. Specifies that the QHBP entity shall not promote suicide, assisted suicide or the active hastening of death (consistent with

- state law) and that the information shall not presume the withdrawal of treatment. Prohibits promotion of assisted suicide.
- [Center for Medicare and Medicaid Payment Innovation](#): A Center for Medicare and Medicaid Payment Innovation would be established to test the effect of payment models on spending and quality of life under the Medicare and Medicaid programs. The Secretary may implement the model on a nationwide basis if it improves quality without increasing spending and/or reduces spending without reducing quality.

Descriptions of other amendments of interest that were considered yesterday follow. (The list is not exhaustive.)

[Public health plan](#): Rep. Cliff Stearns (R-Fla.) successfully offered an amendment that would prohibit taxpayer bailouts to subsidize the public plan. An amendment offered by Rep. George Radanovich (R-Calif.) that would have required the public plan to be subject to state taxes and other requirements was defeated. An amendment by Rep. Joe Barton (R-Tex.) was rejected that would have, in lieu of a public health insurance option, expanded state reinsurance programs and state high risk pool programs for those with pre-existing or other high risk conditions, and an amendment by Anthony Weiner (D-N.Y.) was withdrawn that would have established a single payer health care system.

[Medical liability reform](#): Rep. Doyle (D-Pa.) offered and the committee adopted a block of amendments (not available for review this morning) that included language drafted by Rep. Bart Gordon (D-Tenn.) that provides financial incentives to states that enact certificate of merit and/or early offers programs in medical liability cases.

[Health savings accounts](#): An amendment to clarify that health savings accounts are qualified health benefits plans that may be offered through the Health Insurance Exchange, sponsored by Rep. Michael Rogers (R-Mich.) was defeated.

[Insurance reforms](#): An amendment by Rep. Betty Sutton (D-Ohio) was adopted addressing limitations on preexisting condition exclusions in group and individual coverage. The committee rejected an amendment by Rep. Steve Buyer (R-Ind.) that would have allowed providers and health insurers to offer premium discounts, rebates, or modified copayments or deductibles to individuals who participate in health promotion or disease prevention programs.

Health Benefits Advisory Committee: An amendment by Rep. Greg Walden (R-Ore.) was adopted that would require at least 25 percent of the members of the Health Benefits Advisory Committee to be health care practitioners who practice in a rural area and have done so for at least the previous five years. It also requires that the proportion of Medicare Payment Advisory Commission members who represent rural providers be proportional to the total number of Medicare beneficiaries who reside in rural areas.

Medicaid and CHIP: Rep. Zack Space (D-Ohio) sponsored an amendment, which was adopted, that prohibits payments under Medicaid and the Children's Health Insurance Program (CHIP) for undocumented immigrants. An amendment by Rep. Lois Capps (D-Calif.) was adopted that would eliminate copayments for certain Medicaid preventive services. Rep. Eliot Engel (D-N.Y.) successfully offered an amendment to ensure Medicaid coverage of non-emergency transportation to medical necessary services. An amendment by Rep. Peter Welch (D-Vt.) was adopted that would allow a limited exception to the maintenance of effort requirement for Medicaid. An amendment by Rep. Anna Eshoo (D-Calif.) was adopted to clarify Medicaid coverage for citizens of freely associated states (Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau). Another amendment authored by Rep. Donna Christensen (D-V.I.) that would have increased Medicaid payments to the U.S. territories was withdrawn.

Medicare benefits: Rep. Gene Greene (D-Tex.) offered a block of amendments, all of which were adopted, addressing certain Medicare benefits. One amendment addressed payment for post-mastectomy external breast prosthesis garments. A second amendment adds "presence of impairments" to the assessments for patient-centered and population-based quality measures. The Greene amendments also require the HHS Secretary to report to Congress on Medicare barriers to abdominal aortic aneurysm screening and other preventive services approved by the U.S. Preventive Services Task Force. In addition, the Secretary would be required to make the education of physicians and patients about the risk factors for abdominal aortic aneurysm a priority.

Medicare payments: An amendment by Rep. Ed Whitfield (Ky.) was adopted to place a moratorium on Medicare payment reductions for several interventional pain management procedures covered under the ambulatory surgery center fee schedule.

Pharmaceuticals: An amendment by Rep. Bobby Rush (D-Ill.) was adopted that would prohibit current settlement agreements between brand-name and generic pharmaceutical companies where brand companies pay a significant sum to the first generic company that files to challenge the brand company's patent. The Federal Trade Commission would be conferred with enforcement authority to regulate such agreements. Another amendment, offered by Rep. Anna Eshoo (D-Calif.), was adopted that would confer the FDA with authority to establish an abbreviated pathway to approve biosimilars for market.

Affordability and cost containment: Amendments offered by Rep. Janice Schakowsky (D-Ill.) and Tammy Baldwin (D-Wis.) were adopted to require savings generated through various provisions in the bill to be used to make **premiums** more affordable for lower income people in the exchange. The amendment offered by Rep. Baldwin would also require the Secretary of HHS to adopt operating rules for specified electronic transactions and to establish a unique health plan identifier system, and would mandate the use of electronic funds transfers under Medicare by 2015. An amendment by Rep. Phil Gingrey, MD (R-Ga.) that was rejected would have required the Secretary to develop a methodology that ensures that any savings to Medicare resulting from the Medicaid and Medicare Improvements included in the bill and amendments shall be used solely for the purpose of improving the affordability of health care for Medicare beneficiaries.

Physician hospital ownership: Rep. Joe Barton (R-Tex.) offered and withdrew an amendment that would have struck the bill's restrictions on physician-owned hospitals. After considerable discussion, Committee Chairman Henry Waxman pledged to work with Rep. Barton to develop compromise language for later incorporation into the legislation.

To view all the amendments offered during the committee debate, visit <http://energycommerce.house.gov>.

The Energy and Commerce Committee is the third panel in the House to mark up H.R. 3200. Over the August recess, the three committee products will be combined into a single bill for consideration on the House floor.

For the latest developments on health system reform legislative activities and AMA advocacy efforts, please go to www.ama-assn.org/go/reform.

