

Senate Finance Committee Releases First Healthcare Reform Policy Paper

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On April 28, Senate Finance Committee Chairman Max Baucus (D-MT) and Ranking Member Chuck Grassley (R-IA) released the first in a series of three healthcare reform policy papers, “Transforming the Health Care Delivery System: Proposals to Improve Patient Care and Reduce Health Care Costs” (the Delivery System Options Paper or Options Paper). The members of the Senate Finance Committee (both Democrats and Republicans) are expected to begin discussion of the Delivery System Options Paper today.

Two other option papers (addressing increasing healthcare coverage and financing healthcare reform) will be released by the Senate Finance Committee in May. The Committee intends to synthesize the options discussed within these three papers into a Chairman’s Mark (the starting point for Committee deliberations) on overall healthcare reform. In addition, the Committee continues to work closely on healthcare reform with the Senate Committee on Health, Education, Labor, and Pensions (HELP).

Many of the proposals included in the Delivery Systems Options Paper hinge on the Medicare and Medicaid programs. Briefly, the Options Paper proposes the following reforms:

- **Modification of the Medicare value-based purchasing (VBP) program** so that hospitals are paid for their actual performance on quality measures, rather than being paid for reporting on quality measures. Funding for the incentive bonuses would be generated through reducing other Medicare payments to hospitals. The selection of measures, the development of the methodology for assigning scores, and the development of the methodology for calculating payments would be made transparent and public through rulemaking. The Options Paper also includes an option to implement Medicare VBP implementation plans for home health agencies and skilled nursing facilities and modifies the Physician Quality Reporting Initiative (PQRI).
- **Amendment of the physician self-referral statute’s (the Stark Law’s) in-office ancillary services exception** to require physicians to disclose their financial interests in certain imaging and radiology services, including MRI, CT, PET, and other services. The Options Paper also proposes various imaging appropriateness criteria measures.
- **Establishment of new quality reporting programs** for inpatient rehabilitation and long-term-care hospital providers.

- **An increase in primary care services bonus payments** to certain Medicare physicians. This option considers providing a bonus of at least 5% for certain primary care services and for general surgeons practicing in scarcity areas. These bonuses would be offset by reductions in payments for other services. In addition, the Options Paper proposes payments for “transitional care management” for chronically ill patients.
- **Establishment of a Chronic Care Management Innovations Center** to test and disseminate payment innovations to foster patient-centered care coordination for chronically ill Medicare beneficiaries.
- **Reduction of hospital readmissions** by penalizing hospitals with high rates of readmissions beginning in FY 2013. Beginning in FY 2015, the Options Paper recommends Medicare bundle payments for acute hospital services and post-acute care services. The Options Paper includes a proposed timeline for the implementation of the readmission and bundling policies.
- **The anticipated 21% reduction** in the 2010 Medicare physician fee schedule is addressed in the Options Paper with options to update the fee schedule by 1% and/or established floors in the future. The financing of this option is not discussed in the Options Paper.
- **Establishment of requirements for “accountable care organizations” (ACOs).** ACOs would be paid on a fee-for-service basis, but would also be eligible for incentive payments for meeting quality indicators.
- **The permanent authorization of the Medicare Health Care Quality Demonstration Program.**
- **Expansions of the types of Medicare providers eligible for incentive payments** from the Medicare and Medicaid programs for adoption and use of electronic health records, as established by the Health Information Technology for Economic and Clinical Health (HITECH) Act.
- **Expansion of the U.S. Department of Health and Human Services’ activities** to develop and improve quality measurement and development, with continued emphasis on furthering comparative clinical effectiveness research, and an increase in transparency requirements.
- **Requirement of transparency in the relationships between physicians and manufacturers** of drugs, devices, biologics, and medical supplies with regard to physician payments and ownership. This option is similar to the provisions proposed in S. 301, the Physician Payments Sunshine Act of 2009, sponsored by Senators Chuck Grassley and Herb Kohl (D-WI).
- **Elimination of the “whole hospital” and rural provider exceptions to the Stark Law,** with an inclusion of a limited “grandfather” provision.
- **An increase in the regulatory scrutiny of skilled nursing faculties and nursing homes** by the Medicare and Medicaid programs, including establishing ownership disclosure requirements.

- **Discussion of the options for addressing the workforce shortage of physicians** and other healthcare professionals.
- **Tying payments to Medicare Advantage plans to performance on quality measures**, similar to the imposition of heightened quality requirements on Medicare providers. Several approaches for modifying the Medicare Advantage benchmark formula, including use of competitive bidding, are also included.
- **Additional efforts to combat fraud, waste, and abuse**, including requiring Medicare and Medicaid providers to adopt compliance programs and increasing the level of monetary penalties for certain violations. The Health Care Fraud and Abuse Control program will also receive additional funding for increased activities by enforcement agencies.

The full Delivery System Options Paper may be found at <http://finance.senate.gov/sitepages/leg/LEG%202009/042809%20Health%20Care%20Description%20of%20Policy%20Option.pdf>.

The Senate Finance Committee's press release may be found at <http://finance.senate.gov/press/Bpress/2009press/prb042809.pdf>.

We will continue to follow congressional developments related to healthcare reform and provide timely updates as warranted. If you have any questions regarding any of the issues discussed in this LawFlash, please contact the following Morgan Lewis attorney:

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