Budget Reconciliation

After a full weekend of work and a day and night of legislative horse-trading and last-minute tinkering, the House adjourned Monday morning, December 19, having passed a conference committee version of a long-awaited and debated $39.7 billion spending reduction measure. After working all night on the details, the chamber adjourned at 6:27 a.m., and is not scheduled to return until January 31. On Wednesday, December 21, the Senate approved the budget bill by the narrowest possible margin, 51-50, with the Vice President breaking the tie vote.

The budget bill freezes the Medicare Physician Fee Schedule payments to physicians (and some home health providers) through 2006. Without action on the update, physicians faced a 4.4-percent cut beginning on January 1. In addition, the conference committee dropped pay-for-performance provisions for physicians and asked MedPAC to recommend an appropriate system of “value-based purchasing” for physician services.

The final outcome in the Senate was uncertain until the very end because several provisions in the bill, like increases in Medicaid beneficiary cost-sharing, persuaded several Senate GOP moderates, along with all of the Democratic Senators, to vote against the package.

While the Senate approved the bill, procedural issues require the House to vote on the bill again. However, unlike the appropriations bills that set funding for FY 2006, the budget reconciliation legislation is not essential to keep the government running. Therefore, the House might not vote on this bill until it returns to Washington in early February. In that case, it is not clear if CMS will enforce the 4.4-percent reduction in physician payments after January 1 until the House acts. In addition, it is important to note that the interim period gives opponents another several weeks to build resistance to the budget bill. Given the slim margin of approval in the House (212-206), it is not inconceivable that the outcome in the House could change.

Appropriations

The Labor/HHS spending bill continued its awkward steps toward passage following its startling defeat in the House on November 17, by a vote of 224-209. To corral largely rural members who had opposed the bill, House leaders rearranged dollars within the legislation to direct $90 million to mainly rural programs, i.e., rural outreach grants and rural health outreach. Included in the list of seven programs receiving increases, however, was Section 747, which received $13 million, bringing the total from $28 million in the original conference report to $41 million. Nevertheless, this figure is still substantially lower than the current level of $89 million. Other programs had their funding restored to FY 2005 levels: AHECS; Scholarships for Disadvantaged Students; and Faculty Loan Repayment. Consequently, on December 14, the House narrowly passed its second Labor/HHS conference report by a vote of 215-213.
Late December 21, 2005, the Senate accepted the conference committee’s version by voice vote.

While the Labor/HHS conference report contains $41 million for Section 747, like all non-veterans domestic programs, it will be subject to an across-the-board cut of 1 percent, which will decrease funding for the program to $40.89 million. In the final analysis, this is a 54-percent reduction from current funding.

Funding for the Agency for Healthcare Research and Quality will remain the same as last year, namely $318.7 million before the 1 percent across-the-board reduction. The bill also provides for a $253 million or 0.89-percent increase in the NIH budget, but the increase will be eliminated by the across-the-board cut. The bottom line is that NIH is now facing its first cut in funding in more than 35 years.

The Labor/HHS bill included $54.9 billion for the new Medicare Part D drug benefit, the first time spending for this new law had been included.

The Defense appropriations bill also passed the Senate on December 21 by a vote of 93-0. The measure includes $3.8 billion for pandemic flu preparedness along with $29 billion to rebuild the Gulf Coast. The overwhelming show of support for this bill masks the rancorous debate in the hours preceding the vote. The Senate refused to allow oil drilling in Alaska (the Arctic National Wildlife Refuge, ANWR), a provision that had been attached to the Defense Department’s appropriations bill. After removing the ANWR amendment, the measure passed the Senate quickly.

**Medicaid**

The budget reconciliation bill that is pending in the House would achieve about $4.8 billion in net savings from Medicaid over five years. The bill would give states greater flexibility to require co-payments and higher premiums of beneficiaries and to limit their benefits, as well as tighten the rule for transfers of assets by individuals to obtain Medicaid coverage for long-term care.

**Extension of Specialty Hospitals Moratorium**

Physicians are currently prohibited from referring Medicare and Medicaid patients to facilities in which they or their immediate family members have financial interest. Physicians, however, are not prohibited from referring patients to hospitals where they have ownership or investment interest in the whole hospital (and not merely in a subdivision of the hospital). The Medicare Modernization Act (MMA) of 2003 established an exception for physician investment and self-referral and that such exception would not extend to specialty hospitals for a period of 18 months beyond enactment (that is, through June 8, 2005).

The budget agreement directs HHS to develop a strategic plan regarding physician investment in specialty hospitals that addresses issues related to proportionality of investment return, bona fide investments, annual disclosure of investment information and the provision of Medicaid and charity care by specialty hospitals. An interim report is due within three months and a final report no later than six months after date of enactment of this legislation. CMS will continue suspension on enrollment of new
specialty hospitals until the earlier of the date of submission of the report or 6 months after date of enactment. If HHS fails to comply with the statutory requirement to submit the final report within the six month time period, then the suspension on enrollment will be extended an additional two months.

Imaging Services Payments Adjusted
The conference agreement provides that for specified imaging services furnished beginning in 2007, the technical component for a service will be reduced if it exceeds the outpatient department (OPD) fee schedule amount for the service established under prospective payment system for hospital outpatient departments. This provision does not apply to diagnostic and screening mammography.

Limitation on Payments for Procedures in Ambulatory Surgical Centers
Services provided in an ambulatory surgical center (ASC) are currently reimbursed under an ASC fee schedule, while associated physician services (anesthesia and surgery) are reimbursed under the Medicare Physician Fee Schedule (MPFS). Under the MMA, CMS is required to implement a new payment system for ASC no later than January 2008.

The conference agreement requires that beginning on January 1, 2007, when the facility payment for an ASC is greater than the Medicare payment calculated under the outpatient prospective payment system (OPPS), the ASC will be paid the OPD fee schedule amount. This method will apply to ASC payments until the revised ASC payment (required by MMA) is implemented.

Colorectal Screening Deductible
The budget bill waives the Part B deductible for colorectal screening tests effective January 1, 2007.

Cutbacks in Student Aid
The budget reconciliation bill included a provision to reduce spending on student loans by $12.7 billion over five years. The bill increases the loan interest rate paid by students and parents from 7.9 percent to 8.5 percent.

Mental Health Parity
The Senate on Thursday, December 21, by voice vote passed a bill (H.R. 4579) that would extend for one year a mental health parity law under which health insurers cannot place caps on annual or lifetime mental health benefits unless they place similar caps on medical and surgical benefits. The legislation would extend a 1996 scheduled to expire on December 31. The House had passed the bill on December 17.

STATE ACTIVITY
The District of Columbia, Michigan, New Jersey, Ohio, Pennsylvania (running concurrent special sessions) and Wisconsin are in session. Alabama, Arizona, Delaware, Florida, Georgia, Kansas, Kentucky, Maine, Missouri, North Dakota, New
Hampshire, Oklahoma, South Carolina, Tennessee, Virginia, Washington and Wyoming are currently prefiling legislation for 2006 legislative sessions.

**Professional Liability Insurance**

**Kentucky**
Governor Ernie Fletcher (R) has announced a constitutional amendment capping damage awards as part of his 2006 legislative agenda. Gov. Fletcher—a family physician—did not offer specifics on his proposal.

**Wisconsin**
As expected, Governor Jim Doyle (D) vetoed legislation capping medical liability awards at $450,000 for adults and $550,000 for children. Gov. Doyle stated that he felt the bill’s language followed too closely that of a previous law that was struck down recently by the State Supreme Court. Legislative leaders are considering an attempt to override the veto.

**Medicaid/SCHIP**

**Florida**
Governor Jeb Bush (R) signed into law the Sunshine State’s Medicaid demonstration project. The demonstration will pay managed care organizations a fixed per-member per-month fee to serve Medicaid enrollees in Broward and Duval counties. The MCOs will then have nearly free rein to alter benefit plans for Medicaid recipients as they see fit. The goal is to provide the state with consistent and predictable Medicaid costs, to increase program flexibility and responsiveness, and to spread cost risk. The demonstration will go into effect July 1, 2006.

**Montana**
The Governor's office announced that, thanks in large part to a recent increase in the tobacco tax, the state government has the funds to add 2,000 children to its SCHIP program. State officials stated the program will now have a capacity of about 14,000 children, while an estimated 15,000 children in the state still remain eligible for the program.

**Vermont**
The Vermont Legislature is moving forward with plans to reorganize part of the executive branch in response to the Green Mountain state’s recently-approved block grant waiver. Several health agencies will be consolidated into a new state-run HMO-style agency that will oversee administration of the new “Global Commitment to Health” program.