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Hot Button – November 19, 2009

Senate Majority Leader Reid Unveils $849 Billion Senate Health Reform Legislation

Late yesterday, Senate Majority Leader Harry Reid (D-NV) released the "Patient Protection and Affordable Care Act," an $849 billion health care reform bill that would provide health care coverage to 94 percent of Americans. The 2074-page bill, a combined version of legislation developed by the Senate Finance and Health, Education, Labor, and Pensions committees, will likely face its first test November 21, when the Senate is expected to vote on a motion to proceed to debate on the bill, which requires 60 votes to succeed. Assuming the vote succeeds, the Senate would likely begin floor debate on the bill the week after Thanksgiving.

There are a number of provisions in the Senate bill that would directly impact durable medical equipment (DME), most are substantially similar to those contained in the Senate Finance Committee package released in September:

1. ANNUAL FEE ON MANUFACTURERS AND IMPORTERS OF MEDICAL DEVICES (Section 9009)

This provision would impose an annual flat fee of $2 billion on the medical device manufacturing sector beginning in 2010. This non-deductible fee would be allocated across the industry according to market share. The fee would not apply to any sale of a Class I product or any sale of a Class II product that is primarily sold to consumers at retail for not more than $100 per unit (under the FDA product classification system). Small manufacturers, defined as those companies with sales of medical devices in the U.S. of $5 million or less, would be exempt, and firms with U.S. sales between $5 million and $25 million would pay the tax on 50% on the sales.

The Secretary of the Treasury would require manufacturers to file an annual report of its covered domestic sales for the prior calendar year. The Secretary would establish individual assessments by determining the relative market share for each covered entity. A covered entity's relative market share would be the entity's covered domestic sales as a percentage of the total reported covered domestic sales for all covered entities.

In the September Senate Finance Committee package, this excise tax proposal was double the size, producing revenues of $40 billion over ten years. The House provision would also raise $20 billion over ten years, but takes a wholly different approach to imposing the tax.

2. EXPANSION OF ROUND 2 AND BEYOND OF COMPETITIVE BID PROGRAM (Section 6410)

This provision would expand Round 2 of the competitive bid program by 21 additional metropolitan areas. It would also require the Secretary to bid all areas of the country or apply bid rates nationwide by 2016.

3. ELIMINATION OF FIRST MONTH PURCHASE OPTION FOR STANDARD POWER WHEELCHAIRS (Section 3136)

Effective for services beginning January 1, 2011, beneficiaries would no longer have the option to have Medicare purchase a standard power wheelchair in the first month of medical need. Instead, the Medicare program would pay on a rental basis for 13 months, and ownership would transfer at that time. DME suppliers would be paid 15% of the purchase price in months one through three, and 6% of the purchase price in months four through 13. Complex rehab power wheelchairs would retain the first month purchase option. This provision would not apply to any contracts entered into prior to January 1, 2011 under the competitive bid program.

4. ELIMINATION OF CPIs INCREASES; IMPOSITION OF ANNUAL PRODUCTIVITY ADJUSTMENT (Section 3401)

The provision would eliminate the 2014 two percent add-on payment (above CPI) for DME that Congress provided for in last year's Medicare Improvements for Patients and Providers Act. Instead, DME fee schedules updates would be reduced each year by a "productivity adjustment" estimated to result in a minus one percent applied to the annual update factor for DME items.

5. ACCREDITATION EXEMPTION FOR CERTAIN PHARMACIES (Section 3109)

This provision would exempt from the accreditation requirement pharmacies with less than 5 percent of revenues from Medicare DMEPOS billings until the Secretary of HHS develops pharmacy-specific standards.