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NEWS FROM CQ ROLL CALL. ANALYSIS FROM THOMSON REUTERS.

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NOTE TO OUR READERS: Due to the impending sale of the Thomson Reuters health unit, This Week in Healthcare will cease publication following the June 1 edition. CQ Roll Call and Thomson Reuters would like to thank our subscribers for the opportunity to serve them with this unique blend of CQ Roll Call health policy news and Thomson Reuters analysis. Look for continued health policy coverage each afternoon in CQ HealthBeat.

Hospitals go up against medical device companies on tax issue

By Rebecca Adams, CQ HealthBeat Associate Editor

May 8, 2012

Hospital officials are pushing the Internal Revenue Service to stop medical device companies from passing on the cost of a new federal tax on their companies to the hospitals by raising the cost of the products. The new tax takes effect in January. The move by the hospitals puts them squarely against the medical device industry.

While there is often quiet jockeying among different sectors of healthcare, it is not every day that one industry group fights against another's top priority so publicly. The hospital groups argue that it would not be fair to ease the burden on device companies by allowing them to pass through this new tax, while other parts of the industry are being asked to cut down their costs in the 2010 healthcare overhaul.

Hospital lobbyists also said it appears that because the device companies will be able to deduct the fees from their taxes, they would enjoy a "windfall" if they also were also able to raise prices to recover the costs of the new taxes. A group of five trade associations raised the concerns in a recent letter to the IRS.

Officials at the Advanced Medical Technology Association (AdvaMed) responded with raised eyebrows.

"AdvaMed is puzzled by the Federation's letter," David Nexon, senior executive vice president for the organization, said in a comment to CQ HealthBeat. "Like the share of Medicare cuts hospitals shift to privately insured or uninsured patients, the incidence of excise taxes has always been determined by market forces."

In other words, if the federal government does not try to curb cost-shifting by hospitals, why should it get involved in the prices that device manufacturers charge?

"There is nothing in the underlying legislation that would allow the IRS to micromanage supplier-customer relations in the way the letter suggests," Nexon said.

Nexon said one of the reasons that the device industry has made the elimination of the tax a top priority is that it could cost as many as 43,000 jobs. The 2.3 percent tax is supposed to take effect in January 2013.

Hospitals' concerns

A wide range of healthcare industries were asked to contribute to the federal healthcare overhaul through new taxes or reduced Medicare payments, according to the letter from the hospitals.

"The IRS should implement the device tax in a manner that recognizes the 'shared responsibility' commitment from a broad group of key healthcare stakeholders, including medical device companies, to bring forward long-needed national health reform," said the 10-page letter, which was signed by officials from the Federation of American Hospitals, the American Hospital Association, The Catholic Health Association of the United States, the Healthcare Supply Chain Organization and the Association for Healthcare Resource and Materials Management.

"Medical device companies should not be permitted to sidestep their ACA [healthcare law] financial contribution by passing the tax through to their customers, including hospitals," the letter went on.

The hospital groups want the rule governing this new excise tax to specifically prohibit device makers from passing the tax on to the hospitals by raising prices. The groups also said manufacturers should be required to certify on federal excise tax returns that they have not included the tax as part of the prices of their products.

The consequences of allowing the tax to be passed on, according to hospital leaders, would be higher healthcare system costs, potential harm to patients and a heavier burden on hospitals that had agreed to accept USD 155 billion in lower federal health payments over 10 years as part of the healthcare overhaul deal.

AdvaMed officials sent their own letter to the IRS asking for the tax to be implemented in ways that minimize the impact on the industry. They also asked lawmakers to repeal the tax, but that would be difficult given the cost-cutting climate on Capitol Hill.

ANALYSIS



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Ray Fabius, Michael L. Taylor, Michael R. Udwin and William Bithoney of Thomson Reuters answer questions from Dena Bunis, CQ HealthBeat Managing Editor.

Q. What do you make of this face-off between the hospitals and the device industry?

Fabius. *This face-off between the hospital and device industries is emblematic of the present healthcare system which is fragmented and inefficient. All experts believe that market forces will require greater collaboration and coordination between healthcare constituencies in the near future and eliminate conflicts over the distributions of healthcare dollars. In particular, hospitals and device companies should work more closely together to ensure that the right medical device gets to the right person at the right time.*

Taylor. *Virtually all industries respond to higher costs in one of two ways: increase the price of the product or find some way to save money in the production process. Ultimately, the consumer will pay the extra cost. Healthcare is different because the consumer is shielded from the true cost, which will ultimately go to employers and the government as higher insurance costs. The device industry is attempting to offset their higher costs by raising the price of the product. Hospitals are constrained from increasing their prices by the government (through Medicare), so it is to be expected that hospitals would push back against this price increase.*

Udwin. *With medical device industry concern over jobs and diminished reimbursements in the hospital space, it is expected that both groups would offer compelling arguments. This backdrop can only heighten the impact of competitive market forces in shaping and*

shifting costs.

Bithoney. *It is not surprising. In an era of constrained budgets the healthcare industry will continue to try to impose such cost shifting. To prevent this by legislative mandate and fiat is not necessarily useful. In a true free market economy such legislation would not be considered. In healthcare though, markets for lifesaving devices are not truly open. In spite of this it is best to let the market decide prices without federal mandates.*

Q. Should the IRS put some sort of limitation on device companies passing the new excise tax onto their customers?

Fabius. *While it seems fair for all healthcare constituents to “contribute” to mitigating the unsustainable rise in healthcare costs, policing device companies in a way that truly prevents them from passing along a new tax seems difficult.*

Taylor. *The excise tax is really just a higher price for the product; it seems unlikely the IRS will start dictating prices in the private market.*

Udwin. *Questioning the potential outcome of deducting fees which had been passed on is not unreasonable. Yet, attempts to limit this practice may prove problematic and set a complicated precedent.*

Bithoney. *Further price controls and legislative fiats are not the answer here. Payers routinely work with hospitals to cut prices for medical devices. Hospitals may need to work more cooperatively with payers to prevent price gouging.*

Q. What do you think will happen?

Fabius. *In the same way that hospitals' cost shift Medicare reductions into higher costs for the privately insured, the medical device companies will pass the cost for this new tax along to the greatest extent the marketplace will allow. All successful companies attempt to at least maintain their profit margin despite new taxes by raising revenue or reducing other expenses. Perhaps a few benchmark device companies will find ways to reduce other costs, so that they will not need to pass the new tax onto hospitals and consumers.*

Taylor. *It will be interesting to watch as this unfolds. I suspect the device industry will win this battle. The real process improvement would be to change the payment methodology, from a-fee for-service model to one in which the hospital, as an accountable care organization, receive a global payment for services to a defined population. This would, in all likelihood, lead to a decrease in the demand for medical devices and stabilize the prices.*

Udwin. *Given the reluctance to open “settled” issues, I suspect the Internal Revenue Service will not intervene. This inaction may place an additional burden on hospitals which will look for ways to manage the costs and, if possible, pass along these fees to others.*

Bithoney. *If Congress legislates prices for devices, where will it stop? Will we then legislate prices for expensive drugs which can cost thousands of dollars per dose? For MRI machines? This is a slippery slope on which we should not venture.*

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Primary care doctors who treat Medicaid patients get a two-year boost

By Jane Norman, CQ Healthbeat Associate Editor

May 9, 2012

Primary care physicians will receive reimbursements for Medicaid equal to what Medicare pays in a two-year “fix” mandated by the healthcare law, said Health and Human Services officials.

The increase will apply to Medicaid services provided in calendar years 2013 and 2014, and will go to family practice physicians, pediatricians and other practitioners of family medicine, as well as some primary care sub-specialists such as neonatologists.

This could be a significant payment increase for many doctors. States set Medicaid provider reimbursement rates. Primary care practitioners currently are paid 66 percent of the Medicare rate on average, though the actual percentages vary from state to state, Centers for Medicare and Medicaid Services (CMS) officials told reporters in a conference call.

Cindy Mann, deputy administrator at CMS, said that the USD 11 billion, two-year boost in reimbursements will be entirely paid for by the federal government rather than the state-federal sharing that generally is the practice for Medicaid. One of the key goals of the healthcare law is to emphasize primary care and the increased payments are an example of that, even if they will only last two years, Mann said.

The reimbursement increase was included in a proposed rule recently published by CMS.

Roland Goertz, board president of the American Academy of Family Physicians, who was on the call with Mann, said that family doctors know that people who do not have access to care put off health needs sometimes making a simple problem complicated. Two-thirds of the members of his academy continue to accept Medicaid patients even though the payment rates are low, he said. “We can’t continue to