

# AFROC



ASSOCIATION OF FREESTANDING RADIATION ONCOLOGY CENTERS

*Our Voice in Washington*

## The Source

April - May 2009

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### 2009 DUES

Third and final notice for 2009 AFROC dues have been mailed. To assure that your name will remain on our mailing list, please let us hear from you.

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## LEGISLATIVE NEWS

### CMS HEARS CONCERNS ABOUT REDUCTIONS IN HDR BRACHYTHERAPY SERVICES AFFECTING FREESTANDING CENTERS

Members of the Joint HDR Brachytherapy Working Group met with key leaders of the Centers for Medicare and Medicaid Services (CMS) on March 9, 2009 to discuss the practice expense inputs of the 2009 High Dose Rate (HDR) brachytherapy codes and provide both short-term and longer-term recommendations to correct inputs and avert significant payment reductions under the Medicare Physician Fee Schedule. AFROC joined a number of other organizations involved in the Working Group in signing a joint letter objecting to these payment reductions, and also sent a separate comment letter to emphasize our serious concerns.

The Working Group educated CMS on the clinical effectiveness of HDR brachytherapy and provided details regarding medical supplies, equipment and non-physician clinical personnel required to provide HDR treatment delivery and requested CMS to correct the medical supply and non-physician clinical staff costs used in determining allowances for the new code, and to correct the useful life of the HDR Iridium-192 Source from five years to one year. The Working Group also requested CMS to implement a temporary HCPCS "G" Code to facilitate billing of catheter placement by freestanding centers and to develop permanent allowances for this service.

Unfortunately, at this stage, it does not appear that CMS is willing to issue a Technical Correction to correct the data omissions and errors

### AFROC Office Relocation Reminder

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underlying the brachytherapy payment reductions or that the agency is willing to delay implementation of the reductions. At this stage, the Working Group is considering further steps, potentially including a legal analysis and a legislative strategy.

## **PRESIDENT INCLUDES MAJOR HEALTH REFORMS IN FY 2010 BUDGET**

On Thursday, February 26, in preliminary budget documents, President Obama released a summary of his \$3.55 trillion FY 2010 federal budget. The budget was termed “honest” by Administration officials because it eliminated budget devices used by previous administrations to disguise the magnitude of federal outlays, in particular, war spending.

The budget for next year and beyond would fund investments in energy, healthcare and education initiatives. The package is mega-spending proposal close on the heels of three other major spending bills, the SCHIP legislation, the Economic Stimulus bill, and the FY 2009 omnibus appropriations bills. This proposal contains a number of big-ticket spending items as well as tax increases on top income brackets, both of which quickly came under fire in Congress and in the news media. The White House asserted that it had closely reviewed the budget and found \$2.2 trillion in savings over ten years to help pay for many of its new initiatives.

The budget is a preliminary one, with summary documents that are incomplete and nonspecific in many areas. A more comprehensive budget and a complete set of documents are expected from the Obama Administration in April.

As is the case every year, however, the President’s proposal is just the first step in a lengthy budget process. The budget does not become law but rather, a resolution that is not binding. In years’ past, many of the President’s proposals have not been adopted by Congress in the budget process. Usually, the release of the

President’s budget in early February leads to the development and consideration of House and Senate budgets during February and March. These in turn provide the budgetary outlines for consideration of the next set of appropriations bills which are developed in the spring and ideally passed in mid- to late summer, though in recent years some if not most of the appropriations bills have needed to be packaged together as an omnibus spending bill to ensure passage, and usually, after several delays necessitating “continuing resolutions.”

## **Health Care and Entitlement Reform**

**Health Care Reform Reserve Fund:** The President’s budget proposes to create a \$634 billion “reserve fund” over the next decade to finance expanded health insurance coverage and other health care investments. The reserve fund is likely a little more than half the cost of health care reform that is expected to eventually provide universal healthcare coverage. Congress will be expected to find additional savings to make up the difference.

As in other areas, the Administration’s budget does not contain many specifics about the President’s plan to overhaul health care. The administration did outline eight principles for a healthcare overhaul, including: reduce the cost of premiums and protect families from bankruptcy as a result of health bills; invest in prevention; reduce waste and inefficiencies; put the nation on a path to universal coverage; make health plans portable; allow Americans to keep employer-based plans; improve safety; and make the plan pay for itself.

**Offsets to Pay for Reserve Fund:** The reserve fund would be paid for through tax increases on high income Americans and Medicare cuts. Approximately half of the fund would be generated by increasing taxes on couples earning more than \$250,000 a year and individuals earning more than \$200,000 a year. Cuts in subsidies to Medicare managed care plans are expected to yield \$175 billion in savings over 10 years—Medicare managed care plans are paid 14 percent more

than Medicare fee-for-service to treat beneficiaries. This will change the Medicare Advantage program so that health plans will bid to provide Medicare benefits and the program will pay based on the average bid.

Other sources of funding include savings from “bundling” payments for hospitals and post-acute care services (\$17.8 billion)—a very controversial proposal that some say is unworkable—reducing hospital payments for patients who are readmitted to the acute care hospital (\$8.4 billion), linking a portion of Medicare payments to the quality of care delivered at hospitals (\$12 billion), reduced payments for home health services (\$37.1 billion), increased Medicaid drug rebates (\$19.6 billion), increased Part D drug premiums for higher income beneficiaries (\$8.1 billion), and Medicare program integrity efforts (\$2.0 billion). In addition, the budget calls for unspecified restrictions on physician owned hospitals (with negligible savings and no policy explanation), a requirement for the use of radiology benefits managers (\$260 million in savings over 10 years), and incentives for physicians to administer flu vaccinations (with negligible savings and no policy explanation).

The new budget also includes a provision that would create a regulatory pathway to allow the Food and Drug Administration to approve generic or follow-on versions of biotechnology drugs, which it estimates would save the federal government \$9.2 billion from 2010 to 2019. The budget proposal also states that the Administration will support FDA's efforts to allow Americans to buy safe and effective drugs from other countries and includes a substantial increase (but no details) to strengthen FDA's efforts to make medical and food products safer.

Other savings would come from streamlining certain programs, such as linking Medicare physician payments to the quality of care provided. The budget also makes attempts to lower drug costs by allowing the FDA to approve generic biologic drugs, and it calls on Congress to keep rewards for brand biologic drug makers much lower than what the brand industry is seeking.

***Fixing the Physician Fee Schedule:*** The budget proposal includes \$329.6 billion over the next 10 years to fix the Medicare physician fee schedule problem. If adopted by Congress, this would effectively eliminate the enormous deficit and scheduled Medicare physician payment cuts of 40% that result from the Sustainable Growth Rate “SGR” formula over the next seven years. While the full impact is hard to gauge, such a large financial commitment would seem to meet the AMA's desire for a realistic budget baseline to solve this problem and assumes Congress will continue to protect against further SGR cuts.

In addition, the Administration would support comprehensive, fiscally responsible, reforms to the SGR payment formula and moving to a system of better incentives for high-quality care rather than simply more care. Inclusion of this tremendous sum in the budget followed several top-level meetings between physicians groups and Obama Administration officials. If this provision is adopted by Congress in their budget, the details of this solution to the physician fee schedule will have to be worked out in the authorizing committees such as the Senate Finance and House Ways and Means Committees.

The budget also calls for the doubling of funding for cancer research, primarily through the National Institutes of Health. It also accelerates the adoption of electronic health records and would create a nurse home visitation program within the Department of Health and Human Services (HHS).

### ***Tax Provisions Will Prove Difficult to Enact***

The tax increases in the budget will be extremely controversial, and the Administration would delay the fight a year by simply allowing President Bush's upper-income tax cuts to expire as scheduled in 2011. About half of the cost of the tax cuts would come from a multi-billion dollar “cap-and-trade” scheme, which essentially would require companies to pay for the right to emit greenhouse gases, and by limiting itemized deductions for wealthier households. The budget also adds a series of tax increases on

multinational corporations, some still unspecified, as well as oil and gas and real estate firms, private equity fund managers, venture capitalists and others. Deductions for charitable donations, real estate taxes, and home mortgage interest would be capped at 28 percent for households with more than \$250,000 in annual income. These proposals seem to have unified opposition against the tax provisions of the Administration budget from groups as diverse as the philanthropic community and home-building industry.

### **Outlook**

The increased spending and the proposed elimination of major tax cuts drew immediate Republican ire in reaction to the Obama Administration's budget outline. They criticized the proposal for ending tax breaks on top income brackets during a severe recession, and slammed the administration for not pushing for more aggressive spending cuts after campaigning against wasteful spending last year. Even Senate Republican moderates were critical while raising the question of whether the Senate will be able to pass its budget version without the aid of the 3 moderates it needed to pass the recently-enacted economic stimulus/recovery bill. There were signs of dissent even from fiscal moderates, known as "Blue Dogs," amongst House Democrats.

The tax increases would not take effect immediately, and the Obama Administration is apparently counting on an economic recovery to take hold by next year before the painful budget medicine is administered. But this budget lines up a long series of potentially vocal and strong opponents to the Administration's ambitious and far-reaching proposals. In addition, powerful interests ranging from the insurance industry to organized religion to the nation's realtors will strongly challenge the tax proposals designed to help President Obama pay for a \$634 billion reserve fund to cover health care reform. With additional details to emerge next month there may be additional opponents looming on the horizon while, clearly, some lobbies hit with cuts under the

Obama plan appear to be holding their fire, for now.

Whether Congress will be able to answer the Obama proposals with equally ambitious legislation at a time where there are other huge problems facing the nation is an open question at the moment. But, whatever the shortcomings of the new budget proposal, the onus will be on critics and lawmakers to propose and pass alternatives. And leaving it to lawmakers to fill in the details of how health care reform should be achieved may avoid the mistake many analysts believe President Clinton made by trying to micromanage health care reform from the White House.

### **CONGRESS PASSES, PRESIDENT SIGNS FY 2009 FUNDING PACKAGE**

On March 11, President Obama signed a \$410 billion omnibus package funding several federal agencies for the remainder of Fiscal Year 2009, just hours before a continuing resolution funding the agencies at 2008 levels was set to expire. After a contentious debate over the amount of earmarks attached to the appropriations bill, the Senate eventually cleared the bill on March 10 by a vote of 62-35. The House approved the bill late last month.

The spending package includes \$66.3 billion in discretionary funding for the Department of Health and Human Services, a 3% increase from 2008. The HHS funding includes just over \$30 billion for NIH; \$171 million for Title VIII nursing workforce development programs; \$75 million for state health access grants; \$43.5 million for the Office of the National Coordinator for Health Information Technology; and \$39.2 million for rural flexibility grants.

As Congress finally ends the consideration of the delayed FY 2009 appropriations, lawmakers are gearing up for a fiercer battle over the 2010 budget. President Obama released a summary of

his request earlier this month, and representatives on both sides of the aisle are already taking aim at some of the President's proposed cuts.

### **PRESIDENT OBAMA TAPS SEBELIUS FOR HHS AND DEPARLE FOR WHITE HOUSE OFFICE OF HEALTH REFORM**

On Monday, March 2, President Obama announced his administration's selection of Kansas Governor Kathleen Sebelius (D) as the next chief of HHS. Sebelius' selection came on the heels of Secretary-designate Tom Daschle's withdrawal of his nomination because of tax issues. Daschle was also selected to head the new White House Office of Health Reform, but that post will now be held by former Clinton official Nancy Ann DeParle.

Stakeholders were concerned that Daschle's withdrawal could delay healthcare reform. But advocates in DC publicly praised the choice of Sebelius and DeParle, and the White House and key Democratic leaders in Congress are continuing to push for healthcare reform legislation in 2009. The latest indications point to a potential bill this summer, possibly as early as June.

Senate Finance Chair Max Baucus (D-MT) has called for a series of healthcare reform hearings that would wrap up in June, and last year he released a White Paper that outlined his plan for reform. Baucus is also convening a set of working groups made up of healthcare stakeholders that would provide feedback to Congressional staff. Healthcare reform champion Senator Ted Kennedy staff has been meeting with stakeholders twice weekly over the last few months.

It is unclear when the Senate health and finance committees will hold confirmation hearings for Sebelius.

### **MEDICARE PAYMENT ADVISORY COMMISSION RELEASES REPORT ON MEDICARE PAYMENT POLICY**

On February 27, 2009, the Medicare Payment Advisory Commission (MedPAC) released its March 2009 *Report to the Congress: Medicare Payment Policy*. MedPAC's report often serves as a starting point for legislators considering payment reductions and policy changes affecting the Medicare program. The report recommends updates for Medicare's fee-for-service (FFS) payment systems that take into account beneficiaries' access to care, the quality of care, the relation of payments to costs, and other factors, while maintaining fiscal pressure to increase Medicare's sustainability. The Commission recommended an update of 1.1 percent for physician services overall, and reiterated its recommendation to increase payments for primary care services delivered by practitioners who focus on primary care, funded in part by reductions in Medicare payment for "advanced imaging services" such as MRI, PET, and CT. In addition, the report reviews recent findings and reiterates recommendations on Medicare Advantage (MA) plans. MedPAC again documents that Medicare's payment system for private plans (e.g. Medicare Advantage) is seriously flawed, resulting in substantially increased costs to Medicare and Medicare Advantage enrollees. The report makes a series of recommendations to increase transparency of physician financial relationships with manufacturers of drugs and medical devices.



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