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Washington Update

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The Physician Fee Schedule Debate

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Medicare is a government-run health insurance program for individuals sixty-five years of age or older, individuals under the age of sixty-five who have certain disabilities, and individuals of all ages who have End-Stage Renal Disease.

Medicare is an entitlement program. It must be fully-funded each year and eligible individuals may not be turned away. In fiscal year 2009, Medicare is estimated to cost a total of $492 billion – three percent of the Gross Domestic Product of the United States – while covering about forty-five million individuals. Physicians who serve the Medicare population are reimbursed on a physician fee schedule established through the *Omnibus Budget Reconciliation Act of 1989* (P.L. 101-239). The physician fee schedule is determined by the Sustainable Growth Rate (SGR), a formula designed to provide payments to physicians in accordance with the costs of providing those services. As established by law, each year the reimbursement rates are calculated using the SGR. Since 2002, this formula has resulted in a negative update in payments, leading to concern from physicians and providers.

A decrease in payment would likely lead to increased costs for all patients, including those privately insured, so that physicians can cover the loss suffered from serving the Medicare population. It could also potentially lead to a refusal by physicians to accept Medicare patients. Congress has acted to prevent these reductions each year since 2003. However, the manner in which they have 'paid for' these adjustments has only allowed the issue to snowball. In order to find funds to pay for the current year's adjustment, Congress increases the reduction in payment for the following year. Next year, Congress would do the same thing, thereby continually increasing the reductions that physicians face annually.

Finding a 'fix' has been at the forefront of the health care debate this year. Several proposals have surfaced, including using a formula other than SRG or just appropriating funds to ensure that doctors are reimbursed at a level sufficient to sustain operations. There are few issues brought before Congress that are truly non-partisan. The issue of the physician fee schedule under Medicare is one of those issues and it will be interesting to see what direction Congress takes to fix this problem.

The Fat Tax: Banning Bake Sales and Penalties for Drinking Soda

Jessica Ritsick, 2L

According to experts at Johns Hopkins University, the obesity epidemic in the United States is a full-fledged 'public health crisis' – beginning in childhood and continuing through adulthood. In response to this crisis, schools across the country have locked up soda and snack vending machines until after school hours to force children to eat healthier lunches. Some schools have banned vending machines altogether, even though contracts with these companies provide additional funding to the schools. The New York City Education Department placed a ban on bake sales – limiting them to once-a-month and only allowing dark fudge brownies and lemon squares to be sold after the lunch hour.

President Obama, who has been spotted at 'quick fix' hamburger restaurants such as Five Guys and Ray's Hell Burger, among other places,

supports proposing a 'sin tax' on so-called junk food, especially soda. Proponents of the tax note that, just as the United States taxes and regulates items such as tobacco and alcohol, other potentially harmful food products should also be regulated. Others suggest cutting corn-production subsidies – a reason high-fructose corn syrup permeates so many foods on store shelves – and instead subsidizing organic and fresh fruits and vegetables. Opponents believe that the federal government already over-taxes citizens. They also contend that taxing and regulating non-drug items constitutes an over-stepping of the government's federal power and a potential slippery slope into further regulation.

Most Americans agree that obesity is becoming a crisis in the United States – but what they cannot agree upon is how much regulation is too much regulation.

Cutting Health Care Costs – The Re-importation of Drugs Debate

Colin Rettammel, 2L

The United States health care system has been at the forefront of policy discussions since President Barack Obama took office in January, 2009. Even with this attention to health care reform, the *Pharmaceutical Market Access and Drug Safety Act* is one piece of legislation that has gone largely unnoticed. This bill was introduced by Senators Byron Dorgan (D-ND), John McCain (R-AZ), and Olympia Snowe (R-ME), as a bi-partisan effort to lower the cost of prescription drugs.

The bill would allow drug wholesalers and licensed pharmacies in the United States to re-import prescription drugs originally manufactured in the United States from Canada, Europe, Australia, New Zealand, and Japan. Because many countries impose price controls on the drugs that they import from the United States, the sponsors believe that re-importing prescription drugs at a lower price will pass savings directly on to customers without any inconvenience. The sponsors also state that measures will be taken to ensure that the imported medications are safe, including mandating that only FDA-approved drugs be re-imported and sold.

Many critics of the bill claim that not only are the safety measures inadequate, but that the bill could potentially harm pharmaceutical research and development. The American Enterprise Institute for Public Policy Research argues that the best defense against counterfeit drugs, which are easier to produce outside the United States, is the ban on large-scale drug importation. Thus, the reasoning is that if wholesalers are allowed to import foreign drugs, then counterfeit drugs will find their way into the market, as there is no technology that would allow for the easy detection of such drugs at the border. Along with the security fears is the concern that pharmaceutical companies would potentially lose money due to price controls placed on their products, money that could be spent on research. Even if some countries chose to raise prices to encourage research, other countries could undercut those prices to attract resellers.

While there is much argument about the actual implications of the legislation, there appears to be little room for compromise. The bill will likely be discussed on the Senate floor in the midst of the health care reform debates, as its sponsors are trying to take advantage of the current national spotlight on health care.