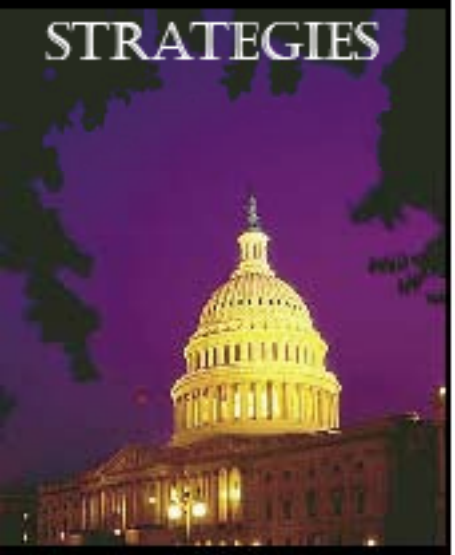
HART HEALTH HH STRATEGIES



Health Policy Briefing

September 26, 2011

CR Must Pass this Week to Avoid Federal Shutdown; Obama Deficit Reduction Plan

Senate Rejects House CR Threatening a Government Shutdown

On Friday the Senate voted 59-36 to table H.R. 2608, the continuing resolution (CR) passed earlier in the House (219-203), thus delaying a possible resolution into this week. The House CR which extends federal agency funding until November 18 would also provide $3.65 billion for FEMA (which could run out of funds early this week) together with a controversial payfor that would reduce funding for the Department of Energy program that gave the SOLYNDRA solar panel company a federal loan shortly before its bankruptcy. The Senate is insisting on providing FEMA with $6.9 billion without any offset. A Senate cloture vote on the CR is scheduled for 5:30 p.m. this Monday. Both houses had previously scheduled a recess for this week, but with federal agency funding running out this coming Friday, a quick resolution of FEMA funding will be needed in order to avoid a federal shutdown. The high stakes of this showdown was illustrated when House Republican fiscal hawks shot down, 195-230, a CR offered earlier in the week which had a different offset for the FEMA disaster fund. Fiscal conservatives continue to think the level of funding under the CR is too high, even though it provides a 1.5% cut from FY 2011 levels in line with the Budget Control Act cap of $1.043 trillion in discretionary spending. Offsets to other spending measures are likely to become the order of the day. In this connection, the Trade Adjustment legislation, H.R. 2832, includes a $400 million health coverage provision for displaced workers offered by **Senate Finance Committee Chairman Max Baucus** that would be offset by adjustments to contracts for Medicare Quality Improvement Organizations. The dispute over the CR only adds to the upcoming contentious debate over the President's American Jobs Act which **Senator Reid** said would be taken up in the Senate with Democrats and Republicans offering a number of amendments.

Other Appropriations Issues

With the FY 2012 CR dispute spilling over until this Monday, it remains unlikely that the House will move a separate Labor/

continued page two

Inside

from page one

HHS/Education appropriations bill. Nonetheless, the Senate Appropriations Committee cleared that chamber's FY 2012 measure last week on a party-line vote providing HHS with $70.18 billion, only slightly lower than for this fiscal year. Also, the bill creates a new $582 million "National Center for Advancing Translational Sciences" under NIH to accelerate treatments from "bench to bedside" while reducing total NIH funding by $190 million to $30.5 billion. CDC also gets a haircut in FY 2012 funding to $6.22 billion from $6.28 billion. Community health centers would receive $1.58 billion which together with PPACA mandatory spending amounts to an increase in FY 2012 of about $200 million. President Obama's Deficit

Reduction/Tax Increase Plan

Last week the Joint Select Committee on Deficit Reduction heard from the Joint Tax Committee on the potential effect of various means to reform the corporate and individual income tax code. While members appeared to agree on the overall goal to make the tax code simpler and more fair, their views differed when it came to a discussion on what so-called loopholes should be closed and whether a restructuring to reduce rates should be revenue neutral. **DOD Secretary Leon Panetta** also told Congress that the Pentagon will soon be sending up recommendations to the super committee which would cut DOD spending by $450 billion over ten years without affecting military capabilities. Last week the President also delivered his deficit reduction proposals to the Joint Committee. The White House said the tax increase and spending cut plan would reduce the deficit by about $3.2 trillion over ten years. The President said the plan was fair and balanced and that he would veto any plan produced by the joint committee that reduces entitlement program benefits without raising taxes on the wealthy and eliminating tax loopholes for corporations. **Senate Minority Leader Mitch McConnell** dismissed the President's plan as class warfare and a non-starter. The plan would cut mandatory federal spending by $580 billion, including $248 billion from Medicare and $65 billion from Medicaid and about $7 billion from other health-related programs. Most of the Medicare cuts would come from reducing payments to health care providers and drug companies while some higher-income beneficiaries would pay higher premiums. The minimum age for Medicare eligibility would not be raised under the plan. Increased taxes would make up almost $1.6 trillion of the deficit reduction plan, a move that House Speaker John Boehner quickly rejected as not a viable option.

The following are some of the health related cuts under the President's plan:

Medicare--

♦reduce payments to drug makers to the level paid by Medicaid ($135 billion);

♦adjust payments for nursing homes and rehabilitation facilities that provide post-acute patient care ($42 billion);

♦increase by 15% the premiums for both Medicare Part B and D that are tied to income levels and apply these premiums to 25% of beneficiaries ($20 billion);

♦reduce reimbursements to providers resulting from beneficiaries' non-payment of deductibles and copayments ($20 billion);

♦reduce waste, fraud and improper payments ($5 billion);

♦implementing payment adjustments for advanced imaging equipment to account for higher levels of utilization of certain types of equipment ($400 million);

♦adopting prior authorization for the most expensive imaging services beginning in 2013 ($900 million);

Medicaid--

♦limit state taxes on providers and reduce the federal matching contribution ($26 billion);

♦apply a single matching rate for each state for Medicaid and SCHIP ($15 billion);

♦include Social Security benefits in the calculation of eligibility ($15 billion);

Tricare--

♦increase pharmacy co-payments for the military Tricare health program ($15 billion);

♦initiate annual premiums for the Tricare Medigap program ($7 billion);

continued page three

from page two

Other--
♦reduce the exclusivity period from 12 to 7 years for brand-name biologic drugs ($3.5 billion);

♦Office of Personnel Management would contract directly for pharmacy benefit management services under the FEHBP ($1.6 billion).

In addition, the plan would ban pay-for-delay or reverse payment agreements in drug patent litigation.

House Passes Health Legislation

The House passed several health-related bills last week: H.R. 1852, legislation to reauthorize the Children's Hospitals Graduate Medical Education Payment Program through FY 2016 at an annual rate of $330 million; H.R. 2646, legislation to authorize $850 million for construction and renovations at VA medical facilities in California, Puerto Rico and Missouri and to authorize $50 million for the leasing of medical facilities in various parts of the country; and H.R. 2005, legislation to authorize $231 million per year from FY 2012-2014 for research and other activities at CDC and NIH. **Senator Jim DeMint** has placed a hold on a similar autism bill in the Senate (S. 1094) stating that Congress should not prioritize research on one disorder or disease over another. In addition **Senator Mike Lee** stated that he would object to moving the autism legislation without a spending offset.

House W&Ms Hearing on Medical Reimbursement Extenders

The House Ways and Means Health Subcommittee held hearings on medical provider reimbursement policies that expire between October and next July. To extend the current payment policies would cost $2-2.5 billion per year. Witnesses from hospital, skilled nursing facility, ambulance service, clinical laboratory and physician groups testified to the need to extend the current payment policies. On the other hand, a consultant testified that Medicare cannot afford to spend $25 billion over ten years on all of the extensions. He said that extensions would undermine provider incentives to be efficient and that Congress should instead reform the Medicare payment system. **Subcommittee Chairman Wally Herger** said that just because Congress must act, it does not mean it should do so blindly. The policies involved include:

♦hospital inpatient Section 508 wage reclassifications (costing $300 million a year);

♦the extension of the moratorium on Medicare Part B outpatient therapy caps ($900 million);

♦hospital outpatient hold-harmless payments ($200 million);

♦ambulance service add-on payments ($100 million);

♦a geographic work payment floor for physician fee schedule services ($500 million);

♦allowing certain independent labs to bill Medicare directly ($100 million per year);

♦mental health add-on payments ($100 million per year);

♦increased dual-energy x-ray absorptiometry reimbursements ($100 million); and

♦hold harmless payments for clinical laboratory services furnished in small rural hospitals (less than $50 million).

The need for a fix to the scheduled 30% cut to 2012 Medicare physician payments was also discussed.

In related news, MedPAC released a draft proposal of $230 billion in offsets to pay for a revamping of the SGR under the Medicare physician payment system, as follows:
♦a hospital payment update of 1% for 2012 including recovery of past overpayments for bill coding ($14 billion);

♦rebase home health payments in 2013 with no update in 2012 ($10 billion);

♦base Medicare reimbursements for durable medical equipment on categories never subject to competitive bidding ($8 billion);

♦repeal the Medicare Advantage demonstration program of bonus payments for higher quality ($6 billion);

continued page four

from page three

♦copayments for home health episodes ($4 billion); raise the compliance threshold for inpatient rehabilitation facilities to 75% ($3 billion);

♦requiring drug manufacturers to pay Medicaid-like drug discounts for dual-eligibles ($75 billion);

♦rebase payments to skilled nursing facilities ($23 billion);

♦reduce payments by 10% for clinical lab services ($21 billion);

♦structure out-of-pocket charges to low-income beneficiaries to encourage use of prescription drugs ($17 billion);

♦apply an excise tax to Medigap plans ($12 billion);

♦pay physicians the same rate for "evaluation and management" visits in hospital outpatient departments as those in doctors' offices ($10 billion); pay competitively bid rates for home oxygen ($5 billion);

♦reduce payments for preventable readmissions to skilled nursing facilities, home health agencies, long-term acute care hospitals and inpatient rehabilitation facilities ($4 billion);

♦reduce hospice payment rates in nursing homes 6% ($3 billion);

♦audit risk adjustment payments in the Medicare Advantage program ($3 billion).

MedPAC also endorsed the President's plan for reducing the growth rate of Medicare spending by revamping the IPAB (the Independent Payment Advisory Board). The Appendix shows the entire list of potential offsets.

Senate Finance Committee Hearing on Dual-Eligibles

Senate Finance Committee members on both sides of the aisle appeared to agree that individuals who are eligible for both Medicare and Medicaid need services to be made more efficient and effective in order to save money and improve care. Testifying was **Melanie Bella**, the Director of the Medicare-Medicaid Coordination Office created under the PPACA. She said one example of the lack of incentive for savings is in the case under which Medicaid assigns a case manager to oversee the treatment needs of a dual-eligible to prevent unnecessary hospitalizations. However, the savings don't go to the state Medicaid program but to the Medicare program, which pays for the hospital care of the dual-eligibles, thus discouraging state assignment of such case managers. Members said that dual-eligible services are duplicated, given in needlessly expensive facilities and result in hospitalizations that need never occur because of poor oversight of patients. Senator Ben Cardin said that bolder approaches are needed. **Senators Orrin Hatch and Charles Grassley** agreed that faster action is needed to restructure how services are given to dual-eligibles. Ms. Bella said that the goal for 2012 is "to have a million of the nine million duals in a coordinated, integrated system of care, and then to keep building year after year, particularly through our demonstrations and our work with states…." **Senator Ron Wyden** encouraged the agency to test a model used by the VA that involves delivering services to people in their homes rather than in nursing homes.

HHS/State Partnerships for Exchanges

Given the lack of progress in establishing PPACA health insurance exchanges by many states, HHS announced three "partnership options" under which states can phase-in exchanges to meet the 2014 deadline. Under the federal-state partnership, states can choose among one of the following models for exchange operations: health care plan management (e.g. selection of health plans, quality monitoring, etc.); consumer assistance (e.g. personal assistance, establish plan navigators, provide outreach, etc.); or both plan management and consumer assistance. If a state elects such a partnership, then HHS would operate other aspects of the exchange.

HHS Recommendations to Support Mobile Health Initiatives

HHS announced that the Text4Health Task Force has issued a report with seven recommendations to support mobile health programs, as follows: develop and host evidence-based health text message libraries; conduct further research into privacy and security risks associated with text messaging of health information and establish guidelines for managing such privacy and security issues; develop further evidence on the effectiveness of health text messaging programs; and explore and develop partnerships to create, implement and disseminate health text messaging and mHealth programs. As a result of the report, HHS said a project for a library is to be developed by the National Cancer Institute (NCI) called QuitNowTXT.

CLASS Act: To Be or Not to Be?

The chief actuary for the HHS long-term care CLASS Act program resigned after saying the office would be shut down. However, HHS responded that their plans have only slowed down (the Senate Labor-HHS-Education appropriations bill omits CLASS Act funding for 2012) and that no decision has yet to be made to terminate the program as being "unsustainable".

HHS Recommendations on Newborn Screening

HHS said the agency has adopted the recommendations of the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children (SACHDNC) that critical congenital heart disease (CCHD) be included on the Recommended Uniform Screening Panel (RUSP) which informs states of the congenital conditions that should be included in state newborn screening programs.

Grants for PPACA Rate Reviews

HHS announced that it has granted awards of $109 million to 28 states and the District of Columbia to introduce legislation to strengthen rate review authority, expand the scope of rate reviews, require insurers to provide additional information on administrative costs and enhance websites for consumers. HHS also said that earlier grants have helped moderate premium increases.

CDC Touts PPACA Increase in Plan Coverage

CDC released a report "Health Insurance Coverage: Early Release of Estimates From the National Health Interview Survey, January-March 2011" which found that, because of the PPACA provision allowing young adults between 19-25 years old to be kept on their parents coverage, the rate of coverage increased by 3.5% in the period surveyed.

NIH Announces Director's Pioneer Awards

NIH Director Francis Collins announced $143.8 million in grants for 79 new research programs known as the NIH Director's Pioneer awards, New Innovator awards and Transformative Research Projects awards. Grantees must show that such projects are "highly innovative approaches that have the potential to produce an unusually high impact on a broad area of biomedical or behavioral research….with ideas substantially different from those already being pursued in the investigator's laboratory or elsewhere."

House Hearing on National Drug Shortages

At a House Energy and Commerce Health Subcommittee hearing, Chairman Joe Pitts said that the number of drug shortages reported to the FDA increased from 61 in 2005 to 178 in 2010, 132 of which involved sterile injectable drugs. The HHS witness said that the crisis, involving shortages of cancer, anti-infection and anesthesia drugs that occur without warning when patients are in desperate need of the medications, would not be solved anytime soon because of the complex reasons the shortages exist.

S. 1584 (DRUGS), to provide for additional quality control of drugs; BENNET; to the Committee on Health, Education, Labor, and Pensions, Sept. 20.

H.R. 2969 (MEDICARE), to amend Title XVIII of the Social Security Act to provide for extended months of Medicare coverage of immunosuppressive drugs for kidney transplant patients and other renal dialysis provisions; BURGESS; jointly, to the committees on Energy and Commerce and Ways and Means, Sept. 20.

H. RES. 403 (BACTERIAL MENINGITIS), honoring those persons whose lives have been taken by bacterial meningitis and those who continue to struggle with bacterial meningitis and its consequences, and supporting all work for the eradication of bacterial meningitis in the United States; BRADY of Texas; to the Committee on Energy and Commerce, Sept. 20.

H. RES. 407 (DISEASE AWARENESS), expressing support for designation of September 2011 as National Ovarian Cancer Awareness Month; BURTON of Indiana; to the Committee on Oversight and Government Reform, Sept. 20.

S. 1587 (MEDICAID), to enable states to opt out of the Medicaid expansion-related provisions of the PPPACA; GRAHAM; to the Committee on Finance, Sept. 21.

H.R. 3000 (HEALTH INSURANCE COVERAGE), to provide for incentives to encourage health insurance coverage, and for other purposes; PRICE of Georgia; jointly, to the committees on Energy and Commerce, Education and the Workforce, Ways and Means, the Judiciary, Natural Resources, Rules, House Administration, Appropriations, Oversight and Government Reform, and the Budget, Sept. 21.

S. 1599 (APPROPRIATIONS), making appropriations for Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending Sept. 30, 2012, and for other purposes; HARKIN; from the Committee on Appropriations; placed on the calendar, Sept. 22.

S. 1609 (HEALTH DEMONSTRATION PROGRAMS), to require the secretary of health and human services to establish a demonstration program to award grants to, and enter into contracts with, medical-legal partnerships to assist patients and their families to navigate health-related programs and activities; HARKIN; to the Committee on Health, Education, Labor, and Pensions, Sept. 22.

S. 1613 (CHILDREN'S HEALTH), to improve and enhance research and programs on childhood cancer survivorship, and for other purposes; REED; to the Committee on Health, Education, Labor, and Pensions, Sept. 22.

H.R. 3010 (REGULATORY PROCESS), to reform the process by which federal agencies analyze and formulate new regulations and guidance documents; SMITH of Texas; to the Committee on the Judiciary, Sept. 22.

H.R. 3015 (CHILDREN'S HEALTH), to improve and enhance research and programs on childhood cancer survivorship, and for other purposes; SPEIER; to the Committee on Energy and Commerce, Sept. 22.

H.R. 3026 (DRUG SAFETY), to amend the Federal Food, Drug, and Cosmetic Act to improve the safety of drugs; MATHESON; to the Committee on Energy and Commerce, Sept. 22.

H.R. 3032 (MEDICARE), to amend Title XVIII of the Social Security Act to provide for payment for services of qualified radiologist assistants under Medicare; REICHERT; jointly, to the committees on Energy and Commerce and Ways and Means, Sept. 22.

Appendix: Draft Offset List

• Along with the draft recommendations discussed on September 15, the Commission is offering a set of savings proposals for the purpose of assisting the Congress in offsetting the budgetary cost of the SGR repeal under consideration by the Commission (attached). The items on the list are preliminary and subject to change based on Commissioner discussion. The projected savings amounts are unofficial, based on MedPAC staff estimates, and subject to change.

• The proposals are divided into two tiers. Tier I – about $50 billion – contains proposals that have been recommended by the Commission in previous reports or comment letters. Tier II – about $180 billion – contains proposals informed by outside groups (e.g., HHS OIG, CBO options) and MedPAC staff analysis. The Commission has not voted on or recommended the items on the Tier II list. The exclusion of policies from this list should not be construed as a statement of MedPAC's position on such policies.

• In the statute creating MedPAC, the Congress charges the Commission with reviewing Medicare policies, including their relationship to access and quality of care for Medicare beneficiaries. Therefore, all of the offsets being considered by MedPAC are Medicare policies; the Congress could choose to employ other savings or revenue offsets including those from outside of Medicare.

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Draft Offset List

(savings in billions)

	Tier I: MedPAC work	**5-yr savings**	**10-yr savings**	**Reference**
1	Copayment for home health episode	2	4	MedPAC March 2011
2	Hospital update of 1% for 2012 and DCI recovery	7	14	MedPAC March 2011
3	Dialysis update of 1% for 2012	0	1	MedPAC March 2011
4	Hospice update of 1% for 2012	1	2	MedPAC March 2011
5	Apply the competitive bidding offset to all competition-eligible DME categories starting in 2012	2	2	MedPAC June 2003
6	Apply the competitive bidding offset to the DME categories never subject to competitive bidding	3	8	MedPAC June 2003
7	Repeal MA quality bonus demonstration	6	6	MedPAC comment letter, 2011
8	Rebase HH in 2013 and no update in 2012	5	10	MedPAC March 2011
9	No IRF update in 2012	0	1	MedPAC March 2011
10	No LTCH update for 2012	0	1	MedPAC March 2011
11	Raise the compliance threshold for IRFs to 75%	1	3	MedPAC comment letter, 2003
12	ASC update of 0.5% for 2012 and report on cost and quality	0.1	0.1	MedPAC March 2011
13	Program integrity: prior authorization for imaging by outlier physicians	0	0.1	MedPAC June 2011
Subtotal, MedPAC work		27	52	

	Tier II: Other Medicare	5-yr savings	10-yr savings	Reference
14	Part D LIS cost sharing policy to encourage substitution	6	17	Staff
15	Apply an excise tax to medigap plans	5	12	CBO: Budget Options 2008
16	Program integrity: pre-payment review of power wheelchairs	0.1	0.2	PB 2012, HHS OIG
17	Require manufacturers to provide Medicaid-level rebates for dual eligibles	25	75	CBO: Budget Options 2011
18	Bundled payment for hospital and physician during the admission	0	1	CBO: Budget Options 2008
19	Pay E&M visits in hospital outpatient departments at physician fee schedule rates	5	10	Staff
20	Reduce payments by 10% for clinical lab services	8	21	Staff
21	Risk-adjustment validation audits in the Medicare Advantage program	2	3	PB 2012
22	Bring employer group plan bids closer to other MA plan bids	0	1	Staff
23	Hold the trust funds harmless for MA advance capitation payments	2	3	HHS OIG
24	Give the Secretary the authority to apply a least costly alternative policy	0	1	Staff
25	Additional reductions through competitive bidding or fee schedule reductions to payments for home oxygen	3	5	HHS OIG
26	Rebase SNF	10	23	Staff
27	Apply readmissions policy to SNFs, HH, LTCHs, and IRFs	1	4	Staff
28	Reduce hospice rates in nursing homes by 6%	1	3	HHS OIG
29	Program integrity: validate physician orders for high-cost services	0	2	PB 2012
Subtotal, Other Medicare		68	181	
Total, Tier I and Tier II		95	233	