



Health Policy Briefing

January 13, 2014

Republicans Target Obamacare; January 15th Deadline for FY 2014 Omnibus Will Slide

Appropriators Set To Delay FY 2014 Omnibus Bill

House and Senate appropriators were unable last week to forge a final deal on fiscal year (FY) 2014-15 appropriations matters, thus forcing negotiations to be continued this week right up to the January 15th deadline when the current continuing resolution (CR) expires. The Chairman of the House Appropriations Committee, **Harold Rogers (R-KY)**, said that the House will take up legislation this week to extend the CR, probably for a week or so, to give Congress time to meet House and Senate rules for bringing up the legislation. It was reported that agreement had been reached on six of the twelve appropriations subcommittee budget lines, but leaving spending decisions on Labor/Health and Human Services (HHS)/Education and several other agencies still to be finalized. Republican budget hawks were reported to still be pushing for various policy riders, including several related to the Patient Protection and Affordable Care Act (PPACA). Appropriators did not disclose the decisions they have made thus far in allocating \$1.012 trillion in FY 2014 spending among the federal agencies. The

delay of the budget bill is also likely to push out for several weeks or more the February release of the President's budget recommendations for future spending and revenue. While it is possible that the House could follow up on the President's recommendations with a Republican-inspired budget resolution, it is unlikely that the Senate will provide this avenue for Republicans to advance their agenda in this election year.

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House Passes PPACA Security and Poison Center Legislation

On a vote of 291-122 (with 67 Democrats voting aye) the House passed H.R. 3811, the Health Exchange Security and Transparency Act of 2014 which Majority Leader Eric Cantor (R-VA) said is designed to help address the security problems connected with the HealthCare.gov website and alert individuals when their personal information is compromised. Although the Statement of Administrative Policy (SAP) expressed opposition to the bill, it is noteworthy that it did not include the threat of a presidential veto. The House also delayed until this week the consideration of H.R. 3362, legislation that would require the U.S. Department of Health and Human Services (HHS) to issue weekly reports on the status of the website. In addition, the House passed H.R. 3527, the Poison Center Network Act, under suspension of the rules. Among other things, the bill authorizes \$700,000 for the next five years for the operation of the national toll-free poison control hotline and \$800,000 annually for a national media campaign.

PPACA Health Reform Update

PPACA Remains In Congressional Spotlight

Rep. Darrell Issa (R-CA), the Chairman of the House Oversight and Government Reform Committee, said last week that HHS Secretary Kathleen Sebelius gave “false and misleading” testimony to the House Energy and Commerce Committee when she testified that she was not advised by any HHS official to delay the October 1st startup of the HealthCare.gov website. In this connection, he said that the then Chief Information Office of the Centers for Medicare and Medicaid Services (CMS) recommended denying authority to begin such operations due to concerns about the high risk of security and other failures due to the lack of adequate testing. Rep. Issa demanded that the HHS Secretary “correct the record.” In a move clearly resulting from the problems surrounding the various failed operations of the website (including the inability of Medicaid eligible individuals to be properly enrolled), HHS will let the current contract for the website’s construction to expire next month and will replace CGI Federal with the Accenture organization which was responsible for the development of the California exchange website. In addition to the above-described legislation addressing PPACA website security issues, House Budget Committee Chairman Paul Ryan (R-WI) said he and other Republicans will spend considerable time this year in developing legislation that would replace the health reform law. A more current issue is whether the House will push for the passage of H.R. 3803, legislation introduced by Rep. Ted Yoho (R-FL) that would repeal the PPACA if enrollment under the law does not meet or exceed the 7 million figure set by the Administration as a goal by April 1st. In this connection, last week the White House Press Secretary, Jay Carney, said that 7 million is not a magic number, it was the Congressional Budget Office (CBO) estimate, and that this number will not determine the success of the law but the “mix” of the young and healthy among the enrolled will determine the law’s effectiveness.

PPACA Preventive Services Expanded

CMS issued a frequently asked questions (FAQ) under which non-grandfathered health plans in the group and individual markets will be required to cover (with no cost-sharing) certain risk-reducing breast cancer medications as recommended by the U.S. Preventive Services Task Force (USPSTF) established under the PPACA.

Petition to Enjoin PECOS Rule Denied

A provision of the PPACA codified the CMS regulations which require physicians who do not participate in Medicare to enroll in Medicare if they want to refer Medicare patients for Medicare-reimbursable services. Recently, the U.S. Supreme Court denied a petition filed by the Association of American Physicians and Surgeons (AAPS) for an emergency injunction of the Provider Enrollment, Chain and Ownership System (PECOS) provision. The case is still pending in the U.S. Court of Appeals for the District of Columbia. Of note, the petition challenged the constitutionality of the PPACA on the basis that the “tax” law did not originate in the House of Representatives.

Medicare/Medicaid/PHSA Corner

Congressional Oversight of Medicare Extenders

At a House Energy and Commerce Health Subcommittee hearing to examine whether some or all of 20 different health-related temporary funding programs (“extenders”) should continue to be funded, perhaps as part of the Medicare physician payment sustainable growth rate (SGR) reform legislation, Chairman Joe Pitts (R-PA) said that “in the current budget climate it is time for us to be very prudent, even skeptical, given the enormous costs of these policies and we need to ensure that every dollar spent is reviewed for efficiency.” Nonetheless, several Republican members, including Rep. John Shimkus (R-IL), expressed support for the Medicare Inpatient Hospital Payment Adjustment for Low-Volume Hospitals and Medicare-Dependent Hospital programs because of the need to keep open rural hospitals in underserved areas. However, the chairman of the Medicare Payment Advisory Commission (MedPAC) testified that the two programs may not be designed so as to target such isolated rural hospitals. Also, the chair of the Medicaid and CHIP Payment and Access Commission (MACPAC) recommended that states that have expanded Medicaid under the PPACA be allowed to opt out of the Medicaid Transitional Medical Assistance (TMA) program. Rep. Michael Burgess (R-TX) suggested that the program be continued for states that have not expanded Medicaid under the health law. In related news, Senator Ron Wyden (D-OR) --the heir apparent as chairman of the Senate Finance Committee when Senator Max Baucus (D-MT) steps down to become ambassador of China-- has indicated that he intends to ensure that his amendment on pricing transparency remain part of the SGR reform legislation. The Senator has also indicated that his legislative goals will include means to help contain Medicare costs by better addressing the health needs of beneficiaries who have chronic health conditions.

CMS Finalizes Rule on Home Based Services

CMS issued a final rule pursuant to the PPACA which will allow state Medicaid programs to support home-based and community-based care as an alternative to institutional care. The rule provides a transitional period and means for public comment on such state plans. Senator Tom Harkin issued a statement in support of the rule.

CMS Proposes Rule to Collect Medicare Overpayments

CMS proposed a rule that is intended to help Medicare better collect overpayments from Medicare Advantage (MA) and Medicare Part D plan sponsors while ensuring that Medicare beneficiaries have access to affordable prescription drugs. Of note, the rule would require Medicare Part D plan sponsors to reject prescription drug claims when the prescribing physician does not participate in Medicare and would allow Medicare to revoke Medicare enrollment of providers if they are deemed to have abusive prescribing practices or patterns. Comments are due by March 7th. Under another MA and Part D rule, CMS proposed that in 2015 the plans include new restrictions on preferred pharmacies and be allowed to exclude certain categories of drugs from protected classes.

CMS Expands Coverage for PILD

CMS issued a final decision under which Medicare coverage will be provided for percutaneous image-guided lumbar decompression (PILD) for lumbar spinal stenosis, but only in connection with clinical trials under the evidence development (CED) process.

Upcoming Health-Related Hearings and Markups

House Veterans' Affairs Subcommittee on Oversight & Investigations: will hold a hearing titled "Vendors in the OR - VA's Failed Oversight of Surgical Implants;" 10:00 a.m., 334 Cannon Bldg.; Jan. 15.

House Energy and Commerce Subcommittee on Oversight and Investigations: will hold a hearing on the ongoing implementation of the Patient Protection and Affordable Care Act; 9:30 a.m., 2123 Rayburn Bldg.; Jan 16.

House Science, Space and Technology Committee: will hold a hearing titled "Healthcare.gov: Consequences of Stolen Identity;" 9 a.m., 2318 Rayburn; Jan. 16.

Health Legislation Recently Introduced

H.R. 3811 (PRIVACY), to require notification of individuals of breaches of personally identifiable information through exchanges under the Affordable Care Act; PITTS; to the Committee on Energy and Commerce, Jan. 7.

H.R. 3812 (REFORM), to repeal sections 1341 and 1342 of the Affordable Care Act; COFFMAN; to the Committee on Energy and Commerce, Jan. 7.

S. 1902 (PRIVACY), to require notification of individuals of breaches of personally identifiable information through exchanges under the Affordable Care Act; BARRASSO; to the Committee on Health, Education, Labor and Pensions, Jan. 9.

H.R. 3831 (VETERANS' HEALTH), to require the secretary of veterans affairs to review the dialysis pilot program implemented by the Department of Veterans Affairs and submit a report to Congress before expanding that program, and for other purposes; ROE of Tennessee; to the Committee on Veterans' Affairs, Jan. 9.

H.R. 3832 (MEDICARE), to amend Title XVIII of the Social Security Act to modify the surety bond requirement applicable to home health agencies as a condition of participation under Medicare; MCDERMOTT; jointly, to the committees on Ways and Means and Energy and Commerce, Jan. 9.

H.R. 3833 (MEDICARE), to amend Title XVIII of the Social Security Act to modify the Medicare durable medical equipment face-to-face encounter documentation requirement; MCDERMOTT; jointly, to the committees on Ways and Means and Energy and Commerce, Jan. 9.

H.R. 3835 (PRIVACY), to require new procedures for health-care exchange websites with regard to personal information, and for other purposes; DUFFY; to the Committee on Energy and Commerce, Jan. 9.