



Health Policy Briefing

January 27, 2014

Congress Returns to Hear President Obama's Next to Last State of the Union Address

Medicare Physician Payment/SGR Reform May Contain Riders

The President will deliver his State of the Union Address to Congress and the nation this Tuesday. It is not anticipated that he will seek congressional help in attempting to fix legislatively the problems that have arisen under the Patient Protection and Affordable Care Act (PPACA), but is expected to lay out his legislative and administrative agenda for health-related and other initiatives. The first major issue looming over the congressional agenda is the extension of the current federal debt limit (which the U.S. Department of Treasury says may need to be increased later in February) which could be delayed pending agreement on other budget-related issues. Also, pending in the House of Representatives is Medicare Physician Payment reform legislation approved by the House Ways and Means Committee (H.R. 2810) and another version of the same bill approved by the House Energy and Commerce Committee. The Congressional Budget Office (CBO) has estimated that the Ways and Means version would cost \$121 billion over ten years and that the Senate Finance Committee counterpart, which contains a number of Medicare "extenders," would cost \$148.6 billion over the same period.

The heir apparent to the Senate Finance Committee chairmanship, **Senator**

Ron Wyden (D-OR), has stated that the sustainable growth rate (SGR) reform legislation could become a vehicle for the consideration of his Wyden-Isakson/Paulsen-Welsh "The Better Care, Lower Cost Act" (S. 1932/H.R. 3890) which is designed to address the high-cost of chronic illnesses among Medicare beneficiaries. Congress will have until March 31st to take up a long-term fix for the SGR problem or again extend the current temporary Medicare reimbursement regime. It remains to be seen whether the President in his State of the Union Address (SOTUA) will endorse some version or another of SGR reform over 5 or 10 years. The Alliance of Specialty Medicine has suggested that long-term reform should reflect a number of additional principles, including the repeal of the PPACA's Independent Payment Advisory Board (IPAB) which, under the law, would have the authority to recommend other provider payment reductions if SGR reform is not fully paid for through other cost savings.

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PPACA Health Reform Update

ObamaCare Remains in Spotlight

Before the President travels to the Capitol this Tuesday to deliver his State of the Union Address, the House Ways and Means Committee will hold a hearing at 10:00 a.m. to take testimony on the negative effect on employees and their jobs that the PPACA's 30-hour full-time coverage rule has created. The Administration has already prepped for the SOTUA in announcing that an additional 800,000 individuals have been enrolled under the federal and state exchanges, thus bringing to about 3 million the number of persons who have chosen private health plans since last October 1st. The Centers for Medicare and Medicaid Services (CMS) also said that over 6.3 million individuals were determined to be eligible by state means for either Medicaid or the Children's Health Insurance Program (CHIP) coverage through year-end. U.S. Department of Health and Human Services (HHS) Secretary Kathleen Sebelius has been busy attempting to persuade the governors and mayors in states that have not expanded Medicaid under the law to do so or risk losing the federal government's full contribution over the next several years. While some Democrats are increasingly urging their colleagues to help "fix" the portions of the PPACA that are not working well, Republicans continue on their quest to resist Medicaid expansion and to "repeal and replace" the law. An independent report by the Jackson/Hewitt firm estimated that employers in states that do not expand Medicaid might become subject to \$1-1.6 billion in shared-responsibility taxes when their employees obtain premium assistance tax credits to help pay for alternative health insurance coverage under their state (or the federal) exchange. Another analysis by the RAND Corporation estimated that the House-passed bill, H.R. 3350--the "Keep Your Health Plan Act" (allowing cancelled plans to be purchased by anyone), would result in a reduction in 2015 of the number of individuals covered under PPACA-compliant plans (about 3.2 million) and an increase in the overall premium cost of such compliant plans (about 10%). In comparison, the report estimated that the Administration's policy to allow such cancelled plans to continue, at least through 2014, would result in a reduction of the number of individuals covered under PPACA-compliant plans (about 500,000) and an increase in the overall premium cost of such compliant plans (about 4%). The Internal Revenue Service (IRS) also showed some flexibility in issuing a proposed rule relating to the law's minimum essential coverage (MEC) requirement for individuals, including several exemptions that would allow certain individuals to avoid the "shared responsibility" tax penalty. As to the law's mandate that employers offer MEC, apparently the IRS will not penalize employers if they continue to offer non-compliant plans to their employees as long as they also offer at least one PPACA-compliant plan. The IRS also is delaying until 2015 the enforcement of the PPACA requirement that employers refrain from offering more valuable health benefits to executives than to other workers.

Supreme Court Injunction Continues for Little Sisters of the Poor

The U.S. Supreme Court ordered the Administration to refrain from enforcing the PPACA's requirement for contraceptive coverage for the Little Sisters of the Poor Home for the Aged and similar non-profit organizations who were objecting to the mandate as against their religious beliefs. The court continued the injunction issued earlier pending a decision on the merits of the case by the U.S. Court of Appeals for the Tenth Circuit.

Medicare/Medicaid/PHSA Corner

Republican Members Express Concern with FDA Generic Drug Labeling Rule

Senator Lamar Alexander (R-TN), Rep. Fred Upton (R-MI) and several other Senate and House members sent a letter to the Food and Drug Administration (FDA) relaying their concerns with the agency's proposed rule that would allow generic drug manufacturers to use the same process as brand drug manufacturers when meeting drug labeling requirements. They said that by allowing generic drug makers to alter drug labels without the FDA's prior approval would be inconsistent with the Hatch-Waxman Act and impose significant costs on the drug industry and consumers. They asked the agency to reconsider the ruling and respond by February 5th.

Upcoming Health-Related Hearings and Markups

House Ways and Means Committee: hearing on effects of the Health Care Law's employer mandate and its definition of full-time employment; 1100 Longworth Bldg.; 10:00 a.m., Jan. 28.