



Health Policy Briefing

April 1, 2013

CBO Says FY 2013 CR Holds Spending Within BCA \$1.043 Trillion Cap

President Signs FY 2013 CR into Law

The President signed H.R. 933, the Consolidated and Continuing Appropriations Act for FY 2013, into law (Public Law 113-6). The White House continued to object to the points of sequestration included under the law, while House **Speaker John Boehner (R-OH)** opined that the House’s “tactic” to go forward with sequestration cuts will force the President to confront what he said is the nation’s long-term spending/entitlement problem. The Congressional Budget Office (CBO) estimated that the resulting \$984 billion in FY 2013 spending, including the spending cuts of \$85 billion induced by sequestration, will keep FY 2013 outlays within the \$1.043 trillion cap mandated under the Budget Control Act (BCA). Thus, any further cuts are expected to be avoided under the BCA enforcement provisions, pending a final determination by the Office of Management and Budget (OMB). Of note, the BCA across-the-board spending reductions will remain in tact for FY 2014-2021.

The long-overdue FY 2014 budget from the White House is expected to be presented to the Congress next week.

White House discussions with congressional Democrats over the inclusion of changes to entitlement programs, such as introducing a “chained” Consumer Price Index (CPI) for Social Security and other federal programs, would seem to collide with the FY 2014 budget resolution already adopted in the Senate. Senate resolution, S.Con. Res.8, would in essence void future BCA sequestration cuts through a combination of targeted spending reductions and revenue increases. In contrast, the House budget plan, H.Con.Res.25, would continue the BCA sequester in full force.

The Congressional Research Service released a report finding that the
continued on page 2

Inside

- Senator McConnell Asks House to Repeal PPACA Medical Device Tax.....2
- HHS Criticizes Report Projecting Large Premium Increases under the PPACA.....2
- CMS Reaffirms Medicaid Rules Even if Private Coverage Offered.....2
- HHS Says Federal Basic Health Plan Set for 2015.....2
- Final Rule for Increased FMAP under PPACA.....2
- MedPAC Concerned with MA Premium Rates and SGR.....3
- IOM Report Unfavorable on Medicare Geographic Adjustments.....3
- OIG Issues Fraud Alert Regarding PODs.....3
- CMS Chronic Disease Online Data.....3
- Upcoming Health-Related Hearings/Markups.....3
- Health Legislation Recently Introduced.....4

continued from page 1

House's Medicaid proposals, including turning the program into a state block-grant, would cut state Medicaid funding by \$1.4 trillion over ten years and possibly lead to new reimbursement, benefit and eligibility restrictions. The vast differences in the two budget resolutions, including the House's repeal of the PPACA and changes to Medicare/Medicaid, would seem to tee up another round of contentious negotiations over FY 2014 appropriations levels. The White House has given hints that the President may again be open to bipartisan discussions leading to a "grand bargain" that would have to be "balanced" with 10-year spending/entitlement reductions and revenue increases. However, when Congress returns next week, the next major hurdle will be for the House, Senate and President to agree on an increase in the federal debt limit which was tolled until May 18 under H.R. 325, the "No Budget, No Pay Act".

PPACA Health Reform Update

Senator McConnell Asks House to Repeal PPACA Medical Device Tax

Following the bipartisan vote to include the non-binding Hatch amendment in the Senate Budget Resolution, which calls for the repeal of the PPACA's medical device tax, Senate Majority Leader Mitch McConnell (R-KY) urged the House leadership to bring up and pass legislation to effect the proposed change.

HHS Criticizes Report Projecting Large Premium Increases under the PPACA

The Society of Actuaries issued a report finding that on-average health insurers in the individual market will experience claims increases of 32% by 2017 with increases ranging from 20% in Florida and 80% in Ohio. Claims increases of this magnitude will inevitably lead to premium increases of a comparable magnitude. The study did not look at the effect on net premium costs to individuals which would be reduced by any federal premium subsidies available under the PPACA. In criticizing the report, U.S. Department of Health and Human Services Secretary Kathleen Sebelius brought up the premium subsidy and other PPACA provisions that might mitigate such premium increases. However, she also said that some PPACA provisions could result in premium increases for some men and younger individuals while lowering the costs for older customers.

HHS Says Federal Basic Health Plan Set for 2015

In a letter to Senator Maria Cantwell (D-WA), HHS indicated that the rules for the Federal Basic Health Plan Option (FBHPO) will be proposed this year and finalized in the first quarter of 2014. In 2015 the FBHPO will be made available to individuals ineligible for Medicaid but with incomes under 200% of the federal poverty level.

CMS Reaffirms Medicaid Rules Even if Private Coverage Offered

In a Frequently Asked Questions (FAQ) released by the Centers for Medicare and Medicaid Services (CMS), the agency said that premium assistance that state Medicaid programs may provide to expand private plan coverage has strings attached. If states use this mechanism, they must ensure that the coverage is "cost effective" and pay providers comparable reimbursements. If private coverage lacks federally guaranteed benefits and cost-sharing protections, state programs must provide "wrap-around" coverage to meet the minimum standards. If Medicaid beneficiaries are offered coverage under PPACA health insurance exchanges, CMS said they will consider a limited number of State Innovation Waivers under section 1115 which would: provide beneficiaries with a choice of at least two qualified health plans; make arrangements with qualified health plans to provide any necessary wrap around benefits and cost sharing; and end no later than December 31, 2016.

Final Rule for Increased FMAP under PPACA

CMS released a final rule which defines the methodology that states must use to apply for the increased Federal Medical Assistance Percentage (FMAP) matching rates (100% in 2014-16 for new expansions) available under the PPACA when states voluntarily decide to expand Medicaid coverage to those with incomes up to 138% of the federal poverty level. Public comments are due by June 3.

Medicare/Medicaid/Public Health Services Corner

MedPAC Concerned with MA Premium Rates and SGR

The Chairman of the Medicare Payment Advisory Commission (MedPAC) sent a letter to CMS stating the panel's concerns with the practice of the agency to incorporate potential Medicare physician payment cuts into the final payments established for Medicare Advantage (MA) plans. He said it creates uncertainty in the MA bidding process and results in insurers having to continually catch up their rates with actual physician costs. However, he also pointed out that the problem is created mainly because of the last minute actions taken by Congress to delay or mitigate the physician payment cuts resulting from the flawed sustainable growth rate (SGR) formula under current law.

IOM Report Unfavorable on Medicare Geographic Adjustments

The Institute of Medicine (IOM) released a report in which Harvard analysts said that a congressional proposal to base Medicare physician and hospital payment rates on a "geographic value index" would result in unfair payments. They concluded that such an index would likely mischaracterize the actual value of services, particularly in heavy-spending geographic regions. Congressional members from low-spending regions have suggested that a geographic adjustment is needed to appropriately compensate providers in their districts.

OIG Issues Fraud Alert Regarding PODs

The HHS Office of the Inspector General (OIG) issued a fraud alert stating that physician-owned distributorships (PODs) which market medical devices to hospitals produce "substantial fraud and abuse risk" and may be found to be in violation of anti-kickback laws. Senate Finance Committee leaders have previously expressed their concerns with PODs and asked HHS to look into the potential problems they may pose.

CMS Chronic Disease Online Data

CMS announced it will launch a so-called "Chronic Conditions Dashboard" on its website. The tool will include: summary information from the agency's Chronic Conditions Data Warehouse; 2011 state, Hospital Referral Region and national comparison data on the prevalence of chronic conditions; and Medicare costs and utilization data for beneficiaries having chronic conditions.

Upcoming Health-Related Hearings/Markups

The House Energy and Commerce Subcommittee on Health will hold a hearing on Wednesday, April 3 at 1:00 p.m. in 2322 RHOB to discuss "Protecting America's Sick and Chronically Ill" in connection with the recent HHS announcement to cease covering individuals under the PPACA's Pre-Existing Condition Insurance Program (PCIP).

The Senate Health, Education, Labor and Pensions Committee will mark up legislation on April 10; the mental health legislation is intended to "help schools become safer and help people struggling with mental health problems to get the treatment that they need."

Health Legislation Recently Introduced

H.R. 1404 (MEDICAID), to amend Title XIX of the Social Security Act to eliminate the increased federal medical assistance percentage under the state plan with respect to newly eligible mandatory individuals under Medicaid, to provide states with greater flexibility under Medicaid, and for other purposes; SALMON; to the Committee on Energy and Commerce, March 25.