



Health Policy Briefing

June 3, 2013

Congress Returns to Take Up FDA Legislation and FY 2014 Appropriations Bills

House Scheduled to Advance Appropriations and FDA Legislation

Having adopted the FY 2014 302(b) federal spending cap allocations, this week the House will move forward to consider the passage of H.R. 2216, the Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, and H.R. 2217, the Department of Homeland Security Appropriations Act. The House republican majority intends to continue sequestration as contained in the Budget Control Act (BCA); however, several efforts are underway in the Senate to give the Administration more flexibility in shifting funds among various line items to help ameliorate the effects of sequestration. A plan being worked on by **Senators Patrick Toomey (R-PA), Joe Manchin (D-WV) and James Inhofe (R-OK)** would allow the President to make certain adjustments, while a plan being devised by **Senator Susan Collins (R-ME)** would allow each department and agency to make adjustments, subject to the approval of both the House and Senate appropriations committees. On Monday, June 3rd, the House is scheduled to take up the following legislation under

the suspension calendar--H.R. 1919, the Safeguarding America's Pharmaceuticals Act of 2013, legislation designed to help ensure drug safety by establishing a uniform national standard for securing the pharmaceutical distribution supply chain; and S. 622, the Animal Drug and Animal Generic Drug User Fee Reauthorization Act of 2013.

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PPACA Bill Cleared for House Consideration

With the passage of H.R. 1549, the Helping Sick Americans Now Act, by the House Energy and Commerce Committee and with a rule for consideration in the House having already been adopted, the House could also soon take up this legislation. As currently constituted the bill would overturn the Department of Health and Human Services (HHS) freeze on new applications for health coverage under the PPACA Pre-Existing Condition Insurance Plan (PCIP) and provide funding of the program through CY 2013 by transferring amounts allocated to the PPACA Prevention and Public Health Fund during FY 2013-2015.

PPACA Health Reform Update

Republicans Again Ask for PPACA-Related Investigations

Senators Orrin Hatch (R-UT) and Lamar Alexander (R-TN) followed up their request for the Government Accountability Office (GAO) to investigate HHS Secretary Sebelius' outreach to insurers to assist in informing the public about enrollment and exchange eligibility rules under the PPACA with another similar letter to the HHS Inspector General Daniel Levinson. They asked for a response by June 14 on whether appropriations or ethics laws were violated by Secretary Sebelius. Senator Hatch also sent a letter to Secretary Sebelius asking for an explanation on how HHS established priorities in reimbursing employer-sponsored health plans under the PPACA's Early Retiree Reinsurance Program (ERRP). The Senator asked why the agency front-loaded payments so that funding ran out early and asked for the status of audits and other program claims information. In addition, Senator John Cornyn (R-TX) and Rep. Phil Roe (R-TN) sent a letter to the Secretary asking her to recuse herself from any involvement with the implementation of the PPACA's Independent Payment Advisory Board (IPAB). House and Senate Republican leaders have refused to name their 3 members to the 15-member IPAB; however, the health law would allow the Secretary to intervene and name such members to allow the Board to obtain a majority for its establishment and operation.

Small Business SHOP Program Delays

The Centers for Medicare and Medicaid Services (CMS) issued a final rule which makes clear that in 2014 the PPACA's Small Business Health Options Program (SHOP) will offer small business employees a single health plan, rather than multiple plans, in the 33 states in which the federal government has a role in operating health insurance marketplaces. In the 16 states and DC which will operate their own exchange marketplaces, the states may offer one or more than one plan. CMS said that beginning in 2015 all state and federally run marketplaces would be required to offer multiple health plans under the SHOP program.

Final Rules for Wellness Program Incentives

The Internal Revenue Service and Department of Labor released final rules for group health plan wellness incentive programs which are designed to prevent prohibited discrimination based on an individual's health status. Among other things, in general the rule allows permissible rewards of up to 30% and allows up to 50% for wellness programs intended to prevent or reduce tobacco use. The agencies also sent to Congress a report on wellness programs.

Medicare/Medicaid/Public Health Services Corner

House E&C Committee Releases Draft of New Medicare Doc Fix Legislation

The House Energy and Commerce Committee released draft legislative language which would implement proposed changes to the current Medicare physician payment sustainable growth rate (SGR) system. On June 5th the House Energy and Commerce Health Subcommittee has scheduled a hearing to take testimony on the proposal. House Republicans are expected to insist that the cost of the legislation be offset (the Congressional Budget Office estimates the cost as \$139 billion over 10 years); however the form such offsets will take is not included in the current draft. Of note, the House Ways and Means Committee did not co-sponsor the initiative as was the case for two previous efforts to outline possible changes to repeal the current sustainable growth rate formula and replace it with a system based on quality measures and new payment models. The E&C draft bill would: repeal the SGR and provide an unspecified period of stable payments in the first phase; provide payments based on quality-of-care measures in a second phase; and introduce “efficiency of care” adjustments in a third phase.

Medicare Part A Solvency Extended 2 Years

The Medicare trustees released their annual reports including an estimate that the current Part A Hospital Insurance trust fund will remain solvent without change through 2025, but will become insolvent in 2026. In general, the Medicare actuaries assumed that recent lower-than-expected spending increases would extend Part A solvency for another two years from the insolvency date reported last year. The Part B Supplemental Program report included an estimate that the standard Part B premium will not increase in 2014 over this year’s premium of \$104.90 a month. Of note, the trustees said the estimates assumed that Congress will not act to override the projected 25% cut in physician payment amounts scheduled to begin in 2014. If Congress does enact a doc fix for 2014, Part B costs are projected to grow by 6.3% annually over the next five years.

CMS Authorizes Data Release for Fraud Prevention

CMS gave notice that the disclosure to health plans of identifiable provider and beneficiary information contained in 23 agency health databases will be allowed when it “is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse....” Such actions will be coordinated by the CMS Data Sharing and Partnership Group.

Medicare Coverage for Anti-Nausea Therapy

CMS released a final decision memo stating that Medicare will cover certain “reasonable and necessary” oral anti-nausea and vomiting therapies for beneficiaries undergoing chemotherapy.

Upcoming Hearings and Markups on Health-Related Legislation

House Education and the Workforce Committee: will hold a hearing on the President's Fiscal Year 2014 Budget Proposal for the U.S. Department of Health and Human Services; 10:00 a.m., 2175 Rayburn Bldg.; June 4

House Energy and Commerce Committee: will hold a hearing on Medicare physician payment overhaul legislation; 10:00 a.m., 2123 Rayburn Bldg.; June 5.

House Appropriations Committee, Agriculture, Rural Development, FDA, and Related Agencies Subcommittee: consideration and markup of FY 2014 Agriculture Appropriations Bill. 9:30 a.m., 2362-A Rayburn Bldg.; June 5.

House Appropriations Committee, Defense Subcommittee: will mark up the FY 2014 Defense Appropriations Bill. 11:00 a.m., H-140 Capitol, June 5. This Mark Up is CLOSED.

Senate Appropriations Defense Subcommittee: will hold hearings on proposed FY 2014 appropriations for agencies, programs and activities under its jurisdiction. 10 a.m., 192 Dirksen; June 5.

Senate Appropriations Labor, Health and Human Services, Education and Related Agencies Subcommittee: will hold hearings on proposed fiscal 2014 appropriations for agencies, programs and the activities under its jurisdiction. 10 a.m., 138 Dirksen; June 5.