



Health Policy Briefing

July 29, 2013

No Budget Deal in Sight as Republicans Seek to Defund Obamacare; SGR Fix in House

Budget Impasse Continues into August Recess

With Congress scheduled to recess after this week until after Labor Day, it appears that the stress lines are growing between Republicans and Democrats over the level of fiscal year (FY) 2014 spending that should be approved before the new fiscal year starts October 1st. The House continues to operate off its own budget resolution which would continue spending at the sequestration level of \$967 billion while Senate appropriators seek to modify sequestration and target spending at the higher \$1.058 billion under the budget resolution adopted in that chamber. The White House would also like to ease the bite of sequestration and pointed to the CBO estimate that cancelling the BCA mandate would increase GDP growth by .7% and increase employment by 900,000. Republican leaders in the House and Senate upped the ante last week by insisting that any budget agreement include a measure which would defund the implementation of the PPACA. **Senator Mike Lee (R-UT)** has circulated a letter seeking support for this move while citing the Administration's one-year delay of the PPACA's employer mandate as justification to suspend the entire law. This element is non-negotiable for the White House and Senate Democrats and raises the

specter of a September stalemate which could threaten another government shutdown. Republicans also seek to use the upcoming need to increase the federal debt limit as leverage to modify Democrat spending demands and, possibly, force negotiations into a broader discussion which would curtail Medicare/Medicaid/cost-of-living adjustment (COLA) entitlement spending. As to the latter possibility, the White House and eight Republican senators, led by **Senator Johnny Isakson (R-GA)**, are reportedly in discussion about possible Social Security COLA adjustments and increased Medicare premiums for higher-income

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beneficiaries. With only a limited number of legislative days in September to enact FY 2014 spending levels, it looks almost certain that Congress will pass a short-term continuing resolution (CR) after the recess in order to continue federal spending to allow more time for budget negotiations. Despite the impasse, the House and Senate recognize the need to fund defense operations in a timely fashion and, in this regard, the Senate Appropriations Committee is scheduled this week to conclude a markup of the FY 2014 Defense appropriations bill. Also, the House passed H.R. 2397, the FY 2014 Defense appropriations bill on a 315-109 vote. The bill provides \$512.5 billion in non-war funding. Of note, this is a decrease of \$5.1 billion below the FY 2013 enacted level and \$3.4 billion below the President's request while exceeding the sequestration level by about \$28.1 billion. Signaling the hurdles that remain over arriving at the levels of domestic spending to be allowed in FY 2014, the House Appropriations Labor/Health and Human Services (HHS)/Education Subcommittee abandoned a scheduled markup of its appropriations bill which would result in an overall 23% cut in spending over this year's level.

Medicare Physician Payment Reform Legislation Advances

The House Energy and Commerce Health Subcommittee approved and sent H.R. 2810 to the full committee for a markup of the bill this Tuesday and Wednesday. In general, the bill would replace the current sustainable growth rate (SGR) formulation under the Medicare Part B physician payment system with an alternative which would make payments beginning in 2019 based on how a provider performs on certain quality of care measurements (a 1% increase for scores above a designated midrange level and a 1% decrease for scores below the mid-range level). Physician payments would increase by a fixed 0.5% during the 5-year phase-in period. The bill also offers incentives to encourage care coordination and medical homes. Specific provisions to pay for the legislation were not included and a resolution of the cost issue will likely have to wait until the House Ways and Means Committee marks up the legislation which was jointly referred to this committee. Whether the bill will be taken up in the House as separate legislation or as part of a larger budget package has yet to be determined.

PPACA Health Reform Update

Republicans Continue Assault on PPACA Implementation

This week the House will take up H.R. 2009, the "Keep the IRS Off Your Health Care Act", which would prohibit the Secretary of the Treasury, or any delegate of the Secretary, from implementing or enforcing any provisions of or amendments made by the Patient Protection and Affordable Care Act (PPACA) or the Health Care and Education Reconciliation Act (HCERA) of 2010. In addition, both the House Energy and Commerce and Ways and Means Committees will hold hearings on the implementation of the PPACA this Thursday. At a hearing to examine the delay by the Administration of the PPACA's employer mandate held by the House Education and the Workforce Subcommittee on Health, Employment, Labor and Pensions and Subcommittee on Workforce Protections, a small-business restaurant chain testified that the automatic enrollment in plans must be eliminated, the definition of small business simplified, and the 30-hour definition of full-time worker be increased (in general, businesses and a number of labor unions say it should be increased to 40 hours to avoid incentives for businesses to decrease employees' hours). Subcommittee Chairman Phil Roe (R-TN) said the one-year delay in the employer mandate "does not alter the fact the law is fatally flawed. Regardless of when the employer mandate is implemented, it will destroy jobs and force Americans to accept part-time work." Supporters of the law said that the delay is "much ado about very little..." and that members should work together to help improve the law. At another hearing held by the Senate Small Business and Entrepreneurship Committee, a small restaurant owner testified that he will drop his employer health plan and pay the penalty because his cost will be significantly less than having to expand coverage to all employees (many working over 30 hours). Republican leaders of the House Ways and Means Committee also sent a letter to the Treasury Secretary asking for further information on the delay. In addition, a letter was sent to HHS Secretary Kathleen Sebelius from seven Republican leaders of the Senate Health, Education, Labor and Pensions (HELP) and House Energy and Commerce

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PPACA Health Reform Update cont.

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committees asking that the premium prices filed with the department from health insurers seeking to offer coverage under the 34 federally facilitated marketplaces (FFMs) be publicly disclosed to help consumers plan better before the exchanges open in October. The House Ways and Means Committee will also take Treasury/Internal Revenue Service (IRS) to task on Wednesday for their action to allow federal premium tax credits to apply to individuals under the FFMs. There is a question as to whether the PPACA, as written, allows for such credits to be offered under exchanges that are not fully operated by the states.

HRSA Rules on PPACA Extension of Orphan Drug Rule

The Health Resources and Services Administration (HRSA) issued a final rule which specifies the discounts available to certain safety net providers when purchasing orphan drugs from drug manufacturers pursuant to the 340B drug program which was expanded under the PPACA.

Medicare/Medicaid/Public Health Services Corner

Senate Finance Committee Hearing on Meaningful Use Deadline

The Health IT industry and providers testified at a Senate Finance Committee hearing that the current “meaningful use” deadlines for the three-stage program could either cause providers to stop their adoption of electronic medical records or to rush implementation, thus leading to safety concerns. The Administration has indicated it opposes further delay and Chairman Max Baucus (D-MT) seemed content to let the deadlines proceed as is. However, Senator Baucus also said something must be done to help rural health clinics get the funding they need to install the health technology.

House Members Ask CMS to Modify Stroke-Related Measures

The House Congressional Heart and Stroke Coalition, headed by Reps. Chris Smith (R-NJ) and Lois Capps (D-CA), sent a letter to the Centers for Medicare and Medicaid Services (CMS) expressing their concern that the 30-day stroke mortality and stroke hospital readmission measures included in the FY 2014 hospital inpatient prospective payment system (IPPS) could have an adverse impact on access to care given to stroke patients. They encouraged the agency, before issuing a final rule, to work with providers to revise the measures to recognize stroke severity in order to mitigate the possible negative outcomes.

IOM Reports on Medicare Payment Adjustment for Geography

The Institute of Medicine (IOM) issued a report, Variation in Health Care Spending: Target Decision Making, Not Geography, which recommends that Congress eliminate geography as a factor in setting Medicare payments. The report said that, while geographic variation in spending and utilization is real, medical care decisions are made at the provider, not regional, level and result in varying degrees of quality care. It was also recommended that CMS continue to test payment reforms that provide incentives for the clinical and financial integration of health care delivery systems that encourage coordination of care, real-time sharing of data, receipt and distribution of provider payments and the assumption of some or all of the risk of managing the care continuum for their populations.

Medicare/Medicaid/Public Health Services Corner cont.

Medicaid Issues

The Government Accountability Office (GAO) issued a report, *Approval Process Raises Cost Concerns and Lacks Transparency*, stating that HHS's actions are inadequate to ensure that state Medicaid demonstration projects are "budget neutral". GAO said the budget neutrality process needs to be updated and assure the reliability of the data. GAO recommended that Congress consider requiring HHS to give increased attention to fiscal responsibility in approving state demonstration proposals. Also, Senators Max Baucus (D-MT) and Charles Grassley (R-IA) have asked HHS to bar state dental clinics from participating in Medicaid if they fail to follow state licensing laws. They cited a Senate Finance Committee report, the Joint Staff Report on the Corporate Practice of Dentistry in the Medicaid Program, which found that dental management companies often fail to meet quality and compliance standards, thus leading to unnecessary treatment, the improper administration of anesthesia and overcharging the Medicaid program.

NIH Issues

Under the National Institutes of Health (NIH) Big Data to Knowledge, or BD2K program, the agency announced it will award up to \$96 million over four years to establish six to eight investigator-initiated Big Data to Knowledge Centers of Excellence in an effort to improve biomedical data set research. Applications are due by November 20, 2013.

FDA Issues

At a hearing held by the Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, the Federal Trade Commission (FTC) witness testified that so-called "pay for delay" agreements between drug companies raise substantial antitrust concerns and cost consumers \$3.5 billion per year. She said the FTC has taken and will continue to take aggressive action to monitor and deter such agreements, but will not contest all of them. Chairwoman Klobuchar (D-MN) and Senator Grassley (R-IA) touted their proposed legislation, S. 214, that would make such agreements illegal unless the pharmaceutical company parties can prove that the agreements are not anticompetitive. Senator Grassley urged the FTC to continue to combat such agreements so that consumers can have access to lower priced generic drugs as soon as possible.

Health-Related Hearings and Markups

Senate Appropriations Defense Subcommittee: will mark up draft legislation that would make FY 2014 appropriations for departments, agencies and programs under its jurisdiction. 10:30 a.m., 192 Dirksen; July 29.

House Energy and Commerce Committee: will begin mark up H.R. 2810, legislation to amend title XVIII of the Social Security Act to reform the sustainable growth rate and Medicare payment for physicians' services, and for other purposes; opening statements only; 4:00 p.m., 2123 Rayburn Bldg; July 30.

Senate Budget Committee: will hold a hearing titled "Containing Health Care Costs: Recent Progress and Remaining Challenges;" 10:30 a.m., 608 Dirksen Bldg; July 30.

House Energy and Commerce Committee: will mark up H.R. 2810, legislation to amend title XVIII of the Social Security Act to reform the sustainable growth rate and Medicare payment for physicians' services, and for other purposes; 10:00 a.m., 2123 Rayburn Bldg; July 31.

House Ways and Means Subcommittee on Human Resources hearing "Improving the Safety Net: Better Coordinating Today's Maze of Programs to Ensure Families Receive Real Help." 2 p.m., 1100 Longworth, July 31.

House Science, Space and Technology's Research and Technology Subcommittee: will hold a hearing titled "The Frontiers of Human Brain Research." 10 a.m., 2318; July 31.

House Oversight and Government Reform Subcommittee on Energy Policy, Health Care and Entitlements hearing "Oversight of IRS' Legal Basis for Expanding ObamaCare's Taxes and Subsidies." 10:15 a.m., 2154 Rayburn, July 31

Senate Environment and Public Works hearing "Strengthening Public Health Protections by Addressing Toxic Chemical Threats." 9:30 a.m., 406 Dirksen, July 31.

Senate Commerce, Science and Transportation Committee hearing on energy drinks and marketing them to youth. 2:30 p.m., 253 Russell, July 31.

House Energy and Commerce Committee: will hold a hearing titled "PPACA [Patient Protection and Affordable Care Act] Pulse Check;" 10:00 a.m., 2123 Rayburn Bldg; August 1.

House Ways and Means Committee: will hold a hearing on the status of implementing the Affordable Care Act by both the IRS and the Department of Health and Human Services; 10:00 a.m., 1100 Longworth Bldg; August 1.

Senate Appropriations Committee: will hold a markup on draft legislation that would make fiscal 2014 appropriations for programs under its jurisdiction. 10:30 a.m., 106 Dirksen; August 1.

House Veterans' Affairs Committee: will mark up pending legislation. 10 a.m., 334 Cannon; August 1.

House Oversight and Government Reform's Energy Policy, Health Care and Entitlements Subcommittee: will hold a hearing titled "Oversight of IRS' Legal Basis for Expanding Obama Care's Taxes and Subsidies." 10:15 a.m., 2154 Rayburn; August 1.

Health Legislation Recently Introduced

H.R. 2753 (MEDICARE), to amend Title XVIII of the Social Security Act to improve Medicare Advantage, and for other purposes; BLACK; jointly, to the committees on Ways and Means and Energy and Commerce, July 19.

H.R. 2757 (MEDICAID), to amend Title XIX of the Social Security Act to remove the exclusion from medical assistance under Medicaid of items and services for patients in an institution for mental diseases; EDDIE BERNICE JOHNSON of Texas; to the Committee on Energy and Commerce, July 19.

H.RES. 309 (HIV/AIDS), supporting the goals and ideals of National Clinicians HIV/AIDS Testing and Awareness Day, and for other purposes; WATERS; to the Committee on Energy and Commerce, July 19.

H.R. 2775 (REFORM), to condition the provision of premium and cost-sharing subsidies under the Affordable Care Act, upon a certification that a program to verify household income and other qualifications for such subsidies is operational, and for other purposes; BLACK; jointly, to the committees on Energy and Commerce and Ways and Means, July 22.

H.R. 2782 (TRAUMA CARE), to award posthumously a Congressional Gold Medal to Dr. R. Adams Cowley, in recognition of his lifelong commitment to the advancement of trauma care; RUPPERSBERGER; to the Committee on Financial Services, July 22.

H.R. 2783 (TAXATION), to amend the Internal Revenue Code of 1986 to provide for continued eligibility for the health care tax credit for PBGC pension recipients eligible for the credit at the end of 2013; RYAN of Ohio; to the Committee on Ways and Means, July 22.

H.R. 2789 (REFORM), to delay enrollment in qualified health plans in state or federally facilitated exchanges until one year after final rules are published establishing the verification and other procedures to be used to implement Section 1411 of the PPACA and carrying out sections 6055 and 6056 of the Internal Revenue Code of 1986; ELLMERS; to the Committee on Energy and Commerce, July 23.

H.R. 2801 (MEDICARE), to amend Title XVIII of the Social Security Act with respect to physician supervision of therapeutic hospital outpatient services; NOEM; jointly, to the committees on Energy and Commerce and Ways and Means, July 23.

S. 1360 (IMPROPER PAYMENTS), to amend the Improper Payments Elimination and Recovery Improvement Act of 2012, including making changes to the Do Not Pay initiative, for improved detection, prevention, and recovery of improper payments to deceased individuals, and for other purposes; CARPER; to the Committee on Homeland Security and Governmental Affairs, July 24.

H.R. 2809 (REFORM), to delay the application of the Affordable Care Act; BLACKBURN; jointly, to the committees on Energy and Commerce, Ways and Means, Education and the Workforce, the Judiciary, Natural Resources, Rules, House Administration, and Appropriations, July 24.

H.R. 2810 (MEDICARE), to amend Title XVIII of the Social Security Act to reform the sustainable growth rate and Medicare payment for physicians' services, and for other purposes; BURGESS; jointly, to the committees on Energy and Commerce, Ways and Means, and the Judiciary, July 24.

H.R. 2811 (APPROPRIATIONS), supplemental appropriations for the National Institutes of Health for the fiscal year ending Sept. 30, 2013, and for other purposes; COHEN; to the Committee on Appropriations, July 24.

H.R. 2817 (HEALTH CARE PROVIDERS), to amend Title XXVII of the Public Health Service Act to remove the nondiscrimination requirements relating to health care providers; HARRIS; to the Committee on Energy and Commerce, July 24.

H.R. 2820 (MEDICAL COSTS), to amend the Internal Revenue Code of 1986 to provide for equity relating to medical costs; RIBBLE; to the Committee on Ways and Means, July 24.

Health Legislation Recently Introduced cont.

S. 1365 (MEDICARE), to amend Title XVIII of the Social Security Act to allow for fair application of the exceptions process for drugs in tiers in formularies in prescription drug plans under Medicare Part D; NELSON; to the Committee on Finance, July 25.

H.R. 2827 (MEDICARE), to amend Title XVIII of the Social Security Act to allow for fair application of the exceptions process for drugs in tiers in formularies in prescription drug plans under Medicare Part D; JOHNSON of Georgia; jointly, to the committees on Energy and Commerce and Ways and Means, July 25.

H.R. 2828 (MEDICARE), to amend titles XI and XVIII of the Social Security Act to prevent fraud and abuse under Medicare and to require National Provider Identifiers for reimbursement of prescriptions under Part D of Medicare, and for other purposes; BILIRAKIS; jointly, to the committee on Energy and Commerce and Ways and Means, July 25.

H.R. 2833 (REFORM), to amend the Affordable Care Act so as to eliminate the authority of the secretary of health and human services to limit the ability of medical providers to conduct lawful business, and for other purposes; GINGREY of Georgia; to the Committee on Energy and Commerce, July 25.

H.R. 2835 (HEALTH SAVINGS ACCOUNTS), to amend the Internal Revenue Code of 1986 to repeal the amendments made by the Affordable Care Act that disqualify expenses for over-the-counter drugs under health savings accounts and health flexible spending arrangements; JENKINS; to the Committee on Ways and Means, July 25.

H.R. 2837 (REFORM), to prohibit for a one-year period beginning Sept. 30, 2013, the implementation, operation, and coordination of a federal data services hub or any similar database system for determining or verifying eligibility under the Patient Protection and Affordable Care Act; MEEHAN; jointly, to the committees on Energy and Commerce and Ways and Means, July 25.

H.R. 2843 (MEDICARE), to amend Title XI of the Social Security Act to provide for the public availability of Medicare claims data; SENSENBRENNER; jointly, to the committees on Ways and Means and Energy and Commerce, July 25.