



Health Policy Briefing

May 6, 2013

Congress Returns As Budget Impasse Continues and Sequestration is Given More Scrutiny

Budget Resolution, Sequestration, Appropriations and Debt Limit Issues Converge

Congress returns this week without agreement on Fiscal Year (FY) 2014 spending levels and whether or not to scale back the defense and non-defense Budget Control Act (BCA) mandated sequestration levels going forward. Absent an agreement between the House and Senate on FY 2014 federal spending levels, House appropriators may have little choice but to proceed with subcommittee markups that reflect the House budget resolution cap of \$967 billion while Senate appropriators may attempt to move bills totaling a larger \$1.058 trillion spending cap. Because sequestration has already lowered monthly federal spending and the U.S. Department of Treasury has reported higher than anticipated revenues, the showdown over raising the federal debt ceiling may be pushed to later this summer or even into October. House Republicans can be expected to use the debt limit issue as leverage to help obtain a major agreement on “revenue

neutral” tax reform and FY 2014-2023 spending levels. Absent a bicameral budget agreement, Republicans and Democrats will continue to wrangle over the extent to which to extend the effects of sequestration on defense and non-defense spending.

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PPACA Attacked and Defended

According to House Majority Leader Eric Cantor (R-VA) the House will again take up legislation to fully repeal the Patient Protection and Affordable Care Act (PPACA), although a specific timetable has not been set. Pending a whip vote count, House Republicans may also try to bring to a vote, H.R. 1549, the “Helping Sick Americans Now Act,” which would transfer funds from the Prevention and Public Health Fund to the Pre-existing Condition Insurance Plan (PCIP). Also, there appears to be bipartisan support in both chambers to repeal the PPACA’s Independent Payment Advisory Board (IPAB). Once the 15 members of the IPAB have been nominated and confirmed by the Senate, the Board could make recommendations beginning in 2014 to keep the rising costs of Medicare within targeted growth rates; however, the President has yet to make the required nominations. In any event the acting CMS Chief Actuary has indicated that his office’s current 5-year projections of Medicare per-capita spending increases of 1.15% do not exceed the 3.03% growth target and are, therefore, insufficient to trigger IPAB cost-cutting recommendations next year. This finding may serve to further defer any congressional action regarding the IPAB. In another knock on the PPACA’s provisions requiring members and staff to obtain their health insurance coverage under the newly established exchanges in 2014, House Ways and Means Committee Chairman Dave Camp (R-MI) and other Republicans introduced H.R. 1780, legislation that would require all federal employees, including the President and Vice President, to obtain coverage through PPACA health insurance exchanges. At a press conference, President Obama also weighed-in to fend off criticism of the law’s implementation, most recently from Senator Max Baucus (D-MT), Chairman of the Senate Finance Committee, who said at a recent hearing that he feared a “huge train wreck” as the 2014 effective date approaches. The President said “Even if we do everything perfectly, there will still be glitches and bumps, and there will be stories that can be written that say, oh look, this thing is not working the way it’s supposed to, and this happened and that happened. And that’s pretty much true of every government program that’s ever been set up.”

CMS Issues Short Form for Online Health Coverage

The Centers for Medicare and Medicaid Services (CMS) released revised shortened application forms, for singles and families, that consumers can access online to enroll under health insurance exchanges, Medicaid and CHIP. Open enrollment begins on October 1 for calendar year (CY) 2014 plan years. In related news, CMS awarded a Virginia health information technology company to operate a call center in at least 34 states to respond to questions on federally-facilitated and partnership exchanges as well as Medicare and Medicare Advantage programs.

Small Businesses Seek Court Relief from PPACA Penalties

A group of small businesses operating in several states deciding to forego state-run health insurance exchanges (i.e. Kansas, Missouri, Texas, Tennessee, Virginia, and West Virginia) have filed suit in the U.S. District Court for the District of Columbia seeking to nullify certain employer provisions under the PPACA. Their complaint says that the IRS regulations giving premium subsidies to individuals in the 33 states abdicating their role to operate health insurance exchanges violates the plain language of the PPACA. The plaintiffs believe the court should enjoin the IRS from assessing the \$2,000 penalty for each of their employees who do not participate in their own health plan and instead obtain coverage under the default federally-facilitated-exchanges. In related news, the Treasury/Internal Revenue Service (IRS) released proposed rules defining the circumstances under which individuals will not be eligible to receive premium tax credits under all exchange types. Such individuals would be ineligible if they are eligible for coverage under an employer-sponsored plan that meets “minimum value” requirements. Each plan must determine total plan costs using a standard population and would meet the minimum value rule if the employer pays at least 60% of such costs.

PPACA Health Reform Update cont.

State-Run Exchange Commission Rules

The CMS Center for Consumer Information and Insurance Oversight (CCIIO) issued guidance on broker/agent payments with respect to states approved to operate their own online health insurance exchanges next year. In general, the CCIIO said that State-Based Marketplaces may establish parameters for compensating agents and brokers, by direct compensation from the Marketplace, or by having health insurance issuers pay commissions. On the other hand, broker/agent compensation would continue to be negotiated between issuers and their broker/agents with respect to health coverage offered under federally-facilitated-exchanges and state-partnership-exchanges.

Medicare/Medicaid/Public Health Services Corner

Medicare SGR Reform

On Tuesday the House Ways and Means Health Subcommittee will hold a hearing on proposals that would repeal the Medicare Physician Payment System's Sustainable Growth Rate (SGR) formula and overhaul the Medicare Physician Payment System. The House Ways and Means and Energy and Commerce Committees jointly released a second draft of a legislative framework for the reform of the Medicare Physician Payment System. House Energy and Commerce Committee Chairman Fred Upton (R-MI) stated that his committee intends to ready such legislation for floor action before the August congressional recess.

Medicare Payments to Increase for Hospices, IRFs and SNFs

CMS issued proposed rules under which Medicare reimbursements to hospices would increase 1.1% in FY 2014. CMS is also seeking comments on a proposal which would eliminate the pain management and quality assessment and performance improvement program and replace them with other quality measures. CMS also proposed to increase FY 2014 Medicare payments by 2% for inpatient rehabilitation facilities (IRFs) under the prospective payment system as well as to update the 60% rule for determining whether a hospital is

eligible for the higher IRF PPS rate. Quality reporting for IRFs would also be updated to include three new National Quality Forum endorsed quality measures. CMS also proposed that payments to skilled nursing facilities (SNFs) be increased by 1.4% in FY 2014 using a new SNF market-basket index that includes the most commonly used cost categories for SNF routine services, ancillary services and capital-related expenses. Comments are generally due by June 1.

MA and Part D Plan Contracts with Providers Override Medicare Sequestration

CMS has alerted Medicare Advantage and Part D plans that their existing payment contracts with providers must be followed despite the 2% reduction of Medicare payments under the BCA sequestration mandate applicable to the Medicare fee-for-service program (FFS). However, CMS states that a non-contract provider is required to accept as payment in full the amount determined as if the beneficiary provided service is enrolled in the Medicare FFS program. Nonetheless, plans can exceed the FFS payment floor. Special rules apply to net capitation payments, including Medicare Advantage rebates, Part D direct subsidy payments and coverage gap discount payments. Also, Part D risk corridor payments are not subject to the 2% sequestration.

Medicare/Medicaid/Public Health Services Corner cont.

White House Reports that Health IT Lags for Minorities

A White House report summarizing the White House Summit on Achieving eHealth Equity concludes that policy reforms are needed to “leverage existing policies such as the Medicare and Medicaid EHR Incentive Programs to develop outcomes-focused goals for minority and other underserved populations....” The report says that a number of barriers, such as limited access to culturally appropriate Health IT systems, have hindered the widespread adoption of electronic health information technology among underserved and minority populations. The Summit also suggested further means to promote Health IT equality among all populations.

Upcoming Health-Related Hearings/Markups

House Ways and Means Health Subcommittee: will hold a hearing on proposals that would repeal the Medicare Physician Payment System’s Sustainable Growth Rate formula and overhaul the Medicare Physician Payment System; 10:00 a.m., 1100 Longworth Bldg; May 7.

House Energy and Commerce Health Subcommittee will hear opening statements for mark up of H.R. 1407, legislation to reauthorize the Animal Drug User Fee Act (ADUFA) and the Animal Generic Drug User Fee Act (AGDUFA), and a bill to amend the Federal Food, Drug, and Cosmetic Act (FDC&A) with respect to the pharmaceutical distribution supply chain; 4:00 p.m., 2123 Rayburn Bldg; May 7.

House Energy and Commerce Health Subcommittee will mark up H.R. 1407, ADUFA/AGDUFA reauthorization, and a bill to amend the Federal Food, Drug, and Cosmetic Act (FDC&A) with respect to the pharmaceutical distribution supply chain); 9:00 a.m., 2123 Rayburn Bldg; May 8.

Senate Veterans’ Affairs Committee: will hold a hearing to examine pending health care legislation; 10:00 a.m., 418 Russell Bldg; May 9.

House Small Business Subcommittee on Health and Technology: will hold a hearing titled “The Health Insurance Fee: Impact on Small Business.” 10 a.m., 2360 Rayburn Bldg; May 9.

Health Legislation Recently Introduced

H.R. 1767 (MEDICAL DEBT), to exclude from consumer credit reports medical debt that has been in collection and has been fully paid or settled, and for other purposes; WATERS; to the Committee on Financial Services, April 26.

H.R. 1780 (REFORM), to provide that the only health plans that the federal government may make available to the president, vice president, members of Congress, and federal employees are those created under the Patient Protection and Affordable Care Act or offered through a health insurance exchange; CAMP; jointly, to the committees on Oversight and Government Reform, Energy and Commerce, and House Administration, April 26.

H.R. 1787 (MEDICARE), to amend Title XVIII of the Social Security Act to provide for an extension of the Medicare-dependent hospital (MDH) program and the increased payments under the Medicare low-volume hospital program; REED; to the Committee on Ways and Means, April 26.

Health Legislation Recently Introduced cont.

H.R. 1790 (MEDICAID), to amend Title XIX of the Social Security Act to extend to physician assistants eligibility for Medicaid incentive payments for the adoption and use of certified electronic health records, whether or not such physician assistants practice at a rural health center or federally qualified health center; BASS; to the Committee on Energy and Commerce, April 26.

H.R. 1792 (VETERANS' HEALTH), to amend Title 38, United States Code, to direct the secretary of veterans affairs to report cases of reportable infectious diseases at medical facilities of the Department of Veterans Affairs in accordance with state law; COFFMAN; to the Committee on Veterans' Affairs, April 26.

H.R. 1798 (HEALTH CARE COVERAGE), to amend the Employee Retirement Income Security Act of 1974 to ensure health care coverage value and transparency for dental benefits under group health plans; GOSAR; to the Committee on Education and the Workforce, April 26.

H.R. 1801 (HEALTH CARE COVERAGE), to amend the Employee Retirement Income Security Act of 1974, the Public Health Service Act, and the Internal Revenue Code of 1986 to require group and individual health insurance coverage and group health plans to provide for coverage of oral anticancer drugs on terms no less favorable than the coverage provided for anticancer medications administered by a health care provider; HIGGINS; jointly, to the committees on Energy and Commerce, Ways and Means, and Education and the Workforce, April 26.

H.R. 1814 (HEALTH CARE COVERAGE), to amend Section 5000A of the Internal Revenue Code of 1986 to provide an additional religious exemption from the individual health coverage mandate; SCHOCK; to the Committee on Ways and Means, April 26.

H. RES. 192 (DISEASE AWARENESS), supporting the goals and ideals of National STD Awareness Month; LEE of California; to the Committee on Energy and Commerce, April 26.

H.RES. 194 (DISEASE AWARENESS), expressing support for designation of the month of May as Williams Syndrome Awareness Month; MORAN; to the Committee on Oversight and Government Reform, April 26.

H.RES. 195 (HEALTH AND FITNESS), support for designation of May 2013 as Health and Fitness Month; VEASEY; to the Committee on Energy and Commerce, April 26.

H.R. 1821 (MEDICARE), to amend Title XVIII of the Social Security Act to provide for patient protection by establishing safe nurse staffing levels at certain Medicare providers, and for other purposes; CAPPs; jointly, to the committees on Energy and Commerce and Ways and Means, April 30.