



Health Policy Briefing

December 23, 2013

Senate Passes Budget Bill Clearing Way for FY 2014 Allocations; Relief Under Obamacare

Budget Agreement Sent to President

On a vote of 64-36, the Senate sent H.J.Res. 59 to the President for his signature (the Continuing Appropriations Resolution for 2014 which contains the Bipartisan Budget Act (BBA) of 2013 and the Pathway for SGR Reform Act of 2013). Passage was all but assured, however the Republican leadership rose in opposition to the relaxation of sequestration and criticized the \$6 billion in savings that will come at the expense of reduced cost-of-living-adjustments (COLAs) for military retirees under the age of 62. The sustainable growth rate (SGR) pathway provisions delay until April 1, 2014 the Medicare physician payment cuts scheduled for January 1st and also allow for an increase in such payments by 0.5% over three years (at a cost of about \$8.7 billion over ten years with the 0.5% 3-year increase amounting to \$7.3 billion of the total). The offsets included in the measure (as previously described) would actually result in about a \$300 million savings over the ten year period. The fate of the long-term SGR solution remains for the second session to determine (see more below) and without **Senator Max Baucus (D-MT)** chairing the Finance Committee, inasmuch he was nominated by **President Obama** as the

next ambassador to China. The BBA portion of the bill increases federal discretionary spending above the sequestration level by \$45 billion in fiscal year (FY) 2014 (to \$1.012 trillion) and by \$18 billion in FY 2015 (to \$1.014 trillion). The increase would be split evenly between domestic and military accounts. Some of the BBA's savings of \$85 billion over ten years would come from extending the BCA's 2% cut in Medicare payments to providers another two years to 2023 (about \$28 billion in savings) and by allowing states to delay payments to Medicaid providers if fraud is suspected (about \$1.4 billion in savings). Among the seventeen Medicare extensions: the Medicare

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Therapy Cap Exceptions Process through March 31, 2014; the Geographic Practice Cost Index (GPCI) through April 1, 2014; the Medicare Advantage Special Needs Plan (SNP) through next year; and the “Two Midnight Rule” hospital rule through October 1, 2014. The legislation also contains a non-binding resolution calling for the repeal of the Patient Protection and Affordable Care Act’s (PPACA) medical device tax. It was reported that the twelve Senate Appropriations subcommittee chairs were given their allocations in order to fashion their respective portions of the FY 2014 omnibus appropriations bill that the Senate and House appropriators hope to begin negotiating when Congress reconvenes during the week of January 6th. The Senate Appropriations Chair, **Sen. Barbara Mikulski (D-MD)**, said she hopes the final bill will be taken up in the House on January 10th and in the Senate on January 15th. The consequences of the sequestration continues on with **Senators Mark Pryor (D-AR)** and **Roy Blunt (R-MO)**, Chair and Ranking Member of the Subcommittee on Agriculture, Rural Development, Food and Drug Administration (FDA) and Related Agencies, decrying the BCA’s \$85 million squeeze on FY 2013 FDA user fees and stating their intent to try and come up with a restoration of the funds while working around the impact it would have in increasing FY 2014 FDA spending by the same amount. When it came to the passage late Thursday of the National Defense Authorization Act of 2014, the Senate resorted to an expedited procedure to avoid a House/Senate conference that could have delayed consideration of the legislation until next year. The \$625.1 billion authorized under the bill is about \$3.1 billion less than for FY 2013. The bill increases the focus on treating stress disorders and traumatic brain injuries.

Senate HELP Committee Passes Health Bills

In a final executive session the Senate Health, Education, Labor and Pensions (HELP) Committee passed the following health legislation: S. 1417, the ***Newborn Screening Saves Lives Act***, and H.R. 3547, the ***Poison Center Network Act***.

PPACA Health Reform Update

Amid Republican Criticism, the Administration Announces New PPACA Relief Measures

With only days to go until the December 23rd deadline expires for individuals to enroll under the Patient Protection and Affordable Care Act (PPACA) exchanges, the Administration continued to extol the virtues of the health care law to potential enrollees and released two reports demonstrating the benefits of the law’s new preventive coverage and other mandates. The continued troubles with HealthCare.gov were not overlooked, however, in that the President himself met with high-level executives of the nation’s leading technology companies. Nonetheless, the White House cheered statistics showing that about 500,000 individuals had enrolled via the website during the first three weeks of December. In recognition of the potential lack of coverage in 2014 for individuals who received cancellation notices from their health insurers, the Centers for Medicare and Medicaid Services (CMS) released guidance that allows individuals of any age to qualify for temporary “hardship” exemptions that relieve them from having to pay any penalty for not having minimum coverage if it is “unaffordable”. In addition, the U.S. Department of Health and Human Services (HHS) told Senator Warner (D-VA) and others that such individuals will also be allowed to obtain catastrophic health coverage offered under the various health insurance exchanges, disregarding the current rule that qualifies only those under age 30 for catastrophic health plans, without the benefit of individual tax credits, that also covers preventive services and three primary care visits at not cost. Republicans were quick to criticize the move, saying that the policy will cause problems for insurers by reducing the pool of younger and healthier individuals who might otherwise purchase non-catastrophic coverage in the various exchanges and, possibly, lead such insurers to seek federal relief for losses that were not anticipated under the previous rules. States also report additional problems insurers are having with information from the website with Wisconsin reporting error rates of 5-25% and consumers being unable to access insurer coverage being offered in the state on the federal exchange. Given such problems, insurers are struggling with finalizing their estimate of how much revenue will be forthcoming from the Internal Revenue Service (IRS) in connection with individual subsidies. The HHS Office of Inspector General (OIG) issued a report stating that one of the top challenges HHS will have with the law is determining the accuracy of the subsidy payments made to such

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PPACA Health Reform Update cont.

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insurers. Apparently some insurers are reacting to the urging by HHS for them to give retroactive coverage to enrollees who have not paid their premiums in advance by allowing such individuals to pay their premiums by January 10th while allowing coverage to begin on January 1st. Republicans on the House Oversight and Government Reform Committee also released a report stating that some of the law's "navigators" hired to help individuals apply for coverage on health insurance exchanges lack adequate training and have even advised some enrollees to commit tax fraud in order to obtain coverage. The Committee's Democrats have also asked the House Speaker and Minority Leader to hold classified briefings with the White House amid reports that the committee has released sensitive information about the security of the health law's website. In an indication that some Democrats are anticipating the potential fallout from the various flaws of the PPACA, Senator Tim Kaine (D-VA) said he sees a growing bipartisan interest for making corrections to the law. Of note, HHS said that former Microsoft executive Kurt DelBene will replace Jeff Zients as senior adviser to HHS Secretary Kathleen Sebelius to help improve the federal marketplace and its website.

PPACA Regulatory Revisions on Excepted Benefits

The U.S. Department of Health and Human Services (HHS), Department of Labor (DOL), Treasury/IRS issued proposed rules stating that so-called "excepted benefits" (regarding vision, dental benefits and employee assistance programs--EAPs) are generally exempt from the changes made to the Employee Retirement Income Security Act (ERISA), the Public Health Service Act (PHSA) and the tax code by the Health Insurance Portability and Accountability Act (HIPAA) and the PPACA. The proposal would eliminate the requirement that separate "premiums" be paid by individuals for excepted vision and dental benefits which are limited in scope in order to give equal treatment to self-insured plans. Beginning in 2015, EAPs would be considered excepted benefits if they do not provide significant benefits in the nature of medical cost or care. Also proposed to be treated as excepted benefits would be "wraparound coverage" offered by employers for instances in which their employees obtain health coverage under PPACA exchanges that are less generous than the coverage the employers offer.

PCORI Grants

The Patient-Centered Outcomes Research Institute (PCORI) announced it will make \$93.5 million in grants for 18 research networks and 11 clinical data research networks to help build a national clinical research data network to improve comparative effectiveness research.

Medicare/Medicaid/PHSA Corner

Senate Finance Committee Releases Text of SGR Reform

The Senate Finance Committee released the legislative language of S. 1871, the bill reported by the committee which is designed to replace the current Medicare physician payment SGR framework with a new value-based performance payment system. Both the Senate Finance and House Ways and Means committee bills leave open to further negotiation the measures needed to offset the cost which the Congressional Budget Office (CBO) estimates to be about \$148.6 billion over ten years. Also, the Senate bill does not guarantee any annual payment increase through 2023 while the House measure includes a 0.5% increase in physician payments over three years.

CMS/FDA Announce Parallel Review Extension

The FDA and CMS jointly gave notice that the agencies are extending for an additional two years the current parallel review pilot program for medical device products.

Medicare/Medicaid/PHSA Corner cont.

CMS Proposes National Preparedness Rules

CMS issued a proposed rule that includes emergency preparedness requirements that seventeen provider and supplier types must meet to participate under Medicare and Medicaid. Four standards the providers must meet include: an emergency plan using an all-hazards approach focusing on capacities and capabilities; the development of policies and procedures based on the plan and risk assessment; the development of a communication plan that complies with both federal and state law; and the maintenance of training and testing programs.

New ONCHIT Head

HHS announced that Karen DeSalvo, the current health commissioner for the city of New Orleans, will become the next head of the Office of the National Coordinator for Health Information Technology (ONCHIT), replacing Jacob Reider.

Health Legislation Recently Introduced

H.R. 3776 (MEDICARE), to amend Title XVIII of the Social Security Act to create alternative sanctions for technical noncompliance with the Stark rule under Medicare, and for other purposes; BOUSTANY; jointly, to the committees on Energy and Commerce and Ways and Means, Dec. 16.

H.R. 3783 (REFORM), to amend Section 1101 of the PPACA to extend for one year the high-risk health insurance pool program, and for other purposes; MICHELLE LUJAN GRISHAM of New Mexico; to the Committee on Energy and Commerce, Dec. 16.

H.R. 3784 (REFORM), to repeal the Affordable Care Act unless the initial enrollment target for exchanges has been met, and for other purposes; YOHO; jointly, to the committees on Energy and Commerce, Ways and Means, Education and the Workforce, the Judiciary, Natural Resources, House Administration and Rules and Appropriations, Dec. 16.

H.R. 3785 (REFORM), to provide for a reduction in the pay of the secretary of health and human services until the HealthCare.gov web site is certified as fully functional; YOHO; jointly, to the committees on Oversight and Government Reform and Energy and Commerce, Dec. 16.

S. 1848 (REFORM): to amend section 1303(b)(3) of the PPACA concerning the notice requirements regarding the extent of health plan coverage of abortion and abortion premium surcharges; ROBERTS; to the Committee on Health, Education, Labor, and Pensions; Dec. 18.

S. 1849 (REFORM), to amend the Affordable Care Act to provide for a fixed annual open enrollment period; ALEXANDER; to the Committee on Health, Education, Labor and Pensions, Dec. 18.

S. 1851 (HEALTH INSURANCE COVERAGE), to provide for incentives to encourage health insurance coverage, and for other purposes; MCCAIN; to the Committee on Finance, Dec. 18.

S. 1860 (MEDICAL LIABILITY/ RURAL HEALTH/PRESCRIPTION DRUGS), to reform the medical liability system, improve access to health care for rural and indigent patients, enhance access to affordable prescription drugs, and for other purposes; HELLER; to the Committee on Finance, Dec. 19.

S. 1863 (VETERANS' HEALTH), to establish in the Department of Veterans Affairs a continuing medical education program for licensed medical professionals to increase knowledge and recognition of medical conditions common to veterans and family members of veterans, and for other purposes; BROWN; to the Committee on Veterans' Affairs, Dec. 19.

S. 1871 (MEDICARE), to amend Title XVIII of the Social Security Act to repeal the Medicare sustainable growth rate formula and to improve beneficiary access under Medicare, and for other purposes; BAUCUS; from the Committee on Finance; placed on the calendar, Dec. 19.

Health Legislation Recently Introduced cont.

S. 1879 (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; FRANKEN; to the Committee on Health, Education, Labor, and Pensions, Dec. 19.

H.R. 3791 (HEALTH INSURANCE PREMIUMS), to amend the Internal Revenue Code of 1986 to provide an above-the-line deduction for health insurance premiums; FATTAH; to the Committee on Ways and Means, Dec. 19.

H.R. 3795 (PATIENT RECORDS), to require notifications by the secretary of health and human services to Congress and to individuals of breaches of personally identifiable information of such individuals maintained, submitted to, or submitted by a system maintained by exchanges under the Affordable Care Act, and for other purposes; BILIRAKIS; to the Committee on Energy and Commerce, Dec. 19.

H.R. 3796 (MEDICARE), to amend Title XVIII of the Social Security Act to provide for bundled payments for certain episodes of care surrounding a hospitalization, and for other purposes; BLACK; jointly, to the committees on Ways and Means and Energy and Commerce, Dec. 19.

H.R. 3799 (MEDICARE/FEHB), to amend Title XVIII of the Social Security Act to provide for coverage of qualified acupuncturist services under Part B of Medicare, and to amend Title 5, U.S. Code, to provide for coverage of such services under the Federal Employees Health Benefits Program; GIBSON; jointly, to the committees on Energy and Commerce, Ways and Means, and Oversight and Government Reform, Dec. 19.

H.R. 3803 (REFORM), to repeal the Affordable Care Act unless the initial enrollment target for exchanges has been met, and for other purposes; YOHO; jointly, to the committees on Energy and Commerce, Ways and Means, Education and the Workforce, the Judiciary, Natural Resources, House Administration, Rules and Appropriations, Dec. 19.