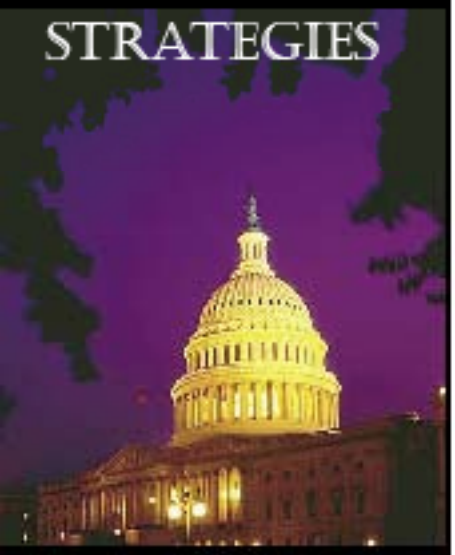
HART HEALTH HH STRATEGIES



Health Policy Briefing

March 28, 2011

Congress Returns to Stare Down Potential Government Shutdown on April 8

Budget Blues

The House and Senate return to work this week, but with no announced progress during last week's recess on any agreement on FY 2011 and FY 2012 spending levels. House fiscal hawks continue to push the spending cuts under H.R. 1, previously passed by the House, and do not appear ready to back off the controversial riders under that measure even as they threaten to vote against another short-term CR after April 8. **House Speaker John Boehner** gained enough Democrat votes to offset Republican defections on the last CR by excluding controversial riders, but will have an even tougher time to secure enough Republican votes with a House-Senate negotiated spending measure through September 30 that does not live up to the goals set under H.R. 1. The Speaker has pledged to avoid another short-term CR, but with Senate Democrats stubbornly sticking to its earlier vote rejecting H.R. 1, it is hard to see how a government shut-down can be avoided by April 8th.

Further complicating the House-Senate negotiations is the renewed demand by various Republicans in both the House and Senate that spending for the implementation of the PPACA be curtailed beginning this fiscal year. However, **Senator Orrin Hatch** had this to say: ""I don't think anybody's talking about a government shutdown over health care…." A looming vote to increase the federal debt limit will also present Congress and the President with another hurdle or stimulus, as the case may be, to achieve a bipartisan agreement on, at least, FY 2011 spending.

Inside

Growing Pains for PPACA on First Birthday 2
National Quality Improvement Strategy 2
Updated Health IT Plan 2

Update on PPACA Constitutional Challenges 3
IOM Recommends Standards for Reliable Clinical Practice/Comparative Effectiveness 3
New Medicare Institutional Provider Fees 3
Senate Finance Oversight of HHS Health Anti-Fraud Efforts 3

Growing Pains for PPACA on First Birthday

Last week the Administration and congressional Democrats touted the benefits of the PPACA, focusing mainly on the provisions already made effective: e.g. filling the donut hole, coverage of children until age 26, high-risk pools, etc. HHS announced that about 48,000 Medicare beneficiaries who reached the initial Part D coverage limit have received assistance in the first two months of the new drug discount program, reducing their out-of-pocket costs by $38 million. Also, Democrats on the House Small Business Committee released a study stating that 650,000 new small businesses have taken advantage of the tax credits under the PPACA and that the numbers could improve even more when the tax credit increases from 35% to 50% in 2014 when up to 6.7 million firms will be eligible to claim the tax credit. However, Republicans used the anniversary to continue their assault on the legislation and promised to take legislative steps to defund the law. CMS has testified that the PPACA Early Retiree Reinsurance Program (ERRP) will exhaust its resources in 2012, but a House Energy and Commerce Republican report says the program will exhaust its funding even earlier. Also, the House Small Business Committee has written **HHS Secretary Kathleen Sebelius** asking whether the benefit waivers HHS has issued for over one thousand organizations also includes small businesses.

National Quality Improvement Strategy

Last week HHS released the National Strategy for Quality Improvement in Health Care required under the PPACA to create national goals and priorities to guide local, state and national efforts to improve the quality of health care. The Interagency Working Group for Health Care Quality, composed of senior officials from 23 federal agencies, held its first meeting March 4 to coordinate efforts to improve care for individuals, improve health for populations and reduce per-capita costs. Goals include: reducing harm en care delivery; engaging patients and their families as partners in care; promoting the most effective prevention and treatment practices for the leading causes of mortality (starting with cardiovascular disease); developing and spreading new health care delivery models to make quality care more affordable; and promoting best practices for healthy living.

Updated Health IT Plan

Last week the Office of the National Coordinator for Health Information Technology released the new Federal Health IT Strategic Plan which includes new initiatives and goals for 2015. In addition to the current Medicare and Medicaid incentive programs for "meaningful use" of electronic health records, new initiatives and goals include: developing health information exchange strategies that are focused on fostering business models that create health information exchange entities, supporting health data exchange where it is not taking place and ensuring that information exchange takes place across different business models; integrating health IT into the National Health Care Quality Strategy and Plan that is required by the PPACA; strengthening data protections to improve privacy and security of health information, including discussing investments in an education and outreach strategy to increase the provider community's and the public's understanding of electronic health information, how their information can be used and their privacy and security rights under HIPPA; empowering individuals with access to their electronic health information through useful tools that can be a powerful driver in moving toward more patient-centered care; and developing a path for building a "learning health system" that can aggregate, analyze, and leverage health information to improve knowledge about health care across populations.

Update on PPACA Constitutional Challenges

Last week it was announced that on April 15 the U.S. Supreme Court will convene a private conference to consider the appeal by **Virginia Attorney General Ken Cuccinelli** for an expedited review of the VA district court ruling that the PPACA individual mandate is unconstitutional. The Department of Justice previously said that there is no good reason for the Supreme Court to bypass appellate review of the Virginia case, given the expedited review of the Florida case expected in the Eleventh Circuit. In the latter case, however, the DOJ has argued that the Eleventh Circuit should not convene an en banc hearing, in another clear attempt to slow the process of considering adverse judgments against the PPACA in the Florida and Virginia cases. The new Republican Governor of Pennsylvania has also testified before Congress for such an expedited hearing by the high court given the stakes for states to conform or not with the law's requirements in the coming months. In related news, in a congressional Democrat led effort to get ahead of any possible adverse ruling on the constitutionality of the individual mandate, last week the GAO released a report providing nine alternative means of how Congress could encourage voluntary enrollment in private health insurance. The options include: modifying open enrollment periods and imposing penalties for late enrollment; expanding employer involvement in auto-enrollment; conducting a public education and outreach campaign; imposing a tax to pay for uncompensated care; providing broad access to personalized assistance for health coverage enrollment; allowing greater variation in premium rates based on enrollee age; conditioning the receipt of certain government services upon proof of health insurance coverage; using health insurance agents and brokers differently; and requiring or encouraging credit rating agencies to use health insurance status as a factor in determining credit ratings.

IOM Recommends Standards for Reliable Clinical Practice/ Comparative Effectiveness

Last week the Institute of Medicine recommended standards to enhance the quality and reliability of clinical practice guidelines, as well as standards for systematic reviews of the comparative effectiveness of health care interventions. In the first report, Finding What Works in Health Care: Standards for Systematic Reviews, an IOM committee recommended 21 standards to ensure objective, transparent, and scientifically valid reviews of evidence-based comparisons of health interventions. In a second report, Clinical Practice Guidelines We Can Trust, the IOM recommended eight standards to ensure the objective, transparent development of trustworthy guidelines. The standards deal with transparency, conflicts of interest, external reviews, and guideline development group composition, etc.

New Medicare Institutional Provider Fees

Last week CMS announced that all institutional providers, excluding physicians and non-physician practitioners, will have to pay a $505 application fee when enrolling or revalidating their participation in Medicare. In future years the fee will be adjusted for inflation.

Senate Finance Oversight of HHS Health Anti-Fraud Efforts

Last week **Senate Finance Committee Chairman Max Baucus and ranking member Orrin Hatch** asked CMS and the HHS OIG for quarterly reports on agency progress in fighting health care fraud, including the funding involved and allocation. In related news, CMS has issued guidance to inform states to suspend Medicaid payments "when there is pending an investigation of a credible allegation of fraud" against the individual or entity.