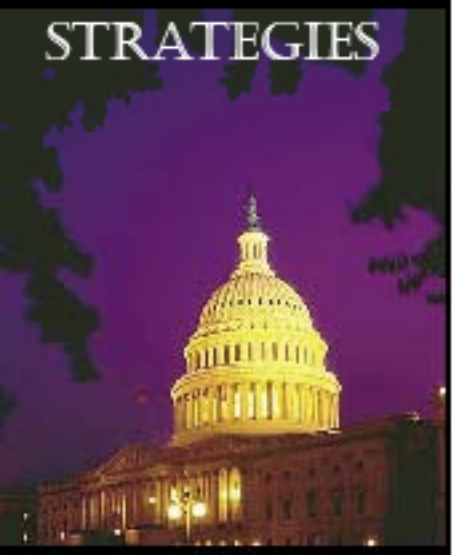
HART HEALTH HH STRATEGIES



Health Policy Briefing

June 27, 2011

The Question for Obama, Boehner and Reid: Cut Entitlement Spending or Raise Taxes?

Biden Debt Reduction Talks Collapse, Setting Stage for Big Three Negotiations

Last week **House Minority Leader Eric Cantor and Senate Minority Whip Jon Kyl** walked out of the deficit reduction talks headed by **Vice President Biden**, thus ratcheting up the stakes for **President Obama** to reach a compromise on spending and revenue legislation that can lead to an increase in the federal debt limit in both the House and Senate. **House Speaker John Boehner** said that any deal including "tax increases" will not pass muster in the House. Meanwhile it appears that congressional Democrats have raised their negotiating leverage by demanding "revenue enhancements" be at least 25% of any package including spending reductions. If the discussions between the President and **Senate Majority Leader Harry Reid** and **Speaker Boehner** reach an impasse the most likely result will be for Congress to pass a one or two-month debt ceiling increase to allow for negotiators to reach a longer term deficit reduction package which would "kick the can" beyond the 2012 elections. **Virginia Senator Mark Warner** said he would release within two weeks the $4 trillion deficit reduction package that his abbreviated "Gang of Five" has been negotiating for months. It appears that there is an undercurrent of bipartisan support in the Senate for such a longer-term solution to the federal debt problem which would help calm the financial markets. However, a majority of Democrats are unlikely to sign onto a deal that would take on full-scale entitlement reform, including Medicare or Social Security, before the 2012 elections. Thus, the **President, Speaker Boehner and Senator Reid** are likely to focus on achieving agreement on a two year package of $2.4 trillion in deficit reductions which can pass before the new fiscal year begins this October. During hearings on federal health program issues last week, it appears that Democrats, led by **Senate Finance Committee Chairman Max Baucus,** may be open to some easing of the PPACA's Medicaid "state maintenance-of-effort requirements" which have been demanded by Republicans and many governors. Although such changes may not amount to major reductions in the federal deficit, inclusion of MOE changes, along the lines of **Senator Orrin Hatch's** bill (S. 868), in a

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deficit reduction package could add grease to congressional Republican acceptance of a two-year debt ceiling increase. **Senator Baucus** also indicated that Medicare changes may be necessary for the solvency of the program, but that such changes should not come "at the expense of beneficiaries."

New PPACA Claims Appeals Rules Delayed Until Next Year

HHS/DOL/Treasury issued an amendment to the agencies' interim final rule spelling out terms for plan internal and external claims appeal and review standards. They said that "non-grandfathered" plans will have until January 2012 to conform with the new rules, thus giving states more time to enact changes that would apply to health insurance issuers. Under the new rules, the time limit for completing reviews was extended to 60 days from 45 days while beneficiaries would have only two months rather than four months to file complaints.

State Health Insurance Exchange Recommendations

The NAIC Health Insurance and Managed Care Committee issued two white papers which provide guidance to states in establishing PPACA state health insurance exchanges. The paper on exchange "navigators" and agents recommended that states consider how to use these resources "in a complementary manner to be sure individuals and small employers currently purchasing insurance as well as uninsured individuals or small employers who do not currently offer health insurance to their employees understand all the new options effective in 2014." The paper on exchange "governance" said that one method for preventing conflicts of interest by exchange governing board members is to prohibit anyone connected with an insurer, agent, broker or health care provider from serving, although it said states could otherwise implement conflict-of-interest policies for board members having experience in the health insurance industry.

FEHBP Adopts PPACA-Like Medical Loss Ratio Rules

OPM issued notice that premiums for community-rated Federal Employees Health Benefits Program plans can no longer be based on a comparison with similarly sized subscriber groups, but instead must be based on medical loss ratio thresholds over a two year phase-in period. Health plans that do not meet the 85% MLR threshold in 2013 will be required to pay a subsidization penalty into a Subsidization Penalty Account which will be distributed annually on a pro rata basis to plans' contingency reserves.

House E&C Committee Questions PPACA Medicaid Expansion Rule

House Energy and Commerce Secretary Fred Upton has written **HHS Secretary Kathleen Sebelius** asking whether the agency could alter the PPACA rule which could give Medicaid eligibility to early retirees whose income exceeds as much as 400% of the federal poverty level. The CMS Chief Actuary has determined that this unintended result could occur under the PPACA's definition of modified adjusted gross income (MAGI).

PPACA Individual Mandate

Even while states continue their effort in federal courts to have the PPACA individual mandate declared unconstitutional, the AMA House of Delegates passed a resolution endorsing the policy that all Americans purchase health coverage.

House Hearings on Ways to Save on Federal Health Costs

At a House Energy and Commerce Health Subcommittee hearing which explored ways to trim federal health spending, **Chairman Joe Pitts and full-committee Chairman Fred Upton** zeroed in on the problems that Medicare/Medicaid "dual eligibles" have in obtaining health care. They said the goal is to "identify what initiatives exist to effectively integrate care for the dual-eligible population, what coordination models are working and what prevents these effective models from expanding." However, CMS testified that in this regard there is "no silver bullet" and that "under the current situation, Medicare provides incentives to treat patients in one way and Medicaid provides incentives to treat patients in another way, and these dueling incentives often lead to poor patient outcomes." However, the new CMS Coordination office has taken initiative to make all federal Medicare data available to state Medicaid programs in order to better integrate care for dual eligibles. In a House Ways and Means Health Subcommittee hearing, the Medicare public trustees testified that the sooner Congress takes action to address Medicare's long-term financial health, the less disruptive such changes will be for beneficiaries, providers and taxpayers. They said that with each passing year the problem becomes harder to solve and that the changes made to Medicare under the PPACA leaves the "cupboard somewhat bare" as to changes that can solve the projected insolvency of Part A in 2024. Finding ways to reduce costs is highlighted again in a letter writing campaign by both Republican and Democrat House members who object to MedPAC's latest recommendation that HHS apply a multiple-procedure payment reduction to the professional component of diagnostic imaging services. The members said that the proposal could harm patient access to needed MRIs and CT scans.

Medicare Secondary Payer Rule Scrutinized

At a House Energy and Commerce Health Subcommittee on Oversight and Investigations hearing on the Medicare secondary payer program, **Chairman Cliff Stearns** said that, for post-payment collections, CMS is creating unnecessary roadblocks for parties in reaching settlement agreements, thus causing lawsuits to drag on and hindering the timely payment of claims for injured persons. **Rep. Diane DeGette** said that passing H.R. 1063, the Strengthening Medicare and Repaying Taxpayers Act, would help address the problems.

HHS Grants to Help Reduce Medical Errors

HHS announced that the CMS Innovation Center will make up to $500 million in funding under the PPACA available to "hospital engagement contractors" for proposals which would test ways to curb hospital-acquired conditions and reduce unnecessary readmissions.

S. 1242 (MEDICARE), to provide for the treatment of certain hospitals under Medicare; ROCKEFELLER; to the Committee on Finance, June 21.

H.R. 2245 (DRUGS), to amend the Federal Food, Drug, and Cosmetic Act to provide the Food and Drug Administration with improved capacity to prevent drug shortages; DEGETTE; to the Committee on Energy and Commerce, June 21.

H.R. 2248 (MEDICARE), to amend Part D of Title XVIII of the Social Security Act to require the secretary of health and human services to negotiate covered Part D drug prices on behalf of Medicare beneficiaries; WELCH; jointly, to the committees on Energy and Commerce and Ways and Means, June 21.

H.R. 2249 (MEDICARE), to provide for the treatment of certain hospitals under Medicare; MCKINLEY; to the Committee on Ways and Means, June 21.

H.R. 2267 (MEDICARE), to amend Title XVIII of the Social Security Act to ensure more timely access to home health services for Medicare beneficiaries under Medicare; WALDEN; jointly, to the committees on Ways and Means and Energy and Commerce, June 21.

S. 1251 (MEDICARE/ MEDICAID), to amend titles XVIII and XIX of the Social Security Act to curb waste, fraud, and abuse in Medicare and Medicaid; CARPER; to the Committee on Finance, June 22.

S. 1257 (GRANT PROGRAMS), to establish grant programs to improve the health of border area residents and for all hazards preparedness in the border area including bioterrorism and infectious disease, and for other purposes; BINGAMAN; to the Committee on Health, Education, Labor, and Pensions, June 22.

H.R. 2276 (GENETICS), to require the director of the United States Patent and Trademark Office to conduct a study on effective ways to provide confirming genetic diagnostic test activity where gene patents and exclusive licensing exist, and for other purposes; WASSERMAN SCHULTZ; jointly, to the committees on the Judiciary and Energy and Commerce, June 22.

H.R. 2288 (MILITARY HEALTH), to amend Title 10, United States Code, to provide for certain treatment of autism under TRICARE; LARSON of Connecticut; to the Committee on Armed Services, June 22.

H.R. 2296 (PRESCRIPTION DRUGS), to establish an America Rx program to establish fairer pricing for prescription drugs for individuals without access to prescription drugs at discounted prices; MICHAUD; to the Committee on Energy and Commerce, June 22.

H.R. 2298 (GRANT PROGRAMS), to establish grant programs to improve the health of border area residents and for all hazards preparedness in the border area, including bioterrorism and infectious disease, and for other purposes; REYES; jointly, to the committees on Energy and Commerce and Foreign Affairs, June 22.

S. 1275 (MEDICARE), to require the secretary of Health and Human Services to remove Social Security account numbers from Medicare identification cards and communications provided to Medicare beneficiaries in order to protect Medicare beneficiaries from identity theft; DURBIN; to the Committee on Finance, June 23.

H.R. 2310 (COBRA), to provide for equal access to COBRA continuation coverage; SPEIER; jointly, to the committees on Education and the Workforce, Energy and Commerce, and Ways and Means, June 23.

H.R. 2332 (WOMEN'S HEALTH), to amend the Public Health Service Act to establish a program of research regarding the risks posed by the presence of dioxin, synthetic fibers, and other additives in feminine hygiene products, and to establish a program for the collection and analysis of data on toxic shock syndrome; MALONEY; to the Committee on Energy and Commerce, June 23.