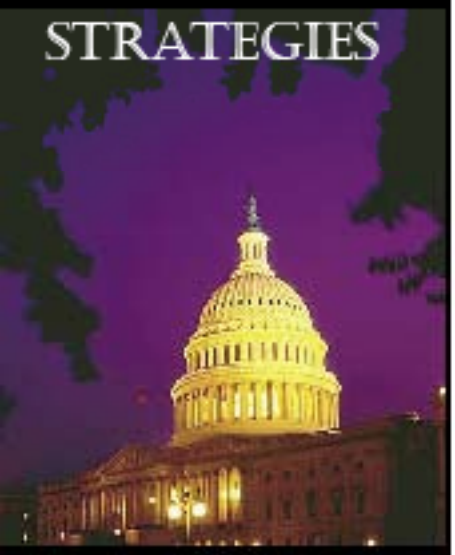
HART HEALTH HH STRATEGIES



Health Policy Briefing

July 11, 2011

Grand $4+ Trillion Debt Deal is No Deal Leaving Fewer Options for Spending Cuts

No Deal on Big Deal

President Obama's proposal that congressional leaders focus on a long-term spending/revenue and debt ceiling increase agreement, including major Medicare/Medicaid/Social-Security entitlement and tax reform, collapsed over the weekend. In opposing Democrat demands for major revenue increases during the current economic malaise, Republican leaders reflected the will of their members who could not be counted on to help pass such a revenue-induced $4+ trillion deficit reduction plan. Also, it would have been nearly impossible logistically for Congress to draft such legislation before the July 22nd date which **Speaker John Boehner** says is the timetable required to meet the August 2nd enactment of legislation to raise the federal debt ceiling limit. The fallback options are for the major parties to reach agreement on a $2+ trillion deficit reduction package to carry over until after next year's elections or for the House to pass an even smaller debt ceiling increase with spending reductions of an equal amount. This latter move would put the Senate in a position of "take it" or "let the market's collapse." If a smaller package extends the debt limit only into 2012, it would leave both parties in the same position they are in today, but with election year politics making the next vote even more contentious. In either case, it is inevitable that federal health spending programs will be targeted for significant reductions. **Senate Finance Committee Chairman Max Baucus** said that one item "on the table" is an effort to save up to $100 billion over ten years by "blending" the separate federal matching rates provided to states under the Medicaid and SCHIP programs. The spending/debt negotiations have also caused **House Ways and Means Committee Chairman Dave Camp** to back off an earlier agreement to include Trade Adjustment Assistance help to displaced workers as part of the trade legislation opening up markets in South Korea, Panama and Columbia.

Appropriations Matters

Last Friday the House passed H.R. 2219, the FY 2012 Defense Appropriations Act containing billions in health care and health research spending, on a 336 - 87 vote. The legislation includes $32.3 billion

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for Defense Department health programs and medical research projects. With the President, House Speaker, House Minority Leader and Senate Majority and Minority Leaders attempting to regroup and fashion a more limited spending/revenue deal, the House Speaker has upped the ante by scheduling a vote in the House this week on a balanced-budget amendment to the Constitution. A growing number of Senate and House Republicans are demanding that the constitutional amendment accompany any increase in the federal debt ceiling. The Senate has yet to unveil a spending plan for FY 2012, although last week **Senate Budget Committee Chairman Kent Conrad** brought up his ten-year proposal for discussion with his Senate caucus. Even in the absence of an FY 2012 plan, the Senate Appropriations Committee passed a $142 billion FY 2012 Military Construction/VA appropriations measure, including $52.5 billion in FY 2013 advance funding for veterans' medical care.

Update on PPACA Constitutional Challenges

Last week the U.S. District Court for the Northern District of Ohio dismissed a second suit, U.S Citizens Association, challenging the constitutionality of the PPACA's individual mandate, citing the earlier decision by the U.S. Court of Appeals for the Sixth Circuit which held that the mandate meets constitutional muster (Thomas More Law Center v. Obama 6th Cir., No. 10-2388, 6/29/11).

In another action attempting to show that **Supreme Court Justice Elena Kagan** should recuse herself from any future decision regarding the PPACA, the chairman of the House Judiciary Committee has requested documents from the Department of Justice showing the extent of her involvement in PPACA matters while she was solicitor general.

CMS to Review Health Insurer Rate Increases

The CMS Center for Consumer Information and Insurance Oversight announced that it will conduct health insurance rate reviews in seven states and four territories and partner with three states to conduct the reviews in accord with PPACA imposed regulations. The review will apply to existing "non-grandfathered" plans which increase their annual health insurance rates by 10% or more.

IRS Issues CHNA Rule

The IRS issued notice 2011-52 which describes how charitable hospital organizations can document PPACA imposed community health needs assessments (CHNA) in written reports, make the CHNA widely available to the public and adopt an implementation strategy to meet health needs identified through the CHNA.

CMS Proposes Home Health Payment Reductions

CMS proposed a rule under which CY 2012 Medicare payments to home health agencies would decrease by 3.35%, or about $640 million. The proposed rule would update the national standardized 60-day episode rates; the national per-visit rates; the low utilization payment amount (LUPA); and outlier payments under the Medicare prospective payment system for home health agencies. Comments on the proposal are due by September 6th.

NGA Asks HHS for $4 Billion in Back Medicaid Payments

The National Governors Association has written to **HHS Secretary Kathleen Sebelius** demanding that the agency reimburse states for up to $4 billion in Medicaid payments made by states over the last 30 years, the costs of which should have been more accurately paid under Medicare. The Social Security Administration has previously found, over the period, that numerous individuals were erroneously denied Social Security Disability Insurance which would have made them eligible for Medicare coverage, thus relieving state Medicaid programs of their payment liabilities.

Dual Eligible Payment and Nursing DEMOs

HHS announced another demonstration project under which states will be allowed to test new payment models for beneficiaries enrolled under both Medicare and Medicaid. The demonstration project includes a capitated model under which CMS and health insurance plans enter into a three-way contract that pays plans a blended capitated rate for the full continuum of benefits provided to dual eligible enrollees. Under a second fee-for-service model, states will be eligible for savings that result from managed fee-for-service initiatives that improve quality and reduce costs under both Medicare and Medicaid. HHS also announced a related demonstration project under which CMS will select partner organizations who will help implement means to help reduce preventable inpatient hospitalizations for nursing facility residents. In this connection, HHS will establish a resource center to help states deliver coordinated health care to high-need, high-cost beneficiaries, such as dual eligibles or those with chronic health conditions.

Medicare Laboratory Billing DEMO

CMS announced a two-year $100 PPACA mandated demonstration, the Treatment of Certain Complex Diagnostic Laboratory Tests Demonstration, under which laboratories that perform certain gene-related diagnostic tests on hospitalized Medicare beneficiaries may apply for direct reimbursement from Medicare rather than from the hospitals involved. Labs must apply for a temporary code to participate by August 1st. A report on the demonstration project will be sent to Congress after the trial period.

FDA Issues

At a House Energy and Commerce Health Subcommittee hearing last week on FDA prescription drug manufacturer user fees, Chairman Joseph Pitts said that he wants to have the fifth reauthorization of such fees enacted by the end of June next year. During the hearing, the Director of the FDA Center for Drug Evaluation and Research defended the FDA's drug approval system, stating that the drug approval process in the United States is faster than in Europe. However, another witness said that the changing regulatory environment at the FDA has led to declining investments in the U.S. pharmaceutical industry, thus hampering innovation.

H.R. 2435 (MEDICARE), to allow individuals to choose to opt out of the Medicare Part A benefit and to allow individuals opting out of such benefit to be eligible for health savings accounts; SAM JOHNSON of Texas; to the Committee on Ways and Means, July 7.

H. RES. 339 (CHILDHOOD OBESITY AWARENESS), expressing support for designation of September as "National Childhood Obesity Awareness Month"; FUDGE; to the Committee on Energy and Commerce, July 7.

H. RES. 341 (BRAIN ANEURYSM AWARENESS), expressing support for designation of the month of September as "National Brain Aneurysm Awareness Month"; MARKEY; to the Committee on Energy and Commerce, July 7.