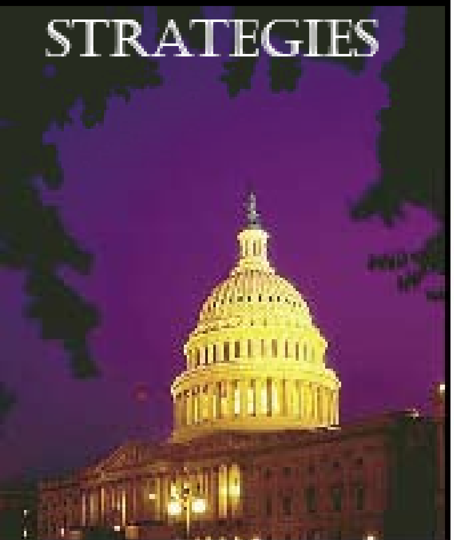
HART HEALTH STRATEGIES



Health Policy Briefing

November 12, 2012

President Obama's Reelection Assures Obamacare Implementation & Fiscal Cliff Debate

President Obama and Congressional Leaders Meet to Discuss Fiscal Issues

Shortly after the votes were counted giving **President Obama** another four years in the White House, the President and congressional leaders were quick to make statements showing at least some flexibility in coming to a resolution to avert the upcoming "fiscal cliff" involving automatic tax increases and cuts to federal spending. The President said he will invite congressional leaders to the White House this week to set the stage for the discussions. After retaining the majority, **House Speaker John Boehner** conceded he would agree to greater "revenues" to reduce the deficit, but not to increased tax "rates" on the wealthy as the President pushed for during the campaign.

The President hinted that he would still push for those making over $250,000 "to pay a little more in taxes" which some interpret as his backing away from tax rate increases for the wealthy. The President also indicated he would push for a 10-year $4 trillion deficit reduction plan and that he is not "wedded to every detail" in the plan. He also said one step that Congress could take this year to give certainty to the business community would be for the House to pass the Senate bill which would repeal the upcoming tax increases only for those making under $250,000. It would appear that the modest departure from earlier positions taken by the President and the Republican-led House may grease the skids during the lame-duck session for both parties to reach an agreement to ameliorate or delay the first tranche of sequestration cuts.

However, the federal debt limit will also have to be increased before year-end and **Speaker Boehner** has said he will insist that any increase be offset by spending cuts, thus setting up another hurdle for a smooth agreement on fiscal matters. As a result it may be that a temporary fix (possibly for six months) for the debt limit could become a new trigger for Congress and the President to reach a long-term deficit reduction deal next year.

With Congress returning on Tuesday, there will only be about six legislative work weeks left this year to reach a long-term deal, clearly not enough time to draft and approve

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major tax, entitlement and spending reforms. The compressed time-frame will, thus, likely force all parties to reach a compromise on a short-term fix to the fiscal cliff and to set the table for long-term deficit reduction talks next year. Both parties appear to agree with CBO that "diving over the fiscal cliff" would contract 2013 GDP by .5% and send the economy into another recession. However, CBO has said the cost of deferring elements of the fiscal cliff comes at a large cost. For example, CBO estimated that eliminating the automatic reductions in nondefense spending and maintaining Medicare's current payment rates for physicians would increase federal spending by $40 billion in 2013 and $61 billion in 2014.

Health Issues To Remain Front and Center in Long-Term Deficit Reduction Talks

If the President is true to his word about a 10-year $4 trillion deficit reduction plan next year, health entitlements and other health spending accounts will become major targets for reform. Setting the stage for long-term entitlement reform discussions, CBO reports that Medicare spending will rise to more than $700 billion in 2020, or 3.5% of GDP; that Medicaid spending will rise to about $514 billion, or 2.3% of GDP; and that SCHIP and Obamacare individual subsidies will account for about .5% of GDP.

While Republicans may not be able to force Democrats to reduce Medicaid to a state block-grant program, the looming revenue shortfall under Medicare will ensure that major reforms will be proposed for this program, as was the case under the President's own Simpson/Bowles Deficit Reduction Commission plan. Discussion items will likely include giving Medicare beneficiaries a choice of private coverage, raising the entitlement age, increasing Part B premiums, combining Part A and Part B, etc. In this connection, it might be noted that both parties agreed to a 2% Medicare cut under the Budget Control Act sequestration trigger.

Although Republicans have continued post-election to push for the repeal of Obamacare and specific provisions of the law (e.g. the 2.3% medical device tax, the Independent Payment Advisory Board, federal subsidies for individuals covered under the federal default health insurance exchange, etc.), it would seem that it would be difficult for Republicans in long-term budget negotiations to continue a push to repeal the $716 billion in Medicare cuts already included under Obamacare, but individual health insurance subsidies could come under pressure for reduction.

The pleas made by the medical community for a long-term solution to the current Medicare physician payment SGR formulation have been heard by the Administration and Congress and this matter will likely be given major attention in any long-term fiscal negotiations. In the meantime, Congress will have a major hurdle to find the revenue offsets to accomplish another temporary "doc fix" this year to avoid the 27% cut in payments scheduled for next January. It is possible that "doc fix" offsets may target other Medicare providers for spending cuts. Groups are already lining up to provide budget negotiators with their suggestions. For example, the National Coalition on Health Care, a coalition of providers, health insurers, unions and others, released a 50-page report containing the following suggestions, among others, to decrease future health spending by $220 billion and to increase health-related revenues by $276 billion:

♦equalize Medicare payments for hospital outpatient and physician offices;

♦raise penalties for hospitals that do not eliminate avoidable readmissions;

♦expand the use of competitive bidding programs to include Medicare and Medicaid durable medical equipment;

♦increase federal taxes on most tobacco products and $1 per pack on cigarettes;

♦impose a penny-per-ounce federal excise tax on sweetened beverages;

♦increase federal liquor, beer and wine taxes;

♦repeal the Medicare physician payment SGR and transition to a payment model based on value;

♦reduce copays and cost-sharing for "value-based" services;

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♦incentivize team-based primary care; and

♦reform medical liability laws and provide "safe harbors" for providers who follow evidence-based guidelines.

The chairmen ranking members of the budget committees and key health committees will be important negotiators on the health program changes being proposed within their committees' jurisdictions. In this connection, it is expected that the heads of the Senate Finance, Senate HELP, House Ways and Means and House Energy and Commerce committees will remain the same in the 113th Congress. The ranking members will also likely remain the same, but a term-limit could remove **Senator Mike Enzi** from his ranking spot on the Senate HELP Committee. The retirement of **Senator Kent Conrad** will require the appointment of a new Senate Budget Committee chairman (**Senator Patty Murray** being the most likely successor). Also, **House Budget Committee Chairman Paul Ryan** will need a term-limit waiver to retain his post next year and become a leading long-term budget negotiator for House Republicans.

CBO Releases Cost of MLR Relief Legislation

R**ep. Mike Rogers'** "Access to Professional Health Insurance Advisors Act" (H.R. 1206) as passed by the House Energy and Commerce Committee received a cost estimate from CBO. The agency said the legislation would increase the federal deficit by $1.1 billion in 2013-2022. The bill would exclude agent commissions from the expenses required under the PPACA to be considered in determining the minimum loss ratio for health insurance policies. Likely Senate opposition and the cost of this and other "repeal and replace" Obamacare measures that House Republican leaders say they will pursue present major hurdles to their enactment. Other Republican targets next year include repealing the IPAB and the 2.3% tax on medical devices.

Enrollment Delay for Certain Medicare Beneficiaries

CMS announced that Medicare beneficiaries and caregivers affected by Hurricane Sandy who are unable to make their Medicare enrollment decisions by December 7th will be allowed to make their decision over an extended period of time by contacting the agency.

HHS Extends Deadline for State-Run Health Insurance Exchanges

H**HS Secretary Kathleen Sebelius** sent a letter last week to all state governors alerting them to new guidance which gives states more time to notify HHS as to their decisions on the establishment of state-run health insurance exchanges. A state has until November 16th to notify HHS of its intent to establish its own exchange and until December 14th to submit more detailed plans for setting up the state-run exchange. HHS will extend until February 15th the date for a state to notify HHS and submit a blueprint to partner with HHS in operating a "partnership exchange". Partnership exchanges will be approved by HHS on a rolling basis and state-run exchanges will be approved by the first of next year. HHS has yet to issue final regulations regarding the details on how states and federal government will have to operate their health insurance exchanges. Of note, several provisions of Obamacare came under attack in the November elections. Missouri residents voted to block the establishment of a state-run insurance exchange at this time; Alabama voters approved a state legislative measure that would prevent the federal government from forcing Alabama residents to enroll in a health care insurance plan; Montana voters approved a legislative referendum that prohibits the state and the federal government from requiring state residents to purchase health insurance (except for the state university system which requires that students have health insurance); and Wyoming voters approved a state constitutional amendment that guarantees competent adults the right to make their own decisions regarding health care coverage.

Health Hearings Scheduled for This Week

House Science, Space and Technology Committee Subcommittee on Technology and Innovation hearing titled "Is 'Meaningful Use' Delivering Meaningful Results: An Examination of Health Information Technology Standards and Interoperability," November 14, at 10:00 a.m.; 2318 Rayburn Bldg.

House Energy and Commerce Committee Subcommittee on Oversight and Investigations hearing titled "The Fungal Meningitis Outbreak: Could It Have Been Prevented?" The session will focus on the recent outbreak that has been traced back to a contaminated injectable steroid produced by the New England Compounding Center in Framingham, Massachusetts; November 14, at 10:00 a.m.; 2123 Rayburn Bldg.

Senate HELP Committee hearing on "Pharmacy Compounding: Implications of the 2012 Meningitis Outbreak," focusing on the recent outbreak that has been traced back to a contaminated injectable steroid produced by the New England Compounding Center in Framingham, Massachusetts; November 15 at 10:00 a.m.; 106 Dirksen Bldg.

Recently Introduced Health Legislation

H.R. 6584, to amend the Federal Food, Drug, and Cosmetic Act to provide for the compounding of drug products; MARKEY; to the Committee on Energy and Commerce, Nov. 2.

H.R. 6585, to amend subtitle B of title I of the Patient Protection and Affordable Care Act to extend the temporary high-risk insurance pool program to the territories; CHRISTENSEN; to the Committee on Energy and Commerce, Nov. 2.