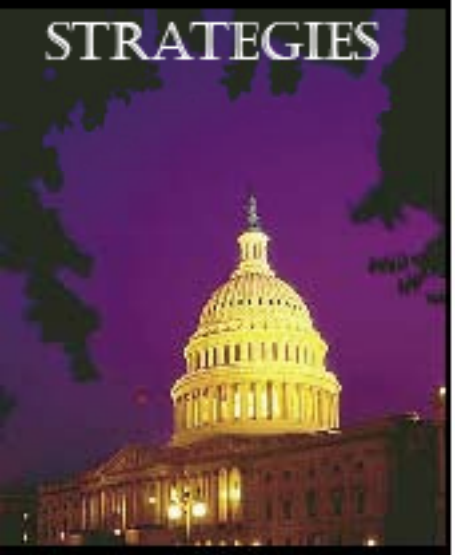
HART HEALTH HH STRATEGIES



Health Policy Briefing

November 26, 2012

Congress Returns to Digest Fiscal Cliff "Turkey"; CMS Issues Flurry of PPACA Regs

Negotiations Begin in Earnest to Avoid Damage From Fiscal Cliff

The barriers to arriving at a pre-Christmas compromise to avoid federal discretionary spending cuts pursuant to the BCA sequestration mandate and tax increases under the expiring Bush-era tax cuts were ratcheted up as Congress returns to work this week. In a signal that Republicans will not easily cave into Democrat budget demands, **House Speaker John Boehner** repeated his mantra to "repeal and replace" the PPACA. He said as part of the negotiations to reduce long-term federal deficits that "We can't afford [the PPACA law], and we can't afford to leave it intact. That's why I've been clear that the law has to stay on the table as both parties discuss ways to solve our nation's massive debt challenge."

States that refuse to establish state-run health insurance exchanges or expand Medicaid under the PPACA present significant challenges to the full implementation of the health care law. In this connection, **Speaker Boehner** praised **Ohio Governor John Kasich** for his decision not to establish a state-run exchange.

After **House Minority Leader Nancy Pelosi and Senator Dick Durbin** took a hard line on making tax increases for the "wealthy" part of any budget deal, **Senator Jeff Sessions** undoubtedly spoke for many Republicans when he cautioned against a panicked rush to pass an 11th hour, 59th minute budget deal.

Another barrier that negotiators will have to confront is the new stance taken by AARP against raising the Medicare eligibility age as part of any fix to avoid the program's impending insolvency. These and other hurdles to a quick resolution of the differing views of Republican and Democrat leaders makes it increasingly likely that a short-term (six-month or so) deficit reduction alternative of around $700 billion may be adopted in order to avoid the fiscal cliff, provide a Medicare physician payment fix for six-months or a year, and set up another round of negotiations on a ten-year deficit reduction plan next year.

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Key PPACA Regulations Proposed

HHS and the IRS released proposed regulations giving insurers and employers guidance regarding their PPACA duties and requirements. A 131-page proposed rule relating to health insurance markets and premium rate reviews would prohibit health insurers from discriminating against individuals because of a pre-existing or chronic conditions beginning in 2014.

In particular the non-discrimination rules would:

♦require insurers of non-grandfathered individual and small group plans to sell policies to all consumers, regardless of their health status;

♦prohibit insurers in the individual and small group markets from varying premiums by more than a 3-to-1 ratio, based on age (21-63), tobacco use, and family size (insurers would not be able to charge more based on pre-existing conditions, gender, occupation or other factors);

♦reinforce guaranteed renewability provisions, already in effect under HIPPA;

♦require insurers to maintain a single, statewide risk pool for each of their individual and small group markets to ensure that the cost of coverage would be spread among all consumers;

♦ensure that young adults and people for whom coverage would otherwise be unaffordable would have access to a catastrophic plan in the individual market; and

♦require insurers to report premium rates.

CMS is also seeking comment on health plan quality management reporting standards that are to apply in 2014. Another 119-page proposed rule relating to health insurance exchanges and health insurance issuer standards defines the essential health benefits (EHBs) that must be covered by all non-grandfathered individual and small group plans. This rule requires plans to compute and disclose the actuarial value of plan benefits in an effort to make it easier for individuals and small businesses to compare health plan coverage.

The proposed rule would require prescription drug coverage with either at least one drug in each class or, if greater, the number of drugs that the benchmark plan offers

Another IRS/HHS/DOL proposed rule relating to employment-based wellness programs would ensure that individuals are protected from unfair underwriting practices that could otherwise reduce benefits based on health status.

Qualified wellness programs would fall into one of two categories, participatory wellness programs or health contingent wellness programs; with the latter limited to a 30% reward for participation (a 50% reward could be given for programs helping to reduce the use of tobacco products).

Comments on the above proposed rules are due within 30 days. CMS has also requested comment on data that will be required to initially certify qualified health plans (QHPs).

Also, notice was given that the National Committee for Quality Assurance and URAC will be recognized as accrediting entities for QHP certification.

CMS also provided guidance to state Medicaid directors providing details as to the types of benefits (along the lines of EHBs and DRA benchmark plans) that must be provided in connection with expanded Medicaid coverage under the PPACA. CMS said that states that do not establish their own state-run exchanges will still have to coordinate with the default federal exchange which will determine Medicaid eligibility and individual subsidies.

In addition, **HHS Secretary Kathleen Sebelius** pledged to fully implement the default federal exchange and to also sit down with governors to ensure that states are given every incentive to establish their own state exchanges before open season begins in October 2013.

Senate HELP Committee Urges State Oversight of Compounding Pharmacies

After holding hearings on the fungal meningitis outbreak caused by problems of a single compounding pharmacy, **Senators Tom Harkin and Mike Enzi** sent letters of inquiry to state boards of pharmacy seeking further information on the matter. The letter said "The outbreak raises serious questions about the level of oversight that a large-scale compounding pharmacy was subject to, both by state and federal regulators, and what if any additional steps need to be taken to prevent such a tragedy in the future…we write to request information regarding general oversight of compounding pharmacies in your state and what actions you have taken to address this meningitis outbreak." The House Energy and Commerce Committee also followed up on their hearings by asking the FDA for internal communications they say are needed to identify any possible weaknesses in the FDA's regulatory system that can be corrected administratively or legislatively.

CBO Estimates Cost of Doc Fix

CBO released estimates showing that delaying for one year the 26.5% cut in CY 2013 Medicare physician payments would cost $25.2 billion. However, CBO said this delay would also result in another cut of 25% in 2014 physician payments. The ten-year cost of a payment freeze was estimated to cost $243.7 billion.

Health-Related Hearings This Week

House Energy and Commerce Committee Subcommittee on Health hearing titled "Examining Options to Combat Health Care Waste, Fraud and Abuse" to assess current anti-fraud measures employed by CMS and explore potential new approaches to address ongoing threats; November 28, 10:00 a.m., 2123 Rayburn Bldg.

CMS Names Medicare Quality Measurement Entities

CMS announced that three health care quality organizations have been selected to assemble provider quality reports under the PPACA "Availability of Medicare Data for Performance Measurement Program." Working with providers and insurers, the organizations will collect data and evaluate the performance of providers and suppliers and make public such information to help consumers to make better health care choices.

Health Legislation Recently Introduced

H.R. 6597 (TAXATION), to amend Section 5000A of the Internal Revenue Code of 1986 to provide an additional religious exemption from the individual health coverage mandate; BIGGERT; to the Committee on Ways and Means, Nov. 16.

H.R. 6598 (MEDICARE/ MEDICAID), to amend certain requirements and penalties implemented under Medicare and Medicaid by the HITECH Act of 2009, which would otherwise impede eligible professionals from adopting electronic health records to improve patient care; BLACK; jointly, to the committees on Energy and Commerce and Ways and Means, Nov. 16.