



Health Policy Briefing

January 21, 2013

House Set to Pass 3-Month Debt Limit Bill Forcing Senate to Pass FY 2014 Budget

Post-Inaugural Schedule Includes Debt Ceiling Push-Back

On Tuesday, January 22nd, the day after the Presidential inauguration, the House will take up H.R. 307, the Pandemic and All-Hazards Preparedness Reauthorization Act (PAHPA) of 2013, as well as a bill, Legislation Conditioning an Increase in the Nation's Debt Limit Upon Congress Passing a Budget, which confronts the Senate Democrat leadership's past inability or refusal to bring up and pass a budget. The debt limit legislation will extend the nation's ability to borrow for only three months and require the Senate to pass a budget resolution by April 15th in accordance with the Congressional Budget Act or face a deferral of pay for all Senators (House Republicans are expected to meet the April 15th deadline). It remains to be seen whether the House Republican Caucus will stand behind **Speaker John Boehner** in this move to gain some political leverage over congressional Democrats and the President in the fiscal years 2013-14 and long-term budget debate. In this regard, the Speaker is attempting to restore the so-called "Hastert Rule" under which legislation would be taken up in the House only when a majority of Republicans support the move (the rule was set aside

in the vote taken to avoid the fiscal cliff, 35% of R's voted aye, as well as in the supplemental appropriations vote to fund Sandy-related restoration, 21% of R's voted aye). While Senate **Minority Leader Mitch McConnell** seemed to support the House's condition, the office of **Senate Majority Leader Harry Reid** said the Senate would be looking to the House to pass a "clean debt-ceiling increase to avoid default," and if that happens, "we will be happy to consider it." Even if a debt ceiling extension is enacted, the Congress still faces a March 1 deadline to reach an agreement on how to ameliorate the \$85 billion in automatic spending cuts mandated under the Budget Control Act and a March 27 deadline to extend funding for FY 2013 federal operations and avoid a government shut-down. **Senator John Cornyn (R-TX)** has suggested that these two dates be used to force the President to negotiate a long-term budget including Medicare and

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Social Security entitlement reforms. The Office of Management and Budget (OMB) has directed federal agencies to come up with contingency plans to cut spending if Congress is unable to reach a resolution of the matter and has warned that hundreds of thousands of federal employees may need to be furloughed without a legislative solution. It is not expected that Congress will consider legislation proposed by **Senator Pat Toomey (R-PA)** and **Rep. Daniel Webster (R-FL-10)** which seeks to resolve the debt limit ceiling problem by setting spending priorities, beginning with interest payments on the debt and the payment of Social Security and active/retired military pay. The spectrum of views on long-term spending is reflected by recent positions of the AARP to reject cutting Medicare benefits or provider payments and of the Business Roundtable to increase the Medicare eligibility age to 70 and adopt a premium support regimen for the program. The need to reduce federal deficits was also promoted by the Treasury Department in its Financial Report of the United States which concludes that, despite the spending constraints included under the Patient Protection and Affordable Care Act (PPACA) and sequestration, if federal spending policy remains unchanged, the debt-to-gross domestic product ratio will continually increase over the next 75 years and beyond, “which implies current policies are not sustainable and must ultimately change.”

Committee Health Agenda

The new chairman of the House Ways and Means Subcommittee on Health, Rep. Kevin Brady (R-TX-08), said his committee will focus on repealing parts of the PPACA, scrutinizing the law’s implementation, replacing the Medicare sustainable growth rate (SGR) physician payment system with a formula that rewards quality and reducing Medicare overhead by 10% within five years. The House Energy and Commerce Committee, which has scheduled an organizational meeting this Tuesday, announced a similar agenda to oversee the PPACA and examine the fiscal challenges facing Medicare and Medicaid. House Budget Committee Chairman Paul Ryan (R-WI-01) also indicated his committee would work on a substitute for the PPACA. The ranking member of the W&M’s Health Subcommittee, Rep. Jim McDermott (D-WA-07), said he has not given up on seeking a single-payer health care system, but will work with Rep. Brady (R-TX-08) to see that the PPACA is implemented in the best way possible. Of note, Rep. Schakowsky (D-IL-09) and 44 other House Democrats introduced legislation, H.R. 261, which would add a “public option” under the PPACA. Another topic likely to be given attention was highlighted in a Congressional Research Services (CRS) report, ***Physician Supply and the Affordable Care Act***, which states that “experts suggest that there are too few physicians overall, too few primary care physicians specifically, and that physicians are inadequately distributed throughout the United States.” House and Senate committees of jurisdiction will also have to address the reauthorization of a number of health programs, including those involving graduate medical education, HIV-AIDS and the National Health Service Corps. House Republicans have already introduced a flurry of bills intended to repeal various parts of the PPACA:

- **H.R. 37, the Business and Government Operations Improvement Act** – repeals the individual and employer mandates and the Independent Payment Advisory Board, introduced by Rep John Barrow (D-GA-12)
- **H.R. 45** - repeals the Patient Protection and Affordable Care Act and health care-related provisions in the Health Care and Education Reconciliation Act, introduced by Rep Michele Bachmann (R-MN-06)
- **H.R. 105, Reclaiming Individual Liberty Act** – repeals individual mandate, introduced by Rep Scott Garrett (R-NJ-05)
- **H.R. 132, ObamaCare Repeal Act** - repeals the Patient Protection and Affordable Care Act and Health Care and Education Reconciliation Act, introduced by Rep Steve King (R-IA-04)

PPACA Health Reform Update

PPACA Exchange Deadline Extended Indefinitely

The U.S. Department of Health and Human Services' (HHS) Center for Consumer Information and Insurance Oversight (CCIIO) announced that "there is no deadline" for states to determine whether they will establish their own PPACA health insurance exchanges. The February 15th deadline was also extended for states to declare whether they will "partner" with HHS to establish such an exchange. The agency head said that "We are going to give final approval once states demonstrate that they are able to satisfy all the requirements and meet all the conditions of operating an exchange." A number of states have complained that they lack the information necessary to make a decision on whether or not to establish an exchange. In this connection, HHS released a 474-page regulatory proposal intended to provide additional guidance to states and health insurers on the Medicaid expansion and the creation of exchanges, including guidance on: eligibility for federal premium tax credits; the imposition of increased cost-sharing; appeals of eligibility requirements; coordination between insurance exchanges and Medicaid/SCHIP; roles of counselors who will assist residents in applying for coverage; verification procedures for employer-sponsored coverage; and how to use updated Medicaid eligibility categories. Comments on the proposed regulations are due by February 13th. HHS Secretary Kathleen Sebelius announced that she and other senior HHS officials will tour the country to promote the PPACA and the establishment of and enrollment under health insurance exchanges, including the federally-run default exchange to be named the "Health Insurance Marketplace." To boost state-run exchanges, HHS announced that \$1.5 billion in new PPACA grants were awarded to eleven states to establish online exchange markets.

PPACA Oversight and Implementation

Oversight of the PPACA by congressional committees will likely include close scrutiny of at least the following: the implementation of insurance exchanges and open enrollment beginning in October; the implementation of essential health benefits (EHB); the implementation of medical loss ratio (MLR) requirements; Medicaid expansion and the growing role of managed care; premium costs as implementation occurs; the development of accountable care organizations (ACOs); Medicare Advantage payments; the continued movement of dual-eligibles into managed care; employer decisions on maintaining coverage; and the possibility of PPACA implementation deadline delays.

Medicare/Medicaid/PHSA Corner

Final HIPPA Regulations

The Department of Health and Human Services Office for Civil Rights (OCR) released four final regulations under an omnibus rule as follows: modifications to the Health Insurance Portability and Accountability Act (HIPAA) Privacy and Security rules mandated in the Health Information Technology for Economic and Clinical Health (HITECH) Act; changes to the HIPAA enforcement rules; final regulations concerning reporting of data breaches; and modifications to the Privacy Rule as required in the Genetic Information Nondiscrimination Act (GINA). The effective date of the rule is March 26, 2013 while the compliance date for covered entities and their business associates is September 23, 2013. HHS

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Secretary Kathleen Sebelius said the final rules are intended to protect patient data in “an ever expanding digital age.” Of note, the reporting of a breach to affected individuals was changed so that the definition of a breach means “that an impermissible use or disclosure of protected health information is presumed to be a breach unless the covered entity or business associate, as applicable, demonstrates that there is a low probability that the protected health information has been compromised.” The OCR also said that physicians can, without violating federal privacy rules, disclose a patient’s health care information to law enforcement or family members if the individual presents a serious danger to himself or others. The final enforcement provisions include increased civil monetary penalties and a cap of \$1.5 million on the maximum annual penalty, up from the existing \$25,000 cap.

NIH Announces Funding of Alzheimer’s Clinical Trials

The National Institute on Aging announced that \$11 million will be awarded in FY 2013 and as much as \$55 million over 5-years to the Alzheimer’s Disease Cooperative Study, a consortium of academic medical centers and clinics NIH founded in 1991 to collaborate on Alzheimer’s research. The funds will be used in four clinical trials to help discover and develop treatments for Alzheimer’s disease.

Executive Actions to Stem Gun Violence Include Mental Health Provisions

In the wake of the Sandy Hook Elementary School mass shootings, on January 16th the President announced 23 executive actions intended to stem gun violence. The White House said the following actions will focus on mental health: the issuance of final regulations under the Mental Health Parity and Addiction Equity Act (MHPAEA) of 2008 to ensure mental health services are covered “at parity” with other covered health services; a directive to CDC to conduct research into the causes and prevention of gun violence; two directives attempting to clarify health care providers’ right to ask patients about gun ownership; and two directives intended to increase the information that states provide in connection with federal gun-purchase background checks. The plan, developed by a group led by Vice President Biden, also is to include: efforts to train teachers to identify and respond to mental illness in children; innovative state-based strategies supporting people ages 16 to 25 with mental health or substance abuse issues; measures to offer students mental health services for trauma or anxiety and conflict-resolution programs; other school-based

violence prevention strategies; and stipends and tuition reimbursement to educate and train more than 5,000 new social workers, counselors, and psychologists to work with young people in schools and communities. Senator Charles Grassley (R-IA) expressed concern with the directive to CDC to study gun violence in that agency appropriations bills include language preventing the agency from using funds to “advocate or promote gun control.” He also questioned the legality of the directives allowing providers to ask about gun ownership inasmuch as the PPACA contains a provision stating that the law does not grant the federal government the authority to collect “any information relating to the lawful ownership or possession of a firearm or ammunition.” The Senate Committee on Health, Education, Labor and Pensions (HELP) is scheduled to hold hearings on the state of the mental health system with a focus on what needs to be done on early intervention.

Health Legislation Recently Introduced

H.R. 225 (introduced by Rep. Capps for herself, Rep. McMorris Rodgers, Rep. Degette, Rep. Harper, Rep. Matsui, and Rep. King of New York): A bill to amend title IV of the Public Health Service Act to provide for a National Pediatric Research Network, including with respect to pediatric rare diseases or conditions; to the Committee on Energy and Commerce.

H.R. 232 (introduced by Rep. Harper): A bill to amend title XVIII of the Social Security Act to permit direct payment to pharmacies for certain compounded drugs that are prepared by the pharmacies for a specific beneficiary for use through an implanted infusion pump; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

H.R. 235 (introduced by Rep. Kinzinger of Illinois for himself and Rep. Capps): A bill to amend the Public Health Service Act to provide grants to States to streamline State requirements and procedures for veterans with military emergency medical training to become civilian emergency medical technicians; to the Committee on Energy and Commerce.

H.R. 241 (introduced by Rep. Ross): A bill to direct the Secretary of Veterans Affairs to establish standards of access to care for veterans seeking health care from Department of Veterans Affairs medical facilities, and for other purposes; to the Committee on Veterans' Affairs.

H.R. 244 (introduced by Rep. Schakowsky): A bill to assure that the services of a nonemergency department physician are available to hospital patients 24 hours a day, seven days a week in all non-Federal hospitals with at least 100 licensed beds; to the Committee on Energy and Commerce.

H.R. 257 (introduced by Rep. Shea-Porter): A bill to amend title 38, United States Code, to ensure that veterans in each of the 48 contiguous States are able to receive services in at least one full-service hospital of the Veterans Health Administration in the State or receive comparable services provided by contract in the State; to the Committee on Veterans' Affairs.

H.R. 261 (introduced by Rep. Schakowsky for herself and 44 others): A bill to amend the Patient Protection and Affordable Care Act to establish a public health insurance option; to the Committee on Energy and Commerce.

H.R. 274 (introduced by Rep. Barber). A bill to amend section 520J of the Public Health Service Act to authorize grants for mental health first aid training programs; to the Committee on Energy and Commerce.

H.R. 288 (introduced by Rep. Michaud for himself and Rep. Walz): A bill to amend title 38, United States Code, to increase the maximum age for children eligible for medical care under the CHAMPVA program; to the Committee on Veterans' Affairs.

H.R. 297 (introduced by Rep. Pitts for himself, Rep. Pallone, Rep. Burgess, and Rep. Capps): A bill to amend the Public Health Service Act to reauthorize support for graduate medical education programs in children's hospitals; to the Committee on Energy and Commerce.