



Health Policy Briefing

January 28, 2013

After President’s Inaugural Address, He Gives Support to House Debt Limit Extension

President’s Inaugural Address

The President’s inaugural address last Tuesday gave no specifics as to how he would confront the nation’s rising health and entitlement costs which he acknowledged, but he defended such programs in saying that “The commitments we make to each other, through Medicare and Medicaid and Social Security, these things do not sap our initiative; they strengthen us. They do not make us a nation of takers; they free us to take the risks that make this country great.”

It would not appear from his remarks that the Administration will be in a rush to compromise on long-term deficit reduction, particularly when it comes to entitlement reform. However, he did give a nod to possible action in stating that “We cannot mistake absolutism for principle or substitute spectacle for politics or treat name-calling as reasoned debate. We must act, knowing that our work will be imperfect....We must act, knowing that today’s victories will be only partial.”

Senator Rob Portman (R-OH)

expressed Republican sentiment on the President’s speech in saying that “The President missed an opportunity to point out where we can find common ground....Instead, he chose to talk about it in the abstract, and then his specificity was on things he believes but were not issues where we as a Congress and as an executive branch can make progress, and I’m referring to the debt and the deficit and tax reform.”

Inside

- Up Next: the Debt Ceiling Vote and SOTU.....2
- House Passes Federal Debt Limit Extension/
Budget Resolution Incentives.....2
- Senate Rules Confrontation Avoided.....2
- Health Bills Passed.....3
- Senate Lame Ducks.....3
- Republicans Continue to Target PPACA
Provisions.....3
- PPACA Subsidy Thresholds Clarified.....3
- Notification of Availability of Exchange
Coverage Delayed.....3
- New Benefit Required Under PPACA.....4
- House Chairs Question CMS Ability to
Provide Accurate Plan Data.....4
- NAIC Names Ben Nelson CEO.....4
- Senate HELP Committee Hearings on Mental
Health.....4
- Health Legislation Recently Introduced.....5
- Appendix: H.R. 325.....7

Up Next: the Debt Ceiling Vote and SOTU

The Senate will convene this Monday to pass the Super-storm Sandy relief legislation while the House will not return for legislative business until the week of February 4th. According to a statement from Senate Majority Leader Harry Reid (D-NV) the Senate will take up and is expected to pass H.R. 365, the legislation passed by the House which extends the federal debt limit for three months (see below). The bill's fate may have to wait until the week of January 28th. Also, House Speaker John Boehner (R-OH- 08) has requested President Obama to give his State of the Union (SOTU) Address to a joint session of Congress on Tuesday February 12th. It is not expected that the Administration will release the President's recommended budget for FY 2014 until early March. Thus, there will be little guidance from the Administration as to future spending before the March 2 deadline when the first year cut of the Budget Control Act (BCA) mandated sequestration is scheduled to take place. The lack of any reported discussions between the White House and Congress on budget issues would indicate that some or all of the automatic spending cuts of \$85 billion (for the remainder of FY 2013) may well take place. House Speaker John Boehner indicated he might allow the sequestration to take place unless Congress approves an alternative such as a reduction to \$73 billion in cuts through September 30th. Of note, the BCA also mandates a 2% cut in Medicare spending for the period as well. Whether House Republicans will use the March 2nd deadline or the March 27th deadline, when the continuing resolution (CR) for FY 2013 spending expires, as further leverage on the President and the Senate to agree to long-term entitlement reform remains to be seen. Senator Orrin Hatch (R-UT) has already put down the gauntlet regarding proposed changes to Medicare, including raising the entitlement age to 67; putting fee-for-service Medicare into competition with private health plans; combining parts A and B and adding a catastrophic benefit (once rejected under the Reagan Administration).

House Passes Federal Debt Limit Extension/Budget Resolution Incentives

By a vote of 285-144, last week the House approved H.R. 325, legislation which temporarily suspends the current limit on federal borrowing of \$16.394 billion from the date of the bill's enactment until May 19 when the debt ceiling would be raised by the amount of debt issued during the suspension period. Senate Majority Leader Harry Reid said he would take up the bill and attempt to have it passed without amendment. Of note, House Speaker John Boehner also had included a provision (see Appendix) which forces both houses to pass a budget resolution for FY 2014 by the April 15th deadline imposed under the congressional budget act or face a deferral of pay for the members of the house that fails to pass a new budget. The provision was included to help persuade the Senate to pass a budget resolution which it has failed to do since 2009. The provision was also included to help persuade House Republican fiscal hawks to support the bill even though it does not provide spending reductions equal to the borrowing increase. The House is expected to pass a budget resolution and avoid the pay deferral penalty. Senate Majority Leader Harry Reid said he would prefer that the Senate's budget resolution be developed under "regular order" which would turn over the first steps to the new Budget Committee Chair Patty Murray (D-WA).

Senate Rules Confrontation Avoided

Senate Majority Leader Harry Reid (D-NV) and Minority Leader Mitch McConnell (R-KY) were able to reach agreement on a narrow revision of the Senate filibuster rules which avoided the threat by Senator Reid to invoke the "nuclear option" under which Senate Democrats would need only 51 votes to eliminate or severely restrict the filibuster of measures the majority brings to the floor in the 113th Congress. The agreement adopted last week by the Senate allows the Majority Leader to start debate on any bill at any time as long as Republicans are given the opportunity to have votes taken on two amendments chosen by the Minority Leader. However, as under the previous rules, a senator will still be able to force a 60-vote supermajority on any bill or nomination that is brought up for a vote in the Senate. Another wrinkle that was adopted will allow an initial vote, on a bill or nomination agreed to by both the Majority and Minority Leaders, to be expedited after a delay of only one day (not two as previously). In addition, the period of preliminary debate would be ended after an initial cloture vote.

Health Bills Passed

The House passed H.R. 307, the Pandemic and All-Hazards Preparedness Reauthorization Act (PAHPA) of 2013, which now moves to the Senate. Also, by unanimous consent, the House Energy and Commerce Committee passed three bills which will next be taken up on the House floor: **H.R. 297**, the Children's Hospital GME Support Reauthorization Act, which reauthorizes the funding for five years of training programs for pediatric care physicians; **H.R. 225**, the National Pediatric Research Network Act of 2013, which would authorize NIH to establish a national pediatric research network dedicated to finding treatments and cures for pediatric diseases and conditions; and **H.R. 235**, which streamlines the certification requirements for U.S. veterans with military emergency medical training to become civilian EMTs and which authorizes a five-year grant program for states that demonstrate an EMT shortage.

Senate Lame Ducks

Senators having sway over key health and budget issues who have announced that they will make the current Congress their last include: Sen. Tom Harkin (D-IA), Chairman of the Senate HELP Committee; Sen. Jay Rockefeller (D-WV), Chairman of the Senate Finance Health Care Subcommittee; and Sen. Saxby Chambliss (R-GA) who has proved an important voice for long-term deficit reduction as a member of the so-called "Gang of Eight". Of note, Senator Harkin also said his Senate HELP Committee will hold a hearing "**30 Million New Patients and 11 Months to Go: Who Will Provide Their Primary Care?**" on Tuesday at 10:00 a.m. in 430 Dirksen Bldg.

PPACA Health Reform Update

Republicans Continue to Target PPACA Provisions

Senators Lamar Alexander (R-TN) and Orrin Hatch (R-UT) introduced S. 40, legislation that would repeal the Patient Protection and Affordable Care Act's (PPACA) individual mandate. Senator Hatch said the bill eliminates the individual mandate "so we can instead find ways of providing people with health care, but in a manner that doesn't run counter to our constitutional framework of limited government." In the House, Rep. Phil Roe (R-TN-01) and several Democrats support legislation (H.R. 351) which would repeal the Independent Payment Advisory Board (IPAB) while Rep. Erik Paulsen (R-MN-03) is seeking to repeal the PPACA's 2.3% excise tax on medical devices. House leaders would likely require that consideration of the two latter bills be accompanied by cost offsets which could again scuttle such legislation in the Senate. Federal costs under the PPACA could also be pushed off by extending the various effective dates of the act, an idea that may be pursued by Rep. Michael Burgess (R-TX-26).

PPACA Subsidy Thresholds Clarified

HHS released the federal poverty guidelines which will be used under the PPACA to determine the income levels for households with between 100-400% of the FPL which are eligible for premium subsidies (refundable tax credits) under the law. The FPL for one person is \$11,490 and \$23,550 for a family of four.

Notification of Availability of Exchange Coverage Delayed

The Departments of Labor, Health and Human Services and Treasury announced that the PPACA mandate that all employers subject to the Fair Labor Standards Act notify new and current employees of coverage available under health insurance exchanges has been delayed from March 1, 2013 until regulations outlining the notification requirements are issued (probably in late summer or this fall).

PPACA Health Reform Update cont.

New Benefit Required Under PPACA

The U.S. Preventive Services Task Force (USPSTF) announced a final recommendation that health care providers screen all women of childbearing age (14-46) for possible domestic abuse to determine if they are victims of intimate partner violence which often goes undetected. If present, providers could recommend counseling, home visits or referrals to community services. This so-called “Grade B” ruling means that the screening will be defined as a “preventive service” under the PPACA and covered without cost-sharing. In a non-final draft recommendation the Task Force said more evidence would be needed for the panel to make a final recommendation that providers intervene to prevent child maltreatment among children who show no signs of abuse. The draft recommendation is open for public comment until February 18, 2013.

House Chairs Question CMS Ability to Provide Accurate Plan Data

House Ways and Means Chairman Dave Camp (R-MI-04) and Subcommittee Chairman Kevin Brady (R-TX-08) alerted Department of Health and Human Services (HHS) Secretary Kathleen Sebelius of their concern that, according to the Government Accountability Office (GAO), the Centers for Medicare and Medicaid Services (CMS) failed at times to provide accurate data about the availability of Medicare Advantage cost plans under the agency’s online plan finder. They asked HHS to respond by February 8 as to whether and how the systems involved need to be improved to provide Medicare beneficiaries with accurate information. They intimated that if CMS cannot provide accurate plan information now, it does not bode well for the ability of HHS to provide accurate plan information under the health exchanges required under the PPACA.

NAIC Names Ben Nelson CEO

The National Association of Insurance Commissioners (NAIC) named former Nebraska Senator Ben Nelson as their new CEO. He said the association’s focus will be retaining state insurance authority as the PPACA and its health insurance exchanges are implemented.

Medicare/Medicaid/PHSA Corner

Senate HELP Committee Hearings on Mental Health

At last week’s Senate Committee on Health, Education, Labor and Pensions (HELP) hearing, Chairman Tom Harkin (D-IA) said that mental illness is a critical issue but that less than half of children with the diagnosis receive treatment, thus leading to too many suicides. He also said that the prison system serves as a “dumping ground” for the mentally ill. On a positive note, the witness from the National Institute of Mental Health (NIMH) said that mental health research is “on the cusp of a revolution” that will allow for much earlier detection of brain disorders and help promote timely treatment. On point to the recent use of guns by the mentally ill to engage in mass killings, the NIMH witness testified that violent behavior among the mentally ill is rare, occurring in only about 5% of people diagnosed with mental illness. He also said that early detection and treatment of mental illness is necessary for positive outcomes. The Substance Abuse and Mental Health Services Administration (SAMHSA) Administrator said that the Administration is finalizing regulations under the Mental Health Parity and Addiction Equity Act (MHPAEA) of 2008 and instructing state Medicaid directors that the law applies to Medicaid managed care programs. Senator Harkin said he would look for funding opportunities to increase mental health research and treatment and will push for the enactment of his legislation, the Healthier Lifestyles and Prevention America Act (S. 39), which aims to reduce health care costs by readjusting the national health care system to focus on prevention, wellness and health promotion.

Health Legislation Recently Introduced

H.R. 307 (HAZARDS PREPAREDNESS AND RESPONSE), bill to reauthorize certain programs under the Public Health Service Act and the Federal Food, Drug, and Cosmetic Act with respect to public health security and all-hazards preparedness and response, and for other purposes; ROGERS of Michigan; jointly, to the committees on Energy and Commerce and Veterans' Affairs, Jan. 18.

H.R. 309 (REGULATORY REVIEW), to require the periodic review and automatic termination of federal regulations; HULTGREN; jointly, to the committees on Oversight and Government Reform and the Judiciary, Jan. 18.

H.R. 315 (DRUGS), to provide for the placement of certain synthetic drugs on Schedule I under the Controlled Substances Act; EMERSON; jointly, to the committees on Energy and Commerce and the Judiciary, Jan. 18.

S. 39 (PUBLIC HEALTH), to improve the health of Americans and reduce health care costs by reorienting the nation's health care system toward prevention, wellness, and health promotion; HARKIN; to the Committee on Finance, Jan. 22.

S. 40 (REFORM), to restore Americans' individual liberty by striking the federal mandate to purchase insurance; HATCH; to the Committee on Finance, Jan. 22.

S. 44 (PATIENT ACCESS), to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system; PORTMAN; to the Committee on Health, Education, Labor and Pensions, Jan. 22.

S. 49 (VETERANS' HEALTH), 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 Department of Veterans Affairs medical center in the state or receive comparable services provided by contract in the state, and for other purposes; SHAHEEN; to the Committee on Veterans' Affairs, Jan. 22.

S. 50 (ENVIRONMENTAL HEALTH), to direct the administrator of the Environmental Protection Agency to investigate and address cancer and disease clusters, including in infants and children; BOXER; to the Committee on Environment and Public Works, Jan. 22.

S. 53 (ENVIRONMENTAL HEALTH), to authorize the administrator of the Environmental Protection Agency to award grants to individuals that may be affected by a reported disease cluster; BOXER; to the Committee on Environment and Public Works, Jan. 22.

H.R. 344 (ANTITRUST), to restore the application of the federal antitrust laws to the business of health insurance to protect competition and consumers; LYNCH; to the Committee on the Judiciary.

H.R. 346 (ABORTION), to amend Title I of the Patient Protection and Affordable Care Act to ensure that the coverage offered under multistate qualified health plans offered in exchanges is consistent with the federal abortion funding ban; NUNNELEE; to the Committee on Energy and Commerce, Jan. 22.

S. 77 (MEDICARE), to amend Part D of Title XVIII of the Social Security Act to authorize the secretary of health and human services to negotiate for lower prices for Medicare prescription drugs; FRANKEN; to the Committee on Finance, Jan. 23.

S. 117 (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; KLOBUCHAR; to the Committee on Finance, Jan. 23.

H.R. 351 (REFORM), to repeal the provisions of the Patient Protection and Affordable Care Act providing for the Independent Payment Advisory Board; ROE of Tennessee; jointly, to the committees on Ways and Means, Energy and Commerce, and Rules, Jan. 23.

H.R. 413 (MEDICARE), to eliminate the two-year delay in including oral-only ESRD-related drugs in the Medicare ESRD prospective payment system, as provided under Section 632(b)(1) of the American Taxpayer Relief Act of 2012; WELCH; jointly, to the committees on Energy and Commerce and Ways and Means, Jan. 23.

Health Legislation Recently Introduced cont.

S. 133 (COMPARATIVE EFFECTIVENESS RESEARCH), to protect all patients by prohibiting the use of data obtained from comparative effectiveness research to deny or delay coverage of items or services under federal health care programs and to ensure that comparative effectiveness research accounts for advancements in personalized medicine and differences in patient treatment response; ROBERTS; to the Committee on Health, Education, Labor and Pensions, Jan. 24.

S. 135 (ABORTION), to amend Title X of the Public Health Service Act to prohibit family planning grants from being awarded to any entity that performs abortions, and for other purposes; VITTER; to the Committee on Health, Education, Labor and Pensions, Jan. 24.

S. 136 (STEM CELL RESEARCH), to amend the Internal Revenue Code of 1986 to provide a Federal income tax credit for certain stem cell research expenditures; VITTER; to the Committee on Finance, Jan. 24.

S. 137 (ABORTION), to amend the Public Health Service Act to prohibit certain abortion-related discrimination in governmental activities; VITTER; to the Committee on Health, Education, Labor and Pensions, Jan. 24.

S. 139 (ABORTION), to impose admitting privilege requirements with respect to physicians who perform abortions; VITTER; to the Committee on Health, Education, Labor and Pensions, Jan. 24.

S. 142 (ABORTION), to prohibit the expenditure of federal funds for abortions, and for other purposes; CASEY; to the Committee on Health, Education, Labor, and Pensions, Jan. 24.

S. 143 (ABORTION), to prohibit discrimination and retaliation against individuals and health care entities that refuse to recommend, refer for, provide coverage for, pay for, provide, perform, assist, or participate in abortions; CASEY; to the Committee on Health, Education, Labor and Pensions, Jan. 24.

S. 144(PREGNANCY ASSISTANCE FUND), to amend the Patient Protection and Affordable Care Act to authorize additional funding for the pregnancy assistance fund; CASEY; to the Committee on Health, Education, Labor and Pensions, Jan. 24.

S. 153 (MENTAL HEALTH), to amend Section 520J of the Public Health Service Act to authorize grants for mental health first aid training programs; BEGICH; to the Committee on Health, Education, Labor, and Pensions, Jan. 24.

S. 154 (ABORTION), to amend Title I of the Patient Protection and Affordable Care Act to ensure that the coverage offered under multistate qualified health plans offered in exchanges is consistent with the federal abortion funding ban; COBURN; to the Committee on Health, Education, Labor and Pensions, Jan. 24.

Appendix

H.R. 325

To ensure the complete and timely payment of the obligations of the United States Government until May 19, 2013, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. Temporary suspension of debt ceiling.

(a) Suspension.—Section 3101(b) of title 31, United States Code, shall not apply for the period beginning on the date of the enactment of this Act and ending on May 18, 2013.

(b) Special rule relating to obligations issued during suspension period.—Effective May 19, 2013, the limitation in section 3101(b) of title 31, United States Code, as increased by section 3101A of such title, is increased to the extent that—

(1) the face amount of obligations issued under chapter 31 of such title and the face amount of obligations whose principal and interest are guaranteed by the United States Government (except guaranteed obligations held by the Secretary of the Treasury) outstanding on May 19, 2013, exceeds

(2) the face amount of such obligations outstanding on the date of the enactment of this Act.

An obligation shall not be taken into account under paragraph (1) unless the issuance of such obligation was necessary to fund a commitment incurred by the Federal Government that required payment before May 19, 2013.

SEC. 2. Holding salaries of members of congress in escrow upon failure to agree to budget resolution.

(a) Holding salaries in escrow.—

(1) IN GENERAL.—If by April 15, 2013, a House of Congress has not agreed to a concurrent resolution on the budget for fiscal year 2014 pursuant to section 301 of the Congressional Budget Act of 1974, during the period described in paragraph (2) the payroll administrator of that House of Congress shall deposit in an escrow account all payments otherwise required to be made during such period for the compensation of Members of Congress who serve in that House of Congress, and shall release such payments to such Members only upon the expiration of such period.

(2) PERIOD DESCRIBED.—With respect to a House of Congress, the period described in this paragraph is the period which begins on April 16, 2013, and ends on the earlier of—

(A) the day on which the House of Congress agrees to a concurrent resolution on the budget for fiscal year 2014 pursuant to section 301 of the Congressional Budget Act of 1974; or

(B) the last day of the One Hundred Thirteenth Congress.

(3) WITHHOLDING AND REMITTANCE OF AMOUNTS FROM PAYMENTS HELD IN ESCROW.—The payroll administrator shall provide for the same withholding and remittance with respect to a payment deposited in an escrow account under paragraph (1) that would apply to the payment if the payment were not subject to paragraph (1).

(4) RELEASE OF AMOUNTS AT END OF THE CONGRESS.—In order to ensure that this section is carried out in a manner that shall not vary the compensation of Senators or Representatives in violation of the twenty-seventh article of amendment to the Constitution of the United States, the payroll administrator of a House of Congress shall release for payments to Members of that House of Congress any amounts remaining in any escrow account under this section on the last day of the One Hundred Thirteenth Congress.

(5) ROLE OF SECRETARY OF THE TREASURY.—The Secretary of the Treasury shall provide the payroll administrators of the Houses of Congress with such assistance as may be necessary to enable the payroll administrators to carry out this section.

(b) Treatment of delegates as members.—In this section, the term “Member” includes a Delegate or Resident Commissioner to the Congress.

(c) Payroll administrator defined.—In this section, the “payroll administrator” of a House of Congress means—

(1) in the case of the House of Representatives, the Chief Administrative Officer of the House of Representatives, or an employee of the Office of the Chief Administrative Officer who is designated by the Chief Administrative Officer to carry out this section; and

(2) in the case of the Senate, the Secretary of the Senate, or an employee of the Office of the Secretary of the Senate who is designated by the Secretary to carry out this section.