



Health Policy Briefing

October 14, 2013

Government Shutdown and Debt Limit Debate to Extend Beyond Columbus Day

President and Senate Democrats Reject Republican Budget Proposals

Although the President met last Thursday with key House and Senate leaders to discuss a way forward on restoring federal government operations and raising the federal debt limit, the various proposals put forward by Republicans appear to have been stymied over the weekend. **House Budget Committee Chairman Paul Ryan (R-WI)** offered a plan at the meeting which would extend the debt limit and fiscal year (FY) 2014 appropriations until November 22nd and include a commitment by all parties to negotiate on tax reform and the amelioration of sequestration levels coupled with spending offsets concentrating on changes to entitlement programs, including using a reduced “chained” cost-of-living adjustment (COLA) for Social Security and proposals in the President’s budget to help reduce Medicare and Medicaid spending.

After a House Republican Conference meeting on Saturday, leaders appeared dejected upon learning that the White House had rebuffed their offer. Senate Republicans, leading with a proposal fashioned by **Senator Susan Collins (R-ME)**, attempted to reach out to the President with a separate deal, but **Senate Majority Leader Harry Reid (D-NV)** said this “plan is not going

anywhere at this stage”. The Senate plan, endorsed by **Senate Minority Leader Mitch McConnell (R-KY)**, would among other things have provided appropriations for six months at the sequestration level (a rate of \$988 billion/year); raised the federal debt limit until January 31, 2014; delayed the Patient Protection and Affordable Care Act’s (PPACA) medical device tax for two years; and provided for enhanced verification of PPACA subsidies for individual health insurance coverage. Also, Senator Reid’s attempt on Saturday to clear a clean debt limit increase through next year failed to garner the 60 votes needed for the measure to proceed. All Senate Republicans refused to vote for cloture to enable the Senate to vote on raising the \$16.7 trillion federal debt ceiling. When Congress returns on Monday,

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members will have only four legislative days to address the debt ceiling issue before running into the October 17th deadline that, if exceeded, could throw the economy into another recession according to **Treasury Secretary Jacob Lew**. In testimony before the Senate Finance Committee the Treasury Secretary also said that failure to act could lead to delays in payments being made to Medicare providers and Medicaid state agencies as well as to Social Security beneficiaries. Reportedly, the Treasury Department has already engaged in \$300 billion in “extraordinary” measures to keep the federal spending spigots open, including delaying investments under the federal employee thrift savings plan. If the latest standoff continues, the House may well resort to a last minute tactic to give the Senate and the President a fairly clean, short-term bill that increases the debt ceiling and reopens the federal government. A more risky spending approach for House Republicans would be to stare down the Senate and urge them to pass one or more of the individual spending bills the House has passed to continue agency operations through December 15 (e.g. H.J.Res.72, the Veterans Benefits Continuing Appropriations Resolution; H.J. Res. 73 which would fund the National Institutes of Health (NIH); and H.J. Res. 77 which would fund the Food and Drug Administration (FDA)). Pending further House action are H.J. Res. 92 which would fund the Centers for Disease Control and Prevention (CDC) and H.J. Res. 80, the Bureau of Indian Affairs, Bureau of Indian Education and Indian Health Service Continuing Appropriations Resolution. The House also passed H.R. 3273, legislation quickly rejected by Senate Democrats that would have created a bipartisan House/Senate working group designed to jumpstart negotiations on opening the government and raising the debt limit. It is likely that any short-term action taken this week by the House would have to abandon defunding or changing the PPACA or members would risk creating a financial crisis of unknown proportions considering the threats the President has made to veto such a measure. If a short-term measure is adopted at the 11th hour to avoid the immediate crisis, Republicans will likely continue their push for long-term spending reforms and the White House and congressional Democrats will continue to seek the means to increase federal revenues. Last week Republicans and Democrats on the Senate Finance Committee brought up their ideas to rein in future federal deficits. **Senator Rob Portman (R-OH)** suggested that the President’s own budget includes a number of entitlement savings reforms that could be made part of a budget deal. **Senator Orrin Hatch (R-UT)** reiterated his list of entitlement savings proposals, including: gradually increasing the Medicare eligibility age to 67; limiting the amount of out-of-pocket costs that could be covered under Medigap policies; combining the Medicare Part A and B deductibles; and setting per capita limits on Medicaid spending growth. Despite the recognition by some members of both parties on the need to address deficit and funding issues, the shutdown of the federal government continues to drag on with increasing consequences. Federal agencies report that a number of critical government functions have been hampered by the shutdown, including the CDC’s suspension of its daily update on the outbreak of influenza and other diseases. The U.S. Department of Agriculture (USDA) Food and Safety Inspection Service said that an outbreak of salmonella has worried the agency and as a result it will reinstate 30 employees in an effort to address the issue. If the parties cannot agree on a last-minute legislative solution to the current impasse, the Senate majority could well decide to invoke the so-called “nuclear option” which would change the chamber’s rules to permit a cloture vote allowing a “clean” bill to pass with only a majority vote (rather than a minimum of 60 votes as required under current Senate rules). In this case it would be up to **House Speaker John Boehner (R-OH)** whether or not to allow the House to vote on such a bill which has to date been rejected by the vast majority of House Republicans.

PPACA Health Reform Update

Federal Health Insurance Exchange Woes Continue

Department of Health and Human Services (HHS) Secretary Kathleen Sebelius has refused to release information on the number of individuals who have enrolled under the PPACA Federally Facilitated Exchanges (FfEs) because, she says, she does not know the number. HHS did say that during its first week of operation the FFE website received 8.6 million visitors and 225,000 requests for online chats. House Energy and Commerce Committee Chairman Fred Upton (R-MI) responded that HHS had given assurance that the exchanges would be up and running on October 1st but that “Instead, here we are 10 days later, and delays and technical failures have reached epidemic proportions...” His committee has asked for information from HHS and FFE contractors on the cause of “this mess” and the fixes needed. In addition, House Oversight and Government Reform Committee Chairman Darrell Issa (R-CA) and Senator Lamar Alexander (R-TN) sent a letter to Secretary Sebelius asking for information by October 24th on how many individuals were successful in enrolling through the federal website as of October 9th. Senator Pat Roberts (R-KS) went further and called on HHS Secretary Kathleen Sebelius to resign due to “gross incompetence leading to the complete failure” of the health insurance exchanges. Defending the Administration at a House Oversight and Government Reform Committee hearing, the director of the Internal Revenue Service (IRS) Affordable Care Act Office testified that “The system and processes the IRS has developed to support enrollment in the marketplaces were launched on schedule and are working as planned...” HHS did report that one improvement made to the website will allow individuals to browse for the price of various plans without first establishing an account. The Center for Medicare and Medicaid Services (CMS) also released draft FFE operation and policy guidance for entities involved in the enrollment process which the agency said will be updated regularly (CMS will release information “bulletins” in the interim). Of note, the first annual enrollment period is from October 1, 2013 through March 31, 2014 and coverage will begin on January 1, 2014 for enrollments taking place through December 15th. In related news, HHS confirmed that the deadline for individuals to purchase health coverage in order to avoid the PPACA individual mandate penalty is mid-February 2014, notwithstanding the March open-enrollment period.

PPACA Medicaid Expansion Issues

State Medicaid directors reported that state efforts to enroll newly eligible Medicaid applicants were also experiencing trouble during the first week of online enrollment. Republicans appear to also be standing pat on their policy to thwart Medicaid expansion under the PPACA with the latest being a letter to the Government Accountability Office (GAO) from key Republicans on the House Energy and Commerce Committee asking the agency to project the financial impact of expanding Medicaid to the nation’s prison population and those newly released. The request appears to have been in response to a call by some outside groups for the expansion of Medicaid to new populations.

Bipartisan Criticism of PPACA “30 Hour” Rule

At a House Small Business Health and Technology Subcommittee hearing, Rep. Janice Hahn (D-CA) expressed concern that the PPACA’s definition of “full-time” employee for coverage purposes may need some changes. Chairman Chris Collins (R-NY) said the 30-hour rule is a disincentive for businesses to grow and add new jobs. He released a U.S. Chamber of Commerce poll finding that 74% of surveyed small employers intend to take action to avoid the law’s employer mandate, in some cases by reducing current full-time employee hours to below the 30 hour full-time threshold.

Medicare/Medicaid/Public Health Services Corner

House Members Oppose CMS Cut to Clinical Lab Medicare Reimbursements

Reps. Bill Pascrell (D-NJ), Jim Gerlach (R-PA) and 111 other House members sent a letter to CMS containing their request for the agency to withdraw the cap on Medicare payments to clinical laboratories in cases in which charges for non-hospitalized patients exceed those that would otherwise be paid under the Medicare hospital outpatient prospective payment system (OPPS). They stated their concern that the ability of independent laboratories to continue to provide the full range of anatomic pathology services in their communities will be severely limited or curtailed. They asked CMS for the legal justification for OPPS data to determine payments under the Medicare Physician Fee Schedule (PFS).

Medicare Advantage Plan Star Ratings Posted

The federal shutdown delayed the posting by CMS of the Medicare Advantage and Part D drug plan “star ratings” for 2014 until this past Friday. CMS reported that more than 34% of all Medicare Advantage (MA) contracts received four or more stars, an increase from 28% in 2013.

GAO Recommends Deletion of Social Security Numbers on Medicare Cards

The General Accountability Office (GAO) released a report in which the agency recommends that CMS eliminate the inclusion of Social Security identification numbers on the cards issued to Medicare beneficiaries. The GAO said the move is necessary to help prevent fraud and identity theft.

Senator Manchin Calls for Pay to Play Investigation

Senator Joe Manchin (D-WV) sent a letter to the FDA requesting that the agency open an investigation into allegations made in news reports that pharmaceutical companies engaged in “pay to play” practices involving an advisory group established to make recommendations regarding FDA policies for testing the safety and effectiveness of painkillers.

Upcoming Health-Related Hearings and Markups

Postponed--Executive Session, Senate Committee on Health, Education, Labor and Pensions: mark up of Children’s Hospital GME Support Reauthorization; CHIMP Act Amendments of 2013; H.R. 2094, School Access to Emergency Epinephrine Act; and Older Americans Act Reauthorization; 10:00 a.m., 430 Dirksen Bldg.

Postponed--Senate Finance Committee: hearing titled “Transforming Medicare Post-Acute Care: Issues and Options”; 10:00 a.m., 219 Dirksen Bldg.

Postponed--House Energy and Commerce Subcommittee on Health: hearing titled “Reviewing FDA’s Implementation of FDASIA”; 10:00 a.m., 2123 Rayburn Bldg.

Senate Special Aging Committee: hearing on long-term care; 2:15 p.m., 562 Dirksen Bldg.; Oct. 23.

Health Legislation Recently Introduced

H.R. 3247 through H.R. 3258 (APPROPRIATIONS), making continuing appropriations for all departments and agencies of the federal government, and for other purposes; GRAYSON; to the Committee on Appropriations, Oct. 5.

H.R. 3259 through H.R. 3270 (FEDERAL BUDGET), eliminating the debt ceiling for a period defined, and for other purposes; GRAYSON; to the Committee on Ways and Means, Oct. 5.

S. 1569 (FEDERAL BUDGET), to ensure the complete and timely payment of the obligations of the U.S. government until Dec. 31, 2014; REID; read the first time, Oct. 8.

H.R. 3279 (ABORTION), to amend Section 1303(b)(3) of Public Law 111-148 concerning the notice requirements regarding the extent of health plan coverage of abortion and abortion premium surcharges; SMITH of New Jersey; to the Committee on Energy and Commerce, Oct. 9.

H.J. RES. 92 (APPROPRIATIONS), making continuing appropriations for the Centers for Disease Control and Prevention for fiscal year 2014, and for other purposes; KINGSTON; to the Committee on Appropriations, Oct. 9.

S. 1570 (NATIVE AMERICANS), to amend the Indian Health Care Improvement Act to authorize advance appropriations for the Indian Health Service by providing two-fiscal-year budget authority, and for other purposes; MURKOWSKI; to the Committee on Indian Affairs, Oct. 10.

H.R. 3284 (FEDERAL BUDGET), to ensure the complete and timely payment of the obligations of the U.S. government until Dec. 31, 2014; LEVIN; to the Committee on Ways and Means, Oct. 10.