



Health Policy Briefing

October 21, 2013

Budget Deal Sets Up New Appropriations/Debt Limit Deadlines; Obamacare In Crosshairs

President Signs Budget Deal Negotiated in Senate

Before recessing until October 28, late Wednesday night (a day before the deadline for raising the federal debt ceiling) the Senate voted 81-18 to pass the Continuing Appropriations Act of 2014 (H.R. 2775) and the House voted 285-144 in agreeing to the budget deal negotiated by **Senate Majority Leader Harry Reid (D-NV)** and **Minority Leader Mitch McConnell (R-KY)**. The President supported the proposal and he signed the legislation into law, Public Law 113-046. In addition to the health-related provisions described below, the legislation ends the shutdown of the federal government by providing appropriations at the current \$986.3 billion level through January 15, 2014 and also includes provisions allowing the Treasury to avoid violating the federal debt ceiling until February 7, 2014 (excluding House demands that Treasury be prohibited from using “extraordinary” measures to avoid default after establishing the new debt ceiling as of February 8th). The Senate deal was necessitated after the House abandoned efforts earlier in the week to obtain a Republican majority on legislation that would condition further appropriations and the lifting of the debt ceiling with provisions changing the Patient Protection and Affordable Care Act (PPACA). Regardless,

the President publicly stated his opposition to any deal that included substantive changes to his signature health law. Of note, none of the changes to the PPACA demanded by Republicans were included in the law (that is, defunding the law; delaying the individual mandate; delaying the reinsurance tax on insurers; eliminating the Independent Payment Advisory Board (IPAB); eliminating federal employer contributions for the President, Vice President, Senators and House members who would have to elect coverage under the law’s health insurance exchanges; delaying the tax on medical devices; etc.). **House Speaker John Boehner (R-OH)** said “we fought the good fight, but we did not win” regarding the tactic to attack the PPACA by shutting down the government. Senator Mitch McConnell went further by declaring that the tactic would not be allowed again on the continuing resolution needed to fund the federal government after January 15th. He also lauded the “importance” of continuing the sequestration provisions of the Budget Control Act in the deal. The *continued on page 2*

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only PPACA-related provision included is one that requires the HHS Secretary to certify to Congress by January 1, 2014 that the PPACA health insurance exchanges are using effective procedures to verify income eligibility before making tax credits or cost-sharing reductions available to covered individuals. The U.S. Department of Health and Human Services (HHS) Office of Inspector General (OIG) is also required to report to Congress by July 1, 2014 on how effective the procedures are in preventing fraud. Additional spending provisions included in the new law provide: \$2.5 billion for the Veterans Benefits Administration to help eliminate the backlog of disability claims; authority for HHS to obligate funds to ensure timely execution of planned advanced research and development contracts and the procurement of health security countermeasures associated with the Biomedical Advanced Research and Development Authority (BARDA); for the reimbursement of a state (or another federal grantee) that used its funds to continue carrying out a federal program during a lapse of appropriations and for the compensation of their furloughed employees; that agencies report to their IG the cost and number of employees attending conferences and prohibits the use of federal grants or contracts to defray the costs of such a conference not directly and programmatically related to the purpose of such a grant or contract; and back-pay for health-related and all other federal employees affected by the government shutdown.

Conference on FY 2014-2023 Budget Resolution

DAs part of the budget/debt deal, the Senate also substituted the content of the previously passed Senate budget resolution (S.Con.Res. 8) for the House-passed resolution, H.Con.Res. 25, and instructed the named conferees to file a conference report by December 13, 2013. The Senate appointed the following conferees: Sens. Murray, Wyden, Nelson, Stabenow, Sanders, Whitehouse, Warner, Merkley, Coons, Baldwin, Kaine, King, Sessions, Grassley, Enzi, Crapo, Graham, Portman, Toomey, Johnson (Wis.), Ayotte and Wicker. The House appointed the following conferees: Reps. Ryan (Wis.), Cole, Price (Ga.), Black, Van Hollen, Clyburn and Lowey. Senator Rob Portman and House Budget Committee Chairman Paul Ryan said the conference offers an opportunity for Republicans to push for entitlement reforms (e.g. modifying Social Security cost-of-living-adjustments (COLAs); means-testing parts of Medicare and raising the eligibility age, etc.) and to resist tax increases while Democrats can be expected in turn to seek some relief from the effects of sequestration for favored programs. Senate Budget Committee Chairman Patty Murray (D-WA) stated her hope to find common ground for a resolution to extend appropriations for the remainder of fiscal year (FY) 2014 and to avoid another debt limit fight. The House and Senate budget resolutions for FY 2014-2023 provide for reserve funds and other means to accomplish policy goals by reforming the tax code and changing health-related programs. For example, **the House measure contains certain deficit-neutral funds to:** reform the PPACA and to repeal all or part of the decreases in Medicare spending included in it and to reform the Sustainable Growth Rate (SGR) used in the Medicare physician payment program. It also includes goals to convert the federal share of Medicaid spending into a flexible state allotment tailored to meet each state's needs, indexed for inflation and population growth and to put Medicare beneficiaries, not the federal government, in control of their health care decisions. **The Senate measure provides for deficit-neutral reserve funds to:** permanently reform or replace the Medicare SGR formula; extend expiring Medicare, Medicaid, or other health provisions; promote improvements to health care delivery systems, which may include changes that increase care quality, encourage efficiency, focus on chronic illness, or improve care coordination, improve overall population health, promote health equity or reduce health disparities, and that improve the fiscal sustainability of health care spending over the long term; protect access to outpatient therapy services (including physical therapy, occupational therapy, and speech-language pathology services) through measures such as repealing or increasing the current outpatient therapy caps; allow legislation that permits the safe importation of prescription drugs approved by the FDA from a specified list of countries; improve health outcomes and lower costs for children in Medicaid; repeal the PPACA medical device tax; prohibit Medicare vouchers; help improve women's health care; provide for state-wide budget neutrality for the Medicare hospital wage index; adjust the definition of full-time employee under the PPACA; limit undocumented immigrants from qualifying for federally subsidized health insurance coverage; repeal tax increases on health savings and flexible spending accounts; provide for full funding for BARDA under section 319L of the Public Health Service Act (42 U.S.C. 247d-7e) and the Special Reserve Fund under Section 319-F2 of the Public Health Service Act; increase funding for federal investments in biomedical research; and establish a biennial budget and appropriations process. The Senate also intends to pursue policies that would require transparent reporting on the ongoing costs to taxpayers of the PPACA. The House and Senate may be driven to arrive on a spending/tax compromise if members are to be responsive to the demands by the Pentagon for an easing of sequestration in order for the military to meet their readiness needs.

PPACA Health Reform Update

Glitches in Online Federal Marketplace Draws More Criticism

HHS Secretary Kathleen Sebelius has, to date, refused to disclose the source of the problems plaguing the website which consumers must access to gain coverage under the federal health insurance marketplace. Increasing public criticism of the failure of the technology to work properly has come from health insurers and even friends of the Administration. This has led House Energy and Commerce Committee Chairman Fred Upton (R-MI) to search for answers by scheduling a hearing on the issue in his committee this Thursday. House Republicans Diane Black (R-TN) and Patrick Meehan (R-PA) have also asked the HHS OIG for information about the security testing that HHS conducted on the health insurance marketplace data hub before its implementation on October 1. The Centers for Medicare and Medicaid Services (CMS) also announced that the federal exchanges will be unable to transfer Medicaid applications to state agencies until the first of next month. The agency is also requesting comment by mid-November on an information data collection request concerning the eligibility of individuals for federal subsidies under the exchanges. It is reported that HHS is considering an action to shutter the website temporarily in order to give programmers the time necessary to come up with a permanent fix for the problems. Unless health insurers are given accurate information on applicants from the exchanges, the system will continue to fail to live up to its favorable billing given by the President.

Upcoming Health-Related Hearings and Markups

House Energy and Commerce Committee: hearing on *implementation of the Patient Protection and Affordable Care Act and its challenges since the October 1 opening of health care exchanges*; 9:00 a.m., 2123 Rayburn Bldg.; October 24.

Senate Special Aging Committee: member's roundtable titled "*Tackling Diseases of Aging: Why Research Collaboration Matters*." 4:00 p.m., 562 Dirksen Bldg.; October 29.

Senate HELP Committee, Executive Session: mark up of *Children's Hospital GME Support Reauthorization; CHIMP Act Amendments of 2013; H.R. 2094, School Access to Emergency Epinephrine Act; Cooperative and Small Employer Charity Pension Flexibility Act; The Streamlining Claims Processing for Federal Contractor Employees Act; and Older Americans Act Reauthorization*; 10:00 a.m., 430 Dirksen Bldg.; October 30.

Postponed until further notice--Senate Finance Committee: hearing titled "*Transforming Medicare Post-Acute Care: Issues and Options*"

Postponed until further notice--House Energy and Commerce Subcommittee on Health: hearing titled "*Reviewing FDA's Implementation of FDASIA*"

Health Legislation Recently Introduced

H.RES. 381 (HIV/AIDS), supporting the goals and ideals of “National Latino AIDS Awareness Day” on Oct. 15, 2013, and for other purposes; RUIZ; to the Committee on Energy and Commerce, Oct. 11.

S. 1575 (NATIVE AMERICANS), to correct inconsistencies in the definitions relating to Native Americans in the PPACA; BEGICH; to the Committee on Finance, Oct. 16.

S. RES. 270 (POLIO), supporting the goals and ideals of World Polio Day and commending the international community and others for their efforts to prevent and eradicate polio; KIRK; to the Committee on Foreign Relations, Oct. 16.

H.R. 3295 (MEDICARE), to amend Title XVIII of the Social Security Act to eliminate contributing factors to disparities in breast cancer treatment through the development of a uniform set of consensus-based breast cancer treatment performance measures for a six-year quality reporting system and value-based purchasing system under Medicare; CASTOR of Florida; jointly, to the committees on Ways and Means and Energy and Commerce, Oct. 16.

H.R. 3299 (HEALTH EXCHANGE ENROLLMENT), to amend Section 340A of the Public Health Service Act to protect the privacy of personally identifiable information in relation to enrollment activities of health insurance exchanges, and for other purposes; ROSS; jointly, to the committees on Energy and Commerce and Ways and Means, Oct. 16.