



Health Policy Briefing

October 28, 2013

Partisan Battle Over Obamacare Continues while Budget Battle Begins

Talks Begin This Week on FY 2014-2023 Spending/Taxes

In an effort to file a conference report by December 13th, this week the House and Senate conferees on the fiscal years 2014-2023 Budget Resolution, H.Con.Res 25, are scheduled to begin their discussions over the level of federal spending and taxes needed to help contain and, perhaps, reduce federal deficits over ten years. Senate conferees, led by **Senate Budget Committee Chairman Patty Murray (D-WA)**, are expected to push for a scale-back of spending cuts mandated under the Budget Control Act (BCA) and obtaining a deficit-neutral effect by closing tax “loopholes”. House conferees, led by **House Budget Committee Chairman Paul Ryan (R-WI)**, are expected 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. The opposing agendas of Democrats and Republicans may again lead to a last-minute deal which accomplishes little of either agenda. Changes to the Patient Protection and Affordable Care Act (PPACA) being pushed by Republicans, and a growing number of Democrats, that have a potential chance of being included in a conference

agreement include a repeal of the medical device tax and a delay in the individual mandate or the related penalty for non-compliance. Although the House and Senate resolutions both contain deficit-neutral reserve funds for reforming the Medicare physician payment system that relies on the much-criticized sustainable growth rate (SGR), to include such long-term reforms the conferees will have to agree on spending cuts/revenue-increases to offset the \$175.5 billion ten-year cost contained in the latest Congressional Budget Office (CBO) projections. The conferees could expedite their agreement by pursuing the reconciliation route which would require only a majority vote in each chamber for passage.

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PPACA Health Reform Update

HHS Secretary Under Fire for ACA Glitches

Flanked by individuals who will benefit from Obamacare, the President said in a White House Rose Garden ceremony that the PPACA website glitches will be fixed, that the “product is working. It’s really good...”, and that there is massive demand for it. Nonetheless, Rep. John Fleming (R-LA) and 31 other House Republicans sent a letter to the President that asks for the resignation of Department of Health and Human Services (HHS) Secretary Kathleen Sebelius due to the many failures of the HealthCare.gov website to operate successfully in enrolling potential individuals and small businesses. The Secretary will have her “day in court” this Wednesday when she is scheduled to testify before the House Energy and Commerce Committee. Despite the problems disclosed in the hearings held last week by the same committee, the Centers for Medicare and Medicaid Services (CMS) said that about 700,000 individuals have completed the application process for enrollment under the federal and state-run health insurance exchanges. The technical problems with the exchanges, including the inability of the entities to properly transfer personal and coverage information to health insurers, led senior Administration officials to meet with insurer CEOs at the White House to hash out the situation and discuss the efforts underway to address the problems. In this connection, the White House announced that Jeffrey Zients, a former acting director of the Office of Management and Budget (OMB), will take charge of the efforts to fix the exchange problems. He said that a contractor has been assigned to make the necessary changes and that the website is expected to be fully functional by the end of November. The House Speaker, John Boehner (R-OH), got into the fray in stating that the website glitches are only part of the problem with the health law and that hundreds of thousands of individuals have been notified that their current health coverage is being dropped by their insurer (defying the President’s earlier promise that people will not lose the coverage in which they are currently enrolled).

HealthCare.gov Contractors Shift Blame to CMS for Glitches

At the above-referenced House Energy and Commerce Committee hearing, the two major contractors responsible for developing the HealthCare.gov website attempted to avoid being fingered for the website’s problems and, instead, shifted the blame to CMS who was said to have allowed only two weeks for the testing of the multi-vendor computer coding. As a result, the consultants said that the problems were not fully understood when CMS decided to open enrollment on October 1st and, consequently, the website was overwhelmed. Democrats attempted to defend the law and called the hearing a “monkey court” and not a serious attempt to help improve the operations of the website. The committee’s Democrat staff also released a report designed to illustrate that prior efforts to implement the Medicare Part D enrollment process, resulting from a Republican congressional initiative, also had similar problems at the start. Rep. Marsha Blackburn (R-TN) said that “No one can be a blind cheerleader for the Affordable Care Act when they see all these problems right before their eyes...” Senators Orrin Hatch (R-UT) and Chuck Grassley (R-IA) also got into the act by sending letters to forty-seven contractors asking them to respond by November 8 on their roles in developing and implementing the website. The House Oversight and Government Reform Committee also sent letters to eleven technology companies seeking answers on how they communicated with CMS and responded to CMS directives. The committee’s Republicans sent another letter to the OMB’s chief information officer and the chief technology officer accusing the Administration of purposely hiding the prices of insurance policies offered under the exchanges. They requested that OMB provide the committee with all communications between the agency and CMS regarding the website’s development. In general, Republicans have criticized the initial decision which only allowed individuals who signed in with their personal information to access the health care options available to them. The site has since been changed to allow for “anonymous” shopping. The committee has also threatened to issue a subpoena by October 28th if HHS refuses to provide the information previously requested as to the website’s problems. Amid the increasing frustration faced by individuals in being able to obtain health coverage via the website, ten Senate Democrats have called for a delay in the penalties that would be applied if consumers do not sign-up by mid-February. However, HHS responded to this concern by issuing a ruling that penalties related to the individual mandate will not be enforced if coverage is obtained at any point during the open enrollment period which ends on March 31.

PPACA Health Reform Update cont.

PPACA Regulations Finalized

CMS has issued a final rule setting forth the standards for: advance payments of premium tax credits and cost-sharing reductions to make health coverage more affordable for moderate and low-income people; premium stabilization programs; state marketplaces; oversight of issuers in federally facilitated marketplaces; and enrollee satisfaction survey vendors. CMS also released a notice which makes effective immediately certain modifications to the Health Insurance Exchanges (HIX) Program system of records relating to individual's personal information and all other data activities involving the federal and state-run exchanges.

PCORI Announces New CER Award Program

The Patient-Centered Outcomes Research Institute (PCORI) announced the establishment of the "Pipeline to Proposal" award program designed to build a national community of patients, other stakeholders, and researchers who have the expertise and passion to participate in patient-centered outcomes research that leads to high-quality research proposals. About twenty-five Tier I awards of up to \$15,000 will first be made available in thirteen western states.

Courts Continue to Allow Suits Challenging the PPACA

In a recent PPACA-related case, the U.S. District Court for the District of Columbia denied the Administration's motion to dismiss the Competitive Enterprise Institute's case asserting that individuals who obtain health insurance through federally facilitated exchanges (FfEs) are not eligible for the law's premium tax credits and subsidies. The case is expected to be expedited. In another suit filed in the U.S. District Court for the Eastern District of Virginia, the Department of Justice (DOJ) argued that the Virginia residents filing the complaint would likely not succeed in their claim that the same Internal Revenue Service (IRS) rule is invalid. The DOJ argument is likely to be repeated in connection with the first case. Another issue being litigated involves the law's mandate to include contraceptive drugs, devices and related services for women. Both Hobby Lobby Stores, Inc. and Conestoga Wood Specialties Corp. filed briefs asking the Supreme Court to resolve conflicting appeals court decisions as to whether the federal government should be stopped from enforcing the PPACA's preventive services mandate. An en banc U.S. Court of Appeals for the Tenth Circuit held for the two companies while the U.S. Court of Appeals for the Third Circuit decided that for-profit companies do not have a basis for failing to comply with the mandate. The DOJ agreed that the high court should hear the case because of its "exceptional importance".

Medicare/Medicaid/PHSA Corner

Medicare Payment Rules Delayed

CMS announced that final regulations involving the following four Medicare rules may be delayed until November 27th (as a likely result of the government shutdown): Revisions to Payment Policies under the Physician Fee Schedule and Other Revisions to Part B for CY 2014 Final Rule with Comment Period (CMS-1600-FC); CY 2014 Home Health Prospective Payment System Final Rule (CMS-1450-F); CY 2014 Changes to the Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System (CMS-1601-FC); and Medicare Program; End-Stage Renal Disease Prospective Payment System, Quality Incentive Program, and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (CMS-1526-F).

Upcoming Health-Related Hearings and Markups

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.

House Ways and Means Committee: hearing on challenges consumers are facing with the implementation and enrollment process of the Affordable Care Act; 10:00 a.m., 1100 Longworth Bldg.; October 29.

House Energy and Commerce Committee: hearing titled "PPACA Implementation Failures: Answers from the Department of Health and Human Services;" 9:00 a.m., 2125 Rayburn Bldg.; October 30.

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--Senate Finance Committee: hearing titled "Transforming Medicare Post-Acute Care: Issues and Options"; 219 Dirksen Bldg.

Postponed--House Energy and Commerce Subcommittee on Health: hearing titled "Reviewing FDA's Implementation of FDASIA"; 2123 Rayburn Bldg.

Health Legislation Recently Introduced

H.R. 3319 (FEHB), to modernize the Federal Employees Health Benefits Program, and for other purposes; ISSA; jointly, to the committees on Oversight and Government Reform, Energy and Commerce and Ways and Means, Oct. 23.

H.R. 3320 (MEDICARE), to ensure appropriate coverage of ventricular assist devices under Medicare under Title XVIII of the Social Security Act, and for other purposes; BUCSHON; jointly, to the committees on Ways and Means and Energy and Commerce, Oct. 23.

H.R. 3322 (DIABETES), to amend the Public Health Service Act to prevent and treat diabetes, to promote and improve the care of individuals with diabetes, and to reduce health disparities, relating to diabetes, within racial and ethnic minority groups; DEGETTE; to the Committee on Energy and Commerce, Oct. 23.

H.R. 3334 (MEDICARE), to amend Title XVIII of the Social Security Act to provide for coverage of certified adult day services under Medicare; LINDA T. SÁNCHEZ of California; jointly, to the committees on Ways and Means and Energy and Commerce, Oct. 23.

H.R. 3336 (APPROPRIATIONS), making supplemental appropriations for the National Institutes of Health for the fiscal year ending Sept. 30, 2014, and for other purposes; SCHWARTZ; jointly, to the committees on Appropriations and 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, Oct. 23.

H.R. 1443, to direct the secretary of veterans affairs to recognize tinnitus as a mandatory condition for research and treatment by the Department of Veterans Affairs, and for other purposes, with an amendment (H. Rept. 113-247).

Health Legislation Recently Introduced cont.

H.R. 623, to provide for the conveyance of certain property in Anchorage, Alaska, from the U.S. to the Alaska Native Tribal Health Consortium, with an amendment (H. Rept. 113-248, Pt. 1).
Bills and Resolutions

H.R. 3303 (MEDICAL SOFTWARE), to amend the Federal Food, Drug, and Cosmetic Act to provide for regulating medical software, and for other purposes; **BLACKBURN**; to the Committee on Energy and Commerce Oct. 22.

H.R. 3306 (TELEHEALTH), to promote and expand the application of telehealth under Medicare and other federal health-care programs, and for other purposes; **HARPER**; jointly, to the committees on Energy and Commerce and Ways and Means, Oct. 22.