



## Health Policy Briefing

November 11, 2013

### House Returns to Target Obamacare and Reverse Individual Policy Cancellations

#### *Budget Conferees Slow to Make Decisions*

Democrats on the House and Senate budget conference legislation met last week to assess the possible path for both chambers to come to a resolution on the outlines of a budget agreement in order to meet the legislated December 13th deadline. With the House returning this week and only 16 legislative days remaining before the budget deadline, senior Democrats are likely to put more pressure on House Republican conference chairman, **Rep. Paul Ryan (R-WI)**, to accelerate negotiations and move off of their insistence on provisions in the House fiscal year (FY) 2014 budget resolution which extends sequestration and holds spending under a \$986 billion cap. In conference, Democrats are expected to extract more revenue from “loophole closings” in an effort to trim the effect of sequestration and to avoid raising tax rates which they know is a non-starter for both House and Senate Republicans. Whether inside the conference or otherwise, both chambers will have to agree on a source of spending-cuts/ revenue-increases to offset the cost of a long-term fix to the sustainable growth rate problems

created under the current Medicare physician payment system. To do otherwise would confront Congress with a secondary well-worn path to ward off a near-25% cut in physician payments beginning in January.

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## ***House/Senate to Take Up Health Legislation***

Last week Senate Majority Leader Harry Reid (D-NV) filed cloture on H.R. 3204, the Drug Quality and Security Act, and the vote is expected to come early this week. In general, the House-passed bill would require manufacturers of compounded drugs to report to the Food and Drug Administration (FDA) on outsourcing facilities and would create a national supply chain drug tracking system. The Majority Leader was forced to use the cloture route in order to fend off a move by Senator David Vitter (R-LA) to secure a vote on his ‘Show Your Exemption Act’ which would require House and Senate members to disclose which staffers they chose to exempt from having to secure their health coverage under the Patient Protection Affordable Care Act (PPACA)-related DC health insurance exchange. Amid the public furor over the cancellation of millions of non-grandfathered individual health insurance policies, the House has scheduled a vote on H.R. 3350, the Keep Your Health Plan Act, which House Speaker John Boehner (R-OH) said would allow President Obama to uphold his promise to let people keep their health plans if they like them, not just apologize for failing to do so. Senator Ron Johnson (R-WI) has introduced similar legislation, S. 1617.

## ***PPACA Health Reform Update***

### ***Republicans and Administration Trade Barbs on Obamacare***

While the President offered apologies for the growing number of individual health insurance policy cancellations and the continued problems with the HealthCare.gov website, Republicans as well as some Democrats demanded answers and solutions to the problems. Before leaving for Dallas to put pressure on the Texas governor and legislature to expand Medicaid, the President met with the fifteen Senate Democrats up for reelection in 2014 to hear their grievances about the law’s shortcomings, including concerns over the security of personal information submitted to the exchanges. Led by Sen. Jeanne Shaheen (D-NH), eight Senate Democrats also asked the President to have the Department of Health and Human Services (HHS) extend the open enrollment period to enable individuals to avoid having to pay a penalty for not having coverage for the required number of months in 2014. In addition, Senator Joe Manchin (D-WV) introduced S. 1671, legislation that would delay the PPACA’s individual mandate until 2015 and Senator Mary Landrieu (D-LA) introduced S. 1642, legislation that would allow individuals to continue their current individual health coverage for an extended period. The House will also take up H.R. 3350, Rep. Fred Upton’s (R-MI) bill that would also allow insurance policies offered in the individual market as of January 1, 2013 to continue to be offered in 2014 outside of the PPACA’s health insurance exchanges. The Administration may be looking for an administrative “fix” to the cancellation problems after the President said officials will do what they can to help them. It remains to be seen what additional information the Administration will reveal in the hearings to be held this week vs. that gleaned by Republicans in last week’s testimony by Centers for Medicare and Medicaid Services (CMS) and HHS. CMS Administrator Marilyn Tavenner and HHS Secretary Kathleen Sebelius told the Senate Health, Education, Labor and Pensions (HELP) Committee and the Senate Finance Committee, respectively, to wait until November 15th for official numbers on the individuals actually enrolled under the PPACA exchanges and to wait until the end of November for all technical problems with HealthCare.gov to be fixed. However, the problems with HealthCare.gov continue and the Administration’s lead in fixing the site, Jeffrey Zients, hinted that roadblocks continue to crop up as the site’s capacity is tested. Despite the problems, CMS projects that about 800,000 individuals will be enrolled under Obamacare in October and November. Even Senator Barbara Mikulski (D-MD) told CMS that “there’s been a crisis of confidence created in the dysfunctional nature of the website, the canceling of policies, and sticker shock from some people.” The CMS Administrator tried to assure her that the agency’s goal is to “to stabilize the website this month, and then we have a targeted plan that includes not only young people, but the large populations of the uninsured in markets...” However, both Ms. Tavenner and HHS Secretary Kathleen Sebelius said the Administration has no plans to delay the individual mandate. On a cautionary note about potential future problems, Senate Finance Committee Chairman Max Baucus (D-MT) told the Secretary “The more you don’t tell us, the greater the problem is going to be. The more you do tell us, the good and the bad, the more likely it is that we’re going to get this right at an earlier date.” The long-knives came out to fix blame for the website’s problems when Senator Bill Nelson (D-FL) urged Secretary Sebelius to use her legal authority to hold the contractors who built the website accountable for the site’s breakdowns.

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## PPACA Health Reform Update cont.

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House Ways and Means Committee Chairman also demanded that the Internal Revenue Service (IRS) provide his committee (by this Tuesday) with the number of applications in each state that the agency has reviewed to determine the eligibility of individuals for tax credits. At the Senate HELP Committee hearing, Senator Mike Enzi (R-WY) lamented about the large number of individuals who have applied to state-run exchanges and found to qualify for Medicaid under the PPACA's expanded criteria, thus likely increasing the law's cost well beyond early projections and jeopardizing the long-term viability of the exchanges. This despite CMS' report to state Medicaid directors that Medicaid enrollment as determined under the Federally Facilitated Exchanges will not be forwarded to the states until the end of this month. Republicans' strongest strike against Obamacare and its implementation came in the form of a letter to the President asking him to fire HHS Secretary Kathleen Sebelius (signatories include: Sens. Roberts, Alexander, Cornyn, Cruz, Enzi, Risch, Kirk, Barrasso, Inhofe and Paul).

### Confusion Reigns About QHP Provider Subsidies

**A**s previously reported, HHS ruled that the Stark anti-kickback law does not apply to qualified health plans (QHPs) purchased on state and federal health insurance exchanges because they are not "federal health care programs". However, the CMS Center for Consumer Information & Insurance Oversight (CCIIO) released a Q&A document that discourages health-care providers and other commercial entities from extending premium and cost-sharing assistance on behalf of individuals who obtain their QHPs on the PPACA's state and federal exchanges. The agency said that, while the practice may not be illegal, it will monitor the practice and take "appropriate action if necessary" as a deterrent to skewing the exchange risk pool and creating an unlevel playing field.

#### *House Republicans Question Union-Related Navigators*

**T**he Chairman of the House Education and the Workforce and other committee Republicans sent a letter to HHS demanding answers by next Monday about the grants made to PPACA non-profit navigator organizations, the training the navigators receive and the security of personal information. They expressed concern over navigator grants made to two union-based "worker centers" which have as one of their missions to organize low-wage workers.

#### *Possible Relief for Multiemployer Plans from Reinsurance Fees*

**B**uried in the final regulations released by HHS on October 30th relating to "Standards Related to Reinsurance, Risk Corridors, and Risk Adjustment Under the Affordable Care Act" is a statement that the agency intends "to propose in future rulemaking to exempt self-insured, self-administered plans from the requirement to make reinsurance contributions in 2015 and 2016." While this also covers non-union self-insured plans it also would exempt the class of collectively-bargained multiemployer health plans. Senator Orrin Hatch said that "It certainly looks like the Obama administration is looking at a special deal for unions, which is deeply concerning given the problems that all Americans are facing due to Obamacare..."

### Grants for New Community Health Centers

**H**HS announced that \$150 million in awards have been granted under the PPACA to help form 236 new community health center sites that are estimated to cover about 1.25 million additional patients.

## PPACA Health Reform Update cont.

### *MedPAC on PPACA ACO Shared Savings Program*

The members of MedPAC discussed the terms under which new Accountable Care Organizations (ACOs) formed in 2015 under the second round of PPACA generated contracts should be subjected to risk and to shared savings. In general, it appeared that members favored a so-called “two-sided-risk-model” in the long-term, but suggested exempting new ACOs from sharing in risk in the first three years and making them eligible for the shared-savings element only.

### *Final Mental Health Parity Rules Issued*

The mental health benefits that health plans must contain to meet the PPACA’s minimum essential benefits requirements were spelled out in final regulations released by HHS/Treasury-IRS/Department of Labor. The mental health parity provisions originally mandated under the Mental Health Parity and Addiction Equity Act of 2008 require that plan provisions relating to mental health and substance abuse disorders are not more restrictive than the cost-sharing, deductible, office visit, out-patient, intermediate care and other coverage provisions related to other health conditions. A so-called “increased cost exception” allows plans that would experience more than a 2% increase in cost to be exempt from the rules until the second plan/policy year. The effective date is tied to plan years and policy years beginning on or after July 1, 2014.

## Medicare/Medicaid/PHSA Corner

### *MedPAC on Primary Care MD/IRF-SNF Payments*

The Medicare Payment Advisory Commission (MedPAC) also discussed various policy options for altering Medicare payments to primary care physicians to better reflect actual costs. One option would be for such primary care MDs to receive a “per beneficiary” payment as part of a blended Medicare payment formula. It was suggested such payments could be on a “per beneficiary per month” basis or be paid on a quarterly basis. In recognition that such a change might increase Part B costs, it was suggested that the payments for other Part B services might be cut appropriately if a budget-neutral solution cannot be found. The commissioners also were told that inpatient rehabilitation facility (IRF) payments are usually higher than for similar services performed in skilled nursing facilities. It was suggested that a study of the differential payments should be conducted in order to determine the means to narrow the discrepancies.

### *FDA Seeks Comments on Brand/Generic Drug Safety Labeling*

The FDA proposed a new rule under which generic drug manufacturers would be able to independently update product labeling in the same manner as brand name drug manufacturers now do, provided the brand name manufacturer is informed of the update. Comments are due by January 13, 2014.

## Upcoming Health-Related Hearings and Markups

**House Oversight and Government Reform Committee:** will hold a hearing on *Affordable Care Act implementation and the rollout of [healthcare.gov](http://healthcare.gov)*; 9:30 a.m., 2154 Rayburn Bldg.; Nov. 13.

**House Energy and Commerce Subcommittee on Health:** will hold a hearing on *implementation of the Affordable Care Act*; 10:00 a.m., 2322 Rayburn Bldg.; Nov. 14.

**House Energy and Commerce Committee Subcommittee on Health:** hearing titled “*Reviewing FDA’s Implementation of FDASIA*”; 10:00 a.m., 2322 Rayburn Bldg.; Nov. 15.

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

## Health Legislation Recently Introduced

**S. 1642 (REFORM)**, to permit the continuation of certain health plans; LANDRIEU; to the Committee on Finance, Nov. 4.

**S. 1647 (REFORM)**, to amend the Affordable Care Act to repeal distributions for medicine qualified only if for prescribed drug or insulin; ROBERTS; to the Committee on Finance, Nov. 5.

**S. 1655 (MEDICAID)**, to require the secretary of health and human services to approve waivers under Medicaid under Title XIX of the Social Security Act that are related to state provider taxes that exempt certain retirement communities; BOOZMAN; to the Committee on Finance, Nov. 6.

**S. 1657 (PRESCRIPTION DRUG ABUSE)**, to reduce prescription drug misuse and abuse; UDALL of New Mexico; to the Committee on Health, Education, Labor and Pensions, Nov. 6.

**S. 1662 (VETERANS’ HEALTH)**, to provide for the introduction of pay-for-performance compensation mechanisms into contracts of the Department of Veterans Affairs with community-based outpatient clinics for the provision of health-care services, and for other purposes; MCCONNELL; to the Committee on Veterans’ Affairs, Nov. 7.

**S. 1666 (REFORM)**, to amend the Affordable Care Act to improve the patient navigator program; RUBIO; to the Committee on Health, Education, Labor and Pensions, Nov. 7.

**S. 1671 (REFORM)**, to delay the implementation of the individual health coverage mandate under the Affordable Care Act; MANCHIN; to the Committee on Finance, Nov. 7.

**S. 1672 (MEDICAID)**, to amend Title XIX of the Social Security Act to empower individuals with disabilities to establish their own supplemental needs trusts; NELSON; to the Committee on Finance, Nov. 7.