



Health Policy Briefing

November 18, 2013

ObamaCare Problems Continue to Dominate Congressional Debate; What Budget Deal?

Appropriators Stress Over Lack of Budget/Spending Deal

After another week of budget conference committee meetings, House appropriators expressed their angst over the lack of agreement on the level of so-called 302(a) spending totals for FY 2014-15 being negotiated between the **House Budget Committee Chairman Paul Ryan (R-WI)** and **Senate Budget Committee Chair Patty Murray (D-WA)**. Both House and Senate appropriators have been calling for the conference committee to give them their discretionary spending directives by December 2nd, even before the conference deadline of December 13th is reached, in order to get a jump on appropriation committee/subcommittee deliberations that are likely to lead to an omnibus spending bill to be taken up before year end. Whether or not the conference leaders will agree to entitlement spending reductions as possible offsets for sequestration reductions remains to be seen. To help the conferees in this regard, the Congressional Budget Office (CBO) released a report, "Options for Reducing the Deficit: 2014-2023," that includes possible deficit-reduction Medicare/Medicaid/Patient Protection Affordable

Care Act (PPACA) savings, including Medigap restrictions, Parts B/D premium increases and minimum drug manufacturer rebates, Medicaid spending caps and introducing a "public" option under PPACA exchanges.

Inside

- House Passes Upton Bill to Assist Individuals Receiving Policy Cancellations.....2
- Health Legislation Advances in House and Senate.....2
- Questions About on President Obama's Administrative "Fix".....2
- Proceedings in the House Highlight Other PPACA Failures.....3
- CMS to Propose Health Plan Quality Measures.....3
- Congressional Republicans Take PPACA Opposition to a Higher Court.....3
- FDA FDASIA On Track.....4
- CMS Virtual Research Data Center.....4
- Upcoming Health-Related Hearings and Markups.....4
- Health Legislation Recently Introduced.....5

House Passes Upton Bill to Assist Individuals Receiving Policy Cancellations

As a rebuff to the President's early statement that "if you like your health care plan, you can keep it", the House passed H.R. 3351, the Keep Your Health Plan Act, by a vote of 261 to 157 with 39 Democrats joining nearly all Republicans to send the bill to the Senate. However, with the President's action to have the Department of Health and Human Services (HHS) issue an administrative "fix" for the 5+ million individuals receiving health policy cancellations from their insurers (see below), it remains to be seen whether Senate Majority Leader Harry Reid (D-NV) will move forward on a senate version, such as S. 1642 proposed by Senators Mary Landrieu (D-LA), Joe Manchin (D-WV) and Dianne Feinstein (D-CA). House Democrat leaders failed in their move to substitute a legislative provision that would codify the HHS administrative fix. The House bill, which the President said he would veto, would allow health insurers to offer non-PPACA compliant plans to any person through the individual marketplace, but not inside any health exchange. The Landrieu bill would restrict the purchase of such policies to only those who otherwise would lose coverage under the PPACA rules.

Health Legislation Advances in House and Senate

Last week the Senate sent to the President for his signature the bill, S. 252--the PREEMIE Reauthorization Act that expands research to prevent premature births and infant mortality, establishes a National Pediatric Research Network and that also includes Senate language in S. 1561 which authorizes funding for retiring research chimpanzees. In addition, the Senate passed S. 1557, legislation amending the Public Health Service Act (PHSA) to reauthorize through 2018 the graduate medical education (GME) programs in children's hospitals. The Senate also cleared the way for a vote this week on H.R. 3204, legislation that would give the Food and Drug Administration (FDA) greater oversight of compounding pharmacies and that would create a national drug tracing system. In addition to taking action on H.R. 3351, the House also passed S. 330, the HIV Organ Policy Equity Act, legislation that amends the Public Health Service Act to establish safeguards and standards of quality for research and transplantation of organs infected with human immunodeficiency virus (HIV).

PPACA Health Reform Update

Questions Abound on President Obama's Administrative "Fix"

In a last-minute effort to address the problems with the Patient Protection and Affordable Care Act's (PPACA) induced cancellation of millions of individual health insurance policies not meeting the law's standards and to head off wholesale support among congressional Democrats for a legislative fix, the President publicly stated his mea culpa in announcing the HHS move to allow health insurers and state insurance commissioners to voluntarily proceed to renew existing health insurance policies (limited to the individual and small group markets) which do not meet the PPACA mandated standards. Whether states will allow this (the Washington state commissioner quickly said no) remains to be seen. The same goes for health insurers who have already sent out cancellation notices, changed policies to conform to the law and set premium rates assuming that the updated policies would be purchased in 2014 through the PPACA exchanges. The statement from the National Association of Insurance Commissioners (NAIC) was not reassuring: "This decision continues different rules for different policies and threatens to undermine the new market, and may lead to higher premiums and market disruptions in 2014 and beyond..." Pressure for the change came not only from Republicans and a growing chorus of congressional Democrats, but even from former President Bill Clinton who said the federal government should make good on the promise that those with cancelled policies should be allowed to keep them. Whether HHS's authority to extend this relief using the law's "grandfather" provision can pass constitutional muster is being openly questioned by the law's opponents. HHS also said it will monitor the effect of the relief with an eye on a possible extension into 2015 provided the disruption can be minimized; particularly regarding the rates insurers will be setting for 2015 in the exchange and non-exchange markets. Under the relief rule, affected persons would have to be notified about the PPACA benefits not included under the existing plans and the alternative options available in the law's exchanges.

PPACA Health Reform Update cont.

Proceedings in the House Highlight Other PPACA Failures

The above-mentioned mea culpa from the President also included a statement regarding the PPACA's exchange problems to the effect that "We fumbled the rollout". Republicans did not accept this apology to affected individuals and criticized the President's less than reassuring statement that the HealthCare.gov website will be fully functioning by the end of this month. HHS Secretary Kathleen Sebelius was as circumspect about the November 30th deadline for the completion of a final fix in her statement that individuals accessing the website after that date will have a "very different experience". Republican leaders of the House Oversight and Government Reform (OGR) Committee were successful in forcing Todd Park, the White House's chief technology officer, to testify under subpoena about the source of the federal exchange problems. Democrats, including Senator Kay Hagan (D-NC), have attempted to shift the blame for the website's woes to the contractors by bringing the Government Accountability Office (GAO) into the picture to investigate and suggest procurement reforms. Bipartisan support for legislation to reform information technology (IT) procurement was also voiced by members of the House OGR Committee. Nonetheless, Republicans at the OGR hearing blamed Todd Park, Henry Chao (Centers for Medicare and Medicaid Services (CMS) Deputy Chief Information Officer) and other IT officers for the flawed rollout. Mr. Chao also testified that the so-called "anonymous shopping" feature was not implemented on October 1 because it had failed in testing. Citing progress to fix the website, Mr. Park said that the data hub is humming nicely and that the site can process 17,000 users per hour and successfully process new accounts. Fixing blame continued, however, with the release of CMS/contractor emails by House Energy and Commerce Chairman Fred Upton (R-MI) which contained statements by Mr. Chao and others to the effect that they knew key features of the website were not ready for primetime from the beginning. At a second hearing focusing on the website's implementation held by the House Energy and Commerce Committee, the former Social Security Commissioner, Michael Astrue, testified that former CMS Administrator Donald Berwick had failed "to put in place the basic assignments, goals and system of accountability necessary to manage a project of this scope." Despite the problems, HHS said that 975,407 eligible individuals had applied for coverage during the first month of operation and that 106,185 of these had actually "selected" health plans from the federal and state exchanges. Of note, another 440,000 individuals were determined to be eligible for Medicaid in 10 of the 25 states electing to expand their Medicaid programs under the PPACA. Hearings held by the House Small Business Subcommittee on Health and Technology uncovered additional PPACA-related problems that will soon be experienced by small businesses. Witnesses said that rising health insurance premiums may force a number of small employers to consider self-insuring their health plans.

CMS to Propose Health Plan Quality Measures

In anticipation of issuing future final regulations, CMS provided notice seeking comments on the table of proposed quality rating system measures that qualified health plans will be required to report under the PPACA. Separate multiple measures are proposed for family/adult sets and child-only sets.

Congressional Republicans Take PPACA Opposition to a Higher Court

In another attempt to stymie the PPACA, forty House Republicans filed an amicus brief with the U.S. Court of Appeals for the Federal Circuit in support of an appeal filed by the Pacific Legal Foundation which contends that the PPACA is unconstitutional because the Senate first passed the provisions of the law using a House-numbered bill that was not a tax bill. Because the Supreme Court held that the individual mandate penalty is a "tax", they argue that this violates the Origination Clause of the Constitution which requires tax bills to be first passed in the House. In addition, private secular and non-profit entities continue to strike at the PPACA's contraceptive and other preventive benefit mandates with the latest coming in the form of a ruling from the U.S. Court of Appeals for the Seventh Circuit that the law's enforcement of the mandate can be challenged on religious grounds under the Religious Freedom Restoration Act.

Medicare/Medicaid/PHSA Corner***FDA FDASIA On Track***

At a House Energy and Commerce Health Subcommittee hearing, the FDA testified that the agency has been successful in reducing by about 15% the approval time for new medical devices and other priorities under the Food and Drug Safety and Innovation Act of 2012 (FDASIA). The agency also has added about 300 full-time equivalent positions to better meet agency goals, despite the government shutdown.

CMS Virtual Research Data Center

CMS announced the creation of a so-called Virtual Research Data Center that the agency says will give medical researchers a more affordable basis to access Medicare and Medicaid data sets. Of note, CMS said that the new center will safeguard against the breach of sensitive individually identifiable information about program beneficiaries.

Upcoming Health-Related Hearings and Markups

House Energy and Commerce Subcommittee on Health: hearing titled “Examining Federal Regulation of Mobile Medical Apps and Other Health Software;” 10:00 a.m., 2322 Rayburn; Nov. 19.

House Energy and Commerce Subcommittee on Oversight and Investigations: hearing titled “Security of HealthCare.gov;” 10:15 a.m., 2123 Rayburn; Nov. 19.

House Science, Space and Technology Committee: hearing titled “Is My Data on Healthcare.gov Secure?” 10 a.m., 2318 Rayburn; Nov. 19.

House Energy and Commerce Committee Subcommittee on Health: hearing titled “Examining Public Health Legislation to Help Local Communities;” the hearing will showcase public health bill that will provide members an opportunity to examine policies for the treatment of traumatic brain injuries, newborn health screening, prevention and treatment of tick-borne illness, and preventing sudden infant death, in addition to a proposal to reauthorize the Poison Control Centers and a proposal to reauthorize the National All Schedules Prescription Electronic Reporting (NASPER) program; 2:00 p.m., 2123 Rayburn; Nov. 20.

House Education and the Workforce Subcommittee on Workforce Protections: will hold a hearing titled “Redefining Companion Care: Jeopardizing Access to Affordable Care for Seniors and Individuals with Disabilities.” 10 a.m., 2175 Rayburn; Nov. 20.

House Foreign Affairs Subcommittee on Africa, Global Health, Global Human Rights and International Organizations: will hold a hearing titled “The Global Challenge of Alzheimer’s: The G-8 Dementia Summit and Beyond.” 10:15 a.m., 2172 Rayburn; Nov. 21.

Postponed--Senate Finance Committee: hearing titled “Transforming Medicare Post-Acute Care: Issues and Options.”

Health Legislation Recently Introduced

S. 1685 (INFORMATION TECHNOLOGY), to amend the Public Health Service Act and the Social Security Act to extend health information technology assistance eligibility to behavioral health, mental health and substance abuse professionals and facilities, and for other purposes; PORTMAN; to the Committee on Finance, Nov. 12.

S. 1686 (CONTROLLED SUBSTANCES), to amend the Controlled Substances Act to provide enhanced penalties for marketing controlled substances to minors; FEINSTEIN; to the Committee on the Judiciary, Nov. 12.

H.R. 3450 (REFORM), to amend the Affordable Care Act to allow individuals to opt out of the minimum required health benefits by permitting health insurance issuers to offer qualified health plans that offer alternative benefits to the minimum essential health benefits otherwise required, and for other purposes; ELLMERS; jointly, to the committees on Energy and Commerce and Ways and Means, Nov. 12.

S. 1693 (REFORM), to amend the Affordable Care Act to extend the initial open enrollment period; SHAHEEN; to the Committee on Finance, Nov. 13.

S. 1694 (TAXATION), to amend the Internal Revenue Code of 1986 to allow a credit against income tax for the purchase of hearing aids; HARKIN; to the Committee on Finance, Nov. 13.

S. 1696 (ABORTION), to protect a women's right to determine whether and when to bear a child or end a pregnancy by limiting restrictions on the provision of abortion services; BLUMENTHAL; to the Committee on the Judiciary, Nov. 13.

S. 1699 (REFORM), to permit individuals to renew certain health insurance coverage offered in the individual or small group markets and to provide that such individuals would not be subject to the individual mandate penalty; UDALL of Colorado; to the Committee on Finance, Nov. 13.

H.R. 3462 (HEALTH CARE COVERAGE), to amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to exclude from the definition of health insurance coverage certain medical stop-loss insurance obtained by certain plan sponsors of group health plans; CASSIDY; jointly, to the committees on Energy and Commerce, Education and the Workforce, and Ways and Means, Nov. 13.

H.R. 3471 (ABORTION), to protect a woman's right to determine whether and when to bear a child or end a pregnancy by limiting restrictions on the provision of abortion services; CHU; to the Committee on Energy and Commerce, Nov. 13.

H.R. 3474 (REFORM), to amend the Internal Revenue Code of 1986 to allow employers to exempt employees with health coverage under TRICARE or the Veterans Administration from being taken into account for purposes of the employer mandate under the Affordable Care Act; RODNEY DAVIS of Illinois; to the Committee on Ways and Means, Nov. 13.

H.R. 3489 (REFORM), to amend Section 1341 of the PPACA to repeal the funding mechanism for the transitional reinsurance program in the individual market, and for other purposes; TIBERI; to the Committee on Energy and Commerce, Nov. 14.

H.R. 3498 (MEDICARE), to allow individuals to choose to opt out of the Medicare Part A benefit and to allow individuals opting out of the benefit to be eligible for health savings accounts; SAM JOHNSON of Texas; to the Committee on Ways and Means, Nov. 14.

H.R. 3499 (VETERANS' HEALTH), to provide for advance appropriations for certain information technology accounts of the Department of Veterans Affairs, to include mental health professionals in training programs of the department, and for other purposes; KIRKPATRICK; to the Committee on Veterans' Affairs, Nov. 14.

H. CON. RES 64 (SUICIDE), supporting the goals and ideals of suicide prevention awareness; BEATTY; to the Committee on Energy and Commerce, Nov. 14.