



Health Policy Briefing

December 10, 2012

The Level of Cuts to Federal Health Programs Rides on Thawing of Fiscal Negotiations

Fiscal Cliff Negotiations Go to Back Room

Conversations continue between House **Speaker John Boehner** and **President Obama** in an attempt to bring the two parties together on tax and spending policies in order to avert the fiscal cliff. Given the limited number of legislative days remaining in the lame-duck session, one approach being discussed is for the House to pass legislation to extend the Bush-era tax cuts and for the Senate to amend the bill by repealing the cuts for the “wealthy” which then would result in a House/Senate conference to duke out the remaining details to alleviate the upcoming sequestration cuts to federal discretionary spending and avert the 27% cut in Medicare physician payments in 2013.

This procedure would likely stimulate some compromises on taxes and spending given that some Republicans have said they could go along with tax rate increases for the wealthy (e.g. **Rep. Steven LaTourette**) and some Democrats have indicated they could go along with some changes to Medicare (e.g. **Sen. Sheldon Whitehouse**).

This and other strategies could extend the negotiations even past Christmas and, in this regard,

House **Majority Leader Eric Cantor** gave notice that the House will remain in session until a deal is reached.

Failure to reach agreement would trigger major cuts to federal health programs, for example: a 2% reduction in Medicare payments would total \$11 billion in FY 2013; NIH would incur a cut of \$2.5 billion; CDC would incur a cut of \$490 billion; and the FDA would incur a cut of about \$318 billion.

A Republican alternative to the President’s initial offer (\$400 billion in ten-year cuts in federal health spending) would be increased to \$600 billion (by among other things, raising the Medicare eligibility age
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from 65 to 67 and targeting higher-income beneficiaries for cost savings). The White House rejected the Republican alternative which also includes \$800 billion in new revenue to be raised by unspecified changes in tax deductions.

If a House/White House deal cannot be reached soon, it is likely that a conference committee could bring into focus the views of other leaders who have shown some willingness to negotiate. For example, **Senator Dick Durbin** said he thinks that including more means testing under Medicare would be a reasonable means to make such federal programs more progressive. On the other hand, numerous outside groups have voiced their strong objections to major changes in federal health programs and Social Security. For example, the National Association of Insurance Commissioners is poised to oppose suggestions that Medigap policies be limited or eliminated as a means to help reduce health care spending.

Senate Passes Defense Authorization Bill

After the Senate's passage of S. 3254, the FY 2013 Defense Authorization Act, the House will take up the House-counterpart this week and proceed to conference. Among other things, the legislation would preserve the military's disease-specific research funding but does not include the President's requested enrollment fee changes to the TRICARE program that would raise \$12.9 billion through FY 2017.

CLIA Legislation Signed into Law

President Obama signed into law H.R. 6118, The Taking Essential Steps for Testing (TEST) Act of 2012, which gives CMS the discretion whether or not to revoke a clinical laboratory's CLIA certificate when the lab refers proficiency testing samples to another lab. The new law (Pub. L. 112-202) also gives CMS alternative sanctions in such cases.

PPACA Health Reform Update

GOP Governors Ask for Meeting with the President

The Public Policy Committee of the Republican Governors Association sent a letter to President Obama requesting a meeting in an attempt to gain more flexibility over HHS decisions regarding the expansion of Medicaid under the PPACA. Other issues of concern to the governors include the rules for establishing state-run health insurance exchanges.

House Small Business Committee Explains PPACA Provisions

The House Small Business Committee released documents which the committee says gives small businesses the tools to better understand their responsibilities under the PPAWCA, as well as information on the "consequences for small business".

CBO Defends PPACA Cost Assumptions

The CBO responded to a request by House Government Reform Chairman Darrell Issa for the reason the agency assumed that federal subsidies would be available to individuals who elect to be covered under the default federal health insurance exchange beginning in 2014. Several legal authorities have offered their opinion that the plain language of the PPACA cannot be read to authorize subsidies beyond state-run exchanges. The Executive Director said the CBO assumed the individual subsidies would be available in all states, even under the federal exchange, because the possibility that such subsidies would only be available in states that created their own exchanges did not arise in the agency's discussions with congressional staff during the law's consideration.

PPACA Health Reform Update continued

IRS Releases Final Tax Rules on Medical Devices and Health Insurance

The Internal Revenue Service issued final regulations defining the details of the 2.3% excise tax on medical devices imposed by the PPACA. The tax applies to the sale of certain medical devices beginning in 2013. The rule exempts eyeglasses, contact lenses and hearing aids. Another PPACA final rule released by the IRS implements and provides guidance on the “fees” imposed on health insurers in connection with certain health insurance policies as well as on the plan sponsors of certain self-insured group health plans. The final regulations apply to policy and plan years ending on or after October 1, 2012 and before October 1, 2019.

Medicare/Medicaid/PHSA Corner

MedPAC Releases Recommendations on Provider Payments

The Medicare Payment Advisory Commission released FY 2014 payment rate recommendations under which inpatient and outpatient hospitals would receive a 1% increase (the .8% difference between the 1% and the 1.8% statutory update is intended to recover past overpayments). The Commission also appears ready to recommend in January that ambulatory surgical centers (ASCs) be given a .5% payment increase in FY 2014. In addition, MedPAC said that inpatient rehabilitation facilities, long-term care hospitals and hospice facilities should not receive payment updates in FY 2014. Of note, MedPAC also discussed whether to reiterate their previous recommendation to Congress that the sustainable growth rate (SGR) be eliminated in determining future Medicare physician payments.

Supreme Court to Hear Pay-for-Delay Case

The Supreme Court has accepted for review a federal appeals court decision involving a “reverse payment” deal between a branded and generic drug-maker. If a ruling results from the court’s review, the decision would resolve a split in circuit courts as to whether or not such pay-for-delay deals are anti-competitive and presumptively illegal.

Health-Related Hearings This Week

House Energy and Commerce Health Subcommittee will hold a hearing titled “State of Uncertainty: Implementation of PPACA’s Exchanges and Medicaid Expansion”; Dec. 13, 10:00 a.m., 2123 Rayburn Bldg.

Senate Finance Committee will hold a hearing titled “Improving Care for Dually-Eligible Beneficiaries: A Progress Update”. Dec. 13, 10:00 a.m., 215 Dirksen Bldg.

Health Legislation Recently Introduced

H.R. 6633 (HUMAN CLONING), to amend Title 18, U.S. Code, to prohibit human cloning; HARRIS; to the Committee on the Judiciary, Nov. 30.

H.R. 6626 (HEALTH INFORMATION TECHNOLOGY), to foster further innovation and entrepreneurship in the health information technology sector; HONDA; jointly, to the committees on Energy and Commerce, Ways and Means and Small Business, Dec. 3.

S. 3659 (MEDICARE), to repeal certain changes to contracts with Medicare quality improvement organizations, and for other purposes; CONRAD; to the Committee on Finance, Dec. 5.

H.R. 6635 (TRICARE), to direct the secretary of defense to submit a report to Congress on the future availability of TRICARE Prime throughout the United States and to ensure that certain TRICARE beneficiaries retain access to a primary care provider, and for other purposes; WALDEN; to the Committee on Armed Services, Dec. 5.

H.R. 6638 (PHARMACIES), to amend Chapter V of the Federal Food, Drug, and Cosmetic Act to enhance requirements for pharmacies that compound 13.