



Health Policy Briefing

December 31, 2012

Congress to Vote Monday on a Small Deal or Not; Doc Fix/Sequester Hang in the Balance

Congress Leaves Deal-Making to Final Hours in Effort to Avoid the Fiscal Cliff

After much political wrangling and finger-pointing last week over the lack of any resolution to avoid the expiration of the Bush-era tax cuts and triggering of the discretionary spending cuts mandated under the Budget Control Act, Senate **Majority Leader Harry Reid**, Senate **Minority Leader Mitch McConnell** and other congressional leaders convened on Saturday and Sunday in an effort to forge a consensus to ameliorate, if not avoid, the full consequences of the fiscal cliff.

After a meeting on Friday with House and Senate leaders, **President Obama** expressed “modest optimism” that a mini-agreement could be reached and voted on Monday before the midnight expiration of the current federal income tax rate structure for individuals. The President continued to express his desire that tax rates increase for those having incomes over \$250,000, a position that House Republicans have continually rejected, although **Speaker Boehner** has modified his position allowing for rate increases for those with incomes over \$1 million. Several House Republicans have publicly indicated their willingness

to raise the President’s demand to \$400,000.

House Republican leaders have placed the burden on the Senate to pass a temporary fix which Speaker **Boehner** said he would take up in the House when passed. Whether a temporary fix will lead to a more permanent budget deal addressing taxes and entitlements, as President **Obama** wishes, remains to be seen.

In the new Congress, it can be expected that Republicans will use the upcoming need to raise the \$16.394 trillion federal debt limit as a means to extract spending and entitlement concessions from the President and congressional Democrats.

Treasury **Secretary Timothy Geithner** said that his agency will use extraordinary measures to avoid a federal default on Monday, but that the

continued on page 2

Inside

- [Fix for Medicare Physician Payment Cut Uncertain.....](#)2
- [Congressional Schedule.....](#)2
- [Federal Exchange Scrutinized.....](#)2
- [PPACA Employer Mandate Regulations Proposed.....](#)3
- [Court Rulings on PPACA Cases.....](#)3
- [GAO Reports on Medicare Quality and Medicaid Legal Authority.....](#)3
- [Comments Due on Medicare Clinical Quality Data.....](#)3
- [Health Legislation Recently Introduced.....](#)4

continued from page 1

lack of a deal on the fiscal cliff makes it uncertain that such measures will be successful in pushing back by much more than two months the drop-dead date for lifting the debt limit.

Senators Lamar Alexander and Bob Corker have already unveiled a budget proposal designed as a trade-off for a debt limit increase. The proposal would increase competition between fee-for-service Medicare and Medicare Advantage; slowly raise the Medicare eligibility age; change Medicaid by giving states additional flexibility; and slowly raise the retirement age for Social Security.

Fix for Medicare Physician Payment Cut Uncertain

Pending a last-minute deal on taxes and spending, the 26.5% cut in Medicare physician payments will, by law, be implemented January 1st. However, in a Centers for Medicare and Medicaid Services (CMS) notice to doctors, it was stated that “the Administration is disappointed that Congress has failed to pass a solution to eliminate the sustainable growth rate (SGR) formula-driven cuts, and has put payments for health care for Medicare beneficiaries at risk.... We continue to urge Congress to take action to ensure these cuts do not take effect. Given the current progress with the legislation, CMS must take steps to implement the negative update.” The notice also said that “clean electronic claims are not paid sooner than 14 calendar days (29 days for paper claims) after the date of receipt” which would result in the first cuts being made in mid-January lacking further congressional action which could rescind the cuts prospectively and retroactively. It is anticipated, if a deal does clear Congress on Monday or Tuesday, that it will include a doc fix, an alternative minimum tax (AMT) fix, tax extenders and a tax rate increase for high-income individuals. A reprieve on sequestration cuts for at least a few months may make it into the mini-fix, but if not, this issue will hold over and become a major bargaining item in the next set of negotiations over entitlements and other federal spending.

Congressional Schedule

After concluding any congressional action on fiscal cliff matters on December 31st, the new Congress is scheduled to convene on January 3 and the House is scheduled to recess January 7-11 (the Senate schedule is uncertain at this time).

PPACA Health Reform Update

Federal Exchange Scrutinized

The federal default exchange (the federally facilitated health insurance exchange) and the contractor selected by HHS to develop the infrastructure of the federal data hub have come under fire by Republicans. House Oversight and Government Reform Committee Chairman Darrell Issa and Senator Orrin Hatch have written to HHS Secretary Kathleen Sebelius seeking information about what they see as potential conflicts of interest the contractor may have in that it has been acquired by one of the largest health insurers who may participate in such exchanges. The members also criticized HHS saying that “it remains unclear how the administration plans to administer key aspects of the law, particularly the design, management, and implementation of the federally-facilitated health insurance exchanges ... and the federal-state partnership exchanges.”

PPACA Health Reform Update cont.

***PPACA Employer Mandate Regulations
Proposed***

The IRS released proposed regulations under IRC section 4980H spelling out details relating to the PPACA requirement that employers with at least 50 full-time and/or full-time equivalent employees offer “affordable” minimum health care coverage to such employees and “dependents” or pay a penalty. Under the rule an employee would have to be offered coverage if the employee works 30 or more hours per week and 130 hours of service in a calendar month would be considered as the monthly equivalent of 30 hours of service per week. Three alternative methods for calculating full time equivalents (FTEs) are provided for employees who do not work on an hourly basis. For purposes of the rule, the term “dependent” does not include a spouse but includes “an employee’s child (as defined in section 152(f)(1)) who is under 26 years of age.” Comments on the rule are due by March 18.

Court Rulings on PPACA Cases

The U.S. Supreme Court has denied an application by Hobby Lobby Stores Inc. and another employer for an injunction that would prevent the federal government from enforcing the PPACA’s mandate that non-grandfathered group health plans provide no-cost coverage for contraceptives, contraceptive devices, sterilization procedures and patient education and counseling. In another case, the U.S. District Court for the District of Arizona dismissed claims by individuals that the PPACA individual mandate violates their due process rights to privacy and medical autonomy. The court said that neither claim was actionable in that the plaintiffs retain the right, by paying the tax imposed on those who decline to purchase health insurance, to choose their medical providers and to forego the submission of personal information to insurers and the federal government.

Medicare/Medicaid/PHSA Corner***GAO Reports on Medicare Quality and Medicaid Legal Authority***

The GAO issued a report requested by Senators Baucus and Hatch--***Medicaid: More Transparency of and Accountability for Supplemental Payments Are Needed*** (GAO-13-48)--which suggests that Congress may need to enact legislation to give CMS authority to require states to submit annual reports and independent audits on their supplemental “non-DSH” payments to providers under the disproportionate share hospital (DSH) program. In another GAO report--***Private-Sector Initiatives Can Help Inform CMS Quality and Efficiency Incentive Efforts*** (GAO-13-160)--the agency recommended that CMS take steps to conform its Medicare value modifier program for physicians to similar to quality initiatives in the private sector. GAO also said CMS lacks a strategy for applying the Medicare value modifier program to solo and small-practice physician groups in a manner that ensures measurement credibility.

Comments Due on Medicare Clinical Quality Data

CMS is requesting comments by January 22nd on the readiness of hospital electronic health record systems for their use to collect and report clinical quality measures as a means to qualify for meaningful use incentive payments in 2014.

Health Legislation Recently Introduced

H.R. 6710 (NHSC): A bill to include geriatrics and gerontology in the definition of “primary health services” under the National Health Service Corps program; RICHARDSON, to the Committee on Energy and Commerce, Dec. 27.

H.R. 6712 (MENTAL HEALTH): A bill to require the disclosure to parents of information regarding mental illness treatment for their children under the age of 26; RICHARDSON, to the Committee on Energy and Commerce, Dec. 27.

H.R. 6714 (CHILDRENS’ HEALTH): A bill to establish a grant program for automated external defibrillators in schools; RICHARDSON, to the Committee on Education and the Workforce, and in addition to the Committee on Energy and Commerce, 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, Dec. 27.