



Health Policy Briefing

January 20, 2014

Congress Rushes Through FY 2014 Omnibus Spending Bill; PPACA Targeted

Congress Completes and President Signs FY Omnibus Appropriations Bill

After extending the current Continuing Resolution (CR) for three days and before recessing until after the Martin Luther King holiday, the House and Senate passed H.R. 3547, the *Consolidated Appropriations Act of 2014*. The President signed the legislation into law on Friday. Appropriations committee leaders in both chambers praised the bipartisan nature of the process and the directed spending for all twelve appropriations categories, thus avoiding CR-like provisions for fiscal year (FY) 2014. The \$1.012 trillion discretionary spending bill passed on a vote of 359-67 in the House and by 72-26 in the Senate. Health programs were among the beneficiaries of the legislation which restricted the level of sequestration cuts for most programs. Among the major health spending provisions for FY 2014: the National Institutes of Health (NIH) received \$29.9 billion (about a \$1 billion increase over FY 2013) allowing for 385 new research studies/trials including the Brain Research through Advancing Innovative Neurotechnologies (BRAIN) Initiative and Alzheimer’s programs; the Centers for Disease Control and Prevention (CDC) received \$6.9 billion

(an increase of \$567 million) to address issues including state-based bioterrorism and pandemic response programs (\$1.3 billion), Advanced Molecular Detection efforts (\$30 million), the Preventive Health and Health Services block grant (\$160 million) and smoking cessation; community health centers (CHCs) received \$3.6 billion (an increase of \$700 million) that would allow for 450 new centers; the Substance Abuse and Mental Health Services Administration (SAMHSA) received \$3.6 billion (an increase of \$144 million) and \$115 million for the “Now is the Time” violence prevention program; and Project BioShield received \$255 million. Senate Democrats were able to prevent House Republicans from

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defunding the Patient Protection and Affordable Care Act (PPACA), but Republicans declared victory by holding the line on the Centers for Medicare and Medicaid Services (CMS)/PPACA spending (\$3.7 billion) and cutting \$10 million in funding for the PPACA's Independent Payment Advisory Board (IPAB). While the law allocates \$831 million to the CDC and \$62 million to SAMHSA from the health law's Prevention and Public Health Fund (PPHF), Republicans were successful in cutting about \$1 billion in spending and in requiring the U.S. Department of Health and Human Services (HHS) to create a website that shows the details of all programs that receive funding from the PPHF.

House Passes PPACA Disclosure Act

On a vote of 259-154 (with 33 Democrats voting aye), the House passed H.R. 3362, the *Exchange Information Disclosure Act*, which would require HHS to submit weekly reports through March 2015 on the status and operation of HealthCare.gov. Among other things, the reports would have to disclose: the website's problems and steps taken to fix them and information on the number of site visits, new accounts, enrollments by plan type and zip code; and information on the individuals serving as navigators. Rep. Henry Waxman (D-CA) spoke in opposition to the bill saying the "red tape" would hamper the law's implementation. However, Rep. Fred Upton (R-MI) said the bill is consistent with the Administration's commitment to "transparency". The Administration Statement of Administration Policy (SAP) was in opposition to passage of the bill.

Senate Passes Poison Control Bill

The Senate passed and sent to the President for his signature H.R. 3527, the *Poison Center Network Act* which among other things authorizes \$700,000 for the next five years for the operation of the national toll-free poison control hotline and \$800,000 annually for a national media campaign.

PPACA Health Reform Update

PPACA Website Secure/Insecure, Success or Failure?

Even as the House was considering the above-mentioned Exchange Information Disclosure Act, the House Oversight and Government Reform Committee was grilling Kevin Charest, the HHS Chief Information Security Officer, on just how secure the HealthCare.gov website really is. He testified that there have been no successful cyberattacks on the website and that it is protected in multiple ways that exceed those used in most private enterprise websites. The CMS Chief Information Security Officer said that no major flaws were found in an end-to-end security assessment made by independent contractors. Nonetheless, Chairman Darrell Issa (R-CA) said he could not consider the website totally secure from online criminal intrusion. Committee Democrats responded that this and like statements by other Republicans are just scare tactics designed to thwart enrollment under ObamaCare. In the same manner, the House Energy and Commerce Oversight and Investigations Subcommittee was grilling Gary Cohen, the CMS Center for Consumer Information and Insurance Oversight (CCIIO) Director. Mr. Cohen justified his prior statements that reassured members that the website would be "on schedule and on track" as being based on the best information at the time. He went on to say the website is now "fixed". Citing the growing enrollment figures released by HHS, he testified that individuals now do not experience problems in creating new accounts. However, he also admitted that there are still problems with the back-end function designed to pay insurers the tax credit subsidies they are due. He said the first round of payments to insurers will be made January 20th based on a "mitigating process". In an effort to help overcome the enrollment problems under HealthCare.gov, HHS announced that individuals covered under the PPACA's Pre-existing Condition Insurance Plan (PCIP) can continue to be covered under the PCIP until April if they have not been able to obtain new health coverage. However, such individuals would have to enroll under new plans by March 15th in order to avoid having a coverage gap. In releasing the latest enrollment numbers under ObamaCare, HHS said they demonstrate the strong demand for "affordable" health coverage under the health law. About 2.2 million people were said to have enrolled through December 31, 2013 under the federal and state health insurance exchanges. About 24% of the total number enrolled under private plans were in the "young invincible" category between the ages of 18 and 34. Republicans and others have expressed concern that the

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PPACA Health Reform Update cont.

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relatively small percentage of previously uninsured persons who have actually enrolled falls short of the projected pool of “young and healthy” that insurers said they need to keep premiums affordable and their companies profitable. However, HHS expressed optimism that the numbers will escalate significantly as the enrollment period extends through this month and the next two. HHS also said 3.9 million individuals were enrolled under Medicaid through November by accessing the federal and state exchanges, but could not provide the split between those who would have been previously eligible and those who became eligible as a result of the expanded eligibility rules under the PPACA.

Courts Turn Back Challenges to PPACA

In one case, the U.S. District Court for the District of Columbia granted summary judgment for the federal government in turning back the challenge by several individuals and small businesses who argued the invalidity of the Internal Revenue Service (IRS) rule which makes individuals enrolled under the federally-facilitated health insurance exchange eligible for tax-credit-subsidies when their states do not set up their own exchanges. In another case, the U.S. District Court for the Southern District of Florida dismissed the claim by a dental services provider that the federal government, by delaying the employer mandate until 2015, had caused the business substantial harm (by making the business incur expenses to meet the mandate originally scheduled for January 1, 2014).

Medicare/Medicaid/PHSA Corner

Senator Wyden Introduces Medicare Chronic Care Reform Bill

Senator Ron Wyden (D-OR), the heir apparent as Chairman of the Senate Finance Committee when Senator Max Baucus (D-MT) is confirmed as the Ambassador to China, introduced S. 1932, *The Better Care, Lower Cost Act*, which is designed to build on the PPACA's ACO model and remove barriers that will allow providers to better focus on providing coordinated care to beneficiaries with two or more chronic illnesses (who in total account for 93% of Medicare spending). The bipartisan bill is cosponsored by Senator Johnny Isakson (R-GA). The House counterpart is sponsored by Reps. Peter Welch (D-VT) and Erik Paulsen (R-MN).

CMS' New FOIA Rule on MD Medicare Payments

CMS said it will follow a new policy in releasing information on Medicare payments made to physicians under the Freedom of Information Act (FOIA). The agency said the rule will create new “transparency” by providing for a case-by-case “circumstances” determination that will weigh the privacy interests of individual physicians and the public interests in the agency's decision on whether to disclose such information.

MedPAC Finalizes Recommendations on Provider/MA Payments

Last week the Medicare Payment Advisory Commission (MedPAC) finalized its recommendations that will be included in the March report to Congress. The commissioners voted to recommend that Congress freeze payment updates in FY 2015 for ambulatory surgical centers, hospices, inpatient rehabilitation facilities and long-term care hospitals. They also recommended that Medicare payments be reduced for home health providers with relatively high rates of hospital readmissions. The policy was estimated to save \$50-250 million in FY 2015. For all post-acute care providers they recommended that CMS require that they transition into a common patient assessment tool beginning in 2016 to reduce the current tool's complexity. They recommended that Medicare payments to acute-care in-patient and out-patient hospitals be increased in 2015 by 3.2%. In doing so, payment differentials between hospital outpatient departments and physician offices would be eliminated and the same rule would apply to the payments made to long-term care hospitals and acute-care hospitals for non-chronically critically ill patients. The commission also recommended that Medicare Advantage (MA) plans be allowed to include hospice care in their benefit packages in 2016. Also, the commission recommended that the payment policies applied to MA plans sponsored by employers or unions for their retirees be made similar to the policies applicable to non-employer MA plans.

Medicare/Medicaid/PHSA Corner cont.

FDA Guidance on Certain Post-Marketing Submissions

The Food and Drug Administration (FDA) gave notice to drugmakers of new guidance described as “Fulfilling Regulatory Requirements for Post-Marketing Submissions of Interactive Promotional Media for Prescription Human and Animal Drugs and Biologics”. The FDA said that the regulation of prescription drug product promotion extends both to a firm’s promotional activities as well as to such activities conducted on the firm’s behalf. The guidance also defined “interactive promotional media” to include technologies such as blogs, micro-blogs, social networking sites, online communities and live podcasts.

Upcoming Health-Related Hearings and Markups

Senate Special Aging Committee: hearing titled “Medicare Advantage: Changing Networks and Effects on Consumers;” Room 2E, Legislative Office Building, 300 Capitol Ave., Hartford, Conn.; Jan. 22.

Health Legislation Recently Introduced

S. 1915 (PLAN OPTIONS), to permit health insurance issuers to offer additional plan options to individuals; FLAKE; to the Committee on Finance, Jan. 13.

H.R. 3858 (VETERANS’ HEALTH), to amend Title 38, U.S. Code, to direct the secretary of veterans affairs to enter into contracts with health-care providers to improve health-care access and care coordination for veterans, and for other purposes; KINZINGER of Illinois; to the Committee on Veterans’ Affairs, Jan. 13.

H.R. 1918 (TRICARE), to amend the Internal Revenue Code of 1986 to provide a special change in status rule for employees who become eligible for TRICARE; SHAHEEN; to the Committee on Finance, Jan. 14.

H.R. 3871 (HEALTH SAVINGS ACCOUNTS), to amend the Internal Revenue Code of 1986 to allow increased contributions to health savings accounts, to allow Medicare and VA healthcare participants to contribute to health savings accounts, and for other purposes; BOUSTANY; to the Committee on Ways and Means, Jan. 14.

S. 1932 (MEDICARE), to amend Title XVIII of the Social Security Act to establish a Medicare Better Care Program to provide integrated care for Medicare beneficiaries with chronic conditions, and for other purposes; WYDEN; to the Committee on Finance, Jan. 15.

H.R. 3877 (MEDICARE), to amend Title XVIII of the Social Security Act to provide for Medicare coverage of certain lymphedema compression treatment items as items of durable medical equipment; REICHERT; jointly, to the committees on Energy and Commerce and Ways and Means, Jan. 15.

H.R. 3884 (REFORM), to amend Section 1311(a) of the PPACA to provide for the recoupment and reallocation of unspent state grant funds, and for other purposes; PASCRELL; to the Committee on Energy and Commerce, Jan. 15.

H.R. 3890 (MEDICARE), to amend Title XVIII of the Social Security Act to establish a Medicare Better Care Program to provide integrated care for Medicare beneficiaries with chronic conditions, and for other purposes; PAULSEN; jointly, to the committees on Energy and Commerce and Ways and Means, Jan. 15.

S. 1935 (MEDICARE), to amend Title XVIII of the Social Security Act to restore access to diabetic testing supplies for Medicare beneficiaries; THUNE; to the Committee on Finance, Jan. 16.

S. 1940 (MEDICAID), to provide reimbursement under Medicaid to individuals and entities that provide voluntary non-emergency medical transportation to Medicaid beneficiaries for expenses related to no-load travel; FRANKEN; to the Committee on Finance, Jan. 16.

Health Legislation Recently Introduced cont.

S. 1944 (MEDICARE), to amend Title XVIII of the Social Security Act to distribute additional information to Medicare beneficiaries to prevent health-care fraud, and for other purposes; SHAHEEN; to the Committee on Finance, Jan. 16.

S. 1950 (VETERANS' HEALTH), to improve the provision of medical services and benefits to veterans, and for other purposes; SANDERS; read the first time, Jan. 16.

S. 1954 (HOSPITALS), to provide for the extension of the enforcement instruction on supervision requirements for outpatient therapeutic services in critical access and small rural hospitals through 2014; MORAN; to the Committee on Finance, Jan. 16.

H.R. 3912 (MEDICAID), to provide reimbursement under Medicaid to individuals and entities that provide voluntary non-emergency medical transportation to Medicaid beneficiaries for expenses related to no-load travel; DELBENE; to the Committee on Energy and Commerce, Jan. 16.