



Health Policy Briefing

December 2, 2013

House Returns to Assess HealthCare.gov and Budget Options

Budget Talks

Although the Senate does not return until next week, it is expected that budget talks will continue this week among the House and Senate conference committee leaders in an effort to arrive at an overall spending target for both fiscal years (FY) 2014 and 2015. The conferees were unable to meet the December 2nd deadline favored by appropriators, thus it appears that the House will proceed to pass another short term continuing resolution (CR) to give the conferees time to finalize their spending decisions.

It's the Law

The President signed into law the following two bills: H.R. 3204 (the Drug Quality and Security Act), legislation that gives the Food and Drug Administration (FDA) authority to improve the safety of drug compounding and the drug supply chain (by means of federal track-and-trace provisions that preempt state laws); and S. 1545 (the PEPFAR Stewardship and Oversight Act of 2013), legislation that extends for five years the President's emergency plan for foreign AIDS relief.

Inside

Republicans Scrutinize PPACA Deadlines.....	2
Agencies Announce New PPACA Regulations.....	2
Lawsuits Opposing PPACA Women's Preventive Services Reaches Supreme Court.....	2
CMS Finalizes CY 2014 Medicare MD Payment Cuts...	3
CY 2014 Medicare Outpatient/ASC Payment Rates Issued.....	3
Objections to CMS MD Payments Sunshine Rule.....	3
Upcoming Health-Related Hearings and Markups.....	3
Health Legislation Recently Introduced.....	4

PPACA Health Reform Update

Republicans Scrutinize PPACA Deadlines

The House Ways and Means Health Subcommittee announced that the panel will hold a hearing this Wednesday to oversee what progress the Administration has made to fix the HealthCare.gov website and to assess other Patient Protection and Affordable Care Act (PPACA) problems and extensions. In this connection, the U.S. Department of Health and Human Services (HHS) said that the Small Business Health Options Program (SHOP) online marketplace will be delayed until next November. In the meantime, the agency said that small business will have to rely on insurers or their agents to assist them with their health plan selections for 2013 and file separately for any applicable small business tax credit. The agency has announced the establishment of a pilot program in Florida, Ohio and Texas under which insurers will be allowed to directly enroll small businesses outside of the exchange website. House Speaker John Boehner (R-OH) responded to the news of the delay by stating “the President bit off more than he can chew with this health care law, and small businesses are now forced to bear the consequences.” HHS Secretary Kathleen Sebelius said that consumers will have a “significantly different user experience” when they access the website after the November 30th self-imposed deadline for improved operability. She also has turned to state and local officials to urge them to help in getting consumers enrolled under the exchanges and in Medicaid. She also defended the law which has led insurers to cancel health insurance policies which do not meet the PPACA’s benefit mandates. The extent to which states will allow their insurers to renew the cancelled policies for 2014 pursuant to the President’s “transitional rule” remains to be seen. Various health care providers have also voiced their concern over the limited provider networks that insurers have adopted for their new PPACA-compliant plans.

Agencies Announce New PPACA Regulations

The Centers for Medicare and Medicaid Services (CMS) issued a proposed rule that, among other things, defines privacy and security obligations for non-exchange entities and that also is designed to help exchanges better manage personally identifiable information. The rule also proposes the framework for 2015 cost-sharing reductions, premium tax credits, and reinsurance and risk adjustments. Under the proposal, insurers would be required to pay a 3.5% premium user fee for 2015, the same as for 2014. As previously announced, and denounced by Republican Members of Congress, the rule also would exempt self-administered, self-insured group health plans (mainly union-negotiated Taft-Hartley plans and state and local government plans) from the user fee. To address the possible losses that insurers could incur in their exchange-plan-related risk pool as a result of the above-described “transitional rule”, CMS said it is considering making adjustments to the reinsurance and risk corridor programs for 2014-2016 to avoid insurer losses and unanticipated premium increases for PPACA-compliant plans. In addition, the proposed rule contains provisions relating to the annual open enrollment period for 2015, the actuarial value calculator and annual limits for certain dental plans. The Internal Revenue Service (IRS) also released a separate, but related, final rule which spells out the actual amount of the user fees that insurers and self-insured plans will have to pay over 2014-2018. The aggregate amount to be collected is \$8 billion for 2014; \$11.3 billion each for 2015-2016, \$13.9 billion for 2017 and \$14.3 billion for 2018.

Lawsuits Opposing PPACA Women’s Preventive Services Reaches Supreme Court

The U.S. Supreme Court announced that it will hear one hour of oral argument on the constitutionality of the so-called contraceptive mandate under the health law in connection with two lawsuits brought by for-profit employers (two of 96 lawsuits filed in federal courts). In the *Sebelius v. Hobby Lobby Stores, Inc.* case, the Justice Department asked the court to decide whether the Religious Freedom Restoration Act allows the religious objections of its business owners to deny employees PPACA-mandated contraceptive coverage. In the *Conestoga Wood Specialties Corp. v. Sebelius* case, the question presented is whether the religious owners of a family business have free exercise rights that are violated by the application of the contraceptive coverage mandate. The court has not set the date for oral arguments in the two cases.

Medicare/Medicaid/PHSA Corner

CMS Finalizes CY 2014 Medicare MD Payment Cuts

CMS issued a final rule under which Medicare physician payments will be reduced by 20.1% unless Congress passes another extension or a long-term solution to the problems created by the current SGR (sustainable growth rate) formulation. The Senate Finance Committee is scheduled on December 12th to mark up the bi-partisan SGR reform legislation crafted by the tax committees in the two chambers. CMS also said that an extra primary care payment would be made in 2015 for non-face-to-face complex chronic care management services for Medicare beneficiaries having at least two significant chronic conditions. Future notice will be made to solicit comments on the latter payment policy. In addition, the rule proposes to make adjustments to payment rates for more than 200 codes as part of a “misvalued codes” initiative. CMS said it will defer for future consideration a possible rule that would cap physician practice expense payments when such payments would otherwise be greater when performed in a hospital outpatient department or ambulatory surgical center. CMS also said that physician groups of ten or more who do not participate in the Physician Quality Reporting System (PQRS) will have their payments reduced by 2% in 2016 under the value-based payment modifier rule.

CY 2014 Medicare Outpatient/ASC Payment Rates Issued

CMS issued final rules stating that hospital outpatient department payment rates will increase by 1.7% in calendar year (CY) 2014, amounting to an increase of about \$4.4 billion over this year. Failure by hospitals to meet the hospital outpatient quality reporting requirements will also result in a 2% payment penalty. CMS also said that CY 2014 payments to ambulatory surgical centers would rise by about \$143 million over this year.

Objections to CMS MD Payments Sunshine Rule

Several House members, including Reps. Andrews (D-NJ), Burgess (R-TX), Schwartz (D-PA) and Gingrey (R-GA), sent a letter to CMS Administrator Marilyn Tavenner asking for a meeting to air their objections to the agency’s final regulations issued under the PPACA’s Physician Payments Sunshine Act. They said that the ruling could harm quality of care by inadvertently preventing the timely distribution of scientifically reviewed medical information to clinicians and patients.

Upcoming Health-Related Hearings and Markups

House Ways and Means Committee hearing on the challenges of the ACA on the health care system and explore ways to mitigate the adverse impacts of the law on the American people; 10:00 a.m., 1100 Longworth House Office Building; December 4

Senate Finance Committee: markup to consider legislation to repeal the sustainable growth rate system (SGR) and to consider health care extenders; 10:00 a.m., 215 Dirksen Bldg.; December 12

Health Legislation Recently Introduced

H.R. 3621 (INSURANCE COVERAGE), to provide for access to health insurance coverage of life-sustaining treatments furnished by certain providers; DUFFY; to the Committee on Energy and Commerce, Nov. 22.

H.R. 3622 (REFORM), to repeal the Affordable Care Act and provide for comprehensive health reform, and for other purposes; DUFFY; jointly, to the committees on Energy and Commerce, Ways and Means, Education and the Workforce, the Judiciary, Natural Resources, House Administration, Rules and Appropriations, Nov. 22.