



Health Policy Briefing

January 5, 2015

114th Congress Convenes; ACA Enters 5th Year of Implementation

Employer Mandate and Other ACA Provisions to Begin in 2015

This year will see the onset of a number of important provisions included in the Affordable Care Act (ACA). The employer mandate goes into effect on January 1, when larger employers will be required to offer health care insurance. January 1st also marks the expiration of the ACA's temporary pay raise for primary care doctors who treat Medicaid patients. At this time, family physicians will begin to see a 43 percent decrease in their reimbursement rates for these patients. The financial penalty associated with the individual mandate will go into effect for the first time during tax season this spring. Individuals without health insurance will be required to pay a fine of \$95 or 1 percent of their income, whichever is higher. While the ACA reauthorized the Children's Health Insurance Program (CHIP) through 2019, the program was only funded through September, 2015. Congress has yet to take steps to fund the program, despite pleas from governors for a decision to be made as state governments attempt to budget without the knowledge of whether CHIP will be extended beyond September 30, 2015 or eliminated.

Republicans Already Looking Toward 2016 Elections

Although the 114th Congress does not convene until Tuesday, January 6, the GOP is already preparing for what is expected to be a difficult election year in 2016. After only having recently regained the majority as a result of November's midterm elections, Republicans will have 24 seats up for reelection in 2016, compared to the Democrats' 10. Seven of the Republican seats up for reelection are in states that President Obama has carried twice. Republicans such as **Sen. Mark Kirk (Ill.)** are preparing for a close race in the 2016 presidential

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election year. Kirk was only narrowly reelected in 2010 and will likely face a much more Democratic electorate in 2016. **Sen. Marco Rubio's** Florida seat would be in danger of becoming a tossup if Rubio decides to run for the presidency. Other vulnerable Republicans include **Sen. Ron Johnson (Wis.)** and **Sen. Pat Toomey (Pa.)**, who hail from democratic leaning states in presidential election years. **Sen. Kelly Ayotte's** home state of New Hampshire is more of a swing state, but Sen. Ayotte will likely have a tough race ahead of her, especially if Gov. Maggie Hassan (D) decides to run in opposition. While Democrats won't have any senators facing reelection in red states, **Minority Leader Harry Reid (Nev.)** is expected to face a strong challenge for his Senate seat. Reid's approval numbers are low in his home state of Nevada, and he will face a particularly difficult race if popular Nevada Gov. Brian Sandoval (R) decides to run against him. Republicans enter the 114th Congress with a 54 seat majority in the Senate, a net gain of nine seats from the November election. The vulnerability of the GOP Senate majority in the next election cycle, however, could impact the Republican agenda over the next two years.

Veterans' Affairs Committees to Prioritize Access to Care

Leadership of the congressional Veterans' Affairs committees plan to prioritize the Veterans Access, Choice, and Accountability Act of 2014 (P.L. 113-146) during the 114th Congress. The legislation was passed in July of 2014, and is aimed at increasing veterans' access to health care. It came as a result of the Veterans Health Administration scandal in last year, which found systematic lying by the administration about the wait times experienced by veterans in line to receive care. Such wait times resulted in the death of 35 veterans awaiting care in Phoenix, Ariz. The bill authorizes the creation of 27 new Department of Veterans Affairs medical facilities. It also allows for the care of veterans at non-VA hospitals and clinics. Chairman of the Senate Veterans' Affairs Committee Johnny Isakson (R-Ga.) has stated his intent to make the implementation and oversight of this law the sole focus of his Committee.

House Republicans Push for Dynamic Scoring

As House Republicans seek to appoint a new Director of the Congressional Budget Office (CBO), they are expected to move to increase the use of dynamic scoring through a rules change that would require long-term estimates of the economic effects of major legislation. This long-desired change would require macroeconomic estimates to include the projected effects of legislation on economic output, employment, and capital stock. Such an assessment would ultimately estimate how a proposal would cause the economy to expand or contract. Only legislation that would produce a change in revenue, spending or deficits equal to or greater than 0.25 percent of gross domestic product (GDP) would qualify for such a macroeconomic score. Based on current GDP, 0.25 percent is about \$45 billion. House Budget Chairman Tom Price (R-Ga.) is a strong proponent of the proposal, and introduced dynamic scoring legislation that was passed by the House during the 113th Congress.

CA Limits Application of Medical Liability Damage Cap

The Supreme Court of California has held that in medical professional negligence cases, the noneconomic damages cap applies only to "judgments," or the amount of damages awarded to the plaintiff determined in court, but does not apply to settlements. Under the Medical Injury Compensation Reform Act of 1975 (MICRA), recovery of noneconomic damages is capped at \$250,000 for professional negligence actions against healthcare providers. In the case of *Rashidi v. Moser* (filed 12/15/2014), the California Supreme Court ruled that the noneconomic damages cap does not require an offset of amounts received in settlement. This case comes shortly after California voters rejected a proposition to raise MICRA's cap to \$1.1 million.

Republicans Set to Target Employer Mandate

As of January 1, 2015, employers with at least 100 full-time workers will be required to meet certain standards for offering health insurance coverage to their workers, or face penalties in the coming year. The employer mandate was previously delayed twice by the White House in response to employer concerns about implementation of the mandate. Firms with at least 50 employees have until 2016 to offer insurance coverage. Changing the law's definition of full time from a 30-hour workweek to 40 hours is a top priority for the new GOP majority. With the support of 18 Democrats, the House successfully voted to make this change during the 113th Congress, but the Senate did not advance the legislation. While introduction of a bill to change the definition of full time is expected early in 2015, finding offsets for such a change could prove difficult. The Congressional Budget Office (CBO) estimates that such change in definition would cost \$46 billion over the next decade. This price tag, however, is much lower than the \$74 billion estimated last year. Proponents of the change argue that the 30-hour workweek definition would prevent employers from cutting their employees' hours in order to comply with the law.

HealthCare.gov Expected to Exceed Administration's Enrollment Goals

According to data released by the U.S. Department of Health and Human Services (HHS) last week, 6.5 million people were enrolled through HealthCare.gov as recently as December 26. If this trend holds through the remainder of the enrollment period, the administration would be on track to exceed its goal to cover 9 million people. The deadline for the second enrollment period is February 15, 2015.

Medicare & Medicaid News

MedPAC Releases Home Health Payment Report

The Medicare Payment Advisory Commission (MedPAC) has released its December 2014 Report to the Congress on the impact of home health payment rebasing on beneficiary access to and quality of care. In 2014, Medicare implemented the first of four years of base-payment reductions in its home health prospective payment system (PPS) as mandated by the Patient Protection and Affordable Care Act (PPACA). MedPAC found that the sizes of the remaining rebasing adjustments are modest enough that their impact on home health utilization is likely to be small. Additionally, MedPAC explains that trends suggest that payment changes are unlikely to have a significant effect on quality. The Commission reports that experience suggests that the small PPACA rebasing reductions will not change average episode payments significantly. Home health agency margins are likely to remain high under the current rebasing policy, and quality of care and beneficiary access to care are unlikely to be negatively affected. MedPAC's report comes before claims or quality data is available to directly assess the impact of rebasing.

Measures Application Partnership Releases Draft Recommendations

The Measures Application Partnership (MAP) of the National Quality Forum (NQF) has released its 2014-2015 preliminary recommendations on the list of measures it is considering for federal programs this year. NQF will be accepting comments on the recommendations through January 13, 2015. The MAP guides HHS on the selection of performance measures for federal health programs.