



Health Policy Briefing

January 6, 2013

Congress Returns to Confront January 15th Appropriations Deadline & PPACA Issues

Appropriators to Congress: “Take it or Leave it”

The House of Representatives returns this Tuesday and the Senate on Monday with appropriations committee chairs and their ranking members expected to hash out final decisions on how to allocate \$1.012 trillion in fiscal year (FY) 2014 spending among the 12 subcommittee discretionary spending programs. To date, the preliminary spending decisions have been held close to the vest and budget hawks are wary that the House will take the lead in rushing an omnibus bill to the House floor without giving members on either side a chance to amend the legislation. Congressional leaders are hoping to have the House clear the omnibus by Friday, January 10th with the Senate following suit by Monday, January 13th in order to meet the January 15th deadline when the current continuing resolution (CR) expires. Also, on Wednesday the House will bring up under “suspension of the rules” the bill H.R. 3527, the **Poison Center Network Act**, and on Thursday the “**Health Exchange Security and Transparency Act of 2014**” which **Majority Leader Eric Cantor (R-VA)** says is designed to help address

the security problems connected with the ObamaCare website and alert individuals when their personal information is compromised. **House Minority Leader Nancy Pelosi’s (D-CA)** office said that Republicans remain intent on undermining the Patient Protection and Affordable Care Act (PPACA) and that the latest effort is an attempt to scare constituents away from accessing the website. Nonetheless, the Majority Leader’s office indicated that the House will soon take up additional legislation to elicit the disclosure of reliable and complete enrollment data.rm.

Inside

HealthCare.gov Double Enrollment or Double Trouble?.....	2
CRS Analysis of Medical Device Tax.....	2
PPACA in Court.....	2
CMS Rewards States for Improving Health Access.....	3
CMS Proposes EFT Compliance Rules for Certain Health Plans.....	3
HHS Rules on Mental Health Privacy Exception.....	3
Health-Related Hearings and Markups.....	3

PPACA Health Reform Update

HealthCare.gov Double Enrollment or Double Trouble?

The Centers for Medicare and Medicaid Services (CMS) said that private health coverage enrollment under ObamaCare doubled to 2.1 million and that another 3.9 million were declared eligible for Medicaid or the Children's Health Insurance Program (CHIP) through November, thus equaling or exceeding the number of individuals who lost coverage through health insurance policy cancellations. Nonetheless, CMS has yet to disclose the distribution of enrollees among the "old and sick" and "the young and healthy" which will determine the success or failure of the law to make health insurance "more affordable" as promised. Also, it was reported that health insurers continue to have problems with the enrollment information forwarded through the website. Individuals accessing the website who were determined to be eligible for Medicaid were reported to also be having trouble actually obtaining coverage, thus the federal government has begun making "robocalls" to such individuals asking them to reapply. Republicans continue their efforts to point out the flaws with the law and promote legislation (see above House schedule) and to even challenge the law in court. As to the latter, Senator Ron Johnson (R-WI) is apparently going the court route in an attempt to overturn the regulation finalized by the Office of Personnel Management (OPM) which would allow congressional staff to continue receiving federal contributions toward their health insurance, despite the rule which would require designated staff to obtain their coverage under the District of Columbia's or other ObamaCare exchanges. The Republican state attorneys general in eleven states also sent a letter to the U.S. Department of Health and Human Services (HHS) objecting to the proposed PPACA rule that allows health insurers to continue offering health plans that the companies had previously cancelled. They said that they are concerned that the Administration is consistently rewriting rules and basing them on illegal executive actions. They also questioned the security of personal information and urged HHS to require navigators and other with such access to be trained and licensed in a manner similar to that required of state-licensed agents and brokers. Key HHS individuals responsible for the implementation of the HealthCare.gov website continue to exit the Administration, the latest being the CMS Chief Operating Officer Michelle Snyder.

CRS Analysis of Medical Device Tax

The Congressional Research Service (CRS) issued a report stating that the PPACA medical device tax will likely have only "fairly minor effects" on industry growth, jobs and profits. Under a worst case scenario in which the taxes would be passed along in prices, CRS estimated that output and employment in the sector would decrease by no more than 0.2%. To date, the Administration has resisted the strong bipartisan efforts of members in both the House and Senate to repeal the tax.

PPACA in Court

In connection with the U.S. District Court (Colorado) action to deny the request by the Little Sisters of the Poor Home for the Aged for an injunction against the PPACA contraceptive coverage mandate, the U.S. Supreme Court's Sonia Sotomayor ordered the Administration to temporarily halt enforcement of the rule. The Department of Justice (DOJ) complied with the court's request to file a response by close of business last Friday. The Administration's brief maintained that the Little Sisters of the Poor and other similar religious nonprofit groups do not have an "indisputable right" to an injunction pending a final determination by the Supreme Court on the matter.

Medicare/Medicaid/PHSA Corner

CMS Rewards States for Improving Health Access

As authorized under the Children’s Health Insurance Program Reauthorization Act of 2009, CMS announced it has awarded about \$307 million to twenty-three states for their performance in improving access for children to health insurance coverage, including Medicaid.

CMS Proposes EFT Compliance Rules for Certain Health Plans

CMS issued a proposed rule under which so-called “controlling health plans” would be required to show their compliance with electronic data standards for transactions involving eligibility, claim status and electronic fund transfers (EFT). Entities failing to comply would be assessed monetary penalties. Comments on the rule are due by March 3.

HHS Rules on Mental Health Privacy Exception

The HHS Office of Civil Rights issued a proposed rule under which “unnecessary legal barriers” under the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule would be removed in order to allow certain HIPAA-covered entities to disclose to the National Instant Criminal Background Check System the identities of persons prohibited by federal law from possessing or receiving a firearm for reasons related to mental health. Comments are due by March 10.

Upcoming Health-Related Hearings and Markups

House Energy and Commerce Health Subcommittee: will hold a hearing titled “The Extenders Policies: What Are They and How Should They Continue Under a Permanent SGR [Sustainable Growth Rate] Repeal Landscape?” 10 a.m., 2123 Rayburn; Jan. 9.

House Committee on Veterans’ Affairs Subcommittee on Oversight & Investigations: will hold a hearing titled “Vendors in the OR - VA’s Failed Oversight of Surgical Implants.” 10 a.m., 334 Cannon; Jan. 15.