



Health Policy Briefing

February 11, 2013

President Says Sequestration Would Jeopardize Strong State of the Union

Pending Sequestration Casts Shadow Over President's State of the Union Address

President Obama, who will deliver his State of the Union Address to Congress on Tuesday, said that the upcoming March 1 spending cuts to domestic and defense programs would stall the progress of the economy. He urged Congress to at least delay the Budget Control Act (BCA) mandated sequestration for a few months as work progresses on the development of fiscal year (FY) 2013 budget resolutions in both the House and Senate.

While the President said that spending cuts and entitlement reforms have to go “hand in hand” with a process of tax reform, he reiterated his campaign slogan that the wealthiest Americans and corporations should not have the advantage of loopholes and deductions that are not available to most others. Republicans pushed back that taxes have been raised enough and that tax reform should follow a more budget neutral road.

The Administration highlighted the consequences of sequestration if allowed to go ahead at the end of the month: The National Institutes of Health (NIH)--

would be forced to delay or halt vital scientific projects and make hundreds fewer research awards; the National Institute of Mental Health (NIMH)--cuts to the Mental Health Block Grant program would result in over 373,000 seriously mentally ill adults and seriously emotionally disturbed children not receiving needed mental health services; Food and Drug Administration (FDA)--the Center for Drug Evaluation and Research would face delays in translating new science and technology into regulatory policy and decision-making, resulting in delays in new drug approvals, and the FDA would be forced to abandon 2,100 inspections at domestic and

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foreign facilities that manufacture food products; Centers for Disease Control and Prevention (CDC)--cuts to the AIDS Drug Assistance Program could result in 7,400 fewer patients having access to life-saving HIV medications and about 424,000 fewer HIV tests could be conducted by CDC state grantees, which could result in increased future HIV transmissions, deaths from HIV and costs in health care.

As House Republicans begin to form their approach to budget reform, the Majority Leader said that they are looking at options to combine Medicare Part A and B and to reward doctors and patients who can help contain rising medical costs. In an attempt to put pressure on the President to promote balanced budgets, the House voted 253-167 to approve H.R. 444, the "Require a PLAN D Act," legislation which would: require the President, if his original FY 2014 budget fails to show balance in any of the ten years covered by the budget to submit a supplemental budget; and the supplemental budget, due by April 1, would require the reporting of the first year the budget would return to surplus and what additional policies would be needed to achieve a balance.

Of note, as Congress begins the FY 2014 budget process, the Congressional Budget Office (CBO) released its baseline estimates showing that the federal deficit for FY 2013 will decrease to \$845 billion (5.3% of GDP) from the \$1 trillion level reached in FY 2012. CBO also said that Medicare spending grew by 3% (\$16 billion) in FY 2012 -- its slowest rate of growth since 2000. The CBO estimates assume that the BCA mandated spending cuts of about \$85 billion will take place on March 1st.

House Passes Health Legislation

The House passed the following health legislation: H.R. 297, the Children's Hospital GME Support Reauthorization Act, legislation which authorizes \$330 million per year through FY 2017 for the children's hospital graduate medical education program; and H.R. 225, the National Pediatric Research Network Act of 2013, legislation authorizing NIH to fund pediatric research networks composed of consortia of institutions that cooperate in conducting research on conditions and diseases affecting children.

PPACA Health Reform Update

Long-term Care Commission Members

The temporary commission created under the fiscal cliff law to issue recommendations within 6 months on long-term care coverage and payment options will have 15 members named in equal numbers by the President, and the House and Senate Majority and Minority Leaders. House Minority Leader Nancy Pelosi named the following members: Bruce Chernof, president and CEO of the SCAN Foundation; Judith Stein, founder of the Center for Medicare Advocacy; and George Vrandenburg, founder of the USAgainstAlzheimer's network. Senate Majority Leader Harry Reid named the following members: Javaid Anwar, a Nevada physician; Laphonza Butler, president of the United Long-Term Care Workers Union; and Judy Feder, a professor of public policy at the Georgetown Public Policy Institute. The commission was advocated by Senator Rockefeller as a replacement for the PPACA Class Act which was repealed.

PPACA Proposed Contraception Coverage Rule

The Department of Health and Human Services (HHS), the Internal Revenue Service (IRS) and the Department of Labor (DOL) issued a proposed regulation which in general would require most health plans to cover women's preventive services, including contraception, without charging a co-pay or deductible as recommended by the Institute of Medicine (IOM). Differing from a previous advance notice, the rule would allow third-party administrators of self-insured health plans operated by employers affiliated with religious groups that object to contraception to contract with individual insurers that would offer separate plans to cover the services (such plans would receive deductions in the user fees they would otherwise pay to participate in the federally facilitated exchange (FFE) markets as compensation). HHS said that under the rule "insurance companies, not churches or other religious organizations, will cover contraceptive services....No nonprofit religious institutions will be forced to pay for or provide contraceptive coverage, and churches and houses of worship are specifically exempt...."

PPACA Health Reform Update cont.

PPACA Basic Health Program Delayed

HHS announced that, because of the lack of time to provide guidance this year, the implementation of the PPACA Basic Health Program will be delayed a year until 2015. Beginning that year, the program will be designed to help individuals with incomes up to twice the federal poverty level, who are not Medicaid eligible, to get affordable health coverage.

Bundled Payments Initiative

CMS announced that more than 500 health care organizations have been selected to participate in the PPACA's Bundled Payments for Care Improvement program. The new payment model will test whether paying providers a lump sum for a patient's entire episode of care will result in a reduction in the overall cost of care. The first model, the Retrospective Acute Care Hospital Stay Only will begin in April. The other three models include: the Retrospective Acute Care Hospital Stay Plus Post-Acute Care (Model 2); the Retrospective Post-Acute Care Only (Model 3); and the Acute Care Hospital Stay Only (Model 4).

CBO Estimates Costs of PPACA

The CBO released a report on the effects of the PPACA which estimates: that the number of individuals with coverage under health insurance exchanges will increase from 7 million in 2014 to 24 million in 2016; that the number of people added to Medicaid will rise from 8 million in 2014 to 11 million in 2016; that the 2013-2022 cost of subsidies for individuals obtaining health insurance through the exchanges is about \$32 billion; that 7 million fewer people will have employment-based health insurance by 2022 (an increase from an earlier estimate of 4 million); that \$130 billion in revenue (penalties) will be raised in 2013-2022 from employers who do not provide health coverage; and that \$45 billion in revenue (penalties) will be raised in 2013-2022 from uninsured individuals who are required to meet the individual mandate.

PPACA Reduces Part D Beneficiary Costs

HHS announced that, since the beginning of 2011, about \$5.7 billion in drug costs have been reduced for Medicare Part D beneficiaries who have benefited from the PPACA provision reducing such costs for those reaching the so-called "doughnut hole."

PPACA Medicaid Incentives

CMS told state Medicaid directors that their Medicaid programs are eligible to receive a 1% increase in their federal medical assistance percentage (FMAP) if they cover certain preventive services, including routine screenings and adult immunizations.

Medicare/Medicaid/PHSA Corner

Fix for Medicare Physician Payment System Proposed

The chairmen of the House Ways and Means and House Energy and Commerce Committees released a conceptual outline of legislation that would repeal the sustainable growth rate (SGR) formula used under the current Medicare physician payment system and replace it with a performance-based system using physician-endorsed quality of care measures. Under “phase one” the SGR would be repealed and replaced by “stable” payments over an unspecified period, such as 5 years. Under “phase two” physician payments would be based on quality of care measures. Under “phase three” the fee-for-service (FFS) payment system would be reformed to allow for incentive payments based on the “efficiency of care” provided. Republicans will pursue completing the details of the proposal under the assumption that any legislation will be made budget neutral. Comments on the proposal are due by February 25th. In the meantime, physician groups are being asked about whether different medical specialties should be financially rewarded for the care

they deliver and how a new quality reporting system might be structured. Details on a related hearing to be held by the House Energy and Commerce on February 14th are shown below. Of note, CBO released an updated cost estimate of a 10-year freeze of physician payments showing that the total cost is \$138 billion, a reduction from an earlier estimate of \$245 billion due to lower than expected increases in physician service costs. In addition, Reps. Allyson Schwartz (D-PA) and Joe Heck (R-NV) introduced bipartisan legislation, H.R. 574, the Medicare Physician Payment Innovation Act (MPPIA), which would repeal the SGR and replace it with a system that rewards coordinated care. In related news, HHS Secretary Kathleen Sebelius said that “Far too many patients still experience a health care system that’s fragmented, unreliable, and often prohibitively expensive” and called on physicians and other providers to “speed up the rate of change” by adopting new delivery methods.

Medicare Regulatory Relief

CMS released proposed regulations which the agency says are designed to increase the ability of health care professionals to devote resources to improving patient care through the elimination and reduction of requirements that impede quality patient care and that divert resources away from providing high quality patient care. The rule also proposes to clarify various provisions relating to proficiency testing referrals under the Clinical Laboratory Improvement Amendments of 1988 (CLIA). CMS estimates that the regulations would allow providers to save nearly \$676 million annually and \$3.4 billion over five years.

Physician Payment Sunshine Rule

CMS released a final rule, the National Physician Payment Transparency Program: Open Payments, which is designed to reduce conflicts of interest by requiring the manufacturers of drugs, devices and other medical supplies to report certain payments provided to physicians or teaching hospitals. Reports to CMS are due by March 31, 2014 and CMS will release the information on a public website by September 30, 2014.

ESRD Shared Savings Initiative

CMS provided notice to renal care organizations giving them incentive to participate in a three-year “Comprehensive ESRD Care Initiative” under which CMS will enter into “shared financial risk arrangements” with such dialysis facilities, nephrologists and other Medicare providers and suppliers. The so-called shared savings model program is intended to reward providers and suppliers that improve beneficiary outcomes and lower spending and penalize those that do not.

Medicare/Medicaid/PHSA Corner cont.

President Re-nominates CMS Administrator

The President announced that he will re-nominate Marilyn Tavenner to become the Administrator of the Centers for Medicare and Medicaid Services after a seven year lapse in a permanent appointment. Currently, Marilyn Tavenner serves as the Acting Administrator.

Senate Finance Committee “WFA” Report

Senators Max Baucus, Orrin Hatch and other Senate Finance Committee members released a report providing the recommendations made by over 160 health care organizations on means to improve federal efforts to combat waste, fraud and abuse under Medicare and Medicaid. Five themes emerged from the suggestions: how to reduce improper payments; how to improve beneficiary protections; how to reduce audit burdens; how to improve data management; and how to improve enforcement.

Upcoming Health Hearings

House Energy and Commerce Committee: will meet to discuss and adopt the committee’s oversight plan for the 113th Congress; 4:00 p.m., 2123 Rayburn Bldg; Feb. 12.

House Energy and Commerce Subcommittee on Oversight and Investigations: will hold a hearing titled “Influenza: Perspective on Current Season and Update on Preparedness;” 10:00, 2123 Rayburn Bldg; Feb. 13.

Senate HELP Committee: will mark up the following legislation: HR 307 — Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 and The Prematurity Research Expansion and Education for Mothers who deliver Infants Early (PREEMIE) Act; 10:00 a.m., 430 Dirksen Bldg; Feb. 13.

House Energy and Commerce Health Subcommittee: will hold a hearing titled “SGR [Sustainable Growth Rate]: Data, Measures and Models; Building a Future Medicare Physician Payment System; 10:15 a.m., 2123 Rayburn Bldg; Feb. 14.

Health Legislation Recently Introduced

S. 195 (MENTAL HEALTH), to amend the Public Health Service Act to revise and extend projects relating to children and violence to provide access to school-based comprehensive mental health programs; FRANKEN; to the Committee on Health, Education, Labor and Pensions, Jan. 31.

S. 214 (DRUGS), to prohibit brand name drug companies from compensating generic drug companies to delay the entry of a generic drug into the market; KLOBUCHAR; to the Committee on the Judiciary, Feb. 4.

H.R. 460 (PRESCRIPTION DRUG COVERAGE), to amend Title XXVII of the Public Health Service Act to limit copayment, coinsurance, or other cost-sharing requirements applicable to prescription drugs in a specialty drug tier to the dollar amount (or its equivalent) of such requirements applicable to prescription drugs in a non-preferred brand drug tier, and for other purposes; MCKINLEY; to the Committee on Energy and Commerce, Feb. 4.

H.R. 467 (MEDICAID), to amend Title XIX of the Social Security Act to redistribute federal funds that would otherwise be made available to states that do not provide for the Medicaid expansion in accordance with the Affordable Care Act to those states electing to provide those Medicaid benefits; CONNOLLY; to the Committee on Energy and Commerce, Feb. 4.

H.R. 473 (MEDICARE/MEDICAID), to amend titles XVIII and XIX of the Social Security Act with respect to the qualification of the director of food services of a Medicare skilled nursing facility or a Medicaid nursing facility; CONNOLLY; jointly, to the committees on Ways and Means and Energy and Commerce, Feb. 4.

H.R. 475 (TAXATION), to amend the Internal Revenue Code of 1986 to include vaccines against seasonal influenza within the definition of taxable vaccines; GERLACH; to the Committee on Ways and Means, Feb. 4.

H.R. 485 (NURSING), to establish the position of National Nurse for Public Health, to be filled by the same individual serving as the Chief Nurse Officer of the Public Health Service; EDDIE BERNICE JOHNSON of Texas; to the Committee on Energy and Commerce, Feb. 4.

H.R. 486 (DRUGS), to amend the Federal Food, Drug, and Cosmetic Act to incentivize the development of abuse-deterrent drugs; KEATING; to the Committee on Energy and Commerce, Feb. 4.

H.R. 487 (MEDICARE), to provide for a Medicare primary care graduate medical education pilot project in order to improve access to the primary care workforce; MCMORRIS RODGERS; jointly, to the committees on Ways and Means and Energy and Commerce, Feb. 4.

H. RES. 50 (CANCER PREVENTION), expressing support for designation of Feb. 4, 2013, as National Cancer Prevention Day; ISRAEL; to the Committee on Energy and Commerce, Feb. 4.

H.R. 500 (MEDICARE), to amend Title XVIII of the Social Security Act to provide for an option for any citizen or permanent resident of the United States to buy into Medicare; GRAYSON; to the Committee on Ways and Means, Feb. 5.

H.R. 523 (TAXATION), to amend the Internal Revenue Code of 1986 to repeal the excise tax on medical devices; PAULSEN; to the Committee on Ways and Means, Feb. 6.

H.R. 541 (REPRODUCTIVE HEALTH), to reduce preterm labor and delivery and the risk of pregnancy-related deaths and complications due to pregnancy, and to reduce infant mortality caused by prematurity; ESHOO; to the Committee on Energy and Commerce, Feb. 6.

H.R. 544 (HEALTH INSURANCE), to amend Title XXVII of the Public Health Service Act to change the permissible age variation in health insurance premium rates; GINGREY of Georgia; to the Committee on Energy and Commerce, Feb. 6.

H.R. 564 (CHILDREN'S HEALTH), to amend Title V of the Social Security Act to extend funding for family-to-family health information centers to help families of children with disabilities or special health care needs make informed choices about health care for their children; PALLONE; to the Committee on Energy and Commerce, Feb. 6.

Health Legislation Recently Introduced cont.

H.R. 565 (DISEASE AWARENESS), to amend Title III of the Public Health Service Act to authorize and support the creation of cardiomyopathy education, awareness, and risk assessment materials and resources by the secretary of health and human services through the Centers for Disease Control and Prevention and the dissemination of such materials and resources by state educational agencies to identify more at-risk families; PALLONE; to the Committee on Energy and Commerce, Feb. 6.

H.R. 567 (MEDICAID/CHIP), to amend the Social Security Act to replace the Medicaid Program and the Children's Health Insurance Program with a block grant to the states, and for other purposes; ROKITA; jointly, to the committees on Energy and Commerce, Ways and Means, Education and the Workforce, the Judiciary, Natural Resources, House Administration, Rules, and Appropriations, Feb. 6.

H.R. 574 (MEDICAID/CHIP), to amend the Social Security Act to replace the Medicaid Program and the Children's Health Insurance Program with a block grant to the states, and for other purposes; ROKITA; jointly, to the committees on Energy and Commerce, Ways and Means, Education and the Workforce, the Judiciary, Natural Resources, House Administration, Rules, and Appropriations, Feb. 6.

H.R. 581 (TAXATION), to amend the Internal Revenue Code of 1986 to exempt certain emergency medical devices from the excise tax on medical devices, and for other purposes; TURNER; to the Committee on Ways and Means, Feb. 6.

H.R. 582 (REFORM), to amend the Internal Revenue Code of 1986 to repeal the individual and employer health insurance mandates; TURNER; to the Committee on Ways and Means, Feb. 6.

H.R. 589 (ORGAN DONATION), to amend the National Organ Transplant Act to prevent the sale of bone marrow and umbilical cord blood, and for other purposes; YOUNG of Florida; to the Committee on Energy and Commerce, Feb. 6.

H. RES. 59 (HIV/AIDS AWARENESS), supporting the goals and ideals of National Black HIV/AIDS Awareness Day; LEE of California; to the Committee on Energy and Commerce, Feb. 6.

S. 232 (TAXATION), to amend the Internal Revenue Code of 1986 to repeal the excise tax on medical devices; HATCH; to the Committee on Finance, Feb. 7.

S. 236 (MEDICARE), to amend Title XVIII of the Social Security Act to establish a Medicare payment option for patients and physicians or practitioners to freely contract, without penalty, for Medicare fee-for-service items and services, while allowing Medicare beneficiaries to use their Medicare benefits; MURKOWSKI; to the Committee on Finance, Feb. 7.

S. 237 (CHILDREN'S HEALTH), to amend the Public Health Service Act to reauthorize and extend the Fetal Alcohol Syndrome prevention and services program, and for other purposes; MURKOWSKI; to the Committee on Health, Education, Labor, and Pensions, Feb. 7.

S. 239 (PUBLIC HEALTH), to extend the frontier extended stay clinic demonstration; MURKOWSKI; to the Committee on Finance, Feb. 7.

S. 242 (PUBLIC HEALTH), to reauthorize certain programs under the Public Health Service Act and the Federal Food, Drug, and Cosmetic Act with respect to public health security and all-hazards preparedness and response, and for other purposes; BURR; to the Committee on Health, Education, Labor, and Pensions, Feb. 7.

S. 252 (REPRODUCTIVE HEALTH), to reduce preterm labor and delivery and the risk of pregnancy-related deaths and complications due to pregnancy, and to reduce infant mortality caused by prematurity; ALEXANDER; to the Committee on Health, Education, Labor, and Pensions, Feb. 7.

Health Legislation Recently Introduced cont.

S. 254 (DISEASE AWARENESS), to amend Title III of the Public Health Service Act to authorize and support the creation of cardiomyopathy education, awareness, and risk assessment materials and resources by the secretary of health and human services through the Centers for Disease Control and Prevention and the dissemination of such materials and resources by state educational agencies to identify more at-risk families; MENENDEZ; to the Committee on Health, Education, Labor, and Pensions, Feb. 7.

S. 264 (MENTAL HEALTH), to **expand access to community mental health centers and improve the quality of mental health care for all Americans**; STABENOW; to the Committee on Health, Education, Labor, and Pensions, Feb. 7.

S. 265 (MENTAL HEALTH), to amend the Public Health Service Act to provide grants for community-based mental health infrastructure improvement; REED; to the Committee on Health, Education, Labor, and Pensions, Feb. 7.