



Health Policy Briefing

February 18, 2013

Obama SOTU Plea for Delay of March 1 Sequester Fails to Guarantee Action in Congress

President Obama’s State of the Union Address (SOTU) Pares Down Medicare Changes

During last Tuesday’s State of the Union Address, **President Obama** gave recognition that the rising cost of health care for seniors is a key driver of the nation’s debt crisis and, as a result, seniors should “embrace the need for modest reforms....so long as they don’t violate the guarantee of a secure retirement.” Promoting the adoption by both political parties of a long-term budget agreement containing a balance of new revenues and spending cuts, he indicated that he could accept Medicare savings over ten years in an amount (about \$300 billion) recommended by the Simpson/Bowles Deficit Reduction Commission. Specifically he said “We’ll reduce taxpayer subsidies to prescription drug companies and ask more from the wealthiest seniors. We’ll bring down costs by changing the way our government pays for Medicare, because our medical bills shouldn’t be based on the number of tests ordered or days spent in the hospital. They should be based on the quality of care that our seniors receive.”

The White House has already indicated that the President’s FY 2014

budget will not ask for savings from Medicaid or by means of increasing the Medicare eligibility age. The President’s budget is likely to be released in mid-March and only after his nomination of Jack Lew for Treasury Secretary has been cleared by the Senate.

In response to the President’s address, Republican **Senator Marco Rubio** (R-FL) said, “anyone who’s in favor of leaving Medicare exactly the way it is right now is in favor of bankrupting it.” House Republicans have already made clear their budget proposal, which must be approved by April 15 under the debt limit extension legislation, will attempt to balance the federal budget in 10 years largely through entitlement reforms.

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A Congressional Budget Office (CBO) report presents the budget hurdles as both the House and Senate craft their budget resolutions: e.g. in 2012, federal spending on means-tested programs and tax credits totaled \$588 billion with Medicaid accounting for 40% (a sharp increase is expected as the PPACA expands that program); and spending on PPACA health insurance subsidies will grow to \$109 billion (in 2012 dollars) within ten years.

Sequestration to Crimp Health Programs, Lead to Furloughs

With Congress on a “Presidents’ Day” recess for a week, February 25th is the earliest the Senate can take up a Democrat-leadership plan to replace the Budget Control Act (BCA) mandated sequestration, only four days before the March 1st start of a \$400 million/day budget cut across all federal agencies and a 2% reduction in Medicare payments. The Reid/Murray sequestration substitute would consist of 50% in revenue increases and 50% in spending cuts. Included in the \$110 billion plan extending through this calendar year is a 30% surtax on income between \$1-2 million, a new tax on tar sands oil and provisions to repeal a tax deduction for the cost of moving corporate equipment overseas and to end several direct agriculture payments. The plan, supported by the President, would also lock in \$3-5 billion a year in defense cuts beginning in FY 2015. A Senate Republican alternative is expected to be offered, but will likely exclude revenue enhancements. House Speaker John Boehner (R-OH) made it clear that the Senate will have to prove it can pass a bill first, before the House takes any action to ameliorate the sequester. A \$120 billion sequester replacement was also unveiled by Rep. Chris Van Hollen (D-MD), the Ranking Member on the House Budget Committee. House Republicans, nonetheless, have recognized the severity of the cuts to the Pentagon with House Appropriations Chairman Harold Rogers (R-KY) stating that he will propose a new continuing resolution (CR) to continue spending for FY 2013 which would also give the Defense Department and the Veterans Administration added flexibility to make reductions across various accounts in recognition of the need to prioritize spending cuts. It appears that the sequester will begin on March 1 and that Republicans will attempt to negotiate some spending flexibility for federal agencies as the March 27th deadline approaches (the expiration date of the current CR). Federal agencies have called “foul” on the cuts with National Institutes of Health (NIH) Director Francis Collins stating that his agency would see a 5.1%, \$1.6 billion, cut in funding leading to a reduction in medical research programs and the loss of about 20,000 jobs in university and other research laboratories. U.S. Department of Health and Human Services (HHS) Secretary Kathleen Sebelius also chimed in that the cuts would result in 7,400 fewer HIV patients having access to Medicaid, 424,000 fewer tests for AIDS and 373,000 fewer people receiving mental health services. In testimony before the House Energy and Commerce Oversight Committee, the CDC Director said that the cuts will inevitably lead to reductions in the funding of state and local government health departments. House Republicans made clear that they will also pursue deficit reduction by freezing federal wage levels after voting 261-154 to pass H.R. 273, legislation to accomplish that goal.

Health Legislation Advances

Before recessing, the Senate HELP Committee passed H.R. 307, legislation to reauthorize through FY 2018 the current spending levels of the National Disaster Medical Program and the Public Health Emergency Preparedness Cooperative Agreement Program, among other improvements to chemical-biological-radiological (CBR) response programs; and S. 252, legislation to reauthorize through FY 2018 HHS efforts to conduct epidemiological studies on the clinical, biological, social, environmental, genetic and behavioral factors related to premature birth and to establish an Advisory Committee on Infant Mortality to help reduce infant mortality. In addition, the House passed H.R. 235, the Veteran Emergency Medical Technician Support Act of 2013, which directs HHS to establish a demonstration program to assist veterans with emergency medical technician (EMT) training to obtain state certification.

PPACA Health Reform Update

Senate Finance Committee Hearing on PPACA

At a Senate Finance Committee hearing on implementation of the Patient Protection Affordable Care Act (PPACA) matters, both Democrats and Republicans expressed concern over recent HHS actions. Senator Bill Nelson (D-FL) charged that HHS negotiated away funding for the Consumer Operated and Oriented Plan (CO-OP) program in the budget negotiations leading to the fiscal cliff relief legislation (the American Taxpayer Relief Act of 2012). The Consumer Information and Insurance Oversight (CCIIO) Director said his goal is to see that the 24 states given CO-OP funding will have successful programs, while Senators Nelson and Baucus (D-MT) expressed concern that the remaining 26 states will not have the opportunity to establish such programs. Also, Senator Maria Cantwell (D-WA) expressed concern that HHS delayed until 2015 implementation of the PPACA's Basic Health Plan (BHP) provisions which were designed to help non-Medicaid eligible low-income families obtain health coverage other than through health insurance exchanges. She charged that HHS is using the delay to promote exchanges over such BHP alternatives. In addition, Senator Orrin Hatch (R-UT) expressed concern that HHS will have federally facilitated exchange (FFE) online insurance markets operating in time to start selling individual and small group plans beginning October 1st. The CCIIO Director responded that the Centers for Medicare and Medicaid Services (CMS) will receive insurer bids by the end of March and that HHS will review and act on the bids this summer. He also said that applications will be accepted via the HHS HealthCare.gov website and that the agency will determine eligibility for premium tax credit subsidies and Medicaid from information obtained from the Social Security Administration, the Internal Revenue Service, and the Department of Homeland Security. HHS will also provide funding for "navigators" in FFE states to help individuals submit their applications for coverage. At another forum, HHS Secretary Kathleen Sebelius called upon health care providers and others to assist in the implementation of the PPACA by educating patients about the law's coverage options.

PCIP Enrollment Frozen

The CCIIO announced that, due to a projected lack of funding, the agency is immediately blocking new applications for coverage under so-called Pre-Existing Condition Insurance Plans (PCIP) which are currently operating in 23 states and in DC. The 135,000 individuals covered under the PCIPs and many others with pre-existing medical conditions will be eligible to seek enrollment under state-run health insurance exchanges or the FFE's beginning this October. OMB is reviewing the final rules proposed by HHS which will move forward PPACA provisions, including: health insurance rate reviews; standards related to essential health benefits, actuarial value and accreditation; and notice of benefit and payment provisions.

Long-Term Care Commission Members

The temporary commission created under the American Taxpayers Relief Act to make recommendations on long-term care options has six new members leaving only three more members to be named by the President. House Minority Leader Nancy Pelosi (D-CA) and Senate Majority Leader Harry Reid (D-NV) previously named their three members. Last week, Speaker John Boehner (R-OH) named the following members: Judy Brachman of Bexly, Ohio, national co-chairwoman of the Jewish Federations of North America's Aging and Family Caregiving Committee; Stephen Guillard

of Chatham, Mass., a health care executive; and Grace-Marie Turner of Alexandria, Va., president of the Galen Institute. Senate Minority Leader Mitch McConnell (R-KY) selected the following to the panel: Bruce Greenstein, secretary of the Louisiana Department of Health and Hospitals; Neil Pruitt Jr. of Atlanta, a skilled nursing facility executive; and Mark Washofski, an official in the Treasury Department during the George W. Bush administration. Once all members are appointed, the panel will have six months to make its recommendations.

PPACA Health Reform Update cont.

IRS Provides Transitional Relief for Employer Shared Responsibility Penalties

Internal Revenue Service (IRS) officials announced that employers can take advantage of a one-time transitional rule in 2013 to avoid penalties assessed when employers with 50 or more full-time-equivalent (FTE) employees do not offer “affordable” coverage and such employees obtain federally subsidized coverage under health insurance exchanges. Under the rule, employers can measure an employee’s hours from July 1, 2013 through December 31, 2013 to determine FTE (of 30 or more hours a week per month) employment for 2014 coverage purposes. Non-calendar year plans are also accorded relief until their plan year begins in 2014.

Medicare/Medicaid/PHSA Corner

Congress Urged to Revise Physician Payment System

The chairman of the Medicare Payment Advisory Committee (MedPAC) testified before the House Energy and Commerce Health Subcommittee that Congress should soon replace the current sustainable growth rate (SGR) Medicare physician payment system, particularly in light of a recent Congressional Budget Office (CBO) cost estimate which makes the transition less expensive. He said the current system impedes access, particularly among those seeking primary care. He urged that the new system balance payment levels among primary care and specialty physician groups and include incentives for physicians to participate in new payment models (such as accountable care organizations (ACOs) and bundled payment demos). A new CBO report states that the

ten-year cost of freezing Medicare physician payments has been re-estimated to decrease to \$138 billion from \$245 billion, mainly as a result of recent reductions in actual Medicare cost increases over the anticipated rate of increase. The ranking member, Frank Pallone (D-NJ), said that SGR reform still is too expensive to pay for with cuts to other Medicare program elements. Full-committee Chairman Fred Upton (R-MI) has indicated his desire to see the House pass reform legislation before the August congressional recess and send it to the President by year-end. Comments on an outline for legislative reform, as proposed by Republicans on the House Energy and Commerce & Ways and Means Committees is due by February 25th.

Medicare Advantage: Premiums to Decrease/MLR Proposed Rule

CMS announced that preliminary estimates show that Medicare Advantage rates will fall by more than 2% in 2014, given that the per capita Medicare growth rate percentage, the key factor in determining Medicare Advantage rates, will fall by 2.3%. CMS also released a proposed rule, Medical Loss Ratio Requirements for the Medicare Advantage and the Medicare Prescription Drug Benefit Programs, which would put a new 15% cap on overhead and profits for health plans in Medicare Advantage and for Medicare drug plans. Comments on the proposed rule are due April 16.

FDA – Hydrocodone & Counterfeit Pharmaceuticals

Senators Rockefeller (D-WV), Manchin (D-WV), Kirk (R-IL), Feinstein (D-CA), Schumer (D-NY) and Gillibrand (D-NY) and Reps. Markey (D-MA) and Buchanan (R-FL) sent a letter to the FDA Commissioner urging the agency to take action to tighten the classification of prescription painkillers containing **hydrocodone**. They asked for the Food and Drug Administration (FDA) to provide a detailed response on the steps the agency will take to reclassify such drugs from Schedule III to Schedule II under the Controlled Substances Act. Also, Senator Rockefeller sent letters to CMS, the FDA and the Government Accountability Office (GAO) seeking specific steps that each agency can take to help contain the abuse of prescription drugs and methadone, in particular. In other news, the Institute of Medicine (IOM) released a report to the FDA which states that the federal government needs a drug tracking system to plug holes in the supply chain as well as stronger licensing requirements for drug wholesalers in order to reduce the chance that **counterfeit and substandard drugs** are released to the public. The report suggests a national tracking system is needed so that companies do not have to comply with multiple state requirements. Finally, a letter was sent to the Postmaster General from 88 House members requesting that the USPS continue to **deliver prescription drugs on Saturday**, even if the agency ends Saturday delivery later this year.

Health Legislation Recently Introduced

H.R. 594 (DISEASE RESEARCH), to reauthorize and extend the Paul D. Wellstone Muscular Dystrophy Community Assistance, Research, and Education Amendments of 2008; BURGESS; to the Committee on Energy and Commerce, Feb. 8.

H.R. 607 (REFORM), to delay until 2016 provisions of the Patient Protection and Affordable Care Act scheduled to take effect in 2014 or 2015 and to delay the application of sequestration until 2014; THORNBERRY; jointly, to the committees on the Budget, Education and the Workforce, Ways and Means, the Judiciary, Natural Resources, Rules, Appropriations, House Administration, and Energy and Commerce, Feb. 8.

S. 314 (CHILDREN'S HEALTH), to amend the Public Health Service Act to improve the health of children and help better understand and enhance awareness about unexpected sudden death in early life; LAUTENBERG; to the Committee on Health, Education, Labor, and Pensions, Feb. 13.

S. 316 (POSTAL WORKERS HEALTH BENEFITS), to recalculate and restore retirement annuity obligations of the United States Postal Service, to eliminate the requirement that the United States Postal Service prefund the Postal Service Retiree Health Benefits Fund, to place restrictions on the closure of postal facilities, to create incentives for innovation for the United States Postal Service, to maintain levels of postal service, and for other purposes; SANDERS; to the Committee on Homeland Security and Governmental Affairs, Feb. 13.

S. 323 (MEDICARE), to amend Title XVIII of the Social Security Act to provide for extended months of Medicare coverage of immunosuppressive drugs for kidney transplant patients and other renal dialysis provisions; DURBIN; to the Committee on Finance, Feb. 13.

S. 324 (MEDICARE), to amend Part B of the Title XVIII of the Social Security Act to apply deemed enrollment to residents of Puerto Rico and to provide a special enrollment period and a reduction in the late enrollment penalties for certain residents of Puerto Rico; SCHUMER; to the Committee on Finance, Feb. 14.

S. 325 (MILITARY HEALTH), to amend Title 38, United States Code, to increase the maximum age for children eligible for medical care under the CHAMPVA program, and for other purposes; TESTER; to the Committee on Veterans' Affairs, Feb. 14.

S. 328 (MEDICARE), to amend Title XVIII of the Social Security Act to allow certain critical access hospitals and sole community hospitals to use interactive telecommunications systems to satisfy requirements with respect to having a physician available to stabilize an individual with an emergency medical condition under Medicare; THUNE; to the Committee on Finance, Feb. 14.

S. 330 (ORGAN TRANSPLANTATION), to amend the Public Health Service Act to establish safeguards and standards of quality for research and transplantation of organs infected with human immunodeficiency virus (HIV); BOXER; to the Committee on Health, Education, Labor, and Pensions, Feb. 14.

S. 333 (PHARMACIES), to establish certain duties for pharmacies to ensure provision of Food and Drug Administration-approved contraception, and for other purposes; LAUTENBERG; to the Committee on Health, Education, Labor, and Pensions, Feb. 14.

S. 348 (PRESCRIPTION DRUGS), to provide for increased federal oversight of prescription opioid treatment and assistance to states in reducing opioid abuse, diversion, and deaths; ROCKEFELLER; to the Committee on Health, Education, Labor, and Pensions, Feb. 14.

S. 351 (REFORM), to repeal the provisions of the Patient Protection and Affordable Care Act of providing for the Independent Payment Advisory Board; CORNYN; to the Committee on Finance, Feb. 14.

S. 356 (ABORTION), to ensure that women seeking an abortion are fully informed regarding the pain experienced by their unborn child; JOHANNIS; to the Committee on Health, Education, Labor, and Pensions, Feb. 14.

Health Legislation Recently Introduced cont.

S. 367 (MEDICARE), to amend Title XVIII of the Social Security Act to repeal the Medicare outpatient rehabilitation therapy caps; CARDIN; to the Committee on Finance, Feb. 14.

S. 372 (REPRODUCTIVE HEALTH), to provide for the reduction of unintended pregnancy and sexually transmitted infections, including HIV, and the promotion of healthy relationships, and for other purposes; LAUTENBERG; to the Committee on Health, Education, Labor, and Pensions, Feb. 14.

H.R. 628 (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; NAPOLITANO; to the Committee on Energy and Commerce, Feb. 13.

H.R. 630 (POSTAL WORKERS HEALTH BENEFITS), to recalculate and restore retirement annuity obligations of the United States Postal Service, eliminate the requirement that the United States Postal Service pre-fund the Postal Service Retiree Health Benefits Fund, place restrictions on the closure of postal facilities, create incentives for innovation for the United States Postal Service, maintain levels of postal service, and for other purposes; DEFAZIO; jointly, to the committees on Oversight and Government Reform and the Judiciary, Feb. 13.

H.R. 635 (VETERANS' HEALTH), to amend Title 38, United States Code, to require the Secretary of Veterans Affairs to enter into contracts with community health care providers to improve access to health care for veterans in highly rural areas, and for other purposes; PEARCE; to the Committee on Veterans' Affairs, Feb. 13.

H.R. 642 (PUBLIC HEALTH), to make clear that an agency outside of the Department of Health and Human Services may not designate, appoint, or employ special consultants, fellows, or other employees under subsections (f) or (g) of Section 207 of the Public Health Service Act; BURGESS; to the Committee on Energy and Commerce, Feb. 13.

H.R. 660 (DISEASE RESEARCH), to amend the Public Health Service Act to create a National Neuromyelitis Optica Consortium to provide grants and coordinate research with respect to the causes of, and risk factors associated with, neuromyelitis optica, and for other purposes; LEE of California; to the Committee on Energy and Commerce, Feb. 13.

H.R. 669 (CHILDREN'S HEALTH), to amend the Public Health Service Act to improve the health of children and help better understand and enhance awareness about unexpected sudden death in early life; PALLONE; to the Committee on Energy and Commerce, Feb. 13.

H.R. 670 (MEDICARE), to amend Part B of the Title XVIII of the Social Security Act to apply deemed enrollment to residents of Puerto Rico and to provide a special enrollment period and a reduction in the late enrollment penalties for certain residents of Puerto Rico; PIERLUISI; jointly, to the committees on Energy and Commerce and Ways and Means, Feb. 13.

H.R. 672 (PRESCRIPTION DRUGS), to provide for increased federal oversight of prescription opioid treatment and assistance to states in reducing opioid abuse, diversion, and deaths; RAHALL; jointly, to the committees on Energy and Commerce and the Judiciary, Feb. 13.

H.R. 675 (PART-TIME WORKERS BENEFITS), to extend protections to part-time workers in the areas of employer-provided health insurance, family and medical leave, and pension plans; SCHAKOWSKY; jointly, to the committees on Education and the Workforce, Ways and Means, House Administration, and Oversight and Government Reform, Feb. 13.

H.R. 676 (HEALTH INSURANCE COVERAGE), to provide for comprehensive health insurance coverage for all United States residents, improved health care delivery, and for other purposes; CONYERS; jointly, to the committees on Energy and Commerce, Ways and Means, and Natural Resources, Feb. 13.

Health Legislation Recently Introduced cont.

H.R. 689 (MEDICAL MARIJUANA), to provide for the rescheduling of marijuana and for the medical use of marijuana in accordance with the laws of the various states; BLUMENAUER; jointly; to the committees on Energy and Commerce and the Judiciary, Feb. 14.

H.R. 698 (ORGAN TRANSPLANTATION), to amend the Public Health Service Act to establish safeguards and standards of quality for research and transplantation of organs infected with human immunodeficiency virus (HIV); CAPPES; jointly, to the committees on Energy and Commerce and the Judiciary, Feb. 14.

H.R. 702 (LOAN REPAYMENT PROGRAMS), to amend the Public Health Service Act to direct the secretary of health and human services to establish a Frontline Providers Loan Repayment Program; BRALEY of Iowa; to the Committee on Energy and Commerce, Feb. 14.

H.R. 710 (MEDICAL MARIJUANA), to amend Title 18, United States Code, to provide an affirmative defense for the medical use of marijuana in accordance with the laws of the various states, and for other purposes; FARR; to the Committee on the Judiciary, Feb. 14.

H.R. 713 (MEDICARE), to amend Title XVIII of the Social Security Act to repeal the Medicare outpatient rehabilitation therapy caps; GERLACH; jointly, to the committees on Energy and Commerce and Ways and Means, Feb. 14.

H.R. 725 (REPRODUCTIVE HEALTH), to provide for the reduction of unintended pregnancy and sexually transmitted infections, including HIV, and the promotion of healthy relationships, and for other purposes; LEE of California; jointly, to the committees on Energy and Commerce and Education and the Workforce, Feb. 14.

H.R. 728 (PHARMACIES), to establish certain duties for pharmacies to ensure provision of Food and Drug Administration-approved contraception, and for other purposes; CAROLYN B. MALONEY of New York; to the Committee on Energy and Commerce, Feb. 14.

H.R. 729 (NATIONAL INSTITUTES OF HEALTH), to amend the Balanced Budget and Emergency Deficit Control Act of 1985 to exempt the National Institutes of Health from sequestration under Section 251A for fiscal year 2013, and to reduce the sequestration by the amount of the exemption; MCDERMOTT; to the Committee on the Budget, Feb. 14.

H.R. 738 (VETERANS' HEALTH), to amend Title 10, United States Code, to eliminate the requirement that certain former members of the reserve components of the armed forces be at least 60 years of age in order to be eligible to receive health care benefits; WILSON of South Carolina; to the Committee on Armed Services, Feb. 14.

H. RES. 69 (COLORECTAL CANCER AWARENESS), supporting the designation of March 2013, as National Colorectal Cancer Awareness Month; PAYNE; to the Committee on Oversight and Government Reform, Feb. 14.