



## Health Policy Briefing

February 25, 2013

### Congress Returns Without A Solution to March 1st Sequester or Deficit Reduction

#### *President and Congress at Stalemate on a Compromise to Avoid Sequester*

**President Obama** continues to blame congressional Republicans for failing to agree to tax loophole closings and prioritized spending cuts as an alternative to the \$85 billion in FY 2013 federal spending cuts mandated under the Budget Control Act (BCA).

On the other side, House **Speaker John Boehner (R-OH)** shifts the blame to the President and Senate Democrats while explaining that the House has already passed several bills--H.R. 5652, the Sequester Reconciliation Replacement Act, and H.R. 6684, the Spending Reduction Act--that the Senate could take up as a means to prioritize spending cuts.

The likely impact that the sequester will have on health programs, beginning this Friday absent legislation, was outlined by Department of Health and Human Services (HHS) **Secretary Kathleen Sebelius** in response to a request from **Senator Barbara Mikulski (D-MD)**, Chair, Senate Appropriations Committee. The cuts and reductions in services described by Secretary Sebelius are as follows: \$1.6 billion for the National Institutes of Health (NIH); \$350 million for

the Centers for Disease Control and Prevention (CDC); \$120 million for community health centers; 109,000 fewer inpatient admissions; 91,000 fewer substance-abuse treatments; 424,000 fewer HIV tests; 373,000 fewer treatments for seriously ill adults and emotionally disturbed children; and 540,000 fewer doses of vaccines for the flu, hepatitis and measles, etc. The mandated cuts also include a 2% reduction in Medicare reimbursement rates.

The Senate Democrats will likely take up their version of sequester replacement legislation that would consist of 50% in revenue increases (a 30% surtax on incomes 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) and 50% in alternative spending cuts. Senate Republicans are likely to impede passage of this

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bill and Senate Democrats will retaliate by turning back a Republican alternative that would give priority to the cuts under sequestration. If an alternative to sequestration is not enacted this week, as is likely, then Congress has only until March 22, the start of the Spring recess, to take up another FY 2013 continuing resolution (CR) to provide federal agency spending beyond the March 27th date when the current CR expires. House Republican appropriators have indicated their intent to include provisions giving the Defense Department authority to prioritize any cuts resulting from the sequester mandate.

When Congress returns from the Spring break, the House and Senate are expected to meet the April 15th deadline to pass their FY 2014 budget resolutions. These plans will set the stage for the next round of negotiations over potential long-term deficit reduction. The President has suggested he is open to a 10-year deal amounting to \$1.5 trillion in deficit reduction while claiming that recent budget and PPACA legislation has already produced \$2.4 trillion in cuts over the period. The chairmen of the President's Deficit Reduction Commission, former republican Senator Alan Simpson and former President Clinton's White House Chief of Staff Erskine Bowles, appear to disagree with the \$1.5 trillion goal, arguing that a "grand bargain" should contain \$2.4 trillion in deficit reduction. They unveiled a new plan to bridge the Democrat/Republican impasse which would raise \$600 billion by closing tax loopholes and lowering rates, \$600 billion by slowing the growth of Medicare and Medicaid spending and \$1.2 trillion by revising Social Security and pension cost of living adjustments (COLAs) and making other entitlement and discretionary spending reductions (e.g. modernizing civilian health and retirement programs). The new Simpson/Bowles plan would abandon their earlier goal of cutting the debt-to-GDP ratio to 60% in ten years, but would reduce the ratio to about 70% by the early 2020s.

## PPACA Health Reform Update

### *Final PPACA Essential Health Benefit Regulations*

HHS released final regulations defining the "essential health benefits" (EHBs) that must be included in 2014 under individual and small group health plans offered outside of and under health insurance exchanges. The 149-page rule implements the statutory requirement that plans cover ten major categories of care, including: ambulatory patient services; chronic disease management; emergency care; hospital services; laboratory services; maternity and newborn care; prescription drugs; preventive wellness services; rehabilitative care; pediatric dental care and vision care; as well as parity protections for mental health and substance use disorder services, including behavioral health treatment. States can designate certain health plans in their states as "benchmark" plans for EHB purposes, but mental health parity benefits must be included in any event. Plans must also cover a minimum of 60% of the actuarial value of covered services (for the least expensive "bronze plans" with the most expensive "platinum plans" covering 90% of such costs). Plans can substitute actuarially equivalent benefits for certain base benchmark benefits, but states may eliminate or otherwise regulate this plan element. HHS will designate the largest small group plan as the benchmark plan in the 23 states that have not named benchmark plans. Plans with prescription drug formularies must provide for an exceptions process to make non-formulary drugs available under certain circumstances. The plans to be offered under health insurance exchanges must also meet standards for qualification as set forth under the regulation (separate guidance was issued regarding the role states may play in certifying qualified health plans). The Departments of Treasury, Labor and HHS also released separate "Frequently Asked Questions About Affordable Care Act Implementation" which clarifies that: the conditions under which plans that use more than one service provider will be able to coordinate out-of-pocket maximum limits; separate out-of-pocket maximum limits may be applied to prescription drug coverage and pediatric dental coverage; the deductible limits for small group plans may exceed the PPACA limits if needed for such plans to meet the 60% minimum actuarial value coverage level; and there are certain limitations on cost sharing and coverage of preventive services, including contraception.

## PPACA Health Reform Update cont.

### Final PPACA Non-Discrimination Rating Rules

**H**HS released final PPACA “Health Insurance Market Rules--Rate Review” which require: guaranteed availability; guaranteed renewability; insurers to vary premiums only on age, tobacco use, family size and geography (not preexisting medical conditions); separate student plan risk pools; separate insurer statewide risk pools for the individual market and the small group market unless states merge the two in online exchange markets; and catastrophic plans offered to young adults in the individual market to have out-of-pocket cost protections and preventive services covered without cost sharing. Premium rates for individuals age 64 and older cannot be more than 3 times the rates for the youngest age category (beginning with age 21). States can set tougher rules, however. Insurers must provide HHS with information regarding all proposed rate increases for such policies and pay a 3.5% premium “exchange fee” charge. For non-grandfathered individual and small group plan offerings in 2014, the rules become effective on April 29.

### *PPACA State Innovation Awards*

**H**HS announced that six states have been awarded \$250 million to help them implement State Health Care Innovation Plans which have been approved by CMS. An additional \$35 million was awarded to 19 other states to help them design and test State Health Care Innovation Plans that are being developed. The State Innovation Model initiative is intended to create multi-payer models having goals to raise community health status and to reduce long-term health risks for Medicare, Medicaid and State Children’s Health Insurance Program (SCHIP) beneficiaries.

### *Republican Members Join PPACA Challenge*

**O**klahoma Attorney General Scott Pruitt filed an amicus brief with the 10th U.S. Circuit Court of Appeals in support of retail chain Hobby Lobby’s lawsuit against the PPACA’s mandated contraceptive coverage rules. He said “Any regulation that requires an employer to violate their lawful religious beliefs and practices goes directly against the ideals that our Founding Fathers set in place to protect Americans from an overbearing and intrusive government”. Senator Orrin Hatch, eight other Republican senators and two Republican House members also filed a similar brief. Senator Hatch (R-UT) said he and his fellow legislators were instrumental in helping pass the 1993 Religious Freedom Restoration Act which he said “sought to curb government-imposed infringements on religious liberty” such as the PPACA regulations which did not exempt private businesses from the contraceptive mandate (although the regulations did exempt certain religious institutions).

### *State Health Insurance Exchange Implementation*

**H**HS announced that a total of 24 states and the District of Columbia have applied or been approved for state-run or state-federal “partnership” health insurance exchanges under the PPACA. By the February 15th deadline, the following states applied to operate partnership exchanges: Iowa, Michigan, New Hampshire, West Virginia, Arkansas, Delaware and Illinois. States have awarded a number of multi-million dollar contracts to develop their exchanges and Medicaid expansions. The largest contract, for \$359 million, was awarded to help develop the California exchange.

## Upcoming Health Hearings

House Ways and Means Health Subcommittee: will hold a hearing on the current benefit design of the **Medicare fee-for-service program and consider ideas to update and revise the benefit structure to better meet the needs of current and future beneficiaries**; 10:30 a.m., 1100 Longworth Bldg; Feb. 26.

House Committee on Veterans' Affairs: will hold a hearing titled "**Electronic Health Record U-Turn: Are VA and DoD Headed in the Wrong Direction?**" 9:15 a.m., 334 Cannon Bldg; Feb. 27.

House Energy and Commerce Health Subcommittee: will hold a hearing titled "**Fostering Innovation to Fight Waste, Fraud and Abuse in Health Care**;" 10:15 a.m., 2123 Rayburn Bldg; Feb. 27.

Senate HELP Committee: will hold a hearing titled "**The Power of Transparency: Giving Consumers the Information They Need to Make Smart Choices in the Health Insurance Market**;" 2:30 p.m., 253 Russell Bldg.; Feb. 27.

Senate HELP Committee: will hold a hearing titled "**Animal Drug User Fee Agreements: Advancing Animal Health for the Public Health**;" 10:00 a.m., 430 Dirksen Bldg; Feb. 27.

Senate Finance Committee: will hold a hearing titled "**Delivery System Reform: Progress Report from CMS**," focusing on how new programs in the Affordable Care Act are modernizing Medicare and Medicaid to boost program efficiency; 10:30 a.m., 215 Dirksen Bldg; Feb. 28.

House Energy and Commerce Oversight and Investigations Subcommittee: will sponsor a forum titled "**After Newtown: A National Conversation on Violence and Severe Mental Illness**;" 10:00 a.m., 2123 Rayburn Bldg; March 5.

House Appropriations Labor, Health and Human Services, Education and Related Agencies Subcommittee: will hold hearings on **proposed FY 2013 appropriations** for programs under its jurisdiction; 10:00 a.m., 2358-C Rayburn Bldg; March 13.

## Health Legislation Recently Introduced

**H.R. 741** (TRICARE), to require the secretary of defense to develop and implement a plan to provide chiropractic health care services and benefits for certain new beneficiaries as part of the TRICARE program; ROGERS of Alabama; to the Committee on Armed Services, Feb. 15.

**H.R. 743** (ANTITRUST), to restore the application of the federal antitrust laws to the business of health insurance to protect competition and consumers; DEFAZIO; to the Committee on the Judiciary, Feb. 15.

**H.R. 752** (SUBSTANCE ABUSE), to amend the Public Health Service Act to provide for the establishment of a drug-free workplace information clearinghouse, to support residential methamphetamine treatment programs for pregnant and parenting women, to improve the prevention and treatment of methamphetamine addiction, and for other purposes; MCNERNEY; to the Committee on Energy and Commerce, Feb. 15.

**H.R. 762** (REFORM), to repeal Title I of the Patient Protection and Affordable Care Act and to amend the Public Health Service Act to provide for cooperative governing of individual health insurance coverage offered in interstate commerce; BLACKBURN; jointly, to the committees on Energy and Commerce, Ways and Means, and Education and the Workforce, Feb. 15.

**H.R. 763** (HEALTH INSURANCE PROVIDERS FEES), to repeal the annual fee on health insurance providers enacted by the Patient Protection and Affordable Care Act; BOUSTANY; jointly, to the committees on Energy and Commerce and Ways and Means, Feb. 15.

**H.R. 779** (REFORM), to repeal the Patient Protection and Affordable Care Act and the health care-related provisions in the Health Care and Education Reconciliation Act of 2010 and to amend Title 5, United States Code, to establish a national health program administered by the Office of Personnel Management to offer federal employee health benefits plans to individuals who are not federal employees, and for other purposes; ISSA; jointly, to the committees on Energy and Commerce, Ways and Means, Oversight and Government Reform, Education and the Workforce, Natural Resources, the Judiciary, Rules, Appropriations, and House Administration, Feb. 15.

**H.R.781** (MEDICARE), to amend Title II of the Social Security Act to prohibit the inclusion of Social Security account numbers on Medicare cards; SAM JOHNSON of Texas; to the Committee on Ways and Means, Feb. 15.

**H.R.794** (MEDICARE), to amend Title XVIII of the Social Security Act to provide for treatment of clinical psychologists as physicians for purposes of furnishing clinical psychologist services under Medicare; SCHAKOWSKY; jointly, to the committees on Energy and Commerce and Ways and Means, Feb. 15.

**H.R. 800** (MEDICARE), to amend Part B of Title XVIII of the Social Security Act to exclude customary prompt pay discounts from manufacturers to wholesalers from the average sales price for drugs and biologicals under Medicare; WHITFIELD; jointly, to the committees on Energy and Commerce and Ways and Means, Feb. 15.