



## Health Policy Briefing

February 10, 2014

### House/Senate Reach Agreement on Medicare SGR Reform Bill; Possible Debt Limit Riders

#### *Negotiators Finalize Medicare Physician Payment Reform Legislation*

Before recessing last week, the leaders of the three committees negotiating to find a compromise to replace the current Medicare sustainable growth rate (SGR) formulated physician payment system reached an agreement, H.R. 4015/S. 2000, the “**SGR Repeal and Medicare Provider Payment Modernization Act**,” which was introduced in the Senate by **Senator Max Baucus (D-MT)** and in the House by **Rep. Michael Burgess (R-TX)**. The bipartisan legislation was the last major legislative achievement of Chairman Baucus in that he was unanimously confirmed last Thursday as the next ambassador to China. **Senator Ron Wyden (D-OR)** is expected to take his place as chairman of the Senate Finance Committee this week. The Congressional Budget Office (CBO) is said to have estimated the legislation’s cost to be about \$128 billion over ten years. However, the means to offset the legislation’s cost was not included in the introduced legislation, although members indicated they are still working to develop agreeable spending/revenue offsets. Senator Baucus summed up the route the legislation has taken to reach this point: “Congress

has spent a decade lurching from one ‘doc fix’ to the next, creating a new, unnecessary threat to seniors’ care each time. Enough is enough. This proposal would bring that cycle to an end and fix the broken system. Our bill makes Medicare’s physician payments more modern and efficient, and it will protect seniors’ access to their doctors....This bill is the product of years of hard work, and I hope Congress comes together to pass it.” If Congress is unable to move this compromise legislation by the end of next month, then it is likely that Congress will again have to extend the March 31 date after which severe cuts to Medicare physician payments will be made  
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under current law. There remains an outside chance that the SGR Reform legislation could be added as a sweetener to legislation the House is expected to take up in the next several weeks to increase the federal debt limit. In urging Congress to take immediate action on the debt limit, **Treasury Secretary Jacob Lew** said that his department would have to begin taking “extraordinary” measures to avoid a default on federal obligations by the end of this month. **House Speaker John Boehner (R-OH)** was noncommittal as to the form that any add-on would take. Reports are that House Republicans have been unable to coalesce around an add-on that would repeal the Patient Protection and Affordable Care Act’s (PPACA) “risk corridor” provisions, but a repeal of the law’s medical device tax and the SGR reform legislation or a temporary patch are still being discussed as add-on’s to the debt limit bill. The major provisions of the compromise SGR repeal legislation which contain variations on the Senate Finance, Ways and Means and Energy and Commerce passed bills (S. 1871 and H.R. 2810) can be summarized as follows:

- SGR would be repealed;
- Medicare extenders and other provisions in Senate Finance bill (S. 1871) are excluded;
- 0.5% increase in Medicare physician payments over 5 years (2014-2018) as under H.R. 2810 (E&C version);
- starting in 2018 payments would be based on performance in four categories (quality, resource use, electronic health records (EHR) meaningful use and clinical practice improvement activities) for listed professional categories participating in the new Merit-Based Incentive Payment System (MIPS) which would consolidate the Physician Quality Reporting System, the Value-Based Modifier and the “meaningful use” of electronic health records system;
- bonuses of 5% would be available for significant participation (beginning at 25%) in alternative payment models (APMs), such as medical homes, accountable care organizations (ACO) and other forms to be developed;
- the Department of Health and Human Services (HHS) would be required to publish utilization and payment data on the Physician Compare website which qualified users could use to help develop APMs and quality improvement activities;
- a technical advisory committee would be established to recommend physician developed APMs;
- HHS would be required to make public a list of clinical-decision support tools by April 1, 2016 which clinicians must use in ordering scans while utilizing “Appropriate Use Criteria” before Medicare coverage would be approved (non-compliance would result in pre-authorization requirements);
- EHRs would be required to be “interoperable” by 2017 and providers would be prohibited from deliberately blocking information sharing with other EHR vendors; and
- the use of quality performance measures as “standards of care” in medical malpractice claims brought in any court of law would be prohibited.

### ***House Ways and Means Committee Passes Bills Revising PPACA Full-Time Employee Rule***

**T**he House Ways and Means Committee voted 23-14 to pass H.R. 2575, the “Save American Workers Act,” that would amend the definition of full-time employee under the PPACA beginning on December 31, 2013 by increasing the 30 hours/week rule to a 40 hours/week rule. The rule would apply to employers with 50 or more full-time employees who are subject to the law’s employer coverage mandate. The committee also passed H.R. 3979, the “Protecting Volunteer Firefighters and Emergency Responders Act,” that would exempt volunteer emergency service workers from the definition of full-time employee under the law. The legislation could be considered in the House this week or next. The House also passed H.R. 1791, the “Medical Preparedness Allowable Use Act,” legislation that amends the Homeland Security Act of 2002 to authorize the use of Urban Area Security Initiative and State Homeland Security Grant Program funding for enhancing medical preparedness, medical surge capacity, and mass prophylaxis capabilities, including the development and maintenance of an initial pharmaceutical stockpile, including medical kits, and diagnostics sufficient to protect first responders, their families, immediate victims, and vulnerable populations from a chemical or biological event.

## PPACA Health Reform Update

### *Republicans Continue to Question PPACA Operability*

**A**t a House Budget Committee hearing, Chairman Paul Ryan (R-WI) and other members questioned Congressional Budget Office (CBO) Director Elmendorf about the agency's latest report finding that the PPACA would likely cut between 1.5-2% of the total hours worked by Americans because of the choice of some workers to work less as a result of new PPACA-related taxes and health insurance subsidies. CBO also reduced the number of individuals projected to be covered under PPACA exchange plans in 2014 from 7 million to 6 million. The agency also reduced the number of individuals estimated to be covered under Medicaid and Children's Health Insurance Program (CHIP) from 9 million to 8 million. Nonetheless, the agency said that starting in 2017 between 24 and 25 million people are expected to obtain coverage each year through exchanges and that about 80% are likely to receive subsidies under the law. The House Committee on Oversight and Government Reform (OGR) also held a hearing on the law's risk corridor program which CBO said would result in \$8 billion in payments to health insurers in 2015-2017 while still netting budget savings of about the same amount. Senator Mario Rubio (R-FL) testified on the need for his bill S. 1726, the "Obamacare Taxpayer Bailout Prevention Act," which would repeal the law's risk corridors program. Republicans were generally critical that the provision will create a moral hazard by providing risk-corridor "bailout" payments to insurers who may not enroll a large enough share of the "young and healthy" and who may offer premiums lower than experience would dictate in order to increase their share of the expanded health insurance market. Committee Chairman Darrell Issa (R-CA) used a Congressional Research Service (CRS) report to back up his statement that "the insurance companies are entitled to absolutely nothing" under the risk-corridor provisions unless Congress appropriates the money. Two of the OGR committee's subcommittees also held a joint hearing on what a Republican staff report said are "insolvency, personnel mismanagement, and legal issues" among the four CO-OPs they studied. Rep. James Lankford (R-OK) said the \$2 billion in PPACA loans made to 24 CO-OPs in 2013 "is an investment disaster that creates the possibility American taxpayers could be left on the hook.... This is what happens when government picks winners and losers." In response, Rep. Jackie Speier (D-CA) said the staff report is "biased and incomplete" and by no means "bipartisan". The problems that a reported 22,000 individuals are having with the HealthCare.gov website to correctly process their enrollments also came under fire from Republican leaders of the House Committee on Energy and Commerce. In a letter to HHS Secretary Kathleen Sebelius, Chairman Fred Upton (R-MI) and others asked her to respond by February 21 with answers on how the agency will fix problems to correct mistakes such as overcharging for insurance policies, enrolling persons in the wrong plans and the improper denial of coverage. Senator Hatch (R-UT) and other senate Republicans also raised similar concerns with the HHS Secretary. On another front, the House Ways and Means and Oversight and Government Reform Committees released a report finding that the Internal Revenue Service (IRS) and Treasury Department did not conduct a serious or thorough analysis of the PPACA law and its legislative history in concluding in regulations that the law's premium subsidies are lawfully available to individuals covered under the federally facilitated health insurance exchange. The report said the agencies went ahead with the regulation even though there was evidence that agency officials had expressed concern that there was no authority to interpret federal marketplaces as "established by the state" as stated under the law. The ruling is the subject of court litigation and, in one case, a federal district court held for the government.

## PPACA Health Reform Update cont.

### *Government Issues New PPACA Rules and Considers Other Fixes*

The President's Deputy Assistant for Health Policy reported that the Administration is considering new PPACA rules that would aid the implementation of the health law, including the delay of the employer mandate until at least 2015 and grants for the State Innovation Models Initiative. Efforts are also underway to allow the federal and state exchanges to streamline eligibility and enrollment and, also, allow individual information to be used to qualify individuals for other programs such as the Supplemental Nutrition Assistance and the Temporary Assistance for Needy Families programs. Also, it is reported that the Administration is considering an extension beyond 2014 of the President's initiative allowing individual policy holders to keep the health insurance they had before this year. The IRS Commissioner also testified before Congress that the agency is still considering the final rules on how to enforce the individual mandate, including the timing of any forced withholding of tax refunds and whether or not to take taxpayers to court to gain their compliance. The Centers for Medicare and Medicaid Services (CMS) also issued guidance to insurers in connection with the certification process in 2015 and beyond of qualified health plans to be sold in the federally facilitated exchange, including the Small Business Health Options Program (SHOP). Under the rules, insurer plans would have to cover at least 30% of "available" essential community providers in each plan's service area and contract only with hospitals and health care providers that meet certain quality improvement criteria. CMS also indicated it may soon issue rules that require that plans continue covering certain non-formulary drugs if they are covered on January 1 of the plan year. The Patient-Centered Outcomes Research Institute (PCORI) has issued a call for proposals under the Pragmatic Clinical Studies Initiative and also said that up to \$206 million in grant funding will be made available to support various comparative effectiveness research projects.

## Medicare/Medicaid/PHSA Corner

### *Senators Object to Medicare Part D Drug Class Pullback*

In a letter to the CMS Administrator, members of the Senate Finance Committee said that the agency's regulations which proposed to remove antidepressant and immunosuppressive drug classes from protected status in 2015 would deny beneficiaries needed access to such drugs and result in higher costs from preventable hospitalizations and other medical interventions. They said the committee will continue to work with CMS on the issue.

## CMS Allows Patient Direct Access to Lab Results

CMS issued a final rule that modifies the regulations under Clinical Laboratory Improvement Amendments (CLIA) and the Health Insurance Portability and Accountability Act (HIPAA) that restrict a patient's or their representative's direct access to laboratory test results. Taking effect on April 7, the rule preempts any conflicting state law. Within 30 days any attending physicians would have to be provided the test results before such results are given to patients.

### *NIH/BigPharma Join in Accelerating Medicines Partnership*

Ten pharmaceutical manufacturers and the National Institutes of Health (NIH) announced the formation of a new \$230 million partnership over the next five years, the "Accelerating Medicines Partnership", which is intended to bring about more collaboration on basic research and data sharing to help find causes and possible avenues for the treatment of Alzheimer's disease, Type 2 diabetes and autoimmune disorders, such as rheumatoid arthritis and lupus. Nonetheless, drug companies would still be expected to develop specific drug treatments on their own initiative. Non-profit disease organizations are expected to help in recruiting patients for the effort.

## Medicare/Medicaid/PHSA Corner cont.

### *CMS Open Payments Program Begins*

**C**MS announced that the agency will begin collecting data on February 18th from certain manufacturers and applicable group purchasing organizations with respect to payments they make to health-care providers, including gifts, consulting fees and research activities. A second phase of the PPACA's "Sunshine Act" Open Payments system will begin in May under which manufacturers will submit additional, detailed payment information.

### CMS Allows Hospitals to Phase-in Two-Midnight Rule

**C**MS said that physicians are required to certify and accept responsibility for any Medicare inpatient admission prior to a patient's discharge under the Two-Midnight rule which provides for presumptive Medicare Part A coverage for stays over such period.

## Upcoming Health-Related Hearings and Markups

**House Energy and Commerce Health Subcommittee:** will hold a hearing titled *"Examining Drug Shortages and Recent Efforts to Address Them"*; 2:00 p.m., 2123 Rayburn Bldg.; Feb. 10.

**House Veterans' Affairs Health Subcommittee:** will hold a hearing on *alternative forms of mental health therapy for veterans*; 10:00 a.m., California State University Channel Islands, 1 University Drive, Camarillo, Calif.; Feb. 10.

**Senate Budget Committee:** will hold a hearing on the CBO's report titled *"The Budget and Economic Outlook: 2014 to 2024."* 10:30 a.m., 608 Dirksen

## Health Legislation Recently Introduced

**H.R. 3979** (EMERGENCY SERVICES VOLUNTEERS), to amend the Internal Revenue Code of 1986 to ensure that emergency services volunteers are not taken into account as employees under the shared responsibility requirements contained in the Patient Protection and Affordable Care Act; BARLETTA; to the Committee on Ways and Means, Jan. 31.

**S. 1980** (MEDICAID/CHIP), to amend titles XIX and XXI of the Social Security Act to provide for 12-month continuous enrollment under the Medicaid program and Children's Health Insurance Program and to promote quality care; ROCKEFELLER; to the Committee on Finance, Feb. 3.

**S. 1982** (VETERANS' HEALTH), to improve the provision of medical services and benefits to veterans, and for other purposes; SANDERS; read the first time, Feb. 3.

**S. 1985** (VETERANS' HEALTH), to reauthorize and modify the pilot program of the Department of Veterans Affairs under which the secretary of veterans affairs provides health services to veterans through qualifying non-Department of Veterans Affairs health care providers, and for other purposes; MORAN; to the Committee on Veterans' Affairs, Feb. 3.

**H.R. 3985** (REFORM), to sunset funding under sections 1341 and 1342, and to repeal section 1343, of the Patient Protection and Affordable Care Act, and for other purposes; WESTMORELAND; to the Committee on Energy and Commerce, Feb. 3.

## Health Legislation Recently Introduced cont.

**S. 1992** (MEDICAID), to amend Title XIX of the Social Security Act to provide a standard definition of therapeutic foster care services in Medicaid; BALDWIN; to the Committee on Finance, Feb. 4.

**S. 1994** (TRICARE), to amend Title 10, U.S. Code, to provide for the availability of breast-feeding support, supplies and counseling under TRICARE; MCCASKILL; to the Committee on Armed Services, Feb. 4.

**H.R. 3986** (TAXATION), to amend the Internal Revenue Code of 1986 to adjust the phase-out of the health insurance tax credit for geographic variations in cost-of-living; THOMPSON of California; to the Committee on Ways and Means, Feb. 4.

**H.R. 3991** (MEDICARE), to amend Title XVIII of the Social Security Act to remove the 96-hour physician certification requirement for inpatient critical access hospital services; SMITH OF NEBRASKA; to the Committee on Ways and Means, Feb. 4.

**H. RES. 473** (CANCER PREVENTION), expressing support for designation of Feb. 4, 2014, as National Cancer Prevention Day; ISRAEL; to the Committee on Energy and Commerce, Feb. 4.

**H.R. 3999** (FAMILY MEDICAL LEAVE), to amend the Family and Medical Leave Act of 1993 and Title 5, U.S. Code, to allow employees to take, as additional leave, parental involvement leave to participate in or attend their children's and grandchildren's educational and extracurricular activities, and to clarify that leave may be taken for routine family medical needs and to assist elderly relatives, and for other purposes; CAROLYN B. MALONEY of New York; jointly, to the committees on Education and the Workforce, Oversight and Government Reform, and House Administration, Feb. 5.

**S. 2000** (MEDICARE), to amend Title XVIII of the Social Security Act to repeal the Medicare sustainable growth rate and improve Medicare payments for physicians and other professionals, and for other purposes; BAUCUS; to the Committee on Finance, Feb. 6.

**S. 2005** (MEDICARE), to amend Title XVIII of the Social Security Act to provide for the reporting of certain hospital payment data under Medicare, and for other purposes; COBURN; to the Committee on Finance, Feb. 6.

**H.R. 4010** (AUTISM), to provide for enhanced treatment, support, services and research for individuals with autism spectrum disorders and their families; CARTWRIGHT; to the Committee on Energy and Commerce, Feb. 6.

**H.R. 4015** (MEDICARE), to amend Title XVIII of the Social Security Act to repeal the Medicare sustainable growth rate and improve Medicare payments for physicians and other professionals, and for other purposes; BURGESS; jointly, to the committees on Energy and Commerce, Ways and Means and the Judiciary, Feb. 6.

**H.R. 4016** (MEDICAID), to amend Title XIX of the Social Security Act to provide a standard definition of therapeutic foster care services in Medicaid; DELAURO; to the Committee on Energy and Commerce, Feb. 6.