



## Health Policy Briefing

February 17, 2014

### Congress Passes Bills to Extend Federal Debt Limit & Partial Funding for SGR Reform

#### *Clean Debt Limit Bill and Separate Measure Partially Funds SGR Reform*

Sprinting to this week’s Presidents’ Day recess, the House (on a 221-201 vote) and the Senate (on a 55-43 vote) passed S. 540, legislation to extend the federal debt limit through March 15, 2015, taking the issue beyond this year’s mid-term elections. After House Republican leaders failed to garner the 218 votes necessary to pass the bill with extraneous provisions the Republican conference could coalesce around, the debt limit bill was passed without amendment.

**House Speaker John Boehner (R-OH)** had kept open the possibility of adding to the debt bill a repeal of the omnibus 2-year budget deal’s 1% reduction of pre-age-62 military cost of living adjustments (COLAs) and/or the bipartisan reform of the Medicare physician payment system. Having to abandon the amendment route in connection with these measures, Republican leaders followed up the vote on the debt ceiling bill with another legislative move to restore the military pension COLAs together with a means to offset its cost plus some more. This resulted in the House voting 326-90 and the Senate voting 95-3 to pass S. 25, legislation to restore the COLAs with a total offset of about \$8.4 billion. After taking into

account the \$6 billion COLA offset, the legislation left an excess of about \$2.4 billion in spending “cuts” which Congress intends to help offset the cost of the long-term Medicare physician payment sustainable growth rate (SGR) formula overhaul expected to be taken up in March (the Congressional Budget Office (CBO) estimates that H.R. 4015/S. 2000 will cost ~\$128 billion over ten years). Some in the health community were chagrined that the offset for the COLA portion of the legislation came about by an extension for one year (until 2024) of the Budget Control Act (BCA) sequestration rules requiring across-the-board cuts in discretionary

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health-related and certain other federal programs. It is expected that **Senator Ron Wyden (D-OR)**, who was formally appointed by the Senate as the new chairman of the Senate Finance Committee, will make the passage of Medicare SGR reform a legislative priority when Congress returns next week. The major hurdle remaining for SGR reform will be for Congress to agree on spending/revenue offsets amounting to about \$125.6 billion. This task will have to be accomplished in the face of the House Budget Committee's intent to pass a fiscal year (FY) 2015 budget resolution to eliminate the projected federal deficit of \$7.9 trillion over ten years.

### ***House Set to Take Up PPACA Amendment***

**C**learing the way for consideration in the House, the House Ways and Means Committee voted 23-14 to pass H.R. 2575, legislation that would increase the Patient Protection and Affordable Care Act's (PPACA) 30-hour work week threshold to 40-hours. The bill would adjust the Act's definition of full-time worker status used for determining which employees must be offered employer-provided health coverage meeting the law's minimum benefit standards.

### ***Senate Passes Bill Delaying CMS Critical Access Hospital Rule***

**B**efore adjourning, the Senate also passed S. 1954, legislation that provides for the extension through 2014 of the Centers for Medicare and Medicaid Services (CMS) rule requiring that a supervising physician be present at all times when Medicare patients receive outpatient therapeutic services in critical access and small rural hospitals.

## PPACA Health Reform Update

### ***Obama Administration's PPACA Relief Measures Draw Republican Criticism***

Last week final rules were issued by Treasury/Internal Revenue Service (IRS) that delays until 2016 the PPACA's provision that employers with 50-99 full-time workers comply with the Act's "shared employer responsibility" provisions under the tax code, thus relieving all employers with less than 100 full-time workers from having to offer health coverage until such date. The Administration had already delayed the rule from 2014 to 2015 for all larger employers, thus relieving them from the tax penalties for failure to comply with the rule. The Republican leaders on the House Energy and Commerce Committee sent a letter to the Treasury Department asking for information on the constitutional or statutory authority they relied on in adopting the delay. They also asked for any communication with the White House regarding the decision which Republicans think is politically motivated. The Treasury/IRS rule also provides relief for adjunct faculty and for fire departments employing "bona fide volunteer" firefighters and emergency responders, the latter of which has been the subject of legislation already passed by the House Energy and Commerce Committee (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 PPACA). Regarding the rule to delay the employer mandate, House Speaker John Boehner said "Once again, the President is giving a break to corporations while individuals and families are still stuck under the mandates of his health care law..." Republicans have also criticized the restriction of provider networks included under health insurance policies offered under the PPACA exchanges. The Administration has also taken action to address this criticism. In this connection, CMS issued five new bulletins, "Affordable Exchange Guidance", allowing individuals to make changes to their information and plan selections. Under the "Flexibility during the Initial Open Enrollment Period to Change Plans Offered by the Same Issuer at the Same Metal Level" guidance, individuals could still switch their plan choice beyond the date the first premium is paid if: the change is to another plan offered by the same issuer; the change is to another plan offered at the same metal (actuarial) level and cost-sharing reduction level; the change is made to move to a plan with a more inclusive provider network or for "other isolated circumstances determined by CMS..."; and the change is being requested within the initial open enrollment period. Responding to the problems that the Massachusetts exchange has had in enrolling eligible individuals, CMS granted the state agency a three-month extension beyond March 31st to make enrollment decisions. On another front, Republican criticism was leveled by Rep. Sam Graves (R-MO), the Chairman of the House Small Business Committee, who complained that U.S. Department of Health and Human Services (HHS) Secretary Kathleen Sebelius failed to respond by February 7th to his request for information on when the Small Business Health Options Program (SHOP) would be fully operational for the number of small businesses and employees who have actually been enrolled under the program. Ignoring much of the criticism by Republicans, the Administration said the operation of the law had improved to the point that nearly 3.3 million people had enrolled in PPACA exchanges through January and that the enrollment in January was 1.1 million, a 53% increase over the enrollment in the prior three months. Insurers have yet to report on the number of individuals who have actually paid their premiums; reports are that only about 80% of the total "enrollments" have paid premiums when due. Democrats have been critical of congressional Republican efforts to repeal the PPACA and, in particular, the lack of a plan to replace the law. On this subject, Rep. Tom Price (R-GA), the author of one such plan, publicly stated that the House Republican leadership is at work to form a consensus on an alternative to the PPACA which could be considered in the House later this spring or summer.

## Medicare/Medicaid/PHSA Corner

### *Republicans Seek Relief from Upcoming Medicare Advantage Cuts*

In a letter to President Obama, House Speaker John Boehner, Majority Leader Eric Cantor (R-VA) and several others asked the Administration to provide relief from the upcoming cuts to Medicare Advantage in 2015. They said “Anger among the American people about the law [the PPACA] has already escalated to unprecedented levels as a result of the harmful effects of the first few months of its implementation, and the worst parts of the law, including these consequences for our nation’s seniors, are beginning to have a devastating impact...” They also expressed their concerns with CMS rules which propose to remove antidepressant and immunosuppressive drug classes from protected status in 2015 that they said would deny beneficiaries needed access, quality and choice to such drugs.

### House E&C Committee Hearing on Drug Shortages

At a House Energy and Commerce Health Subcommittee hearing, the Government Accountability Office (GAO) testified that although new drug shortages decreased in 2012, after the enactment of the Food and Drug Administration Safety and Innovation Act (FDASIA), the total number of ongoing shortages has increased. However, GAO has determined that the FDA has prevented more potential shortages and improved its ability to respond to shortages since GAO issued its report on the same topic in 2011. GAO found that 53% of critical drug shortages were found among only four therapeutic classes, including anti-infective drugs, anesthetic and central nervous system drugs, cardiovascular drugs and nutritive drugs. The FDA testified that improving the response to drug shortages is a top priority for the agency and that it is addressing the need by improving communication within the Center for Drug Evaluation and Research (CDER); improving the database that tracks drug shortages; and improving timely communication of drug shortages to caregivers and patients.

### *House Members Asks HHS to Fix Medicare RAC Program*

Rep. Sam Graves (R-MO), Adam Schiff (D-CA), Scott Perry (R-PA) and 108 other House members sent a letter to HHS Secretary Kathleen Sebelius complaining that the Medicare Recovery Audit Contractor (RAC) program lacks sufficient oversight, thus resulting in increased administrative burdens for hospitals that have to defend legitimate claims that are denied. They said that CMS should implement reforms so that auditors are charged with identifying real claim coding and documentation errors. They also said that CMS should provide a more transparent mechanism to inform providers of errors. They maintained that the current RAC structure results in higher costs for Medicare beneficiaries who have their inpatient stays improperly denied by RACs.

### FDA Issues Final Reporting Rules for Medical Device Companies

The FDA released a final rule that requires device manufacturers and importers to submit reports in electronic format when identifying adverse events concerning the medical devices they sell.

### *President’s Budget to Include Global Health Security Agenda*

HHS and Homeland Security announced that the President’s FY 2015 budget recommendations, expected to be sent to Congress next month, will include a \$45 million increase for the Centers for Disease Control and Prevention (CDC) efforts connected to global health security. The US and more than 24 other countries and international organizations are initiating a “Global Health Security Agenda” designed to prevent epidemics, detect threats early and respond quickly to outbreaks.

## Upcoming Health-Related Hearings and Markups

**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, CA; Feb. 20.

**House Budget Committee:** will hold a hearing on the *President's Fiscal Year 2015 Budget*, 2:00 pm; March 5.

## Health Legislation Recently Introduced

**S. 2007** (CLINICAL AND HEALTH SOFTWARE), to amend the Federal Food, Drug, and Cosmetic Act to provide for regulating clinical and health software, and for other purposes; FISCHER; to the Committee on Health, Education, Labor, and Pensions, Feb. 10.

**S. 2009** (VETERANS' HEALTH), to improve the provision of health care by the Department of Veterans Affairs to veterans in rural and highly rural areas, and for other purposes; UDALL of New Mexico; to the Committee on Veterans' Affairs, Feb. 10.

**S. 2012** (ANABOLIC STEROIDS), to amend the Controlled Substances Act to more effectively regulate anabolic steroids; WHITEHOUSE; to the Committee on the Judiciary, Feb. 11.

**H.R. 4035** (MEDICARE), to amend Title XVIII of the Social Security Act to provide Medicare beneficiaries coordinated care and greater choice with regard to accessing hearing health services and benefits; MCDERMOTT; jointly, to the committees on Energy and Commerce and Ways and Means, Feb. 11.

**H.R. 4053** (VETERANS' HEALTH), to amend Title 38, U.S. Code, to direct the secretary of veterans affairs to establish standards for the provision of mammograms at health-care facilities of the Department of Veterans Affairs; NEGRETE MCLEOD; to the Committee on Veterans' Affairs, Feb. 11.

**H.J. RES. 110** (REFORM), granting the consent of Congress to the Health Care Compact; LANKFORD; to the Committee on the Judiciary, Feb. 11.