



## Health Policy Briefing

February 24, 2014

### Medicare Physician Payment Reform and Fiscal Year 2015 Budget

Congress will need to reach consensus on how to offset the estimated \$128 billion cost of reform over ten years in order to pass Medicare physician payment reform of the sustainable growth rate (SGR) formula. The enactment of S. 25, legislation to restore certain military pension cost of living adjustments (COLAs), included an extra \$2.4 million in offsets earmarked to help offset the cost of SGR reform legislation. As the March 31st deadline to address the SGR nears, Congress will need to pursue another temporary patch or work to pass H.R. 4015/S. 2000, the SGR legislation introduced by the relevant health committees. Federal budget matters are also expected to heat up the week of March 4th when the President releases his fiscal year (FY) 2015 budget documents. It is reported that the Administration will abandon previous goals to reform entitlement programs which included limiting Social Security and other federal pension program COLAs by means of a “chained consumer price index (CPI)”. Budget hawks are certain to take note of a recent Government Accountability Office (GAO) study finding that in FY 2009 about 31.6% of total Medicare

expenditures were related to expenses incurred by only 4.3% of all beneficiaries (largely new mothers with infants and those in long term care (LTC) facilities, having HIV/AIDS or disabilities). This week the House may also take up H.R. 2575, legislation reported by the House Ways and Means Committee that would increase the Patient Protection and Affordable Care Act’s (PPACA) 30-hour work week threshold to 40-hours.

#### Inside

- Administration Lauds PPACA Enrollment Uptick Amid Renewed Oversight by House.....2
- Final Regulations on PPACA Waiting Periods Released.....2
- Courts Respond to Republican/Democrat Sparring Over Individual Subsidies.....2
- Republicans Threaten CMS Medicare Part D Ruling.....2
- Beneficiaries Allowed to Access Medicare Physician Compare Website.....3
- NCHIT Proposes EHR Rules.....3
- CMS Proposes CY 2015 Medicare Advantage Rate Changes.....3
- CMS Expands Coverage for CHF.....3
- CMS Extends Comment Period on Emergency Preparedness Rules.....3
- HHS Gives Guidance on HIPAA Mental Health Record Compliance.....3
- Health-Related Hearings and Markups.....4
- Health-Related Legislation Recently Introduced.....4

## PPACA Health Reform Update

### *Administration Lauds PPACA Enrollment Uptick Amid Renewed Oversight by House*

**A**lthough the Congressional Budget Office (CBO) had originally estimated that enrollment under the PPACA would cover 7 million individuals, Vice President Biden said that it would be “a hell of a start” if enrollment reached five or six million by the end of March. While the Administration was encouraged by the recent acceleration in the number of individuals accessing coverage under HealthCare.gov, House Republicans continued their pursuit of fault-finding with the PPACA. House Energy and Commerce Committee Republican leaders sent a letter to GAO asking the agency to investigate the \$304 million in federal funding that Oregon used in establishing its state-run health insurance exchange which Republicans said has resulted in the “catastrophic breakdown of Cover Oregon” that has failed to enroll a single individual electronically. In addition, Reps. Andy Harris (R-MD) and Jack Kingston (R-GA) asked the U.S. Department of Health and Human Services (HHS) Office of Inspector General (OIG) to determine whether federal funding can be recouped from the Maryland exchange which has experienced similar problems, leading Maryland legislators to consider abandoning the site in favor of HealthCare.gov. The Centers for Medicare and Medicaid Services (CMS) has also granted the troubled Massachusetts exchange three additional months, beginning April 1st, in an effort to help that exchange complete enrollment applications that remain unprocessed. While HHS did respond to Republican criticism of the narrowing of provider networks available under PPACA compliant plans, as reported last week, health insurers received bad news from Moody’s which said that this rule and the “keep your plan” ruling would be considered “further credit negatives for health insurers selling policies on the health care exchanges....”

### *Final Regulations on PPACA Waiting Periods Released*

**H**HS/IRS/Department of Labor (DOL) released final regulations under the health law that requires group health plans and related health insurance issuers to comply with rules stating that such plans cannot include waiting periods that exceed 90 days from the end of an employment orientation period (no longer than one month). The rule also applies to rehires and employment reclassifications.

### *Courts Respond to Republican/Democrat Sparring Over Individual Subsidies*

**I**n another negative court ruling for those contending that PPACA subsidies to individuals cannot be extended to those enrolling under the federal exchange, the U.S. District Court for the Eastern District of Virginia followed a similar DC District Court ruling that dismissed a complaint that the IRS overstepped its authority in construing the statute more broadly. House and Senate Democrat leaders, as well as America’s Health Insurance Plans (AHIP), have filed briefs in favor of the federal government in the DC case which is on appeal.

## Medicare/Medicaid/PHSA Corner

### *Republicans Threaten CMS Medicare Part D Ruling*

**F**ollowing objections from House Republican leaders, Senator Orrin Hatch (R-UT) and Reps. Dave Camp (R-MI) and Fred Upton (R-MI) sent a letter to the CMS Administrator calling the proposed “Contract Year 2015 Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs” a bureaucratic overreach that would undermine a highly functioning marketplace and that would lead to higher premiums, copayments and deductibles. If the ruling (including one that would restrict formularies and limit to two the number of drug plans in prescription drug plan (PDP) regions) is not changed, they indicated they will examine possible legislative options to overturn the objectionable parts. Final comments on the proposal are due by March 7th.

## **Medicare/Medicaid/PHSA Corner cont.**

### **Beneficiaries Allowed to Access Medicare Physician Compare Website**

**C**MS made a public announcement that Medicare beneficiaries will soon be allowed to view physician quality ratings on the agency's Physician Compare website. However, in the first year the ratings will only be available for 66 group practices and 141 accountable care organizations (ACOs).

### ***NCHIT Proposes EHR Rules***

**T**he Office of the National Coordinator for Health Information Technology (NCHIT) released a proposed ruling under which the criteria of the 2015 electronic health record certification program can be met voluntarily. Separate from the CMS "meaningful use" standards, the NCHIT rules would allow electronic health record (EHR) developers to determine whether or not to incorporate the NCHIT standards into the EHR products used currently by participants in the meaningful use program.

### **CMS Proposes CY 2015 Medicare Advantage Rate Changes**

**C**MS released estimates of proposed Medicare Advantage (MA) plan rates for 2015 which would result in about a 2% decrease over this year. CMS said the reduction is related to the "historically low growth in Medicare per-capita spending". A letter to CMS sent by 40 Senators asked the agency to maintain Medicare Advantage funding in 2015 at a level "that will allow MA beneficiaries to be protected from disruptive changes." Comments on the proposal are due by March 7th.

### ***CMS Expands Coverage for CHF***

**C**MS released a final decision memorandum stating that Medicare coverage will be expanded for cardiac rehabilitation services by including beneficiaries with certain chronic heart failure (CHF) conditions. Cardiac rehab services, overseen by physicians, are defined under the ruling as including: physician-prescribed exercise; cardiac risk factor modification, including education, counseling and behavioral intervention; psychosocial assessment; and outcomes assessment.

### ***CMS Extends Comment Period on Emergency Preparedness Rules***

**C**MS gave notice that it is extending until March 31st the comment period on the proposed rule "The Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers."

### ***HHS Gives Guidance on HIPAA Mental Health Record Compliance***

**T**he HHS Office for Civil Rights issued guidance in Q&A format as to how health care providers are to comply with the Health Insurance Portability and Accountability Act (HIPAA) privacy rules as they apply to mental health records, including their disclosure to family and friends.

## Upcoming Health-Related Hearings and Markups

**Senate HELP Committee:** will hold a hearing titled *“Examining Mental Health: Treatment Options and Trends;”* 10:00 a.m., 430 Dirksen Bldg.; Feb. 25.

**House Energy and Commerce Subcommittee on Health:** will hold a hearing titled *“Messing with Success: How CMS’ Attack on the Part D Program Will Increase Costs and Reduce Choices for Seniors;”* 10:00 a.m., 2123 Rayburn Bldg.; Feb. 26.

**House Education and the Workforce Subcommittee on Health, Employment, Labor and Pensions:** will hold a hearing on *self-insurance health plans;* 10:00 a.m., 2175 Rayburn Bldg.; Feb. 26.

**Senate HELP Committee:** will hold a confirmation hearing to consider several education, health and labor nominations, including *Vivek Hallegere Murthy, of Massachusetts, to serve as Surgeon General of the Public Health Service;* 10:00 a.m., 430 Dirksen Bldg.; Feb. 26.

**Senate Appropriations Subcommittee on Labor, Health and Human Services, Education and Related Agencies:** will hold a hearing on the *economic impact of Alzheimer’s disease in America and the state of Alzheimer’s prevention and treatment research;* 2:00 p.m., 106 Dirksen Bldg.; Feb. 26.

**House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies:** will hold a hearing on *proposed FY 2015 appropriations for agencies, programs and activities under its jurisdiction;* 10:00 a.m., 2358-C Rayburn Bldg.; Feb. 27.

**House Energy and Commerce Subcommittee on Oversight and Investigations:** will hold a hearing titled *“Counterfeit Drugs: Fighting Illegal Supply Chains;”* 10:00 a.m., 2322 Rayburn Bldg.; Feb. 27.

**House Budget Committee:** will hold a hearing on the *President’s Fiscal Year 2015 Budget;* 2:00 p.m.; 210 Cannon Bldg.; 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.