



Health Policy Briefing

March 18, 2013

Congressional Activity of the Week

All About Spending

This coming week, the Senate intends to finish its floor discussion of HR 933, the Continuing Resolution (CR), which will keep the government funded through the end of Fiscal Year 2013. After spending the bulk of the Senate floor time last week, **Majority Leader Reid** (D-NV) has indicated that the Senate plans to invoke cloture (a procedural vote to allow a bill to move forward) on the legislation Monday evening, paving the way for final Senate passage on Wednesday at the latest. With the current continuing resolution ending on March 27, both the House and Senate leaders would like to wrap up discussions before the start of the Easter/Passover recess, beginning as early as this Friday.

The Senate manager's package maintained key health-related provisions of the House-passed legislation, including \$1.043 T in total budget authority while leaving sequestration in place, a \$10 M rescission from the Independent Payment Advisory Board (IPAB), and a \$6.4 B rescission for Medicaid/CHIP performance bonus payments. Unlike the House version of the legislation, the manager's amendment in the Senate also included a rescission of \$200 M

from the community-based care transition program included within the Affordable Care Act (ACA), additional funding for food safety activities at the Food and Drug Administration, and an additional \$71 M for funding at the National Institutes of Health (NIH), among other items. The Senate floor debate has resulted in very few changes to the underlying legislation. The first health-related amendment by **Sen. Cruz** (R-TX) to prohibit the use of funds to carry out the ACA was rejected by a vote of 45-52 on Wednesday. On Thursday, the Senate rejected a Harkin (D-IA) amendment by a vote of 54-45 that would, among other things, increase NIH funding by \$211 million and provide a \$29 million increase for the Ryan White AIDS Drug Assistance Program.

Inside

Budget Battles.....	2
E&C Hearing – Health Insurance Premiums.....	2
Sebelius Discusses ACA Implementation With Senate Committee.....	3
Long Term Care Commission.....	3
Bill Aims To Increase Residency Slots Ahead Of Projected Physician Shortage.....	4
MedPAC March Report Focus of Recent Ways and Means Health Subcommittee Hearing.....	4
Updated Part B Rebilling Rule and Initial Reaction.....	5
Pandemic Bill Signed by President.....	5
House Labor-HHS Subcommittee Hearing.....	5
Supreme Court to Hear Generic Drug Suit This Week..	5
Upcoming Health Hearings.....	6
Health Legislation Recently Introduced.....	7

Budget Battles

As expected, House Budget Committee Chair Paul Ryan (R-WI) released the House Republican budget proposal on Tuesday of last week. His budget blue print balanced the budget in ten years by maintaining the current sequestration cuts, by including a so-called Medicare premium support program under which beneficiaries would receive a subsidy to purchase either a private health care plan or a traditional Medicare plan, by block-granting Medicaid, by repealing the Affordable Care Act (ACA) expansion of Medicaid and exchange subsidies, by including medical liability reform (which includes a cap on non-economic damages), and by including a full repeal of the Independent Payment Advisory Board (IPAB). Democrats quickly noted that the Ryan budget plan would cause real harm to the Medicaid and Medicare programs. After rejecting amendments to increase taxes rather than block grant Medicaid, maintain support for the health care law's pre-existing condition provisions, reject the proposed changes to Medicare, and increase funding for a variety of programs including the National Institutes of Health (NIH), the House budget committee quickly moved to report out the legislation (on a party-line vote) last Wednesday, and the Majority Leader has recently indicated that the House will take up this legislation this week.

Senate Budget Committee Chair Patty Murray (D-WA) released a dueling Senate budget proposal on Wednesday of last week. In contrast to the Ryan budget, Sen. Murray's proposal would not maintain the current sequestration (including the 2% cut to Medicare providers), would not make specific changes to Medicare or Medicaid, would not repeal the IPAB, would not include medical liability reforms, and would leave the ACA intact. In lieu of more dramatic health care changes, her budget would instead assume the repeal of the Medicare Sustainable Growth Rate (SGR) funding formula, without indicating the proposal to replace the SGR funding formula and include \$275 billion in cuts to health spending "by further realigning incentives throughout the system, cutting waste and fraud and seeking greater engagement across the health care system." Of the \$275 billion cuts in health care, \$265 billion are in Medicare and \$10 B are in Medicaid. Republicans quickly noted that the budget plan does not require a balanced budget in 10 years, thus falling short of its stated goals. After rejecting amendments to create a point of order if the budget is not balanced by 2023, to require that the \$275 billion cuts in health care have formal reconciliation instructions, to repeal the medical device tax, to means test Medicare, and to include medical liability reform, the Senate budget committee quickly moved to report out the legislation (on a party-line vote) last Thursday. The Senate Committee aides have indicated that the full Senate will likely consider the legislation as early as this week. The last time the Senate voted on a budget was in 2009.

PPACA Health Reform Update

E&C Hearing – Health Insurance Premiums

Last Friday, the House Energy and Commerce Health Subcommittee held a hearing entitled "Unaffordable: Impact of Obamacare on Americans' Health Insurance Premiums." As expected, the Republicans focused on the "broken promise" of health care reform to help lower costs for Americans, noting the potential rate shock due to community rating, guaranteed issue, limit of age rating, and the essential health benefits, especially as it relates to young adults. The Democrats countered that other changes within the Affordable Care Act or ACA (including health insurance subsidies, the catastrophic care plan, and the ability to stay on one's parents' plan longer) assist young adults. Further highlighting the difference of opinion in the total effect on the ACA on insurance premiums, the witnesses shared differing opinions. Christopher Carlson, an official with Oliver Wyman, noted that most people will see a decrease in the amount of premiums they pay as a result of the law's subsidies to purchase insurance, while former Congressional Budget Office director Douglas Holtz-Eakin predicted a rise in premiums.

PPACA Health Reform Update cont.

Sebelius Discusses ACA Implementation With Senate Committee

The Senate Finance Committee held a closed-door hearing with HHS Secretary Kathleen Sebelius last Thursday, which followed a series of one-on-one meetings with committee members last Wednesday.

As part of those discussions, the Secretary fielded questions on a variety of topics, including the complexity of the forms that people will need to fill out to enroll in coverage on insurance exchanges and the need for age rating provisions that will lower premiums for older Americans and raise them for younger ones. Members of the House Ways and Means Health Subcommittee subsequently requested conversations with the Secretary to discuss implementation of the health care law.

Long Term Care Commission

Last Tuesday, President Obama named his three appointees to a new federal commission on long-term care. The President appointed Henry Claypool, executive vice president of the American Association of People with Disabilities; Julian Harris, director of the Office of Medicaid in Massachusetts; and Carol Raphael, vice chairwoman of the AARP Board of Directors.

The Obama nominees join the twelve other appointees, including 3 nominees selected by House Speaker John A. Boehner -- 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 -- 3 nominees selected by Senate Minority Leader Mitch McConnell -- Bruce D. 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, 3 nominees by House Minority Leader Nancy Pelosi -- Bruce Chernof, president and chief executive of the SCAN Foundation; Judith Stein, founder of the Center for Medicare Advocacy; and George Vrandenburg, a philanthropist and former entertainment executive, and 3 nominees by Senate Minority Leader Harry Reid -- Javaid Anwar, a Nevada physician; Laphonza Butler of California, president of the United Long-Term Care Workers Union; and Judy Feder of Virginia, a professor of public policy at the Georgetown Public Policy Institute.

The temporary commission, which was created as part of the fiscal cliff legislation (PL 112-240) to replace the Community Living Assistance Services and Support program, will have six months to send Congress recommendations on how best to provide long-term care to the nation's elderly and people with disabilities.

Medicare/Medicaid/Public Health Services Corner

Bill Aims To Increase Residency Slots Ahead Of Projected Physician Shortage

House Republican Aaron Schock and Democrat Allyson Y. Schwartz introduced legislation last week that would increase the number of graduate medical training slots for the first time in 15 years, given the increased need for additional physicians to address the health care expansion in the Affordable Care Act, as well as baby boomers entering their senior years. A 1997 balanced-budget law (PL 105-33) capped the federal support for graduate-medical-education training, which hospitals say prevents them from expanding their programs. Schock has noted that in the past 15 years, the country's population has grown by 50 million people, and that by 2015, there will be a shortage of 62,900 physicians.

Therefore, to address potential looming physician shortages, the "Training Tomorrow's Doctors Today Act" would increase the number of federally funded positions for residencies, internships and fellowships, while requiring that 50 percent of the positions train residents in primary care. The bill would add 3,000 new graduate-medical-education positions at teaching hospitals every year for five years. The bill would dole out slots based on need, and no hospital would get more than 75 additional slots per year. In addition, the bill would require federal health officials to study the specialty needs of the U.S. healthcare system as they evolve and allocate residencies accordingly. According to Schwartz, the bill would cost an estimated \$9 billion to \$10 billion over 10 years.

MedPAC March Report Focus of Recent Ways and Means Health Subcommittee Hearing

Members of the House Ways and Means Health Subcommittee questioned Glen M. Hackbarth, chair of the Medicare Payment Advisory Commission (MedPAC), about recommendations for reforming how Medicare pays for healthcare during a hearing on the Commission's March Report to the Congress. Subcommittee chairman Kevin Brady (R-TX) focused on the importance of a solvent Medicare program but specifically mentioned growing frustration and concern over Medicare physician payment under the flawed Sustainable Growth Rate (SGR) formula. Mr. Hackbarth emphasized the need to move toward value-based purchasing in Medicare through accountable care organizations and bundled payments stating they were the most important steps policy makers could take to improve quality and costs. Other subcommittee members raised concerns about Medicare payments to ambulatory surgery centers (ASCs), specifically, the use of the consumer price index for urban consumers (CPI-U) as a proxy for updating ASC payments each year. The MedPAC chairman agreed that a better mechanism for updating ASCs was needed and pointed to the Commission's recommendation for ASC cost reporting, which would help Medicare develop a more appropriate proxy. Differential payments to primary care and specialty physicians for Evaluation and Management (E/M) services were also raised by subcommittee members. Mr. Hackbarth responded that MedPAC has already recommended equalization of payments for E&M services and they are in the process of looking in to equalization of other services. MedPAC's March Report to the Congress is available at www.medpac.gov.

Medicare/Medicaid/Public Health Services Corner cont.

Updated Part B Rebilling Rule and Initial Reaction

A new CMS Ruling was published March 13, 2013 that revises the current policy on Part B billing following the denial of a Part A inpatient hospital claim that was found to be not reasonable and necessary. Under current policy, if a hospital incorrectly bills Medicare for Part A hospitalization services, rather than less-expensive Part B physician care, the wrong setting of care billing error would cause the hospital to forfeit all reimbursement for services. Hospitals claim that Medicare's recovery audit contractors (RAC), who are paid a percentage of the money they recover from hospitals, have targeted these lucrative setting-of-care decisions and that hospitals have been collectively denied hundreds of millions of dollars by Medicare because of disputes over the differences between inpatient and outpatient care. The new ruling directs Medicare judges to allow hospitals to claim Part B inpatient costs in cases where the setting of care was initially wrong and to also separately bill Medicare for some Part B outpatient services that would otherwise have been "bundled" into the Part A bill because they occurred within three days of the hospitalization. The ruling is expected to affect thousands of hospital claims currently pending in the appeals process and to cut \$4.8 billion in Medicare payments to hospitals over the next five years.

The rule was accompanied by a separate notice of proposed rulemaking on the same topic that critics say would actually make it tougher for hospitals to get paid in wrong-setting-of-care cases in the long run because it imposes a one-year time limit for Part B claims, which would apply even if a RAC took longer than a year to appeal a claim.

Despite CMS's overture, the American Hospital Association issued a statement that it will not drop ongoing litigation against CMS, noting that the "proposed rule threatens to undermine the progress made on this important issue. Under the proposal, hospitals will be able to rebill CMS only within the narrow time frame of one year from when patient services were provided. Since the recovery audit contractor typically reviews claims that are more than a year old, the practical effect would be that hospitals would again not be fairly reimbursed for the care they provide Medicare patients."

Pandemic Bill Signed by President

On March 13, 2013, the President signed H.R. 307, the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Public Law No: 113-5). The legislation will facilitate the development of chemical, biological, radioactive and nuclear (CBRN) medical countermeasures and enhance the response to public health emergencies and disasters, including those caused by CBRN attack; and amends the Public Health Service Act (PHSA) to authorize funding for various Department of Health and Human Services (HHS) agencies to support the readiness of the public health system for such emergencies.

House Labor-HHS Subcommittee Hearing

Last Wednesday, on March 13, 2013, the House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies held a hearing to discuss fiscal year 2014 appropriations under their jurisdiction. Health-related public witnesses presented testimony related to funding for a variety of critical health programs, focusing primarily on activities with the National Institutes of Health, Centers for Disease Control and Prevention, and the Health Resources and Services Administration.

Supreme Court to Hear Generic Drug Suit This Week

This week, the Supreme Court will hear oral arguments about whether to close off one possible avenue of legal relief for consumers who are injured by generic drugs. In 2011, the court ruled in *PLIVA v. Mensing*, that a generic drugmaker could not be held liable for failing to adequately warn consumers of side effects in its labeling because federal law requires generic drugs to carry the same label as the brand name. The current case pending before the Supreme Court -- *Mutual Pharmaceutical Co. v. Bartlett* -- examines whether generic drug companies should stop selling the product and be held liable if they do not. This is not the only generic drug case the court expects to hear this month. The second case centers on what the Federal Trade Commission has labeled "pay for delay" patent settlements between brand-name and generic drugs.

Hart Health Strategies

Upcoming Health Hearings

6

Health Subcommittee (Chairman Pitts, R-PA) of House Energy and Commerce Committee will hold a hearing titled “**Saving Seniors and Our Most Vulnerable Citizens From an Entitlement Crisis**,” 4:00 p.m., 2322 Rayburn Bldg., March 18

Subcommittee on Communications and Technology (Chairman Walden, R-OR) of House Energy and Commerce Committee will hold a hearing titled “**Health Information Technologies: Harnessing Wireless Innovation**,” 10:30 a.m., 2123 Rayburn Bldg., March 19

House Appropriations, Subcommittee on Labor, Health and Human Services, Education and Related Agencies will hold a hearing on **Labor, HHS, Education Management Challenges**, 10 a.m., 2358-C Rayburn Bldg., March 19

Senate Finance Committee (Chairman Baucus, D-MT) will hold a hearing titled “**Reforming the Delivery System: The Center on Medicare and Medicaid Innovation**,” 10:00 a.m., 215 Dirksen Bldg., March 20

Labor, Health and Human Services, Education, and Related Agencies Subcommittee (Chairman Kingston, R-GA) of House Appropriations Committee will hold a hearing on **children’s mental health**, 10:00 a.m., 2358-C Rayburn Bldg., March 20

Health Subcommittee (Chairman Pitts, R-PA) of House Energy and Commerce Committee will hold a hearing titled “**Health Information Technologies: How Innovation Benefits Patients**,” 10:00 a.m., 2123 Rayburn Bldg., March 20

Subcommittee on Oversight and Investigations (Chairman Murphy, R-PA) of House Energy and Commerce Committee will hold a hearing titled “**Health Information Technologies: Administration Perspectives on Innovation and Regulation**,” 9:00 a.m., 2322 Rayburn Bldg., March 21

Health Legislation Recently Introduced

S. 516 (PROSTATE CANCER):

A bill to reduce disparities and improve access to effective and cost efficient diagnosis and treatment of prostate cancer through advances in testing, research, and education, including through telehealth, comparative effectiveness research, and identification of best practices in patient education and outreach particularly with respect to underserved racial, ethnic and rural populations and men with a family history of prostate cancer, to establish a directive on what constitutes clinically appropriate prostate cancer imaging, and to create a prostate cancer scientific advisory board for the Office of the Chief Scientist at the Food and Drug Administration to accelerate real-time sharing of the latest research and accelerate movement of new medicines to patients; TESTER; to the Committee on Health, Education, Labor, and Pensions, March 12

S. 531 (PHYSICAL ACTIVITY): A bill to provide for the publication by the Secretary of Health and Human Services of physical activity guidelines for Americans; HARKIN; to the Committee on Health, Education, Labor, and Pensions, March 13

S. 539 (DIABETES): A bill to amend the Public Health Service Act to foster more effective implementation and coordination of clinical care for people with pre-diabetes and diabetes; SHAHEEN; to the Committee on Health, Education, Labor, and Pensions, March 13

H.R. 1070 (COLORECTAL CANCER): A bill to amend title XVIII of the Social Security Act to waive coinsurance under Medicare for colorectal cancer screening tests, regardless of whether therapeutic intervention is required during the screening; DENT; jointly, to the committees on Energy and Commerce and Ways and Means, March 13

H.R. 1074 (DIABETES): A bill to amend the Public Health Service Act to foster more effective implementation and coordination of clinical care for people with pre-diabetes and diabetes; OLSON; to the Committee on Energy and Commerce, March 13

Health Legislation Recently Introduced cont.

H.R. 1076 (REFORM): A bill to amend the Patient Protection and Affordable Care Act to provide for savings to the Federal Government by permitting pass-through funding for State authorized public entity health benefits pools; HALL; jointly, to the committees on Energy and Commerce and Ways and Means, March 13

H.R. 1098 (TRAUMA): A bill to amend the Public Health Service Act to reauthorize certain programs relating to traumatic brain injury and to trauma research; PASCARELL; to the Committee on Energy and Commerce, March 13

H.R. 1099 (PREVENTION): A bill to repeal the Prevention and Public Health Fund; PITTS; to the Committee on Energy and Commerce, March 13

H.R. 1102 (MEDICARE PART D): A bill to amend part D of title XVIII of the Social Security Act to require the Secretary of Health and Human Services to negotiate covered part D drug prices on behalf of Medicare beneficiaries; WELCH; jointly, to the committees on Energy and Commerce Ways and Means, March 13

H.R. 1134 (VETERANS HEALTH): To direct the Secretary of Veterans Affairs to carry out a grant program and pilot program designed to improve the delivery of health care to veterans residing in rural areas, and for other purposes; GALLEGRO; referred to the House Committee on Veterans' Affairs, March 14

H.R. 1140 (HEALTH SAVINGS ACCOUNT): To amend the Internal Revenue Code of 1986 to permit the medical expenses of dependents who have not attained age 27 to be paid from a health savings account; OWENS; referred to the House Committee on Ways and Means, March 14

H.R. 1146 (RADIATION THERAPY): To amend the Public Health Service Act and title XVIII of the Social Security Act to make the provision of technical services for medical imaging examinations and radiation therapy treatments safer, more accurate, and less costly; WHITFIELD; jointly, to the committees on Energy and Commerce and Ways and Means, March 14

S. 557 (MEDICARE PART D): A bill to amend title XVIII of the Social Security Act to improve access to medication therapy management under part D of the Medicare program; HAGAN; read twice and referred to the Committee on Finance, March 14

S. 560 (REFORM): A bill to provide that the individual mandate under the Patient Protection and Affordable Care Act shall not be construed as a tax; LEE; to the Committee on Finance, March 15

S. 562 (MENTAL HEALTH): A bill to amend title XVIII of the Social Security Act to provide for the coverage of marriage and family therapist services and mental health counselor services under part B of the Medicare program, and for other purposes; WYDEN; to the Committee on Finance, March 15

S. 569 (SKILLED NURSING): A bill to amend title XVIII of the Social Security Act to count a period of receipt of outpatient observation services in a hospital toward satisfying the 3-day inpatient hospital requirement for coverage of skilled nursing facility services under Medicare; BROWN; to the Committee on Finance, March 15

S. 577 (GRADUATE MEDICAL EDUCATION): A bill to amend title XVIII of the Social Security Act to provide for the distribution of additional residency positions, and for other purposes; NELSON; to the Committee on Finance, March 15

H.R. 1148 (RADIOLOGY): A bill to amend title XVIII of the Social Security Act to provide for payment for services of qualified radiologist assistants under the Medicare program; REICHERT; jointly, to the committees on Energy and Commerce, and Ways and Means, March 15

H.R. 1150 (ANTIMICROBIALS): A bill to amend the Federal Food, Drug, and Cosmetic Act to preserve the effectiveness of medically important antimicrobials used in the treatment of human and animal diseases; SLAUGHTER; to the Committee on Energy and Commerce, March 15

H.R. 1173 (ADVANCE CARE PLANNING): A bill to amend the Social Security Act to provide for coverage of voluntary advance care planning consultation under Medicare and Medicaid, and for other purposes; BLUMENAUER; jointly, to the committees on Energy and Commerce and Ways and Means, March 15

Health Legislation Recently Introduced cont.

H.R. 1178 (GRADUATE MEDICAL EDUCATION): A bill to amend the Public Health Service Act to authorize grants for graduate medical education partnerships in States with a low physician-resident-to-general-population ratio; CASTOR; to the Committee on Energy and Commerce, March 15

H.R. 1179 (SKILLED NURSING): A bill to amend title XVIII of the Social Security Act to count a period of receipt of outpatient observation services in a hospital toward satisfying the 3-day inpatient hospital requirement for coverage of skilled nursing facility services under Medicare; COURTNEY; jointly, to the committees on Ways and Means and Energy and Commerce, March 15

H.R. 1180 (GRADUATE MEDICAL EDUCATION): A bill to amend title XVIII of the Social Security Act to provide for the distribution of additional residency positions, and for other purposes; CROWLEY; jointly, to the committees on Ways and Means and Energy and Commerce, March 15

H.R. 1188 (PHARMACIES): A bill to ensure and foster continued safety and quality of care and a competitive marketplace by exempting independent pharmacies from the antitrust laws in their negotiations with health plans and health insurance insurers; MARINO; to the Committee on the Judiciary, March 15

H.R. 1200 (REFORM): A bill to provide for health care for every American and to control the cost and enhance the quality of the health care system; MCDERMOTT; jointly, to the committees on Energy and Commerce and Ways and Means, March 15

H.R. 1201 (GRADUATE MEDICAL EDUCATION): A bill to amend title XVIII of the Social Security Act to provide for the distribution of additional residency positions, and for other purposes; SCHOCK; jointly, to the committees on Ways and Means and Energy and Commerce, March 15

H.R. 1205 (PREMIUM RATES): A bill to amend title XXVII of the Public Health Service Act to require health insurance issuers and group health plans to disclose information regarding how certain taxes and fees impact the amount of premiums, and for other purposes; WALDEN; to the Committee on Energy and Commerce, March 15