



Health Policy Briefing

March 25, 2013

House and Senate Pass FY 2013 CR & Separate Conflicting Ten-Year Budget Resolutions

Passage of FY 2013 CR Avoids Government Shutdown

After the Senate amended and voted 73-26 to approve H.R. 933, the FY 2013 continuing resolution (CR) funding federal agencies through September, the House voted 318-109 to send the CR to the President for his signature. With the current CR expiring on March 27th, the compromise bill passed by Senate Democrats and House Republicans avoided a potential shutdown of the federal government and allowed both chambers to go ahead with their scheduled Spring recess this week. The legislation includes full-year Defense, Military Construction/Veterans Affairs, Agriculture/FDA, Commerce/Justice/Science and Homeland Security Appropriations bills. Nonetheless, the bill does not alter sequestration cuts of \$85 billion and the discretionary spending limit of \$984 billion which affects all agencies. The 2% reduction in Medicare reimbursement rates mandated under the Budget Control Act (BCA) will also take effect for the remainder of FY 2013. Among other things, the legislation: corrects a \$40 million flaw

under sequestration, thus allowing the FDA to continue collecting all user fees at current law levels; cuts \$10 million from the PPACA Independent Payment Advisory Board; and increases NIH funding by \$71 million. Of note, the Senate avoided a dispute with the House by refusing to include: an additional \$949 million requested by the Administration to implement health insurance exchanges and other provisions under the PPACA; and a Harkin amendment to increase NIH funding by \$211 million. The House also rejected alternative budget plans offered by the Republican Study Committee (which would raise the Medicare eligibility age from 65 to 70 over time) and another by House Democrat leaders (that among other things would maintain the PPACA).

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House Adopts FY 2013-2023 Budget Resolution

On Thursday by a vote of 221-207, the House adopted H. Con. Res. 25, setting forth budget levels for fiscal years 2014 through 2023. In general, the budget resolution would eventually produce a balanced budget by reducing federal spending by \$4.6 trillion over ten years (\$2.7 billion from federal health programs) and direct the Ways and Means Committee to come up with tax reform provisions without changing projected revenues under current law. Of note, the plan would place a discretionary spending cap of \$966 billion for FY 2014 and require any increase in mandatory spending to be offset by spending reductions. Among the major health related provisions, the budget resolution would: provide for a Medicare premium support system beginning in 2024 for those born in 1959 or later that would give beneficiaries a subsidy equal to “average plan cost” to purchase a private plan or a traditional Medicare option; save \$750 billion by block-granting Medicaid and capping increases using population growth, not medical prices; repeal the PPACA (except for \$716 billion in certain Medicare savings under the program); and repeal the SGR formula and replace the current Medicare physician payment system; etc. Rejected was the Democrat alternative which would: retain the PPACA; repeal the 2% Medicaid reimbursement cuts mandated under sequestration; retain Medicaid without a block-grant; provide for a Medicare physician payment fix at a cost of \$138 billion over 10 years; cut Medicare spending by \$141 billion by giving committees options to extend Medicaid drug rebates to Medicare and to adopt MedPAC savings recommendations, etc.

Senate Adopts First Budget Plan Since 2009

Early Saturday morning, by a 50-49 vote, the Senate adopted S. Con. Res. 8, which sets forth FY 2014 budget levels for Senate committees, revises appropriate budgetary levels for FY 2013 and provides guidelines for spending and revenues in the FY 2015-2023 period. Opposed by all Senate Republicans, the budget resolution also received “no” votes from Democrat Senators Baucus (MT), Begich (AK), Hagan (NC) and Pryor (AR). By adopting budget resolutions before April 1, the Senate (and House) avoided having their members’ pay placed into escrow. In general, while the budget resolution would reduce the deficit by \$1.85 billion from FY 2014-2023 by means of both spending cuts and revenue increases, a \$566 billion deficit would remain at the end of the period. In addition, the budget plan would replace the \$1.2 trillion in mandated cuts under sequestration, including the 2% cut in Medicare reimbursement rates, with a balance of targeted spending cuts and new tax revenues. Notable health-related provisions include: a \$265 billion reduction in Medicare spending and a \$10 billion reduction in Medicaid spending that does not affect beneficiaries; a Stabenow amendment to “establish a deficit-neutral reserve fund (DNRf) to protect Medicare’s guaranteed benefits and to prohibit replacing guaranteed benefits with the House-passed budget plan to turn Medicare into a voucher program”; a Johanns (R-NE) amendment to “establish a DNRf to restore family health care flexibility by repealing the health savings account and flexible spending account restrictions under the PPACA”; and a non-binding Hatch (R-UT) amendment to repeal the medical device tax under the PPACA; etc. Showing that the two Houses are unlikely to agree on a mutual budget resolution, the Senate voted 40-59 to reject an amendment that would have substituted the Ryan House-passed budget resolution for the Senate provisions. Five Republicans voted against the Ryan budget, including Senators Collins (ME), Cruz (TX), Heller (NV), Lee (UT) and Paul (KY). Of note, the Congressional Budget Office (CBO) would be directed to: report changes in direct spending and revenue associated with the PPACA, including the net impact on the deficit, both with on-budget and off-budget effects; and provide an analysis of the budgetary effects of 30%, 50%, and 100% of all Americans losing their employer sponsored health insurance and accessing coverage through federal or state exchanges.

PPACA Health Reform Update

Senators ask for Results from PPACA Innovation Center

At a Senate Finance Committee hearing, Chairman Max Baucus (D-MT) said that, while the CMS Center for Medicare and Medicaid Innovation (CMMI) has established more than thirty new programs affecting over five million Medicare beneficiaries, he and other committee members are anxious to see the results. The CMMI Director testified that the results for the Pioneer Accountable Care Organization program will be available this summer. He said that there is no simple solution to improving health care delivery and that numerous projects are underway that could help improve health care quality and lower costs. However, Senator Orrin Hatch (R-UT) appeared skeptical of the results forthcoming from the ten-year \$10 billion PPACA program, saying that “CMMI is tasked with letting ‘a thousand flowers bloom.’ What I really wonder is if this is simply a euphemism for barely controlled chaos...”

Regulations Limit Waiting Periods Under PPACA

The IRS and the Departments of Treasury and Labor released proposed regulations requiring group health plans and group health insurance issuers to limit the time of any waiting periods to 90 days or less.

Court Says PPACA Preempts State Law Limiting Coverage under the Law

In a recent PPACA-related decision, the U.S. District Court for the Eastern District of Missouri held that a Missouri law that requires health insurers to offer plans that exclude contraceptive coverage conflicts with the PPACA which includes a requirement for the inclusion of preventive service contraception coverage without cost in all plans issued to individuals and employers. The court invalidated the state law provision as being in conflict with the Supremacy Clause under the U.S. Constitution.

Democrats Criticize EHB Dental Regulations

Senator Ben Cardin (D-MD) and several other Democrats sent a letter to the CMS acting administrator expressing their concern that the final regulations spelling out “essential health benefits” under the PPACA will impede the offering of “affordable and accessible” pediatric dental care. They said that the provision allowing stand-alone dental plans to impose a separate out-of-pocket limit for pediatric dental benefits is inconsistent with congressional intent. They asked CMS to make such plans more affordable under the federally facilitated exchange by requiring them to vary OOP costs by family income. In addition, Senator Cardin offered an amendment on the budget resolution to improve oral health care for children with Medicaid coverage which passed by voice vote.

Medicare/Medicaid/Public Health Services Corner

House Energy and Commerce Committee Health Agenda

The Chairman of the House Energy and Commerce Committee, Rep. Fred Upton (R-MI), and the Health Subcommittee Chairman, Joe Pitts (R-PA), released a list of five “policy concepts” they said were priorities for the 113th Congress. They include: an idea in last week’s hearing to keep mobile medical applications and other health technology free from pre-market approval requirements and the PPACA medical device tax (at the hearing the FDA said it has no plans to regulate consumer smart-phones and tablet computers as medical devices and that the FDA would not consider mobile platform manufacturers or medical apps distributors, such as the iTunes App store or the Android market, to be medical device manufacturers); empowering the critically ill to structure their own treatment and clarify the use of off-label drugs; reauthorizing the animal drug and animal generic drug user fee legislation (in related news, the Senate HELP Committee voiced approval of legislation that would reauthorize FDA user fees for the review and approval of animal drugs as well as legislation to establish standards for research and transplantation of HIV-infected organs); encouraging the development of antibiotics; creating a workable framework for tracking drugs through the supply chain; and creating an FDA board of directors to assess the FDA’s performance and to make recommendations for improvement.

MedPAC Annual Report to Congress

As the House and Senate seek to implement their budget reconciliation plans, the recommendations made by MedPAC in its annual report to Congress, if implemented, are said to possibly reduce Medicare spending by \$30 billion over five years. Among the recommendations: requiring outpatient care rates at hospitals to match the same care given at lower rates at physician offices (\$10 billion in savings); reducing payments for skilled nursing facilities (up to \$10 billion in savings); implementing the PPACA provision requiring Medicare to review hospice providers with a large number of patients who are treated for longer than six months (\$1-5 billion in savings); and enforcing the PPACA provision allowing the withholding of payments because of patterns of fraudulent activity (\$750 million to \$2 billion in savings in 2014). The MedPAC Chairman has also testified that the SGR physician payment formula be replaced to help ensure that Medicare costs are constrained and that quality is improved. He said that the cost of a doc fix could be partially offset through reforms to SNF and home health payments.

MACPAC Recommendations to Congress

The Medicaid and CHIP Payment and Access Commission (MACPAC) also released a report to Congress which contains several recommendations, including: allowing states to implement 12-month continuous eligibility for children enrolled in CHIP and adults enrolled in Medicaid to reduce administrative costs and prevent churning between health programs; and permanently funding the Transitional Medical Assistance (TMA) program to help provide certainty to states and families. The report also contains an update of MACStats information showing state-specific Medicaid and CHIP enrollment, spending, eligibility levels, benefits covered and federal matching rates.

Senators Ask for Medicare Rate Reduction Relief

Senate Finance Committee leaders Max Baucus (D-MT) and Orrin Hatch (R-UT) sent a letter to CMS criticizing the agency’s proposed rate reductions in 2014 for Medicare Advantage plans. In another similar letter, Senators Grassley (R-IA), Schumer (D-NY), Wyden (D-OR) and 19 others said the proposed reductions would reduce the ability of MA plans to coordinate care for the chronically ill. A letter from 98 House members suggested that the cuts could amount to as much as 7.8% and require beneficiaries to pay up to \$90 more a month in premiums. They suggest that CMS use “administrative discretion” to correct the situation.

Health Legislation Recently Introduced

S. 602 (PHYSICAL THERAPISTS), to amend the Public Health Service Act to provide for the participation of physical therapists in the National Health Service Corps Loan Repayment Program, and for other purposes; TESTER; to the Committee on Health, Education, Labor, and Pensions, March 19.

S. 603 (REFORM), to repeal the annual fee on health insurance providers enacted by the Patient Protection and Affordable Care Act; BARRASSO; to the Committee on Finance, March 19.

S. 608 (HEALTH INSURANCE COVERAGE), to amend title XVIII of the Social Security Act and title XXVII of the Public Health Service Act to improve coverage for colorectal screening tests under Medicare and private health insurance coverage, and for other purposes; CARDIN; to the Committee on Finance, March 19.

S. 610 (REFORM), to amend the Patient Protection and Affordable Care Act to repeal certain limitations on health care benefits; JOHANNIS; to the Committee on Finance, March 19.

S. 612 (MEDICARE), to require the secretary of health and human services to remove Social Security account numbers from Medicare identification cards and communications provided to Medicare beneficiaries to protect them from identity theft; DURBIN; to the Committee on Finance, March 19.

S. 616 (PHYSICIANS), to provide incentives to physicians to practice in rural and medically underserved communities and for other purposes; KLOBUCHAR; to the Committee on the Judiciary, March 19.

H.R. 1248 (REFORM), to amend the Patient Protection and Affordable Care Act to repeal certain limitations on health care benefits; PAULSEN; to the Committee on Ways and Means, March 19.

H.R. 1250 (MEDICARE), to amend title XVIII of the Social Security Act to improve operations of recovery auditors under the Medicare integrity program, to increase transparency and accuracy in audits conducted by contractors, and for other purposes; GRAVES; jointly, to the committees on Ways and Means and Energy and Commerce, March 19.

H.R. 1252 (PHYSICAL THERAPISTS), to amend the Public Health Service Act to provide for the participation of physical therapists in the National Health Service Corps Loan Repayment Program, and for other purposes; SHIMKUS; to the Committee on Energy and Commerce, March 19.

H.R. 1254 (EMPLOYEE HEALTH BENEFITS), to repeal a requirement that new employees of certain employers be automatically enrolled in the employers' health benefits plan; HUDSON; to the Committee on Education and the Workforce, March 19.

H.R. 1257 (MEDICARE), to amend title XVIII of the Social Security Act to reduce the occurrence of diabetes in Medicare beneficiaries by extending coverage under Medicare for medical nutrition therapy services to such beneficiaries with pre-diabetes or with risk factors for developing type 2 diabetes; DEGETTE; jointly, to the committees on Energy and Commerce and Ways and Means, March 19.

H.R. 1263 (BEHAVIORAL HEALTH SERVICES), to increase access to community behavioral health services for all Americans and to improve Medicaid reimbursement for community behavioral health services; MATSUI; to the Committee on Energy and Commerce, March 19.

H.R. 1264 (MEDICAID), to amend title XIX of the Social Security Act to increase the Federal medical assistance percentage for the District of Columbia under the Medicaid Program to 75 percent; NORTON; to the Committee on Energy and Commerce, March 19.

H.R. 1274 (MEDICARE), to amend title XVIII of the Social Security Act to improve access to diabetes self-management training by authorizing certified diabetes educators to provide diabetes self-management training services, including as part of telehealth services, under part B of the Medicare program; WHITFIELD; jointly, to the committees on Energy and Commerce and Ways and Means, March 19.

Health Legislation Recently Introduced cont.

S. 621 (DRUGS), to amend the Controlled Substances Act to make any substance containing hydrocodone a Schedule II drug; MANCHIN; to the Committee on the Judiciary, March 20.

S. 623 (MEDICARE), to amend title XVIII of the Social Security Act to ensure the continued access of Medicare beneficiaries to diagnostic imaging services; CARDIN; to the Committee on Finance, March 20.

S. 626 (DRUG RESEARCH), to de-link research and development incentives from drug prices for new medicines to treat HIV/AIDS and to stimulate greater sharing of scientific knowledge; SANDERS; to the Committee on Health, Education, Labor, and Pensions, March 20.

S. 627 (DRUG RESEARCH), to provide incentives for investment in research and development for new medicines, to enhance access to new medicines, and for other purposes; SANDERS; to the Committee on Health, Education, Labor, and Pensions, March 20.

H.R. 1281 (PUBLIC HEALTH PROGRAMS), to amend the Public Health Service Act to reauthorize programs under part A of title XI of such Act; ROYBAL-ALLARD; to the Committee on Energy and Commerce, March 20.

H.R. 1285 (DRUGS), to amend the Controlled Substances Act to make any substance containing hydrocodone a schedule II drug; BUCHANAN; jointly, to the committees on Energy and Commerce and Judiciary, March 20.

H.R. 1287 (SCIENTIFIC INFORMATION), to ensure high standards for federal agency use of scientific information; FINCHER; to the Committee on Oversight and Government Reform, March 20.

H.R. 1293 (CANCER RESEARCH), to amend the Internal Revenue Code of 1986 to establish and provide a checkoff for a Breast and Prostate Cancer Research Fund, and for other purposes; KING; jointly, to the committees on Ways and Means and Energy and Commerce, March 20.

H.R. 1295 (MEDICAL DEVICES), to amend the Internal Revenue Code of 1986 to repeal the excise tax on medical devices, and for other purposes; MAFFEI; to the Committee on Ways and Means, March 21.

H.R. 1301 (APPROPRIATIONS), making supplemental appropriations for the National Institutes of Health for the fiscal year ending September 30, 2013, and for other purposes; SCHWARTZ; jointly, to the committees on Appropriations and Ways and Means, March 21
committee SCHWARTZ; jointly, to the committees on Appropriations and Ways and Means, March 20.

S. 636 (MEDICARE), to amend title XVIII of the Social Security Act to allow certain hospitals in Puerto Rico to qualify for incentives for adoption and meaningful use of certified EHR Technology under the Medicare program; MENENDEZ; to the Committee on Finance, March 21.

S. 637 (TOURETTE SYNDROME), to amend the Public Health Service Act to provide for the expansion, intensification, and coordination of the programs and activities of the National Institutes of Health with respect to Tourette syndrome; MENENDEZ; to the Committee on Health, Education, Labor, and Pensions, March 21.

S. 641 (PALLIATIVE CARE), to amend the Public Health Service Act to increase the number of permanent faculty in palliative care at accredited allopathic and osteopathic medical schools, nursing schools, and other programs, to promote education in palliative care and hospice, and to support the development of faculty careers in academic palliative medicine; WYDEN; to the Committee on Health, Education, Labor, and Pensions, March 21.

S. 642 (IMAGING), 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; ENZI; to the Committee on Health, Education, Labor, and Pensions, March 21.

S. 644 (DRUGS), to amend the Federal Food, Drug, and Cosmetic Act to prevent the abuse of dextromethorphan, and for other purposes; CASEY; to the Committee on Health, Education, Labor, and Pensions, March 21.

Health Legislation Recently Introduced cont.

S. 650 (HEALTH INSURANCE), to amend title XXVII of the Public Health Service Act to preserve consumer and employer access to licensed independent insurance producers; LANDRIEU; to the Committee on Health, Education, Labor, and Pensions, March 21.

H.R. 1309 (MEDICARE/MEDICAID), to amend titles XVIII and XIX of the Social Security Act to exclude pathologists from incentive payments and penalties under Medicare and Medicaid, relating to the meaningful use of electronic health records; PRICE of Georgia; jointly, to the committees on Energy and Commerce and Ways and Means, March 21.

H.R. 1310 (MEDICARE), to amend title XVIII of the Social Security Act to establish a Medicare payment option for patients and eligible professionals to freely contract, without penalty, for Medicare fee-for-service items and services, while allowing Medicare beneficiaries to use their Medicare benefits; PRICE; jointly, to the committees on Energy and Commerce and Ways and Means, March 21.

H.R. 1317 (TAXATION), to amend the Internal Revenue Code of 1986 to allow a credit against income tax for the purchase of hearing aids; LATHAM; to the Committee on Ways and Means, March 21.

H.R. 1320 (MEDICARE), to amend title XVIII of the Social Security Act to improve coverage for colorectal screening tests under Medicare, and for other purposes; NEAL; jointly, to the committees on Ways and Means and Energy and Commerce, March 21.

H.R. 1325 (MEDICARE), to amend title XVIII of the Social Security Act to provide Medicare entitlement to immunosuppressive drugs for kidney transplant recipients; BURGESS; jointly, to the committees on Ways and Means and Energy and Commerce, March 21.

H.R. 1326 (MEDICAID), to amend title XIX of the Social Security Act to provide for increased price transparency of hospital information and to provide for additional research on consumer information on charges and out-of-pocket costs; BURGESS; to the Committee on Energy and Commerce, March 21.

H.R. 1331 (MEDICARE/MEDICAID), to amend certain requirements and penalties implemented under the Medicare and Medicaid programs by the HITECH Act of 2009, which would otherwise impede eligible professionals from adopting electronic health records to improve patient care; BLACK; jointly, to the committees on Ways and Means and Energy and Commerce, March 21.

H.R. 1339 (PALLIATIVE CARE), to amend the Public Health Service Act to increase the number of permanent faculty in palliative care at accredited allopathic and osteopathic medical schools, nursing schools, and other programs, to promote education in palliative care and hospice, and to support the development of faculty careers in academic palliative medicine; ENGEL; to the Committee on Energy and Commerce, March 21.

H.R. 1342 (REFORM), to repeal provisions of the Patient Protection and Affordable Care Act relating to health savings accounts, and for other purposes; FLEMING; jointly, to the committees on Ways and Means and Energy and Commerce, March 21.

H.R. 1366 (DRUGS), to direct the Commissioner of Food and Drugs to modify the approval of any drug containing controlled-release oxycodone hydrochloride to limit such approval to use for the relief of severe-only instead of moderate-to-severe pain, and for other purposes; LYNCH; jointly, to the Committee on Energy and Commerce, March 21.

H.R. 1367 (FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM), to amend chapter 89 of title 5, United States Code, to ensure program integrity, transparency, and cost savings in the pricing and contracting of prescription drug benefits under the Federal Employees Health Benefits Program; LYNCH; to the House Committee on Oversight and Government Reform, March 21.

H.R. 1371 (INDIAN HEALTH SERVICE), to restore to the Indian Health Service funds sequestered under section 251A of the Balanced Budget and Emergency Deficit Control Act of 1985 to the extent that the percentage reduction for that program exceeded 2 percent; MCCOLLUM; to the House Committee on the Budget, March 21.

Health Legislation Recently Introduced cont.

H.R. 1379 (MEDICARE), to amend title XVIII of the Social Security Act to allow certain hospitals in Puerto Rico to qualify for incentives for adoption and meaningful use of certified EHR Technology under the Medicare program; **PIERLUISI**; jointly, to the House Committee on Ways and Means, March 21.

H.R. 1389 (ABORTION), to amend Title 10, U.S. Code, regarding restrictions on abortions at medical facilities of the Department of Defense; **SLAUGHTER**; to the Committee on Armed Services, March 21.

H.R. 1390 (MEDICARE), to amend title XVIII of the Social Security Act to preserve access to urban Medicare-dependent hospitals; **SMITH**; to the House Committee on Ways and Means, March 21.

H. RES. 133 (TUBERCULOSIS), commending the progress made by anti-tuberculosis programs; **ENGEL**; jointly, to the committees on Foreign Affairs and Energy and Commerce, March 21.

H. RES. 135 (HEALTH WORKERS), recognizing the importance of frontline health workers toward accelerating progress on global health and saving the lives of women and children, and for other purposes; **LOWEY**; to the Committee on Foreign Affairs, March 21.