



Health Policy Briefing

March 4, 2013

Federal Agencies Adjust to Sequestration and Congress Debates New CR This Week

Sequestration: It's the Rule

The \$85.3 billion sequestration mandated by the Budget Control Act (BCA) was triggered last Friday and **President Obama** issued an executive order directing the discretionary and mandatory federal spending cuts that are to take place before the beginning of the next fiscal year. The Office of Management and Budget (OMB) also issued a 70-page report explaining the effect of the across-the-board cuts on federal agencies. In general, Medicare reimbursements would be cut by 2% beginning April 1 (excluding certain Part D low-income subsidies and risk adjustments); domestic discretionary spending would be cut by 5%; certain other domestic mandatory programs (other than Medicaid) would be cut by 5.1%; and a discretionary defense spending would be cut by 7.8%. OMB advised federal agencies to avoid as much as possible any cuts to core agency activities and to first halt the filling of vacant positions, giving employee bonuses and awards and spending on training, conferences and travel.

The Centers for Medicare and Medicaid Services (CMS) testified before the House Energy and Commerce Health Subcommittee that the cuts would adversely affect Medicare anti-fraud efforts. While the President said

that the cuts would not likely trigger "Armageddon", he said they were dumb, arbitrary and the result of the refusal of congressional Republicans to meet his demand that they be replaced by smart cuts and new revenues raised by closing tax loopholes. The President did not gain any leverage from a last-minute meeting he called on Friday with congressional majority and minority leaders. Senate Democrats could only muster 51 votes (short of the 60 needed) for S. 388, the \$110 billion measure which would have delayed the sequester and replaced about one-half of the cuts with a surtax on high-income households, adding taxes on tar sands oil production, ending tax deductions for relocating U.S. businesses abroad and scaling back farm subsidies.

A Republican substitute, S. 16, garnered only 38 votes to force the President to propose alternative cuts by March 15th. The House has waited until this week to take up separate

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legislation to address the sequester, but which would only give the Veterans Administration and the Department of Defense greater discretion to prioritize the cuts under sequestration. The House is also expected to devise and take up another FY 2013 continuing resolution (CR) to continue federal spending at the BCA's \$1.043 trillion level, but with a provision to allow the sequester to go forward as described above (thus bringing discretionary spending below the \$1 trillion mark that House Republican deficit hawks have demanded).

In the Senate, Appropriations **Chair Barbara Mikulski** has indicated she will take a different approach to the CR by pushing an omnibus bill totaling \$1.043 trillion in spending as previously contained in the 12 FY 2013 appropriations bills taken up in her committee. The Senate omnibus effort is not likely to include the spending reductions mandated under the BCA. However, it is doubtful that the President would veto a CR passed by the House and Senate that contains the House sequestration language. OMB has already said the Administration will be seeking a \$949 million increase in FY 2013 funding for CMS and will ask Congress to eliminate funding under the PPACA for state high-risk insurance pools. Quick congressional action on the FY 2013 CR before the scheduled Spring Recess on March 22nd would avoid a shutdown of the federal government on March 27th when the current CR expires. A resolution of FY 2013 funding will set the stage and baseline for the upcoming debate after the recess over federal spending in FY 2014 and later years. Both the House and Senate are expected to meet the April 15 deadline for passing a budget resolution for the next fiscal year and plan to mark up their budgets next week.

This week the House will also take up H.R. 668, legislation directing the President to provide an estimate of the cost per taxpayer of the federal deficit when he submits his FY 2014 budget plan later this month. A recent GAO report, discussed at a Senate Budget Committee hearing, contains budget simulations which foreshadow the hurdles legislators will confront as to future health spending. It concludes that the PPACA cost controls will be inadequate to prevent federal health care spending from continuing to grow faster than the economy over the next 75 years.

PPACA Health Reform Update

PPACA Final Risk Adjustment Rule

CMS issued a 483-page "Notice of Benefit and Payment Parameters for 2014" final rule spelling out the provisions of the permanent risk adjustment program, transitional reinsurance program (for 2014-16) and temporary risk corridor program (for 2014-16) included under the PPACA to adjust premiums and help keep insurers from avoiding high risk individuals. The rule, which applies to state-run exchanges without risk adjustment programs and to the default federally facilitated exchange (FFE), also spells out provisions relating to the payment of premium tax credits and to the cost-sharing reductions for individuals eligible to purchase health coverage under such exchanges. In addition, health insurers offering coverage under the FFE are directed to pay a 3.5% premium fee. A related interim final rule would allow insurers offering qualified health plans (QHP) to use an optional simplified means for calculating cost-sharing reductions during a transitional period.

PPACA Multi-State Plan Rules Finalized

The Office of Personnel Management (OPM) issued final regulations spelling out the requirements, including a mandated Gold and Silver value plan, that multistate insurance plans (MSPs) must meet in order to be offered under at least 31 state health insurance exchanges beginning in 2014 (and in all states and DC in 2017). OPM will negotiate for and administer at least two such plans for each exchange in a manner similar to that used for the Federal Employee Health Benefits Program (FEHBP). MSPs must also comply with any standards set by states for participation in state-based Small Business Health Options Program (SHOP) exchanges.

PPACA Health Reform Update cont.

PPACA SHOP Rules Proposed

CMS released a proposed rule spelling out the requirement for all PPACA health insurance exchanges, including the FFE, to include a Small Business Health Options Program for facilitating the coverage of the workers of small businesses having fewer than 100 employees. State-run exchanges could allow an employer to require employees to select only one plan (or multiple plans) under a SHOP while the FFE would allow only one plan to be offered to an employer's employees for 2014 only (presumably after 2014 employees must be given multiple plan choices). Small employers would be eligible for the PPACA small business tax credit only in SHOPS, including the FFE SHOP, beginning in 2014.

IRS Proposes PPACA Premium Fees

The IRS issued proposed regulations requiring health insurance companies to pay annual fees based on the premium volume of in-force fully-insured health policies. The total of such fees are as follows: \$8 billion for CY 2014; \$11.3 billion for CY 2015-16; \$13.9 billion for CY 2017; and \$14.3 billion for CY 2018. The total for subsequent years would be increased by the rate of premium growth in the preceding year.

DOL Issues Final PPACA MEWA Rules

The Department of Labor Employee Benefits Security Administration (EBSA) issued final rules providing the means for the department to issue cease-and-desist and summary seizure orders to fraudulent or insolvent multiple employer welfare arrangements (MEWA) established or maintained by two or more employers (MEWAs as defined under ERISA). DOL also released revisions to the Form 5500 annual information return required to be filed by ERISA-covered employee benefit plans as well as to the Form M-1 report required to be filed by MEWAs and plans claiming an exception to MEWA rules.

CMS Says PPACA Reduces Health Costs

At a Senate Finance Committee hearing, the acting principal deputy administrator of CMS testified that the PPACA payment and delivery reforms are working so as to help cause Medicare per capita spending to decline and the 30-day all-cause hospital readmission rate to drop in the last half of 2012 to 17.8% after averaging 19% in the previous 5 years. He also cited the PPACA as an incentive for the health care delivery system to move away from fee-for-service medicine. Of note, at the hearing Senator Maria Cantwell (D-WA) said she might not support Marilyn Tavenner's nomination for CMS Administrator because of the delayed effective date for the implementation of the PPACA's Basic Health Program which would make federal tax subsidies available to states to help cover individuals with incomes between 139-200% of the federal poverty level. Acting Administrator Tavenner also came under fire in a letter from Senator Orrin Hatch (R-UT) and Reps. Dave Camp (R-MI) and Fred Upton (R-MI) who questioned the CMS proposal to reduce payments to Medicare Advantage plans by about 2% in 2014. They expressed their concern that coverage under such plans could fall significantly, particularly for low-income beneficiaries.

Medicare/Medicaid/PHSA Corner

House and Senate Hearings on Medicare Reform

At a House Ways and Means Health Subcommittee hearing, Dr. Mark Fendrick (a UM professor of internal medicine) testified that medical services differ by the benefit they provide to health, but that Medicare implements cost sharing in a one-size-fits-all form under which beneficiaries are charged the same amount for every doctor visit, diagnostic test and prescription drug. He suggested that the Medicare benefit design be changed, for example, by removing beneficiary cost sharing for life-saving services and by increasing cost-sharing for lower value services. Subcommittee chairman Brady (R-TX) touted the structure of Medicare Advantage plans and said that all beneficiaries should have the types of benefits and cost sharing that one-in-four beneficiaries currently enjoy under MA plans. Dr. Fendrick replied that Medicare Advantage plans are constrained by nondiscrimination rules that prohibit plans from tailoring benefits to particular subgroups of patients who may receive particularly high value from a given service. MedPAC Chairman Glenn Hackbarth cited his commission's June 2012 report suggesting Medicare restructuring, such as eliminating cost sharing based on evidence of service value; replacing coinsurance with copayments that vary by the type of service and provider; and including an out-of-pocket maximum that would protect beneficiaries from very high medical costs. A Kaiser Family Foundation spokesperson cautioned that while the current system of separate deductibles for Medicare Parts A and B is complicated, a combination could raise costs for the majority of beneficiaries. The Ways and Means Committee agenda includes work to develop legislation to replace the Medicare physician payment system and to develop a means to make health entitlement programs viable in the long term. At a Senate Special Committee on Aging hearing, Chairman Bill Nelson touted the PPACA as a means to strengthen Medicare, reduce costs and improve the care beneficiaries receive. The president of the Commonwealth Fund said Congress should repeal the current Medicare SGR physician reimbursement system and replace it with a system that ties payments to performance and patient outcomes. He also recommended a new option, a Medicare Essential Plan, which would combine Parts A, B and D benefits and require beneficiaries to pay one copayment and deductible for all services.

Upcoming Health Hearings

House Energy and Commerce Oversight and Investigations Subcommittee: will sponsor a forum titled "After Newtown: A National Conversation on Violence and Severe Mental Illness;" 10:00 a.m., 2123 Rayburn Bldg; March 5.

House Appropriations Labor, Health and Human Services, Education and Related Agencies Subcommittee: will hold hearings on proposed FY 2013 appropriations for programs under its jurisdiction; 10:00 a.m., 2358-C Rayburn Bldg; March 5.

House Ways and Means Oversight Subcommittee: will hold a hearing on the tax-related provisions under the PPACA and the Health Care and Education Reconciliation Act of 2010; 11:00 a.m., 1100 Longworth Bldg; March 5.

House Energy and Commerce Health Subcommittee: will hold a hearing titled "Saving Seniors and Our Most Vulnerable Citizens From an Entitlement Crisis;" 10:15 a.m., 2322 Rayburn Bldg; March 6.

House Energy and Commerce Health Subcommittee: will hold a hearing titled "Unaffordable: Impact of Obamacare on Americans' Health Insurance Premium;" 10:00 a.m., 2123 Rayburn Bldg; March 7.

House Appropriations Labor, Health and Human Services, Education, and Related Agencies Subcommittee: will hold hearings on proposed fiscal 2013 appropriations for programs under its jurisdiction; 10:00 a.m., 2358-C Rayburn Bldg; March 13.

Health Legislation Recently Introduced

S. 377 (9/11 HEALTH PROGRAM), to add the 9/11 health and compensation programs to the list of exempt programs under PAYGO; GILLIBRAND; to the Committee on the Budget, Feb. 25.

H.R. 805 (MEDICARE), to repeal certain changes to contracts with Medicare Quality Improvement Organizations, and for other purposes; PRICE of Georgia; jointly, to the committees on Ways and Means and Energy and Commerce, Feb. 25.

H.R. 806 (VETERANS' HEALTH), to amend Title 38, U.S. Code, to make permanent the requirement for annual reports on comptroller general reviews of the accuracy of Department of Veterans Affairs medical budget submissions, and for other purposes; BROWNLEY of California; to the Committee on Veterans' Affairs, Feb. 25.

H.R. 809 (EMERGENCY MEDICAL SERVICES), to provide for improvement of field emergency medical services, and for other purposes; BUCSHON; jointly, to the committees on Energy and Commerce and Ways and Means, Feb. 25.

H.R. 811 (9/11 HEALTH PROGRAM), to add the 9/11 Health and Compensation Programs to the list of exempt programs under PAYGO; KING of New York; to the Committee on the Budget, Feb. 25.

H.Res. 78 (DISEASE AWARENESS), expressing support for designation of July as National Sarcoma Awareness Month; CASTOR of Florida; to the Committee on Oversight and Government Reform, Feb. 25.

S. 380 (CHILDREN'S HEALTH), to amend the Public Health Service Act to reauthorize and update the National Child Traumatic Stress Initiative for grants to address the problems of individuals who experience trauma and violence-related stress; MURRAY; to the Committee on Health, Education, Labor and Pensions, Feb. 26.

S. 382 (MEDICARE), to amend Title XVIII of the Social Security Act to allow physician assistants, nurse practitioners, and clinical nurse specialists to supervise cardiac, intensive cardiac, and pulmonary rehabilitation programs; SCHUMER; to the Committee on Finance, Feb. 26.

S. 385 (CLAIMS PROCESSING), to deem the submission of certain claims to an Indian Health Service contracting officer as timely; BEGICH; to the Committee on Indian Affairs, Feb. 26.

H.R. 834 (VETERANS' HEALTH), to direct the secretary of veterans affairs to conduct cost-benefit analyses for the provision of medical care by the Department of Veterans Affairs in certain geographic areas served by multiple Department of Veterans Affairs medical facilities; LOBIONDO; to the Committee on Veterans' Affairs, Feb. 26.

H.R. 842 (DISEASE RESEARCH), to expand the research activities of the National Institutes of Health with respect to functional gastrointestinal and motility disorders, and for other purposes; SENSENBRENNER; to the Committee on Energy and Commerce, Feb. 26.

H.R.391 (TAXATION), to amend the Internal Revenue Code of 1986 to include vaccines against seasonal influenza within the definition of taxable vaccines; BAUCUS; to the Committee on Finance, Feb. 27.

S. 392 (CHILDREN'S HEALTH), to support and encourage the health and well-being of elementary school and secondary school students by enhancing school physical education and health education; UDALL of New Mexico; to the Committee on Health, Education, Labor and Pensions, Feb. 27.

H.R. 846 (MEDICARE), to amend Title XVIII of the Social Security Act to ensure the continued access of Medicare beneficiaries to diagnostic imaging services; OLSON; jointly, to the committees on Energy and Commerce and Ways and Means, Feb. 27.

H.R.855 (MEDICAID), to amend Title XIX of the Social Security Act to require Medicaid coverage of optometrists; HALL; to the Committee on Energy and Commerce, Feb. 27.

S. 399 (REFORM), to protect U.S. job creation by striking the federal mandate on employers to offer health insurance; HATCH; to the Committee on Finance, Feb. 28.

S. 408 (MEDICARE), to amend Title XVIII of the Social Security Act to deliver a meaningful benefit and lower prescription drug prices under Medicare; DURBIN; to the Committee on Finance, Feb. 28.

Health Legislation Recently Introduced cont.

S. 422 (VETERANS' HEALTH), to amend the Department of Veterans Affairs Health Care Programs Enhancement Act of 2001 and Title 38, U.S. Code, to require the provision of chiropractic care and services to veterans at all Department of Veterans Affairs medical centers and to expand access to such care and services, and for other purposes; **BLUMENTHAL**; to the Committee on Veterans' Affairs, Feb. 28.

S. 423 (CHILDREN'S HEALTH), to amend Title V of the Social Security Act to extend funding for family-to-family health information centers to help families of children with disabilities or special health care needs make informed choices about health care for their children; **MENENDEZ**; to the Committee on Finance, Feb. 28.

S. 424 (PEDIATRIC RARE DISEASES RESEARCH), to amend Title IV of the Public Health Service Act to provide for a National Pediatric Research Network, including with respect to pediatric rare diseases or conditions; **BROWN**; to the Committee on Health, Education, Labor and Pensions, Feb. 28.8.

S. 425 (MEDICAID/CHIP), to amend Title XI of the Social Security Act to improve the quality, health outcomes, and value of maternity care under the Medicaid and CHIP programs by developing maternity care quality measures and supporting maternity care quality collaboratives; **STABENOW**; to the Committee on Finance, Feb. 28.

S. 426 (PUBLIC HEALTH EMERGENCY), to amend the Public Health Service Act to provide for the participation of particular specialists determined by the secretary of health and human services to be directly related to the health needs stemming from environmental health hazards that have led to its declaration as a public health emergency to be eligible under the National Health Service Corps in the National Health Service Corps Loan Repayment Program, and for other purposes; **TESTER**; to the Committee on Health, Education, Labor, and Pensions, Feb. 28.

H.R. 895 (HIV/AIDS), to provide for an effective HIV/AIDS program in federal prisons; **WATERS**; to the Committee on the Judiciary, Feb. 28.

H.R. 896 (MEDICAID/CHIP), to amend Title XI of the Social Security Act to improve the quality, health outcomes, and value of maternity care under the Medicaid and CHIP programs by developing maternity care quality measures and supporting maternity care quality collaboratives; **ENGEL**; to the Committee on Energy and Commerce, Feb. 28.

H.R. 903 (REFORM), to amend the Internal Revenue Code of 1986 to repeal the employer health insurance mandate; **BOUSTANY**; to the Committee on Ways and Means, Feb. 28.

H.R. 912 (MEDICAID), to amend Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to restore Medicaid coverage for citizens of the Freely Associated States lawfully residing in the United States under the Compacts of Free Association between the government of the United States and the governments of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau; **HANABUSA**; to the Committee on Energy and Commerce, Feb. 28.

H.R. 920 (OPTOMETRISTS), to amend the Public Health Service Act to provide for the participation of optometrists in the National Health Service Corps scholarship and loan repayment programs, and for other purposes; **MCMORRIS RODGERS**; to the Committee on Energy and Commerce, Feb. 28.

H.R. 921 (VETERANS' HEALTH), to amend the Department of Veterans Affairs Health Care Programs Enhancement Act of 2001 and Title 38, U.S. Code, to require the provision of chiropractic care and services to veterans at all Department of Veterans Affairs medical centers and to expand access to such care and services; **MICHAUD**; to the Committee on Veterans' Affairs, Feb. 28.

H.R. 923 (PRESCRIPTION DRUGS), to amend the Internal Revenue Code of 1986 to deny any deduction for direct-to-consumer advertisements of prescription drugs; **NADLER**; to the Committee on Ways and Means, Feb. 28.

Health Legislation Recently Introduced cont.

H.R. 928 (MEDICARE), to amend Title XVIII of the Social Security Act to deliver a meaningful benefit and lower prescription drug prices under Medicare; SCHAKOWSKY; jointly, to the committees on Energy and Commerce and Ways and Means, Feb. 28.

H.RES. 91 (RARE DISEASE AWARENESS), expressing support for designation of Feb. 28, 2013, as Rare Disease Day; CARSON of Indiana; to the Committee on Energy and Commerce, Feb. 28.

H.RES. 98 (WOMEN'S HEALTH), expressing the sense of the House of Representatives regarding women's health and economic security; SCHAKOWSKY; jointly, to the committees on Energy and Commerce, Education and the Workforce, and Ways and Means, Feb. 28.