



Health Policy Briefing

March 17, 2014

House Passes Controversial “Doc Fix” Bill Including PPACA Individual Mandate Delay

Medicare Physician Payment Reform in Doubt, Despite House Passage

Before recessing for a week, last Friday the House voted 238-181 to pass H.R. 4015, legislation to replace the Medicare Sustainable Growth Rate (SGR) framework for physician reimbursement with a transitional mechanism leading to a more permanent physician payment structure based on performance and quality. However, the provision included by House Republican leadership to help pay for the \$138.4 billion cost of the legislation was a delay for five years of the Patient Protection and Affordable Care Act’s (PPACA) individual mandate. The Congressional Budget Office (CBO) estimated the savings at \$169+ billion over ten years. **House Minority Leader Nancy Pelosi (D-CA)** summed up the move as follows: “The Republicans’ fixation with destroying the health security of millions of Americans through their efforts to destroy the Affordable Care Act imperils the permanent doc fix, and that must stop....” **House Ways and Means Committee Chairman Dave Camp (R-MI)** responded: “The President, realizing the failures of his health care law, has repeatedly delayed and exempted certain individuals, labor unions and businesses from the law’s mandates

and penalties. If the President is willing to give relief to some, he and Democrats in Congress should be willing to give all Americans a reprieve from ObamaCare. It is only fair.” The White House also weighed in with a Statement of Administration Policy (SAP) which includes a veto threat. **Senate Finance Committee Chairman Ron Wyden (D-OR)** has said his priority is to pass the permanent legislation before the end of this month when current law would force a 24% reduction in physician payment rates. However, if the Senate is unable to pass the legislation with a payfor suitable to the House Republican conference, then another

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temporary reprieve may be added to the docket next week. **Senator Orrin Hatch (R-UT)**, who has urged both parties to negotiate a bipartisan offset, conceded that the irresolution could result in a “nine month fix” before a post-election solution is reached. Both House and Senate Republicans have rejected Democrat efforts to use as an offset the funding left over from the Iraq/Afghanistan wars which would come from the Overseas Contingency Operations (OCO) account and the CBO has not been willing to recognize OCO funds as scorable savings. It remains to be seen what moves **Senate Majority Leader Harry Reid (D-NV)** may take to bring S. 2110 to a vote in the Senate when it reconvenes. That legislation contains the bipartisan SGR reform language as well as Medicare/Medicaid extensions, podiatric physician provisions, and other health related provisions.

Additional Health Legislation Advances

The Senate passed without dissent the House-passed bill H.R. 2019 that House Majority Leader Eric Cantor (R-VA) promoted to enhance by \$126 million (over ten years) National Institutes of Health (NIH) funded research to address pediatric cancers, autism, Downs Syndrome and other childhood diseases. The legislation, which the President is expected to sign into law, offsets the cost by transferring federal funding that would otherwise have helped pay for political party conventions. The House also passed the following bills that would exempt certain individuals from the individual mandate under the PPACA: H.R. 1814, the “Equitable Access to Care and Health Act,” that would allow individuals citing religious reasons to remain uninsured without becoming subject to the health law’s penalties; H.R. 3979, the “Protecting Volunteer Firefighters and Emergency Responders Act,” that would exempt volunteer firefighters and other emergency responders from being counted as employees under the health law’s employer mandate; and H.R. 3474, the “Hire More Heroes Act,” that would exempt veterans and reservists who have coverage from the Department of Veterans Affairs or TRICARE from being included as employees for purposes of the employer mandate. The House also passed the following bills which would allow Congress to take aim in court at the Obama Administration’s executive actions to which it objects: H.R. 3973, the “Faithful Execution of the Law Act of 2014” and H.R. 4138, the “ENFORCE the Law Act of 2014.”

HHS FY 2015 Budget Scrutinized

Within the President’s budget recommendations for fiscal year (FY) 2015, the Centers for Medicare and Medicaid Services (CMS) has requested \$4.1 billion for program management (an increase of \$226.6 million), including PPACA related activities: \$544.2 million for operation of HealthCare.gov (which is projected to continue to be operating in the majority of states); and an increase in the Medicaid/Children’s Health Insurance Program (CHIP) budget of \$16.2 million, partly to help implement the PPACA Basic Health Program. A total of \$1.8 billion is slated for implementation of the PPACA, \$1.2 billion of which is estimated to be offset by PPACA-related user fees. In a House Ways and Means Committee hearing, Chairman Dave Camp said the President’s budget “doubles down on this law...With so many unanswered questions, it is hard to understand how or why Congress would approve such a request.” Of note, the U.S. Department of Health and Human Services (HHS) reported that PPACA cost-sharing subsidies will not be included among the programs subject to the automatic cuts mandated under sequestration.

PPACA Health Reform Update

PPACA Individual Mandate Delay?; That is the Question

Last week HHS Secretary Kathleen Sebelius, in testimony before the House Ways and Means Committee, said that the Administration will not extend the individual mandate beyond the March 31st deadline. Republicans questioned how this is fair, given the Administration's actions to delay the effect of the employer mandate. As explained above, House Republicans answered their own question by including a 5-year delay of the individual mandate under the doc fix legislation. At a House Appropriations HHS/Labor/Education Subcommittee hearing, the HHS Secretary was also criticized by Republicans for the latest CMS move to broaden the so-called "hardship exemption" under which individuals would avoid the PPACA's penalty for not obtaining health coverage. The new provisions would give hardship exemptions through October 1, 2016 to individuals whose non-PPACA-compliant policies were cancelled and who find that their other options are more expensive (and also allow them to buy catastrophic only coverage); and to individuals who experience "another hardship in obtaining health insurance", although documentation of that fact would only have to be provided "if possible." The Administration said the exemptions are justified under the terms of the PPACA and that applicants have to fill out a form and receive approval in order to gain the exemption. Republican critics of the various exemptions and delays the Administration has promulgated under the law also asked the HHS Secretary whether the 4.2 million who were enrolled through February under the law's exchanges is what you call "success?" She deflected the question and refused to utter her earlier prediction that about 7 million would be enrolled by the March 31st deadline. HHS has also said that it lacks the data on how many individuals have enrolled and actually paid their premiums. In this regard, Republicans on the House Energy and Commerce Committee have written to the health insurers asking plans on HealthCare.gov to give them information on their enrollees' ages and previous insurance status. In another Republican initiative, Senators Lamar Alexander (R-TN), Orrin Hatch (R-UT) and 23 other Republicans sent a letter to the Office of Management and Budget (OMB) threatening action pursuant to the Congressional Review Act if the Administration does not rescind a CMS ruling that gives union-negotiated multiemployer group health plans what the senators say is an "unwarranted specials carve-out" from the PPACA's mandate to pay reinsurance fees.

Third-Party Premium Payments Allowed Under PPACA

In a new interim final rule (with comments due within 60 days) relating to the ability specific third-party payers have to make premium or cost-sharing payments for individuals covered under the PPACA's exchanges, CMS said that related health insurers should "immediately begin accepting third party payments for enrollee premiums and cost sharing from Indian tribes, tribal organizations, urban Indian organizations, the Ryan White HIV/AIDS programs, and state and federal government programs...."

Medicare/Medicaid/PHSA Corner

House to Proceed on Legislation Despite CMS Relief on Medicare Part D Drug Class Changes

Responding to Republican congressional criticism that previously proposed CMS regulations that would remove "protected class" status for three of six Medicare Part D drug categories would "destroy Medicare Part D as we know it", CMS Administrator Marilyn Tavenner notified Congress that her agency will not finalize "at this time" the rules relating to the "protected classes" definition, standards for preferred pharmacy networks, the number of Part D plans sponsors may offer and clarifications to the non-interference provision. Nonetheless, House Ways and Means Committee Chairman Dave Camp said that "While this announcement provides limited relief in the short-term, it should lay the groundwork for strong bipartisan support for legislation expressing Congress' disapproval of these proposals. As Part D approaches a decade of providing access to affordable prescriptions for seniors, Congress must redouble its efforts to work with all parties to ensure the long-term viability of the successful Part D program." In this regard, Rep. Renee Ellmers (R-NC) has sponsored H.R. 4160, the "Keep the Promise to Seniors Act", legislation that would prevent the Administration from making the proposed changes among other things.

Medicare/Medicaid/PHSA Corner cont.

CMS Guidance on Meaningful Use Rules

CMS released guidance on how eligible professionals and hospitals can apply for meaningful use hardship exemptions for the 2014 reporting period based on “2014 Vendor Issues”. The applications for professionals for the 2014 reporting period will be available after July 1, 2014 and will be due by July 1, 2015. For eligible hospitals, hardship applications for the 2014 reporting period will be available after April 1, 2014 and due by April 1, 2015.

Medicare Advantage Cuts Criticized

At a House Energy and Commerce Health Subcommittee hearing on the payment cuts scheduled for Medicare Advantage (MA) under the PPACA, Chairman Joe Pitts (R-PA) said that the Administration’s policies are going to harm seniors by limiting their choice of high quality care. The hearing featured testimony from five Republican members who have sponsored legislation highlighting the problem. However, committee Democrats countered that the program is as strong as ever, citing their staff report finding that analyses by independent experts and others say that “Medicare Advantage enrollment will continue to grow, that insurers’ business will remain highly profitable and that many of the changes announced by CMS will be positive for Medicare Advantage plans.” Nonetheless, the estimated 2% payment reduction in 2015 has led Reps. Bill Cassidy (R-LA) and John Barrow (D-GA) and 188 other House members to send a letter to the CMS Administrator seeking changes and saying that “We believe that the cuts in the advance notice are inconsistent with our health care policy goals to promote more high quality coordinated care for Medicare beneficiaries...” In related news, the Medicare Payment Advisory Commission (MedPAC) report to Congress maintains that the MA program is healthy despite the PPACA’s cuts to the program.

CMS Rules on Payments for Low-Volume Hospitals

CMS issued an interim final rule, with comments due May 13, which would result in payment increases (about \$227 million in the first six months of FY 2014) for low-volume hospitals and the hospital inpatient prospective payment system (IPPS) Medicare-dependent hospital program.

MACPAC Semiannual Report to Congress

In its latest report to Congress, the Medicaid and CHIP Payment and Access Commission (MACPAC) recommended that states be allowed to provide low-income adults with 12 months continuous eligibility for Medicaid and be required to provide the same benefits to pregnant women who are eligible for Medicaid that are provided to women whose eligibility is based on their status as parents of a dependent child. Also, among the report recommended that women enrolled in qualified health plans through PPACA exchanges be allowed to retain their coverage, even if their pregnancy makes them eligible for Medicaid.

Upcoming Health-Related Hearings and Markups

Postponed--House Energy and Commerce Subcommittee on Health: will hold a hearing titled “Examining Concerns Regarding FDA’s Proposed Changes to Generic Drug Labeling;” 2:00 p.m., 2123 Rayburn Bldg.

Postponed--House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies: will hold an oversight hearing on the future of biomedical research; 10:00 a.m., 2358-C Rayburn Bldg.

House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies: will hold a hearing on proposed fiscal 2015 appropriations for agencies, programs and activities under its jurisdiction; 10:00 a.m., 2358-C Rayburn Bldg.; March 25.

Senate Special Aging Committee: will hold a hearing on preventing Medicare fraud; 2:15 p.m., 562 Dirksen Bldg.; March 26.

Health Legislation Recently Introduced

S. 2106 (REFORM), to amend the Internal Revenue Code of 1986 to provide that the individual health insurance mandate not apply until the employer health insurance mandate is enforced without exceptions; FISCHER; to the Committee on Finance, March 11.

S. 2110 (MEDICARE/MEDICAID), to amend titles XVIII and XIX of the Social Security Act to repeal the Medicare sustainable growth rate and to improve Medicare and Medicaid payments, and for other purposes; WYDEN; read the first time, March 11.

H.R. 4187 (MEDICARE), to amend Title XVIII of the Social Security Act to encourage the development and use of new antimicrobial drugs, and for other purposes; ROSKAM; jointly, to the committees on Ways and Means and Energy and Commerce, March 11.

H.R. 4188 (MEDICARE), to amend Title XVIII of the Social Security Act to adjust the Medicare hospital readmission reduction program to respond to patient disparities, and for other purposes; RENACCI; to the Committee on Ways and Means, March 11.

H.R. 4190 (MEDICARE), to amend Title XVIII of the Social Security Act to provide for coverage under Medicare pharmacist services; GUTHRIE; jointly, to the committees on Energy and Commerce and Ways and Means, March 11.

H.R. 4191 (VETERANS’ HEALTH), to amend Title 38, U.S. Code, to improve the treatment of medical evidence provided by non-Department of Veterans Affairs medical professionals in support of claims for disability compensation under the laws administered by the secretary of veterans affairs, and for other purposes; WALZ; to the Committee on Veterans’ Affairs, March 11.

H.R. 4196 (REFORM/MEDICARE), to amend the Patient Protection and Affordable Care Act to eliminate exchange cost-sharing subsidies, to amend Title XVIII of the Social Security Act to create a Medicare Advantage Improvement Fund, and for other purposes; JOHNSON of Ohio; jointly, to the committees on Energy and Commerce, Ways and Means and Education and the Workforce, March 11.

H.R. 4201 (MEDICARE), to amend Title XVIII of the Social Security Act to require Medicare Advantage organizations to disclose certain information on the changes made to the MA plan offered by such organization pursuant to changes required by the Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, and for other purposes; DENHAM; jointly, to the committees on Ways and Means and Energy and Commerce, March 11.

Health Legislation Recently Introduced cont.

H.RES. 510 (MEDICAL TRIALS), expressing the sense of the House of Representatives that the National Institutes of Health should develop a pilot program to improve medical trial participation, retention, efficiency, effectiveness and diversity; KINGSTON; to the Committee on Energy and Commerce, March 11.

H.RES. 513 (OSTEOGENESIS IMPERFECTA), supporting the goals and ideals of the week of May 3, 2014, through May 10, 2014, as National Osteogenesis Imperfecta Awareness Week, to celebrate the progress made, and recognize the work yet to be done toward educating our communities, promoting research programs and raising vital resources for doctors, nurses and health-care providers and everyone touched by the Osteogenesis Imperfecta community; RUPPERSBERGER; to the Committee on Energy and Commerce, March 11.

S. 2115 (BIOMEDICAL RESEARCH), to provide for the establishment of a fund to provide for an expanded and sustained national investment in biomedical research; DURBIN; to the Committee on Health, Education, Labor and Pensions, March 12.

S. 2122 (MEDICARE/MEDICAID), to amend titles XVIII and XIX of the Social Security Act to repeal the Medicare sustainable growth rate and to improve Medicare and Medicaid payments, and for other purposes; HATCH; read the first time, March 12.

H.R. 4209 (MEDICARE), to amend Title XVIII of the Social Security Act to repeal the Medicare sustainable growth rate and improve Medicare payments for physicians and other professionals, and for other purposes; TIERNEY; jointly, to the committees on Energy and Commerce, Ways and Means, the Judiciary and the Budget, March 12.

H.R. 4210 (REFORM), to amend the Affordable Care Act to authorize the extension of the initial open enrollment period for up to one month, and for other purposes; SCHRADER; jointly, to the committees on Energy and Commerce and Ways and Means, March 12.

H.R. 4211 (MEDICARE), to require the comptroller general of the U.S. to conduct studies on enrollment by racial and ethnic minorities and by low-income seniors in Medicare Advantage; WALORSKI; jointly, to the committees on Ways and Means and Energy and Commerce, March 12.

H.R. 4216 (MATERNAL HEALTH), to amend Title V of the Social Security Act to provide grants to states to establish state maternal mortality review committees on pregnancy-related deaths occurring within such states; to develop definitions of severe maternal morbidity and data collection protocols; and to eliminate disparities in maternal health outcomes; CONYERS; to the Committee on Energy and Commerce, March 12.

H.R. 4221 (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; SIRES; to the Committee on Energy and Commerce, March 12.

S. 2126 (REGENERATIVE MEDICINE), to launch a national strategy to support regenerative medicine through the establishment of a Regenerative Medicine Coordinating Council, and for other purposes; BOXER; to the Committee on Health, Education, Labor, and Pensions, March 13.

S. 2134 (DRUGS), to withdraw approval for the drug Zohydro ER and prohibit the Food and Drug Administration from approving such drug unless it is reformulated to prevent abuse; MANCHIN; to the Committee on Health, Education, Labor, and Pensions, March 13.

S. 2141 (NONPRESCRIPTION SUNSCREEN), to amend the Federal Food, Drug, and Cosmetic Act to provide an alternative process for review of safety and effectiveness of nonprescription sunscreen active ingredients and for other purposes; REED; to the Committee on Health, Education, Labor, and Pensions, March 13.

S. 2144 (MEDICARE), to amend Title XVIII of the Social Security Act to apply Medicare competitive bidding to vacuum erection systems and to require the secretary of health and human services to implement a national mail order program for such devices; MCCASKILL; to the Committee on Finance, March 13.

Health Legislation Recently Introduced cont.

H.R. 4234 (VETERANS' HEALTH), to direct the secretary of veterans affairs to carry out a pilot program to reduce the shortage of psychiatrists in the Veterans Health Administration of the Department of Veterans Affairs by offering competitive employment incentives to certain psychiatrists, and for other purposes; BUCSHON; to the Committee on Veterans' Affairs, March 13.

H.R. 4240 (HEALTH SERVICES ACCESS/COVERAGE), to expand access to health-care services, including sexual, reproductive, and maternal health services, for immigrant women, men and families by removing legal barriers to health insurance coverage, and for other purposes; MICHELLE LUJAN GRISHAM of New Mexico; jointly, to the committees on Energy and Commerce and Ways and Means, March 13.

H.R. 4241 (DRUGS), to withdraw approval for the drug Zohydro ER and prohibit the Food and Drug Administration from approving such drug unless it is reformulated to prevent abuse; LYNCH; to the Committee on Energy and Commerce, March 13.

H.R. 4244 (REFORM), to amend the Internal Revenue Code of 1986 to modify the small employer health insurance credit, and for other purposes; PETERS of Michigan; to the Committee on Ways and Means, March 13.

H.R. 4250 (NONPRESCRIPTION SUNSCREEN), to amend the Federal Food, Drug, and Cosmetic Act to provide an alternative process for review of safety and effectiveness of nonprescription sunscreen active ingredients and for other purposes; WHITFIELD; to the Committee on Energy and Commerce, March 13.

H. RES. 518 (MULTIPLE SYSTEM ATROPHY), expressing support for designation of March 2014 as "Multiple System Atrophy Awareness Month" to increase public awareness of this progressive neurodegenerative disorder that affects the autonomic functions of the body; ELLISON; to the Committee on Oversight and Government Reform, March 13.