



## Health Policy Briefing

March 24, 2014

### Congress Returns to Stare Down March 31st Deadline to Pass SGR Reform or a Quick Fix

#### *House Budget Committee May Consider FY 2015 Budget Resolution*

While **Senate Budget Committee Chairman Patty Murray (D-WA)** has made it known she will forego convening her committee to formulate a budget resolution for fiscal year (FY) 2015, **House Budget Committee Chairman Paul Ryan (R-WI)** may attempt to gain the Republican votes needed to go forward with a proposal later this spring. Undoubtedly, both the House and Senate are unlikely to change the \$1.014 spending cap for FY 2015 as set forth in the most recent budget deal. Although it is reported that Rep. Ryan is looking at revamping welfare program entitlements, it remains to be seen the extent to which any draft in committee will also attack federal health programs, including the Patient Protection and Affordable Care Act (PPACA). Democrats will have a challenge in crafting an alternative, given that the President's recommendations appear to be dead on arrival in both chambers.

#### *Inside*

- Medicare Physician Payment Reform Looks Iffy.....2
- Bipartisan Medicare Reform Effort Emerges on a Second Issue.....2
- PPACA Efforts Intensify as March 31st Enrollment Deadline Nears.....2
- CMS Asks Congress for New Authority on Appeals.....3
- Hospice Pilot Program Announced.....3
- FDA Medical Device Classification Proposal.....3
- Health-Related Hearings and Markups.....4
- Health-Related Legislation Recently Introduced.....5

### ***Medicare Physician Payment Reform Looks Iffy***

**W**ith only a week left before Medicare physician reimbursement levels are cut by 24% under current law, it remains to be seen if the Senate will take up an alternative, S. 2110, to the House-passed legislation containing the five-year elimination of the individual mandate penalty under the PPACA (H.R. 4015, as passed). The Congressional Budget Office (CBO) estimates that S. 2110 will cost an additional \$41.8 billion over the House bill's ten year cost of \$138.4 billion before applying the cost offset. The Senate add-ons include the so-called Medicare extenders and other provisions such as ensuring access to podiatric physicians. It is unclear what new sources of revenue or spending offsets the Senate may consider, if the chamber hurries the legislation to a vote this week or next. If a resolution of the issue cannot be fashioned in time, another short-term extension of the current Medicare physician payment regime may become the order of business this week (the House Majority Leader has alerted members to a possible vote this week to address the issue in one way or another). An extension beyond the November elections may be likely if the House and Senate cannot come to a bipartisan agreement on offsets to repeal and replace the Medicare physician sustainable growth rate (SGR) formula.

### ***Bipartisan Medicare Reform Effort Emerges on a Second Issue***

**T**he House Ways and Means Chairman and Ranking Member and their counterparts on the Senate Finance Committee unveiled bipartisan/bicameral draft legislation in an attempt to develop satisfactory means to compare quality across post-acute care (PAC) service settings. The "Improving Medicare Post-Acute Care Transformation (IMPACT) Act of 2014", is designed to among other things: collect standardized data; improve hospital and PAC discharge planning; and use the information to reform PAC payments (via site-neutral or bundled payments or some other reform), while ensuring continued beneficiary access to the most appropriate setting of care. The sponsors are asking affected parties to provide them with suggestions on how to improve the legislation.

## **PPACA Health Reform Update**

### ***PPACA Efforts Intensify as March 31st Enrollment Deadline Nears***

**A**ccording to the latest information, the Administration has determined that enrollment under the PPACA has reached the five million figure, but not the seven million that U.S. Department of Health and Human Services (HHS) Secretary Kathleen Sebelius said was the goal in her congressional testimony. With only eight days to go until the PPACA enrollment deadline ends, the Administration has moved to provide various parties additional relief. Individuals who accessed coverage under the exchanges before March 31, but who did not obtain actual coverage before the deadline due to "technical difficulties" would still be considered covered by such date and be exempt from the non-coverage penalty for 2014. The Centers for Medicare and Medicaid Services (CMS) also deferred until the end of April the date when the law's high-risk pool coverage would end. In addition, CMS issued a 279 page proposed rule providing health insurers participating in the various PPACA health insurance exchanges "premium stabilization" relief. If such insurers incur higher than anticipated administrative costs (due to the spotty rollout of the PPACA), then the insurers can apply for "special circumstances" relief under the law's risk corridors provision. Relief would be provided by reducing the minimum loss ratio (MLR) from 80% to 78% before an insurer is required to return any cost savings to enrollees. CMS also proposed regulations which clarify the circumstances under which state laws would conflict with federal law, thus better enabling consumers to be informed of their choices and insurers of their responsibilities to assist their policyholders. CMS also clarified the circumstances under which the PPACA's reinsurance program would aid insurers and third-party administrators, particularly when federal funds are strained as a result of the extension of the "if you like your plan, you can keep it" rule through plan years beginning before October 16, 2016. Of note, in connection with the delay of the employer mandate, the U.S. District Court for the Eastern District of Wisconsin dismissed a lawsuit by a physician's group which contested the ruling. In addition, the U.S. Supreme Court will hear arguments as to whether private employers can avoid the law's contraceptive benefits mandate if they have religious objections.

## Medicare/Medicaid/PHSA Corner

### *CMS Asks Congress for New Authority on Appeals*

**T**he CMS Medicare/Medicaid Coordination Office has asked Congress for authority under new legislation that would: allow the agency to merge the appeals process under Medicare and Medicaid; ensure retroactive prescription drug coverage for dual-eligibles by making an existing demonstration project a permanent one; and extend the Program for All-Inclusive Care for the Elderly (PACE) to individuals between 21 and 55.

### Hospice Pilot Program Announced

**C**MS announced that, under the PPACA's Medicare Care Choices Model concurrent care demonstration, the agency will allow Medicare hospice patients to have access to palliative and restorative care. In related news, CMS said that it will not, at this time, initiate an independent review of cases in which a hospice and a Medicare Part D drug sponsor disagree on who has financial responsibility for a drug given to a hospice patient.

### *FDA Medical Device Classification Proposal*

**T**he FDA issued a proposed rule under which the agency would revise its device reclassification process to conform to the Food and Drug Administration Safety and Innovation Act (FDASIA). In another action, the agency proposed to update the definitions of class I (low risk), class II (medium risk) and class III (high risk) devices to better reflect the level of risk associated with the device and the level of regulation needed to provide a "reasonable assurance of safety and effectiveness."

## Upcoming Health-Related Hearings and Markups

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

*House Veterans' Affairs Subcommittee on Oversight and Investigations Committee: will hold a hearing on H.R. 3593, the "VA Construction Assistance Act of 2013" and draft legislation related to **Biological Implant Tracking and Veteran Safety**; 10:00 a.m., 334 Cannon Bldg.; March 25.*

*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.; March 26.*

*House Energy and Commerce Subcommittee on Oversight and Investigations: will hold a hearing titled "**Where Have All the Patients Gone? Examining the Psychiatric Bed Shortage**;" 10:00 a.m., 2123 Rayburn Bldg.; March 26.*

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

*House Appropriations Subcommittee on Agriculture, Rural Development, FDA, and Related Agencies: will hold a hearing on the **Food and Drug Administration (FDA) Fiscal Year 2015 Appropriations**; 10:00 a.m., 2362-A Rayburn Bldg.; March 27.*

*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.; April 1.*

*House Committee on Veterans' Affairs Subcommittee on Oversight and Investigations: will hold a hearing titled "**VA & Human Tissue: Poor Practice and Lack of Tracking Endangers Veterans**;" 10:00 a.m., 334 Cannon Bldg.; April 2.*

## Health Legislation Recently Introduced

**H.R. 4251** (TRAUMATIC BRAIN INJURY), to direct the secretary of health and human services, acting through the director of the Centers for Disease Control and Prevention, to establish a surveillance system regarding traumatic brain injury, and for other purposes; PASCARELL; to the Committee on Energy and Commerce, March 14.

**H.R. 4260** (HIV), to ensure that the Ryan White Comprehensive AIDS Resources Emergency Act program is as effective as possible in saving lives and preventing the spread of HIV by ensuring that funding allocations are evidenced-based and by promoting greater utilization of patient-centered care; ELLMERS; to the Committee on Energy and Commerce, March 14.

**H.R. 4261** (VETERANS' HEALTH), to improve the research of Gulf War Illness, the Research Advisory Committee on Gulf War Veterans' Illnesses, and for other purposes; COFFMAN; to the Committee on Veterans' Affairs, March 14.

**H. RES. 522** (BRAIN ANEURYSM AWARENESS), expressing support for designation of September 2014 as National Brain Aneurysm Awareness Month; TIBERI; to the Committee on Energy and Commerce, March 14.

**H.R. 4276** (VETERANS' HEALTH), to extend and modify a pilot program on assisted living services for veterans with traumatic brain injury; CASSIDY; to the Committee on Veterans' Affairs, March 18.