



## Health Policy Briefing

June 17, 2013

### Senate GOP Set to Fight for BCA Spending Caps as Democrats Set FY'14 Allocations

#### *FY 2014 Appropriations Process Still Contentious*

The House continues to push through appropriations and defense authorization measures that save defense-related programs from the full effect of the Budget Control Act's (BCA) sequestration levels while further squeezing domestic program spending. On the other hand, the Senate Appropriations Committee is scheduled on Thursday to set fiscal year (FY) 2014 302(b) spending allocation caps for each subcommittee that will test the resolve of Senate Republicans to hold firm in support of the BCA caps on discretionary spending. The intent of **Committee Chairwoman Barbara Mikulski (D-MD)** is to allocate \$1.058 trillion, an amount that would set aside the BCA's sequestration caps. Lacking a House/Senate agreement on total FY 2014 spending, the House passed the FY 2014 National Defense authorization bill, H.R. 1960, that would authorize spending above the \$498 billion cap by \$28.1 billion. With the spending cap in place, the House Appropriations Committee followed up by passing the FY 2014 defense appropriations bill providing \$512.5 billion in non-war funding, a decrease of \$5.1 billion

below the FY 2013 enacted level and \$3.4 billion below the President's request. The House Appropriations Committee also passed the FY 2014 Agriculture/Food and Drug Administration (FDA) spending bill which allocates \$2.5 billion to the FDA, an increase of \$24 billion above the FY 2013 enacted level. Total FDA revenue would amount to \$4.3 billion, including user fees.

#### *Inside*

- Republicans Scrutinize PPACA Role by Contractors and IRS.....2
- PPACA Assister Program Under Attack.....2
- Financial Integrity Rules for Health Insurance Exchanges.....2
- Final IRS Rule on PPACA Tanning Excise Tax.....2
- Two House Committees Renew Cooperation to Develop Doc Fix.....3
- Medicare Reform Still in the Sights of Key Legislators...3
- House Members Call for Delay in DME Bidding Process.....3
- MedPAC Report on MD Cuts, Bundling and Payment Rates.....3
- Medicare Coverage for Certain PET Scans.....4
- Upcoming Hearings and Markups on Health-Related Legislation.....4
- Health Legislation Recently Introduced.....5

## PPACA Health Reform Update

### *Republicans Scrutinize PPACA Role by Contractors and IRS*

**T**he House Energy and Commerce Subcommittee on Oversight and Investigations sent a letter to the acting Internal Revenue Service (IRS) Commissioner requesting information regarding the agency's ability to protect the confidential health information of millions of Americans and respect the safeguards imposed under the Health Insurance Portability and Accountability Act (HIPAA). Concerns arose in connection with a California health care provider who is suing the IRS after the agency executed a search warrant for financial data pertaining to a former employee, but insisted on also seizing patient medical records. Also, Republicans on the Senate Health, Education, Labor and Pensions (HELP) Committee sent a letter to Department of Health and Human Services (HHS) Secretary Kathleen Sebelius asking for an investigation of reports that California officials may be concealing the details of contracts awarded using Patient Protection and Affordable Care Act (PPACA) funds intended to help establish the state's health insurance exchange.

### *PPACA Assister Program Under Attack*

**T**he House Oversight and Government Reform Committee again set its sights on the PPACA by requesting HHS to produce transcribed interviews with the Center for Consumer Information and Insurance Oversight (CCIIO) head and director of the unit's consumer support group. The committee chairman, Rep. Darrel Issa (R-CA), said HHS intentionally circumvented an explicit federal funding ban by providing "assister" funding to states to help with enrollment under their health insurance exchanges.

### *Financial Integrity Rules for Health Insurance Exchanges*

**C**MS issued proposed rules--Program Integrity: Exchange, Small Business Health Option Programs (SHOP), Premium Stabilization Programs, and Market Standards--that the agency said are intended to safeguard federal funds and to protect consumers by ensuring that issuers, Marketplaces, and other entities comply with federal standards meant to ensure consumers have access to quality, affordable health insurance. The rules include policies governing advance payments of the premium tax credit, cost-sharing reductions and premium stabilization programs for low/moderate-income individuals. The rules also include standards for agents and brokers, as well as premium standards based on geographic areas, guaranteed availability and renewability of plans.

### *Final IRS Rule on PPACA Tanning Excise Tax*

**T**he IRS issued a rule finalizing the PPACA's provision which levies a 10% excise tax on indoor tanning services. The rule eases the scope of the provision somewhat by exempting tanning beds which are part of broader health fitness services.

## Medicare/Medicaid/Public Health Services Corner

### *Two House Committees Renew Cooperation to Develop Doc Fix*

**A**fter the House Energy and Commerce Committee released draft legislation to reform the current Medicare physician payment system and held hearings on the legislation, the Chairman, Rep. Fred Upton (R-MI), and the Chairman of the House Ways and Means Committee, Rep. Dave Camp (R-MI), publicly stated that the two committees are again cooperating to formulate a final legislative product which they hope to move before the August congressional recess. A significant hurdle that remains is to find revenue enhancements or spending reductions sufficient to offset the \$139 billion ten-year cost of the sustainable growth rate (SGR) reform.

### *Medicare Reform Still in the Sights of Key Legislators*

**H**ouse Budget Committee Chairman Paul Ryan (R-WI) recently reiterated his intent to push for Medicare reform, regardless of the Medicare trustees' report that extended the solvency of the program for another two years. However, the prospects that the House budget resolution containing such reforms will become the basis for a House-Senate budget deal appears to be less and less likely as the FY 2013 budget deficit declines due to the sequestration and unanticipated level of tax receipts. Nonetheless, in the Senate another bipartisan effort is underway to craft Medicare changes that focus on helping reduce the spiraling costs of chronic care according to Senators Ron Wyden (D-OR) and Johnny Isakson (R-GA). While the House budget resolution also would transform Medicaid into a block grant program, the Arkansas Surgeon General testified at a House Energy and Commerce Health Subcommittee hearing that the current law is sufficient to give states flexibility to contain Medicaid costs through new delivery mechanisms, such as the state's private option given the okay by HHS. Rep. Joe Pitts (R-PA), the subcommittee chair, said that HHS/CMS should allow states to modernize their Medicaid programs through consumer driven mechanisms, such as coordinated care.

### *House Members Call for Delay in DME Bidding Process*

**R**eps. Glenn Thompson (R-PA) and Bruce Braley (D-IA) said they have about 226 House members who support their efforts to ask the Centers for Medicare and Medicaid Services (CMS) to delay the July 1st start of Round Two of the durable medical equipment (DME) bidding program until year-end. They said they are concerned about what they say is a lack of transparency and binding bids under the program.

### *MedPAC Report on MD Cuts, Bundling and Payment Rates*

**T**he Medicare Payment Advisory Commission (MedPAC) released its annual report to Congress, Medicare and the Health Care Delivery System, which finds that Medicare payment rates often vary significantly for the same ambulatory services across practice/hospital-outpatient settings. The commission suggests that payment rates in different settings for the same patient services should be equalized, particularly given that physician services are shifting to more expensive hospital outpatient settings. MedPAC also found that Medicare fee-for-service payment rates vary significantly in post-acute care settings. The commission suggests that the bundling of payments for post-acute-care in-home and in skilled nursing, long-term care hospitals (LTCH) and inpatient rehabilitation facilities would result in the more efficient use of resources. The commission did not specify one design as the preferred means for payment bundling and said demonstration projects could help determine the best venue. In related news, the House Ways and Means Health Subcommittee held a hearing on other proposals to reform Medicare post-acute care payments included under the President's FY 2014 budget and other bipartisan proposals. Chairman Kevin Brady (R-TX) said the goal is to come up with details for creating site neutral payments, reducing readmissions for nursing homes and creating bundled payments. MedPAC also included several recommendations to reform Medicare outpatient therapy benefit payments to improve accuracy, by: lowering the level of the caps; collecting additional patient data; reducing the certification

*continued on page 4*

## Medicare/Medicaid/Public Health Services Corner cont.

*continued from page 3*

period to improve physician oversight of the plan of care; and developing guidelines for therapy services. The report also discussed how federally qualified health centers (FQHCs) and community health centers (CHCs) could be better used to coordinate care for Medicare/Medicaid dual-eligibles. Of note, MedPAC also announced that Medicare physician payments will be cut by 24.4% in 2014 unless Congress again intervenes. In other news, the Medicaid and CHIP Payment and Access Commission issued its semiannual report to Congress recommending, among other things, the need to improve maternity services to help control costs while ensuring healthy birth outcomes.

### *Medicare Coverage for Certain PET Scans*

**C**MS issued a final Medicare coverage decision under which three fluorodeoxyglucose positron emission tomography (PET) scans will be covered during a patient's lifetime after initial anti-cancer therapy is completed. Additional scans may be allowed as determined by local Medicare Administrative Contractors (MACs).

## Upcoming Hearings and Markups on Health-Related Legislation

**House Energy and Commerce Oversight and Investigations Subcommittee:** will hold a hearing titled "*Continuing Concerns Over BioWatch and the Surveillance of Bioterrorism;*" 10:00 a.m., 2322 Rayburn Bldg; June 18.

**Senate Finance Committee:** will hold a hearing titled "*High Prices, Low Transparency: The Bitter Pill of Health Care Costs;*" 10:00 a.m., 215 Dirksen Bldg; June 18.

**Senate Appropriations Agriculture, Rural Development, FDA, and Related Agencies Subcommittee:** will mark up draft legislation that would make *FY 2014 Ag/FDA appropriations* for programs under its jurisdiction; 10:00 a.m., SD-192 Dirksen Bldg; June 18.

**Senate Appropriations Military Construction, Veterans Affairs and Related Agencies Subcommittee:** will mark up draft legislation that would make *FY 2014 appropriations* for programs under its jurisdiction. 10 a.m., SD-124 Dirksen; June 18.

**Senate HELP Primary Health and Aging Subcommittee:** will hold a hearing titled "*Reducing Senior Poverty and Hunger: The Role of the Older Americans Act;*" 10:00 a.m., 430 Dirksen Bldg; June 19.

**Senate Appropriations: Defense Subcommittee:** will hold hearings on proposed *FY 2014 appropriations* for agencies, programs and activities under its jurisdiction. 10 a.m., 192 Dirksen; June 19.

**Senate Appropriations Committee:** will markup draft legislation that would make *FY 2014 appropriations for various agriculture programs as well as legislation that would make FY 2014 appropriations for military construction-veterans affairs programs*. The committee will also vote on 302(b) subcommittee spending allocations. 10:30 a.m., 106 Dirksen; June 20.

**House Ways and Means Health Subcommittee:** will hold a hearing on the *2013 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds;* 9:30 a.m., 1100 Longworth Bldg; June 20.

## Health Legislation Recently Introduced

**S. 1119** (introduced by Senator Collins), to amend the Public Health Service Act to provide for integration of mental health services and mental health treatment outreach teams, and for other purposes; COLLINS; to the Committee on Health, Education, Labor and Pensions.

**S. 1123** (introduced by Sen. Carper for himself, Sen. Coburn, Sen. Bennet, Sen. Coons, Sen. Klobuchar, Sen. Landrieu, Sen. McCaskill, Sen. Warner, Sen. Ayotte, Sen. Enzi, Sen. Isakson, and Sen. Corker): A bill to amend titles XVIII and XIX of the Social Security Act to curb waste, fraud, and abuse in the Medicare and Medicaid programs; to the Committee on Finance.

**H.R. 2305** (introduced by Rep. Roskam for himself, Rep. Carney, Rep. Hultgren, Rep. Barber, Rep. Shradler, and Rep. Reed): A bill to amend titles XVIII and XIX of the Social Security Act to curb waste, fraud, and abuse in the Medicare and Medicaid programs; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

**S. 1128** (introduced by Sen. Toomey for himself, Sen. Casey, and Sen. Crapo): **A bill to clarify the orphan drug exception to the annual fee on branded prescription pharmaceutical manufacturers and importers; to the Committee on Finance.**

**S. 1137** (introduced by Sen. Wyden for himself, Sen. Crapo, Sen. Landrieu, Sen. Cantwell, Sen. Berkley, and Sen. Blumenthal): **A bill to amend title XVIII of the Social Security Act to modernize payments for ambulatory surgical centers under the Medicare program, and for other purposes; to the Committee on Finance.**

**H.R. 2315** (introduced by Rep. Gerlach for himself and Rep. Neal): **A bill to clarify the orphan drug exception to the annual fee on branded prescription pharmaceutical manufacturers and importers; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.**

**H.R. 2363** (introduced by Rep. Honda): to foster further innovation and entrepreneurship in the health information technology sector; referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, and Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

**S. 1164** (introduced by Sen. Pryor for himself and Sen. Coons): a bill to amend the Patient Protection and Affordable Care Act to clarify provisions with respect to church plans; read twice and referred to the Committee on Finance.

**S. 1165** (introduced by Sen. Tester for himself, Sen. Begich, Sen. Pryor, and Sen. Wyden): a bill to amend title 38, United States Code, to provide for certain requirements relating to the immunization of veterans, and for other purposes; read twice and referred to the Committee on Veterans' Affairs.