



Health Policy Briefing

June 24, 2013

Senate Sets FY 2014 Spending Caps; Timely Implementation of PPACA in Question

FY 2014 Appropriations Measures Advance

The Senate Appropriations Committee advanced several measures last week that will set up a confrontation with the House over the level of fiscal year (FY) 2014 federal spending. The committee approved so-called 302(b) spending caps for each appropriations subcommittee, including \$164.330 billion for Labor/Health and Human Services/Education in contrast to the \$121.797 billion allocated to the corresponding subcommittee in the House. Overall the Senate committee capped spending at \$1.058 trillion (\$552 trillion for defense and \$506 for non-defense programs) in contrast to the House total spending cap of \$966.924 billion as set under the Budget Control Act (BCA). Of note, the BCA with its sequestration caps would limit defense spending to \$498 billion and domestic spending to \$469 billion, but the House total spending caps would shift funding to defense, thus leaving domestic programs to make up the shortfall. The Senate Appropriations Committee also voted to pass the FY 2014 Agriculture/Food and Drug Administration (FDA) spending bill which would give the FDA \$2.55 billion in discretionary spending, including an increase of \$19 million for improvements to medical product safety. The bill

also would allow all \$4.3 billion in FDA user fees, already authorized, to be spent in FY 2014. The Senate Appropriations Committee also approved the FY 2014 Military-Construction/Veterans Administration (VA) bill which would give the VA \$147.9 billion in discretionary funding, including \$63.4 billion for VA medical care and \$55.6 billion in FY 2015 advance funding for medical care. Senate Democrats continued to press for a conference with the House to forge a compromise on FY 2014 spending. In this regard, **Senator Dick Durbin** was successful in adding his amendment to the MilCon/VA bill which expresses the sense of the Senate that “Congress should immediately request a conference with the House, appoint conferees and complete work on a final fiscal 2014 budget resolution.”

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House and Senate Actions on Vaccines, Veterans Mental Health and HIV Donor Issues

The Senate Judiciary Committee voted to pass S. 162, legislation that would authorize \$40 million per year in FY 2015-2019 to provide grants for veterans' mental health programs, including peer-to-peer counseling and alternatives to incarceration and transitional services. The full-Senate also passed S. 330, legislation that would facilitate research into the potential health risks individuals with HIV face after receiving organs from donors who also have HIV. The bill also contains provisions: instructing HHS to develop and implement safeguards and quality standards for research related to HIV-infected organ transplantation; and that would decriminalize organ donations by individuals with HIV if the research concludes that there are no health risks. The House also passed and sent to the President for his signature H.R. 475, legislation amending the Internal Revenue Code of 1986 to include vaccines against seasonal influenza within the definition of taxable vaccines. The House also passed H.R. 1797, the Pain-Capable Unborn Child Protection Act, which in general, subject to certain exceptions, would prohibit any person from performing or attempting to perform an abortion if the probable post-fertilization age of the unborn child is 20 weeks or greater.

PPACA Health Reform Update

More Threats to Full Implementation of the PPACA

Rep. Jim Matheson (D-UT) announced that H.R. 763, legislation that would repeal the Patient Protection and Affordable Care Act's (PPACA) tax on health insurers, has 221 cosponsors, enough to pass the House. Senator Orrin Hatch (R-UT) and the other eight Senate Finance Committee Republicans sent a letter to HHS Secretary Kathleen Sebelius which demands details on the so-called "navigator" program to determine the extent to which appropriate safeguards to protect consumer privacy have been adopted (some have expressed concerns that identity theft could increase if the standards for navigators are set too low). Also, the House Oversight and Government Reform Committee issued a subpoena to HHS Secretary Kathleen Sebelius for documents related to reviews and other information about each PPACA CO-OP applicant's financial viability and ability to repay the loans each has received (a total of about \$2 billion). In addition, the GAO issued a report finding that CMS has missed several deadlines in completing key activities necessary to establish federally facilitated health insurance exchanges in the 34 states which have ceded their roles to the federal government under the PPACA. GAO said that the remaining activities cross the core exchange functional areas of eligibility and enrollment, plan management and consumer assistance. In a related report, the GAO said the problems also cross-over to the federal role in establishing Small Business Health Options Program (SHOP) exchanges. Another factor confronting the implementation of the PPACA is the potential cost of the low-income subsidies to individuals who would be made newly eligible under the immigration reform legislation currently pending in the Senate (S. 744). Although CBO estimated that there would be about \$200 billion in budget savings in the first 10 years after enactment of the bill, the CBO also estimated there would be 10.4 million more legal immigrants in the United States by 2023 which would result in an additional \$82.3 billion more in health care law subsidies over the decade. In an attempt to help make the PPACA law successful, HHS Secretary Kathleen Sebelius is scheduled to visit at least seven states in the next few weeks to garner support for the law and increase enrollment under the exchanges beginning this October. The HHS outreach program includes programs for the following groups: the "Healthy and Young" who might feel medically invulnerable and might not see the value in health coverage; the "Active, Sick and Worried" who want to obtain health insurance but do not know how to choose a plan; and the "Passive and Unengaged" who are uninterested in health coverage and might have some mistrust of the PPACA. HHS also said that the PPACA medical loss ratio (MLR) requirements will reduce premiums by about \$500 billion for certain policyholders in 2012.

Medicare/Medicaid/Public Health Services Corner

Senate Finance Committee Hearing Calls for Greater Health Price Transparency

At a Senate Finance Committee hearing Chairman Max Baucus (D-MT) and Senator Orrin Hatch (R-UT) presented their concerns that consolidation in the health care industry could lead to higher prices for health care without improving outcomes. The hearing focused on the relative lack of health care pricing transparency throughout the health care system. A key witness, a Time magazine journalist, testified that the health care marketplace is dysfunctional because prices for goods and services and how they are set are not known. He said that providers should be required to publicly release their charges in order to increase competition and lower costs. Others said that price transparency could be improved by: building on efforts by CMS to release Medicare data on inpatient procedures; allowing more access to Medicare databases; and requiring health plans subject to the PPACA to be more transparent in their pricing.

Congressional Follow-up to Hearings on Post-Acute Care

The chairmen and ranking members of the Senate Finance Committee and House Ways and Means Committee requested that key post-acute care providers submit suggestions by August 19 on ways to “ensure that Medicare beneficiaries receive the right post-acute care, in the right setting at the right time with the highest level of quality.” They say their concerns are that: the Medicare rules do not clearly delineate the types of patients who are appropriate for each different setting; most post-acute care providers are not required to admit all beneficiaries; and that the quality of care and patient outcomes often cannot be compared across facilities making it impossible to evaluate the comparative efficacy of services provided in different settings. They also asked for comments on MedPAC’s suggestion for the bundling of post-acute care payments.

AoA Rule on LTC Ombudsmen Responsibilities

The Administration on Aging (AoA) released a proposed rule relating to the ombudsman program under the Older Americans Act which (1) addresses responsibilities of state agencies housing long-term care ombudsman offices not to disclose the identity of any person sending a complaint to the ombudsman or the identity of any resident of a long-term care facility, (2) defines the following terms--immediate family; office of the state long-term care ombudsman; and representative of the office of the state long-term care ombudsman; and (3) defines the responsibilities of state ombudsmen; consistent approaches to resolving complaints; and conflicts of interest. Comments on the rule are due by August 19th.

Hearing on Medicare Trustees Report

The Committee on Ways and Means: Health Subcommittee held a hearing on the 2013 Medicare Hospital Insurance Trustees Report in order to gain a better understanding of Medicare’s financial condition according to Chairman Kevin Brady (R-TX). He maintained that the reports make clear that program financing is insufficient, despite the projected two years of additional solvency until 2026, and that Congress should take first steps this year to ensure that Medicare beneficiaries receive the medical care they need and deserve. The ranking member, Rep. Jim McDermott (D-WA) said he supports making some improvements to the Medicare program, but said he would oppose measures that would slash the program in order to save it. Witnesses pointed out that the projections are suspect in that they include an assumption that Medicare physician payments will be cut by 24.4% as required under current law (but which many expect to be fixed by Congress before year-end). It was pointed out that benefits would have to be cut to 87% of current law levels when the Hospital Insurance (HI) Trust Fund becomes insolvent and witnesses were generally in agreement that the sooner the projected shortfall is addressed the smaller the impact would fall on beneficiary benefits.

Medicare/Medicaid/Public Health Services Corner cont.***House Hearing on BioWatch Program***

At a House Energy and Commerce Subcommittee on Oversight and Investigations hearing on the post-911 BioWatch program intended to detect massive airborne biological attacks in cities, members were critical of the program's management and said a proposed \$5.8 billion upgrade, called "Generation 3", may not be effective in detecting pathogens. Additional congressional oversight of the revised program is expected this fall.

Upcoming Hearings and Markups on Health-Related Legislation

Senate Homeland Security and Governmental Affairs Committee: will hold a hearing on *curbing prescription drug abuse in Medicare*; 3:00 p.m., 342 Dirksen Bldg.; June 24.

Senate Committee on Finance: will hold a hearing titled "*Program Integrity: Oversight of Recovery Audit Contractors*;" 10:00 a.m., 215 Dirksen Bldg; June 25.

House Appropriations Committee: will meet to consider *302 (b) allocations to the subcommittees*. 10:30 a.m., 2359 Rayburn; June 26.

House Energy and Commerce Health Subcommittee: will hold a hearing titled "*A 21st Century Medicare: Bipartisan Proposals to Redesign the Program's Outdated Benefit Structure*;" 10:00 a.m., 2322 Rayburn Bldg; June 26.

Senate Finance Committee: will hold a hearing on the *outlook for health care quality issues*; 10:00 a.m., 215 Dirksen Bldg.; June 26.

Senate Special Aging Committee: will hold a hearing titled "*Renewing the Conversation: Respecting Patients? Wishes and Advance Care Planning*;" 2:00 p.m., 124 Dirksen Bldg; June 26.

House Energy and Commerce Oversight and Investigations Subcommittee: will hold a hearing titled "*Challenges Facing America's Businesses Under the Patient Protection and Affordable Care Act*;" 10:15 a.m., 2123 Rayburn Bldg; June 26.

House Small Business Health and Technology Subcommittee: will hold a hearing titled "*Mobile Medical App Entrepreneurs: Changing the Face of Health Care*." 10 a.m., 2360 Rayburn; June 27.

House Energy and Commerce Health Subcommittee: will hold a hearing titled "*Examining Reforms to Improve the Part B Drug Program for Seniors*;" 10:00 a.m., 2123 Rayburn Bldg; June 28.

Health Legislation Recently Introduced

H.R. 2365 (REPRODUCTIVE HEALTH), to amend the Public Health Service Act to provide for the national collection of data on stillbirths in a standardized manner, and for other purposes; KING of New York; to the Committee on Energy and Commerce, June 13.

H.R. 2375 (MEDICARE), to delay for at least six months the implementation of Round One re-compete and Round Two of the Medicare durable medical equipment (DME) competitive bidding program and of the national mail-order program for diabetic testing supplies, to permit Congress an opportunity to reform the competitive bidding program; to provide for an evaluation of that program by an auction expert team; and for other purposes; THOMPSON of Pennsylvania; jointly, to the committees on Energy and Commerce and Ways and Means, June 14.

H.R. 2376 (MEDICARE/MEDICAID), to implement a demonstration project under titles XVIII and XIX of the Social Security Act to examine the costs and benefits of providing payments for comprehensive coordinated health care services provided by purpose-built, continuing care retirement communities to Medicare beneficiaries; FITZPATRICK; jointly, to the committees on Energy and Commerce and Ways and Means, June 14.

S. 1180 (MEDICARE), to amend Title XI of the Social Security Act to provide for the public availability of Medicare claims data; GRASSLEY; to the Committee on Finance, June 18.

H.R. 2412 (VETERANS' HEALTH), amend Title 38, U.S. Code, to direct the secretary of veterans affairs to consider the best interest of the veteran when determining whether the veteran should receive certain contracted health care; BARBER; to the Committee on Veterans' Affairs, June 18.

H.R. 2415 (MEDICARE), to amend Title XVIII of the Social Security Act to include information on the coverage of intensive behavioral therapy for obesity in the Medicare and You Handbook, and to provide for the coordination of programs to prevent and treat obesity, and for other purposes; CASSIDY; jointly, to the committees on Energy and Commerce and Ways and Means, June 18.

H.R. 2423 (VETERANS' HEALTH), to improve the authority of the secretary of veterans affairs to enter into contracts with private physicians to conduct medical disability examinations; RUNYAN; to the Committee on Veterans' Affairs, June 18.

H.R. 2425 (RETIREE HEALTH BENEFITS), to amend Title I of the Employee Retirement Income Security Act of 1974 to provide protection for company-provided retiree health benefits; TIERNEY; to the Committee on Education and the Workforce, June 18.

S. 1184 (MEDICARE), to amend Title XVIII of the Social Security Act to include information on the coverage of intensive behavioral therapy for obesity in the Medicare and You Handbook and to provide for the coordination of programs to prevent and treat obesity, and for other purposes; CARPER; to the Committee on Finance, June 19.

S. 1188 (REFORM), to amend the Internal Revenue Code of 1986 to modify the definition of full-time employee for purposes of the individual mandate in the Affordable Care Act; COLLINS; to the Committee on Finance, June 19.

H.R. 2433 (STEM CELL RESEARCH), to amend the Public Health Service Act to provide for human stem cell research, including human embryonic stem cell research, and for other purposes; DEGETTE; to the Committee on Energy and Commerce, June 19.

H.R. 2443 (REFORM), to amend the Internal Revenue Code of 1986 to exempt certain educational institutions from the employer health insurance mandate; MESSER; to the Committee on Ways and Means, June 19.

S. 1198 (MEDICARE), to amend Title XVIII of the Social Security Act to provide for adjustments to Medicare Parts B and D premiums for high-income beneficiaries; MCCASKILL; to the Committee on Finance, June 20.

Health Legislation Recently Introduced cont.

S. 1204 (ABORTION), to amend the Affordable Care Act to protect rights of conscience with regard to requirements for coverage of specific items and services, to amend the Public Health Service Act to prohibit certain abortion-related discrimination in governmental activities, and for other purposes; COBURN; to the Committee on Health, Education, Labor and Pensions, June 20.

H.R. 2453 (MEDICARE), to preserve Medicare beneficiary choice by restoring and expanding the Medicare open enrollment and disenrollment opportunities repealed by section 3204(a) of the PPACA; ROTHFUS; jointly, to the committees on Ways and Means and Energy and Commerce, June 20.

H.R. 2457 (WOMEN'S HEALTH), to provide for a national public outreach and education campaign to raise public awareness of women's preventive health; BERA of California; to the Committee on Energy and Commerce, June 20.

H.R. 2465 (PUBLIC HEALTH), to require the surgeon general of the Public Health Service to submit to Congress an annual report on the effects of gun violence on public health; KELLY of Illinois; to the Committee on Energy and Commerce, June 20.