



Health Policy Briefing

July 22, 2013

House Votes to Delay Employer/Individual Mandate; SGR/Medicare Reform on Tap

Health Legislation in the Spotlight

Last week the House passed legislation which would delay the Patient Protection and Affordable Care Act's (PPACA) employer and individual mandate (see below) and also set the stage for legislation to replace the current Medicare physician payment sustainable growth rate (SGR) formula and make significant changes to Medicare along the lines recommended in the Administration's fiscal year (FY) 2014 budget (see below).

Also, the House Energy and Commerce Committee passed H.R. 698, the HIV-positive Organ Transplant Act, which would authorize the Organ Procurement and Transplantation Network to adopt certain standards with respect to organs infected with HIV if they ensure that such organs may be transplanted only into individuals who also have HIV. The House Financial Services Committee also approved FY 2014 Treasury/Internal Revenue Service (IRS) appropriations which included a statement that "...the IRS has demonstrated little ability to self-police or self-correct, the IRS is on the precipice having even more authority over policing Americans' health coverage. The Committee

finds this expansion of IRS authority to be unacceptable and, therefore, prohibits funding to implement the individual mandate and prohibits transfers from the Department of Health and Human Services to fund the IRS' implementation of the Affordable Care Act." The House is also scheduled to take up amendments under H.R. 2397, the Department of Defense Appropriations Act.

Inside

House Sends to Senate a Bill to Delay PPACA Mandates.....	2
CMS Report on Pioneer ACO Performance.....	2
House E&C Committee Markup of SGR Fix.....	3
House Ways and Means Committee Proposes Medicare Reforms.....	3
Senate Finance Committee Hearing on Meaningful Use.....	3
Comprehensive ESRD Care Initiative Extension.....	3
New Open Payments Apps.....	3
FDA Issues.....	4
Health-Related Hearings and Markups.....	4
Health Legislation Recently Introduced.....	5

PPACA Health Reform Update

House Sends to Senate a Bill to Delay PPACA Mandates

The House passed, and sent to a likely Senate grave, the following PPACA measures which were combined into one bill: H.R. 2667 (the Authority for Mandate Delay Act), which would codify the Treasury Department's delay of the employer mandate until 2015 (35 Democrats voted with Republicans); and H.R. 2668 (the Fairness for American Families Act), which in the same manner would delay until 2015 the law's individual mandate (22 Democrats voted with Republicans). The White House issued a Statement of Administration Policy (SAP) which said the President would veto the bill if passed by the Senate. During hearings held by the House Committees on Ways and Means and Energy and Commerce regarding the employer mandate delay, the Deputy Assistant Secretary For Retirement And Health Policy, said that "While the 2014 transition relief for reporting by employers would make it impractical to implement the employer responsibility provisions, it would not have a comparable effect on implementation of the individual responsibility provisions, which as a practical matter are necessary for implementing ACA's insurance market reforms that guarantee access to affordable insurance for individuals..." Witnesses also testified that delaying the individual mandate would result in higher health insurance rates offered in the PPACA exchanges due to the potential for adverse selection. Republicans also questioned how the individual premium tax credit subsidies could be administered in 2014 without the reporting by employers in 2014 of employment-based health coverage. Republicans continued to question the authority for the delay. The Treasury witness said the agency has the authority under Internal Revenue Code (IRC) 7805(a) which has been used by Republican and Democrat administrations to provide transitional tax relief. At another hearing, the Government Accountability Office (GAO) and Treasury Inspector General (IG) office testified that they have concerns about the timely and fully-functional implementation of the PPACA's health insurance exchanges by October 1st when they are to begin enrollment operations. In addition, at a joint hearing by two subcommittees of the House Oversight and Government Reform and Homeland Security committees, the Center for Medicare and Medicaid Services (CMS) Administrator and IRS Principle Deputy Commissioner testified that they have concerns that sequestration may hamper the efforts of their agencies to implement the various data hubs and insurance market databases that are key to fully implementing the law as intended. Despite these potential problems, the President opened a full court press to promote the benefits of the law and efforts to encourage enrollment in the state and federal health insurance exchanges. He announced that "Just yesterday, state officials in New York announced that average premiums for consumers who buy insurance in their new marketplace will be at least 50% lower next year than they are today..." Adding to the number of critics of the law, the presidents of the International Brotherhood of Teamsters, the United Food and Commercial Workers and Unite Here sent a letter to Senate Majority Leader Harry Reid (D-NV) and House Minority Leader Nancy Pelosi (D-CA) stating that the PPACA needs to be changed in relation to union-negotiated "multiemployer" plans or it "will shatter not only our hard-earned health benefits, but destroy the foundation of the 40-hour work week that is the backbone of the American middle class." They would like the PPACA's individual tax credits to be available to their multiemployer-plan low-income workers in the same manner as under the exchanges and want changes to remove the incentive for employers to reduce worker hours below 30 hours in order to avoid the employer mandate.

CMS Report on Pioneer ACO Performance

CMS issued a one-year progress report on the thirty-two entities participating in the "Pioneer" accountable care organization (ACO) program which found that all ACO's successfully performed better than benchmark rates in fee-for-service Medicare for 15 clinical quality measures which qualified them to receive incentive payments. However, only thirteen of the ACOs met certain cost benchmarks enabling them to share in savings under the Medicare program.

Medicare/Medicaid/Public Health Services Corner

House E&C Committee Markup of SGR Fix

In an attempt to meet House Energy and Commerce Committee Chairman Fred Upton's (R-MI) schedule to pass by the August recess a permanent fix for the current Medicare physician payment sustainable growth rate (SGR) formulation, the committee's Health Subcommittee has scheduled a markup of a bipartisan bill for Monday and Tuesday. The proposed legislation, released by committee leaders, Reps. Upton (R-MI), Pitts (R-PA), Burgess (R-TX), Waxman (D-CA), Pallone (D-NJ) and Dingell (D-MI), is intended to replace the SGR with a new payment system with an alternative that emphasizes payment for quality care. Specifically: the 70-page discussion draft would provide for annual payment updates of 0.5% for the first five years during which various quality care measures would be established by HHS/medical groups/quality organizations and tested; then, beginning in 2019, physicians exceeding their specialty's newly established quality measures under the Physician Quality Reporting System (PQRS) would get 1% incentive payment increases; also, physicians could voluntarily opt out of the fee-for-service system at any time and participate in alternative payment models, such as patient-centered medical homes or bundled care. While the draft includes a provision stating an intent for the final legislation to maintain "budget neutrality", the committee is likely to have help from the House Ways and Means Committee in finding the offsets for the ten-year cost of the fix which the Congressional Budget Office (CBO) has yet to estimate (CBO previously estimated \$139 billion ten-year cost of a ten-year freeze on physician payments).

House Ways and Means Committee Proposes Medicare Reforms

In releasing a discussion draft of three significant changes to the Medicare program, House Ways and Means Committee Chairman Dave Camp (D-MI) stated "Without action, Medicare will be bankrupt by 2026.... There has been strong bipartisan support for advancing common sense solutions to ensure these programs are on a more fiscally sound path, and there is no reason why we cannot work together to achieve that goal." The three provisions, along the lines suggested in the President's budget, estimated to decrease Medicare spending by about \$60 billion over 10 years, would: increase income-related premiums for Parts B (physician services) and D (prescription drugs) beginning in 2017; increase the annual Part B deductible by \$25 for new enrollees in 2017, 2019 and 2021; and establish a \$100 per episode home health copayment starting in 2017. The release of the draft appears to be an opening bid in the committee's attempt to fashion a larger package of Medicare savings which could be included in a broader budget package. With respect to the scoring of potential future legislative changes to Medicare, Reps. Michael Burgess (R-TX) and Donna Christensen (D-VI) introduced H.R. 2663, legislation that would require the CBO to adopt health cost estimating practices over 10+ years which are similar to those in the private sector which use scientific data in order to better score programs affected by chronic disease and child health care.

Senate Finance Committee Hearing on Meaningful Use

At a Senate Finance Committee hearing Republicans disagreed with a CMS statement that the meaningful use program has resulted in more health care providers adopting electronic health records (EHRs) to deliver care. They said that meaningful use incentive payments should be immediately halted, given that rural area health providers are having trouble meeting the requirements of the program. However, the National Coordinator for Health IT testified that halting the program would "stall the progress that's been hard-fought...."

Comprehensive ESRD Care Initiative Extension

CMS announced that the agency has reopened the submission period until August 1st for letters of intent from providers who wish to apply for participation in the Comprehensive End-Stage Renal Disease (ESRD) Care Initiative.

New Open Payments Apps

CMS announced a new application for physicians and another for the health industry manufacturers to be used on mobile devices for purposes of reporting transfers under the Physician Payments Sunshine Act (i.e. OPEN PAYMENTS program).

FDA Issues

At a House Energy and Commerce Subcommittee on Health hearing to take testimony on legislation to regulate compounding pharmacies (H.R. 2186, S. 959 and Rep. H. Morgan Griffith's (R-VA) Compounding Clarity Act), witnesses were generally supportive of legislative efforts to help clarify the Food and Drug Administration's (FDA) authority over such entities. One witness said that any new legislation should not encourage compounding at the expense of traditional manufacturing. The PhRMA witness said they would generally support legislation that, among other things, clarifies the FDA's authority to regulate "as a new drug" any drug that is compounded outside of traditional compounding, and any person involved in the manufacture, distribution or the marketing of such a drug. However, the organization is not in favor of creating a new classification of "compounding manufacturers" which could result in state and federal regulatory confusion. The CEO of the International Academy of Compounding Pharmacists offered a statement that said S. 959 would limit anticipatory compounding only to instances where the historical volume is directly associated with an individual patient prescription and that this could seriously curtail the ability of a pharmacy to have product on hand when demand exists. The statement also took issue with several provisions under H.R. 2186 which would treat "office use and anticipatory compounding" as problematic and cause major patient and practitioner access issues for medications that are not manufactured and readily available.

Health-Related Hearings and Markups

House Energy and Commerce Health Subcommittee: will mark up the Committee Print — To amend title XVIII of the Social Security Act to reform the sustainable growth rate and Medicare payment for physicians' services, and for other purposes; opening statements only; 5:00 p.m., 2123 Rayburn Bldg; July 22.

House Energy and Commerce Health Subcommittee: will mark up the Committee Print — To amend title XVIII of the Social Security Act to reform the sustainable growth rate and Medicare payment for physicians' services, and for other purposes; 1:30 p.m., 2123 Rayburn Bldg; July 23.

House Education and the Workforce Subcommittees on Health, Employment, Labor and Pensions and Subcommittee on Workforce Protections: will hold a hearing titled "The Employer Mandate: Examining the Delay and its Effect on Workplaces;" 10:00 a.m., 2175 Rayburn Bldg; July 23.

House Veterans' Affairs Health Subcommittee: will mark up pending legislation; 2:00 p.m., 334 Cannon Bldg; July 23.

Senate Judiciary Antitrust, Competition Policy and Consumer Rights Subcommittee: will hold a hearing titled "Pay-for-Delay Deals: Limiting Competition and Costing Consumers;" a list of witnesses can be found [here](#); 10:00 a.m., 226 Dirksen Bldg; July 23.

Health Legislation Recently Introduced

H.R. 2688 (HEALTH SAVINGS ACCOUNTS), to improve health care-related, tax-preferred savings accounts and to provide for cooperative governing of individual and group health insurance coverage across state lines, and for other purposes; ROSS; jointly, to the committees on Ways and Means and Energy and Commerce, July 15.

H.R. 2699 (RYAN WHITE HIV/AIDS PROGRAM), to extend the hold-harmless provisions of the Ryan White HIV/AIDS Program pending reauthorization of the overall program; PALLONE; to the Committee on Energy and Commerce, July 16.

H.R. 2700 (REFORM), to amend Title I of the Affordable Care Act to provide for a process for waiver of requirements of that title where the requirement is asserted to otherwise result in a significant decrease in access to coverage or significant increase in premiums or other costs; ROGERS of Michigan; jointly, to the committees on Energy and Commerce, Ways and Means, and Education and the Workforce, July 16.

H.RES. 301 (CANCER AWARENESS), expressing support for designation of September 2013 as National Ovarian Cancer Awareness Month; ISRAEL; to the Committee on Oversight and Government Reform, July 16.

S. 1315 (REFORM), to prohibit the secretary of the Treasury from enforcing the Affordable Care Act and the Health Care and Education Reconciliation Act of 2010; CORNYN; read the first time, July 17.

S. 1316 (REFORM), to repeal the provisions of the Affordable Care Act providing for the Independent Payment Advisory Board; CORNYN; read the first time, July 17.

S. 1318 (MEDICAID/MEDICARE), to amend Title XIX of the Social Security Act to cover physician services delivered by podiatric physicians to ensure access by Medicaid beneficiaries to appropriate quality foot and ankle care, to amend Title XVIII of such act to modify the requirements for diabetic shoes to be included under Medicare, and for other purposes; SCHUMER; to the Committee on Finance, July 18.

S. 1323 (DRUGS), to address the continued threat posed by dangerous synthetic drugs by amending the Controlled Substances Act relating to controlled substance analogues; FEINSTEIN; to the Committee on the Judiciary, July 18.

S. 1325 (TAXATION), to amend the Internal Revenue Code of 1986 to modify the small employer health insurance credit, and for other purposes; BEGICH; to the Committee on Finance, July 18.

S. 1327 (FEHB/SHOP), to make enrollment in health benefits plans under the Federal Employee Health Benefits Program available to employees of qualified employers when fewer than two qualified health plans are offered through the Small Business Health Options Program; BEGICH; to the Committee on Health, Education, Labor and Pensions, July 18.

S. 1330 (REFORM), to delay implementation of the employer responsibility provisions of the Affordable Care Act; BEGICH; to the Committee on Finance, July 18.

S. 1332 (MEDICARE), to amend Title XVIII of the Social Security Act to ensure more timely access to home health services for Medicare beneficiaries under Medicare; COLLINS; to the Committee on Finance, July 18.

H.R. 2703 (VOLUNTEER PRACTITIONERS), to amend the Public Health Service Act to provide liability protections for volunteer practitioners at health centers under Section 330 of such act; MURPHY of Pennsylvania; to the Committee on Energy and Commerce, July 17.

H.R. 2725 (FDA USER FEES), to amend the Balanced Budget and Emergency Deficit Control Act of 1985 to exempt from sequestration certain user fees of the Food and Drug Administration; LANCE; to the Committee on the Budget, July 18.