



Health Policy Briefing

July 8, 2013

Obamacare Employer Mandate Delayed until 2015; HHS Approp’s Markup in Senate

Senate Set to Tackle FY 2014 Labor/HHS/Education Appropriations

On Tuesday the Senate Appropriations Labor/Health and Human Services (HHS)/ Education Subcommittee will take up **Chairman Tom Harkin’s (D-IA)** mark and on Thursday the full Appropriations Committee will follow suit. As Congress returns from the July 4th recess, Senate Democrats continue to press the House to go to conference on the two houses’ competing versions of their fiscal year (FY) 2014 budget resolutions. The Senate Budget Committee Chair, **Sen. Patty Murray (D-WA)**, told Senate Democrats that ““When we return in July, we will have a narrow window of opportunity to work toward a bipartisan budget deal, replace sequestration in a balanced way for this year, next year, and beyond, and prevent another round of uncertainty and brinkmanship in September...” However, the task remains uncertain given Senate Democrat’s insistence for an amelioration of the Budget Committee Act’s (BCA) sequestration and the House’s strengthening of support for the cuts, except for defense spending which was set at \$54 billion over the sequestration level. A

continued impasse could result in defense and Military Construction/ Veterans Administration bills being considered separately followed by a FY 2014 “minibus” continuing resolution for other programs for which a resolution cannot be negotiated.

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PPACA Health Reform Update

PPACA Employer Mandate Delayed until 2015

In an unusual maneuver, the Administration used a blog by the U.S. Department of Treasury's Assistant Secretary for Tax Policy to announce that the administering agencies of "Obamacare" will soon issue transitional relief under the law by not enforcing the Patient Protection and Affordable Care Act's (PPACA) employer minimum health coverage mandate, shared responsibility payments/penalties and employer/insurer reporting requirements until 2015. The announcement said that individual premium tax credits available in 2014 will not be affected by the delay. The Administration, nonetheless, encouraged employers to make coverage available to their workers as would otherwise have been required under the law. Although several business organizations expressed their approval of the relief, Republicans were quick to respond to the surprise blog on other terms. The House Ways and Means Health Subcommittee announced that it will hold a hearing on the delay this Wednesday. Senator Orrin Hatch (R-UT) stated "That the Obama Administration is putting off this job-killing requirement on employers, but not individuals and families, shows how deeply flawed the President's signature domestic policy achievement is. While a delay of this mandate is welcome news since it shows the challenges the employers are facing complying with it, a delay—conveniently past the 2014 election—only adds to the uncertainty these job creators face because of ObamaCare." In addition, House Energy and Commerce Committee Chairman Fred Upton (D-MI) and other key House Republicans sent a letter to the Departments of Treasury and Health and Human Services (HHS) requesting that they provide them with documents and information by July 17th "to better understand the process being used by this administration to determine which provisions of the law to implement, on what time-table, and the feedback upon which such decisions are being made." Rep. Upton said that "Despite delays and missed deadlines, administration officials had repeatedly testified before Congress that they were still on schedule to implement the law... they [now have] admitted that wasn't the case, and it's clear we have no idea [of] the full scope of delays and disarray that may be coming." Rep. Phil Roe (R-TN) has also asked the Congressional Research Service (CRS) to provide him by this Wednesday with an analysis of the Administration's delay and legal authority for its action. About a \$10 billion reduction in 2014 federal revenues is expected as a result of the delay in employer penalties; and the cost of federal tax credits to individuals who do not take or are not offered employer health coverage is also likely to increase significantly as employers delay establishing coverage and complying with new benefit mandates, thus encouraging employees to seek coverage under the new health insurance exchanges.

Small Businesses Express Other Concerns About the PPACA

Republican leaders on the House Oversight and Government Reform Committee sent a letter to HHS Secretary Kathleen Sebelius to affirm the agency's assurance that small employers do not need to obtain health insurance coverage only in the new PPACA exchanges which will begin enrollment this October. Their concern is that the Vermont and District of Columbia insurance officials have indicated that small business coverage can only be obtained under their state-run exchanges.

PPACA Health Reform Update cont.

Efforts to Increase Enrollment and Final Rules for Exchanges

Against the backdrop of a Gallup poll finding that 43% of uninsured U.S. residents do not know that they will be required to purchase health coverage or pay a penalty under the PPACA, the Centers for Medicare and Medicaid Services (CMS) announced a new partnership with the Institute of Museum and Library Services to utilize 123,000 libraries nationwide to assist in distributing information about the PPACA and locating navigators who can help individuals enroll under the state and federal health insurance exchanges beginning this fall. In addition, HHS announced it has made \$32 million in “Connecting Kids to Coverage Outreach and Enrollment Grants” to 41 state agencies, community health centers, school-based organizations, and other nonprofit groups to identify and enroll children eligible for Medicaid and the Children’s Health Insurance Program (CHIP) programs. The Government Accountability Office (GAO) also reported that, to date, HHS has awarded \$3.7 billion to states to help them establish health insurance exchanges and has awarded about \$159 million to help states establish insurance rate review processes. CMS also issued a final rule setting out the guidelines (including appeals and electronic notices) for how state Medicaid programs are expected to coordinate with health insurance exchanges to implement the PPACA’s eligibility requirements for Medicaid and CHIP.

States Transfer PCIP Oversight to HHS

Seventeen states have reacted to the HHS ruling that sets a cap on the cost of the Pre-Existing Condition Insurance Plan (PCIP) program by electing to transfer the oversight of their high-risk pools to HHS. Without assurance of continued federal funding, the electing states decided to forego the possibility that state revenues would be needed to continue PCIP operations through year-end.

Medicare/Medicaid/Public Health Services Corner

ONC Actions to Reduce Medical Errors

The Office of the National Coordinator (ONC) for Health Information Technology released a final “Health IT Patient Safety Action and Surveillance Plan” which was developed with the Agency of Healthcare Research and Quality (AHRQ) in an effort to promote the reporting of health IT-related patient safety incidents and hazards through the use of electronic health record (EHR) systems. Included among the plan’s recommendations are: using the meaningful use program and the National Quality Strategy to establish and advance health IT patient safety priorities; and providing investigations and the taking of corrective actions as necessary. The ONC also has given a one-year, \$523,000 contract to The Joint Commission to investigate the role of health IT as a contributing cause of adverse events.

ESRD Payments to Decrease

CMMS proposed that payments in 2014 to dialysis facilities under the end-stage renal disease prospective payment system (ESRD PPS) would decrease by 9.4% or about \$970 million and also proposed new incentives to improve quality under the ESRD Quality Incentive Program for Payment Year 2016.

Medicare Coverage for Certain PET Scans

In a proposed decision memorandum, CMS concluded that there is enough evidence to support the use of amyloid-beta positron emission tomography (PET) imaging agents through coverage with evidence development (CED) in two instances: to exclude Alzheimer’s disease (AD) in narrowly defined and clinically difficult differential diagnoses and to enrich clinical trials seeking better treatments or prevention strategies for AD by allowing for selection of patients on the basis of biological as well as clinical and epidemiological factors.

Health-Related Hearings and Markups

House Energy and Commerce Health Subcommittee: will hold a hearing titled “Making Medicaid Work for the Most Vulnerable.” 4 p.m., 2123 Rayburn; July 8.

House Veterans’ Affairs Subcommittee on Health: markup of H.R. 1443, the Long-term Care Veterans’ Choice Act; H.R. 1612, the Tinnitus Research and Treatment Act of 2013; and other legislation; 10 a.m., 334 Cannon; July 9.

Senate Appropriations Labor, Health and Human Services, Education and Related Agencies Subcommittee: will hold a markup on draft legislation that would make fiscal 2014 appropriations for programs under its jurisdiction. 11 a.m., 138 Dirksen; July 9.

House Ways and Means Health Subcommittee: will hold a hearing on the delay of the employer mandate and employer information reporting requirements under the Affordable Care Act. 10 a.m., 1100 Longworth; July 10.

Senate Finance Committee: will hold a hearing titled “Repealing the SGR [Sustainable Growth Rate] and the Path Forward: A View from CMS.” 10 a.m., 215 Dirksen; July 10.

Senate Special Aging Committee: will hold a hearing on diabetes research; 2:00 p.m., G-50 Dirksen Bldg; July 10.

Senate Appropriations Committee: will hold a markup on draft legislation that would make fiscal 2014 appropriations for programs under its jurisdiction (Labor/HHS/Education). 10 a.m., 106 Dirksen; July 11.

Health Legislation Recently Introduced

H.R. 2575 (REFORM), to amend the Internal Revenue Code of 1986 to repeal the 30-hour threshold for classification as a full-time employee for purposes of the employer mandate in the Affordable Care Act and replace it with 40 hours; YOUNG of Indiana; to the Committee on Ways and Means, June 28.

H.R. 2578 (MEDICARE), to amend Title XVIII of the Social Security Act to extend for one year the hold-harmless provision for small rural hospitals and sole community hospitals under the Medicare prospective payment system for hospital outpatient department services, and for other purposes; BRALEY of Iowa; jointly, to the committees on Energy and Commerce and Ways and Means, June 28.

H.R. 2590 (VETERANS’ HEALTH), to amend the Wounded Warrior Act to establish a specific timeline for the secretary of defense and the secretary of veterans affairs to achieve integrated electronic health records, and for other purposes; GIBSON; jointly, to the committees on Armed Services and Veterans’ Affairs, June 28.