



## Health Policy Briefing

August 12, 2013

### GOP Leaders Appear to Reject Threat to Shut Down Gov't Unless PPACA is Defunded

#### Leaders Mull Length of Continuing Resolution (CR)

With the President's statements urging Congress to spend more to improve jobs numbers and congressional GOP leaders' retort that the President is mocking policies that would actually increase employment, little agreement can be expected on fiscal year (FY) 2014 appropriations when Congress returns September 9th. It was reported that **House Speaker John Boehner (R-OH)** will likely seek to pass a CR in September which extends federal funding for a period of two months or less, while Senate Democrats would like the CR to last for at least six months which would move any discussion of a long-term deal on taxes and entitlement spending into the next session of congress. On the other hand, the House may be intent on using the need to increase the federal debt ceiling in December as leverage to make broader spending changes. The idea that the House will insist on provisions to defund Obamacare was debunked by both **House Majority Leader Eric Cantor (R-VA)** and **House Budget Committee Chairman Paul Ryan**

**(R-WI)**. If the past is prologue, however, the House and Senate are likely to conference and reach agreement this fall on the Defense spending bill for FY 2014.

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## PPACA Health Reform Update

### *Congressional Members and Staff Get Relief Under Obamacare*

**E**rasing the possibility that congressional members and their “official office” staff would lose the federal employer contributions to their current health coverage under the Federal Employees Health Benefits Program (FEHBP), the Office of Personnel Management (OPM) released a proposed “Grassley Amendment” rule providing for such contributions to be continued when they are required to purchase coverage next year in the health insurance exchanges established under the PPACA. If members and staff meet the current eligibility requirements for continued employer payments at retirement, the rule states that future employer contributions will be made only if such individuals continue to obtain health coverage from the exchanges. They also would be prohibited from re-enrolling in the FEHBP, although the employer contributions to the chosen exchange plan would be based on the current FEHBP rules.

### *CMS Guidance on Exchanges*

The Centers for Medicare and Medicaid Services (CMS) released a frequently asked questions (FAQs) document which specifies the rules under which state-based health insurance marketplaces would be obligated to verify the income of exchange enrollees in order to determine their eligibility for federal tax credits based on income. In general, exchanges would have to use data from tax filings and Social Security, as well as electronically available wage information in certain circumstances, to verify household income information provided on an application for tax subsidies. However, for 2014 only, if an applicant’s self-reported income is less than 90% of the most recent income data from the Internal Revenue Service (IRS), state exchanges would be relieved from having to further verify household income under certain conditions. Nonetheless, full verification of income would have to be made in the 34 states in which the federal government will operate federally facilitated exchanges (FFE). In related news, U.S. Department of Health and Human Services (HHS) Secretary Kathleen Sebelius said the agency will not be spending much time or effort to rebut the actions being taken by FreedomWorks and other organizations to dissuade young adults from enrolling under the health insurance exchanges established under the PPACA, but will be ramping up the educational efforts already underway to encourage enrollment, including the ability to set up personal accounts under the FFE-related website. Significant hurdles still remain before the exchanges begin enrollment procedures on October 1st. According to a recent HHS Office of Inspector General’s report, the data services hub that will be used as a conduit for patient information exchanged between the IRS, Social Security Administration (SSA), other federal agencies and the federal and state exchanges may contain unidentified security risks and a lack of timely testing and correction could delay the release of such data.

### *Alternatives to Obamacare*

**A**lthough the prospects for a repeal of the entire Patient Protection and Affordable Care Act (PPACA) are slim to none during the tenure of President Obama, the House Republican Study Committee is said to be intent on releasing an alternative to the PPACA this fall. Also, a report commissioned by American Enterprise Institute (AEI) sets forth another set of criteria that would replace the current law. In general, the proposal would: eliminate insurer mandated community rating; provide for government-financed premium support; eliminate legal and practical barriers to allow health insurance policies to be renewed for periods of more than one year; and raise about \$300 billion in revenue by repealing the current tax exemption for employees who purchase employer-provided health coverage. On the Medicaid front, the state of Arkansas has submitted a proposal to CMS asking for a waiver allowing the state to use Medicaid funding to enroll Medicaid eligible individuals in health plans offered under the state PPACA health insurance exchange (a form of “premium assistance”).

## Medicare/Medicaid/Public Health Services Corner

### *Members Object to CMS Proposed Cuts in Dialysis Payments*

**O**ver 200 members of the House of Representatives sent a bipartisan letter to CMS which expresses their concern that the \$970 million in proposed cuts to Medicare dialysis facility payments could result in the closure of many facilities, thus threatening access to needed patient care. Reps. Diane Black (R-TN), John Lewis (D-GA), John Shimkus (R-IL) and Ben Ray Lujan (D-NM) urged CMS to consider its “full statutory obligations” when finalizing the rule to ensure that the final payment amounts do not fall below the actual costs of providing such care.

### *CMS Seeks Comments on Disclosure of Physician Payments*

**C**MS released a “Request for Public Comments on the Potential Release of Medicare Physician Data”. The agency seeks answers to the following: whether physicians have a privacy interest in their Medicare payment information and how to weigh their privacy interest with the public interest in disclosure; what payment disclosure policies CMS should pursue to increase transparency, further the goals of improving the quality and value of care, enhancing access and availability of CMS data and reducing waste, fraud and abuse; and the form in which such data should be released. Comments are due by September 5th.

### *CMS/NCHIT Plans for Health Data Sharing*

**T**he Office of the National Coordinator for Health Information Technology and CMS announced a proposed plan of action based on recent comments regarding the exchange of health data among providers and health care organizations. Among the possible elements, subject to support for the privacy, security and integrity of patient data, would be: programs to encourage Health Information Exchange (HIE) activities among providers by offering incentives that evolve into payment adjustments; the development of means to ultimately make HIE a condition of participation in Medicare and Medicaid; the establishment of voluntary technical standards for health information technologies and HIE products and services rather than require the certification standards under the “meaningful use” program; and to use Stage 3 of the Medicare EHR incentive program as a means to require meaningful use participants to electronically share summary of care records to avoid payment adjustments.

### *Update to National Coverage Determination (NCD) Process*

**C**MS gave notice of its intent to update the process it uses for opening, deciding and reconsidering national coverage determinations (NCDs). Included will be an administrative procedure to periodically review the inventory of NCDs that are older than 10 years since their most recent review and to evaluate the continued need for such policies to remain active on a national scale. CMS said that an interested party may request an NCD for certain described drugs or devices even while they are being reviewed by the FDA.

## Health Legislation Recently Introduced

**S. 1417** (PUBLIC HEALTH), to amend the Public Health Service Act to reauthorize programs under Part A of Title XI of such act; HAGAN; to the Committee on Health, Education, Labor and Pensions, Aug. 1.

**S. 1422** (HEALTH SAVINGS), to amend the Congressional Budget Act of 1974 respecting the scoring of preventive health savings; CARDIN; to the Committee on the Budget, Aug. 1.

**S. 1425** (DIETARY SUPPLEMENT LABELING), to improve the safety of dietary supplements by amending the Federal Food, Drug, and Cosmetic Act to require manufacturers of dietary supplements to register them with the Food and Drug Administration and to amend labeling requirements with respect to dietary supplements; DURBIN; to the Committee on Health, Education, Labor and Pensions, Aug. 1.

**S. 1439** (MEDICARE), to amend Title XVIII of the Social Security Act to provide for advanced illness care coordination services for Medicare beneficiaries, and for other purposes; WARNER; to the Committee on Finance, Aug. 1.

**S. 1444** (MEDICARE), to amend Title XVIII of the Social Security Act to provide payment under Part A of Medicare on a reasonable cost basis for anesthesia services furnished by an anesthesiologist in certain rural hospitals in the same manner as payments are provided for anesthesia services furnished by anesthesiologist assistants and certified anesthetists in such hospitals; WYDEN; to the Committee on Finance, Aug. 1.

**S. 1445** (OPTOMETRISTS), to amend the Public Health Service Act to provide for the participation of optometrists in the National Health Service Corps scholarship and loan repayment programs, and for other purposes; PRYOR; to the Committee on Health, Education, Labor and Pensions, Aug. 1.

**S. 1446** (TAXATION), to amend the Internal Revenue Code of 1986 to improve the affordability of the health care tax credit, and for other purposes; ROCKEFELLER; to the Committee on Finance, Aug. 1.

**S. 1453** (DISEASE RESEARCH AND AWARENESS), to direct the secretary of health and human services to establish an interagency coordinating committee on pulmonary hypertension to develop recommendations to advance research, increase awareness and education, and improve health and health care, and for other purposes; CASEY; to the Committee on Health, Education, Labor and Pensions, Aug. 1.

**S. 1455** (REFORM), to condition the provision of premium and cost-sharing subsidies under the Affordable Care Act, upon a certification that a program to verify household income is operational; COBURN; to the Committee on Finance, Aug. 1.

**S. 1469** (HEALTH CARE COSTS), to provide higher-quality, lower-cost health care to seniors; PAUL; to the Committee on Finance, Aug. 1.

**S. 1473** (LONG-TERM CARE), to develop a model disclosure form to assist consumers in purchasing long-term care insurance; KLOBUCHAR; to the Committee on Health, Education, Labor and Pensions, Aug. 1.

**S. 1475** (NURSING), to establish the position of national nurse for public health, to be filled by the same individual serving as the chief nurse officer of the Public Health Service; MERKLEY; to the Committee on Health, Education, Labor, and Pensions, Aug. 1.

**S. 1481** (LONG-TERM CARE), to require issuers of long-term care insurance to establish third-party review processes for disputed claims; KLOBUCHAR; to the Committee on Health, Education, Labor and Pensions, Aug. 1.

**S. 1485** (TAXATION), to amend the Internal Revenue Code of 1986 to provide an income tax credit for elder-care expenses; KLOBUCHAR; to the Committee on Finance, Aug. 1.

**H.R. 2980** (REFORM), to require certain certifications before funds may be awarded for the operation of a navigator program under the Patient Protection and Affordable Care Act, and for other purposes; MCMORRIS RODGERS; to the Committee on Energy and Commerce, Aug. 2.

**H.R. 2985** (DRUGS), to amend Section 505 of the Federal Food, Drug, and Cosmetic Act to provide incentives for the development of new combination drugs; CHAFFETZ; to the Committee on Energy and Commerce, Aug. 2.

## Health Legislation Recently Introduced cont.

**H.R. 2986** (MEDICAID), to amend Title XIX of the Social Security Act to extend the temporary Medicare payment rate floor for primary care services of primary care physicians to nurse practitioners, clinical nurse specialists, physician assistants, and certified nurse-midwives under Medicaid, and for other purposes; BONAMICI; to the Committee on Energy and Commerce, Aug. 2.

**H.R. 2988** (REFORM), to amend the Internal Revenue Code of 1986 to modify the definition of full-time employee for purposes of the employer mandate in the Patient Protection and Affordable Care Act; LIPINSKI; to the Committee on Ways and Means, Aug. 2.

**H.R. 2993** (MEDICAID), to require states to report information on Medicaid payments to abortion providers; OLSON; to the Committee on Energy and Commerce, Aug. 2.

**H.R. 2995** (REFORM), to amend the Patient Protection and Affordable Care Act to eliminate the limitation on deductibles for employer-sponsored health plans; REED; to the Committee on Energy and Commerce, Aug. 2.

**H.R. 3005** (DIAGNOSTIC TESTS), to amend Chapter V of the Federal Food, Drug, and Cosmetic Act to permit the sale of, and access to, “research use only” products in diagnostic tests; BURGESS; to the Committee on Energy and Commerce, Aug. 2.

**H.R. 3019** (PHARMACIES), to amend Chapter V of the Federal Food, Drug, and Cosmetic Act to enhance the requirements for pharmacies that compound drug products; DELAURO; to the Committee on Energy and Commerce, Aug. 2.

**H.R. 3020** (HEALTH INSURANCE COVERAGE), to amend the Employee Retirement Income Security Act of 1974, the Public Health Service Act, and the Internal Revenue Code of 1986 to provide parity under group and individual health plans and group and individual health insurance coverage for the provision of benefits for prosthetics and custom orthotics and benefits for other medical and surgical services; DENT; jointly, to the committees on Energy and Commerce, Education and the Workforce, and Ways and Means, Aug. 20.

**H.R. 3024** (MEDICARE), to establish a smart card pilot program under Medicare; GERLACH; jointly, to the committees on Ways and Means and Energy and Commerce, Aug. 2.

**H.R. 3041** (HEALTH INFORMATION), to prevent the Internal Revenue Service from unnecessarily seizing protected health information; MURPHY of Pennsylvania; to the Committee on Ways and Means, Aug. 2.

**H.R. 3046** (TAXATION), to amend the Internal Revenue Code of 1986 to expand and simplify the credit for employee health insurance expenses of small employers; PALLONE; to the Committee on Ways and Means, Aug. 2.

**H.R. 3054** (AUTISM), to establish a health and education grant program related to autism spectrum disorders, and for other purposes; SMITH of New Jersey; to the Committee on Foreign Affairs, Aug. 2.

**H.R. 3059** (FEDERAL BUDGET), to provide a biennial budget for the United States Government; WHITFIELD; jointly, to the committees on the Budget, Oversight and Government Reform, and Rules, Aug. 2.

**H.RES. 333** (REFORM), expressing the firm conviction of the House of Representatives that any continuing resolution or debt ceiling increase it may approve for the duration of the 113th Congress shall affirmatively include a provision specifically prohibiting the expenditure of any federal funds in support of or in implementation or effectuation or enforcement of any provision of the Affordable Care Act (“ObamaCare”); STOCKMAN; jointly, to the committees on Appropriations and Ways and Means, Aug. 2.