



Health Policy Briefing

August 5, 2013

House Attacks PPACA and Fails on Appropriations as Congress Recesses Until September

Attempts to Pass FY 2014 Appropriations Bills Collapse

Before recessing until the week of September 9, the House of Representatives refused entreaties by the Senate to go to conference to arrive at a common target for fiscal year (FY) 2014 federal spending, thus leaving only three weeks before the start of the new fiscal year to make decisions on all appropriations bills. Last week the Senate failed to cut off debate on the Transportation/Housing and Urban Development (HUD) spending bill and the House pulled the votes on the Transportation/HUD bill when Republican moderates revolted on the reduced level of spending on this measure as a result of the House's budget resolution which would cut spending in accordance with the Budget Control Act's (BCA's) sequestration mandate.

While the White House position is to ameliorate the effects of sequestration on domestic spending as a condition to do the same for military spending, the House has held steady in its position to provide relief only under the Defense bill, as passed. Last week, the Senate Appropriations Committee did report out of committee its \$594 billion version of the FY 2014 Defense appropriations bill which would ameliorate the cuts mandated under

sequestration. A "gang of eight", led by **Senator Johnny Isakson (R-GA)**, has engaged the White House on the sequestration issue, but also to help gain agreement on a broader measure which would reduce entitlement spending as well. **House Appropriations Committee Chairman Hal Rogers (R-KY)** decried the lack of progress in alleviating the full effect of sequestration and the House's delay in passing bills already approved by his committee. Another hurdle for a quick agreement on FY 2014 appropriations is the effort in the Senate, led by **Senator Mike Lee (R-UT)** and 13 others, to hold the appropriations process hostage to a provision that would defund

continued on page 2

Inside

House E&C Committee Reports Medicare Physician Payment Reform Legislation.....	2
Additional Health Legislation Advances.....	2
PPACA Relief for Members.....	3
PPACA Implementation Questioned.....	3
PCIP Bonuses Increase.....	3
Comments Due on House Ways and Means Draft of Medicare Reforms.....	4
Comments Due on Senate Finance Committee Request on Mental Health Issues.....	4
Medicare Part D Premium Projections.....	4
CMS Finalizes FY 2014 IPPS, LTCH, SNE, IRF, IPS and Hospice Payments.....	4
FDA Issues.....	4
Health Legislation Recently Introduced.....	5

the Patient Protection and Affordable Care Act (PPACA). Neither **Senate Minority Leader Mitch McConnell (R-KY)** nor **House Speaker John Boehner (R-OH)** has indicated support for similar moves in either the Senate or the House. However, Speaker Boehner has told his members that he will support a series of targeted votes to take down various pieces of Obamacare, beginning with the measures passed last week (see below). With little prospect of either side budging from their budget positions over the recess, it appears that Congress is on track to pass one or more continuing resolutions (CRs) in September or beyond to keep the government open. Also, the debate over the recent slowdown in health care spending will likely cause congressional parties to take positions on whether and the extent to which further reforms are needed to curb spending under federal health programs. The White House Council of Economic Advisers (CEA) issued a report stating that health care prices rose just 1.1% in the 12 months ending in May, the slowest in nearly 50 years. The report said that structural changes may be driving a large part of the slowdown in price increases as well as utilization. However, at a Senate Budget Committee hearing at least one witness disagreed, stating that the recession was the biggest reason for the slowdown, and that spending may pick up as the economy improves. In a related move, 19 Democrat and Independent Senators sent a letter to the White House asking the Administration to “identify and announce a cost-savings target for health delivery system reforms that reduce federal spending.”

House E&C Committee Reports Medicare Physician Payment Reform Legislation

The House Energy and Commerce Committee voted 51-0 to report H.R. 2810, the *Medicare Patient Access and Quality Improvement Act of 2013*, which would replace the current sustainable growth rate (SGR) formulation under the Medicare Part B physician payment system with an alternative which would make payments, beginning in 2019, based on how a provider performs on certain quality of care measurements (a 1% increase for scores above a designated mid-range level and a 1% decrease for scores below the mid-range level). As in the bill advanced by the Health Subcommittee, physician payments would increase by a fixed 0.5% during the 5-year phase-in period. The quality measures used to compare physicians with others in their subspecialty would be based on: care coordination; clinical care; patient experience; patient population; and safety. The U.S. Department of Health and Human Services (HHS) would also be required: to finalize the quality measures for the upcoming year by November 15 of each year; to develop codes for complex chronic care management services and a related fee schedule starting in 2015; give physicians feedback on their performance in meeting the quality measures at least quarterly; collect recommendations from professional groups on payment bundles for chronic care and costly, high-volume services; and expand access to Medicare data. Physicians would also be able to voluntarily leave the fee-for-service system and choose an alternative payment model that emphasizes efficient and quality care, such as: accountable care organizations (ACOs), bundled payment programs; or patient-centered medical homes.

Additional Health Legislation Advances

The House passed: **H.R. 367**, the *Regulations From the Executive in Need of Scrutiny (REINS) Act*, which includes an amendment by Rep. Jason Smith (R-MO) that requires any regulation issued under the PPACA to be approved by both the House and Senate before it becomes effective (in general, if both the Senate and House fail to pass a joint resolution approving any “major” regulation within 70 days the rule could not take effect; a major regulation is one that would have an annual economic impact of \$100 million or more); **H.R. 2009**, the *Keep the IRS Off Your Health Care Act*, which prohibits the Treasury/IRS from participating in any activity related to implementation of the PPACA; and **H.R. 2094**, the *School Access to Emergency Epinephrine Act*, which amends the Public Health Service Act (PHSA) to increase the preference given, in awarding certain asthma-related grants, to certain states (those allowing trained school personnel to administer epinephrine and meeting other related requirements). Also, the House Committee on Energy and Commerce passed **H.R. 698**, legislation amending the PHSA to establish safeguards and standards of quality for research and transplantation of organs infected with human immunodeficiency virus (HIV). In addition, the House Committee on Veterans’ Affairs approved several bills, including: **H.R. 813**, legislation that would make discretionary programs under the Veterans Administration (VA) subject to advance appropriations beginning in FY 2016 and would require the Government Accountability Office (GAO) to submit annual reviews of the VA’s medical-care budget; **H.R. 2072**, legislation that would clarify VA accountability and give the agency authority to enter into contracts with medical foster homes to provide care for veterans; and **H.R. 1443**, legislation that would recognize tinnitus as a mandatory condition for research and treatment by the Department of Veterans Affairs Auditory Centers of Excellence.

PPACA Health Reform Update

PPACA Relief for Members

With Senator Tom Coburn (R-OK) threatening to hold up the nomination on the President's pick for the head of the Office of Personnel Management (OPM), the Administration erased the threat by announcing that this week it will release a ruling under the PPACA under which congressional members and staff will be able to continue receiving an employer-federal contribution toward their health insurance in 2014 when, under the Grassley Amendment, they will have to obtain their health insurance coverage through the state-run or back-up federally-run health insurance exchanges.

PPACA Implementation Questioned

Republicans have been critical of the Administration's delay of the employer mandate and reporting of employment-based health coverage which would be used to verify whether or not employees opting for coverage under the exchanges are eligible for federal tax credits. In response, at a House Ways and Means Committee hearing on the implementation of the PPACA, the head of the Center for Consumer Information and Insurance Oversight (CCIIO) testified that the agency will, despite the self-verification system set forth under a final rule, issue new guidance providing that income information reported by all applicants for insurance subsidies will be verified. HHS will use income information obtained from the IRS, Social Security and Equifax to verify the self-reported income and will follow-up by asking for additional information from applicant pay stubs, etc. if the income reported cannot be verified. Nonetheless, Republicans said that individuals under the age of 26 may not know they are ineligible for subsidies if they choose coverage under the exchanges while being eligible for coverage under their parent's health plan. The Congressional Budget Office (CBO) issued a report which includes an estimate that the delay will result in a \$12 billion cost. At a House Energy and Commerce Committee hearing, the Centers for Medicare and Medicaid Services (CMS) Administrator attempted to ease Republican concerns on exchange implementation by testifying that 80% of the marketplace computer systems have been tested and that 100% will be tested by the October 1st opening day of the exchange marketplaces. CMS also said that the premium rates in the 11 states operating their own exchanges will average 18% less than under previous estimates made by the CBO. The Chairman of the House Oversight and Government Reform Committee also threatened the Treasury Department with a subpoena if the department/Internal Revenue Service (IRS) does not comply with a request for documentation on why and how the department/IRS made a decision that individual tax credit subsidies would be made available to individuals choosing health coverage under the back-up federally operated health insurance exchanges in states opting not to establish their own. HHS also announced that 80% of the potential exchange enrollees will have five or more health plan choices made available to them in October. The Small Business Administration (SBA), Department of Health and Human Services (HHS), and Department of Treasury also launched a new website, Business.U.S.A.gov/healthcare, to help businesses determine the PPACA provisions applicable to them. The health insurance industry also appears apprehensive about its role in meeting PPACA standards and has asked HHS for a rule giving insurers a "good faith compliance period" for the regulations they must comply with relating to the online health insurance marketplaces.

PCIP Bonuses Increase

CMS announced that the Primary Care Incentive Payment (PCIP) Program established under the PPACA, gave providers \$664 million in 2012, an increase over the \$560 million paid out in 2011.

Medicare/Medicaid/Public Health Services Corner

Comments Due on House Ways and Means Draft of Medicare Reforms

The House Ways and Means Committee has asked for comments by August 30 on a new draft of possible Medicare post-acute care (PAC) payment reforms. Similar to the recommendations made by in the President's FY 2014 budget request, the proposed changes would: reduce market-basket updates for home health agencies, skilled nursing facilities (SNF), inpatient rehabilitation facilities (IRF) and long-term care hospitals; create site-neutral payments between IRFs and SNFs for certain procedures; modify the criteria required for IRF status (the so-called 75 percent rule); establish a SNF readmissions program; and create PAC bundled payments. The committee appears to be setting the stage to be able to introduce these changes and other proposed Medicare reforms into any budget negotiations that may arise this fall.

Comments Due on Senate Finance Committee Request on Mental Health Issues

Senators Max Baucus (D-MT) and Orrin Hatch (R-UT) have asked those in the mental health community to respond by September 30 with input on the following questions: (1) What administrative and legislative barriers prevent Medicare and Medicaid recipients from obtaining the mental and behavioral health care they need? (2) What are the key policies that have led to improved outcomes for beneficiaries in programs that have tried integrated care models? and, (3) How can Medicare and Medicaid be reformed, in a cost-effective way, to improve access to and quality of care for people with mental and behavioral health needs?

Medicare Part D Premium Projections

CMS announced that the average Medicare Part D drug benefit premium of \$31 will likely remain unchanged in 2014, although the actual base beneficiary premium will increase from \$31.17 to \$32.42 per month. Enrollment under the program is scheduled to begin October 15th.

CMS Finalizes FY 2014 IPPS, LTCH, SNF, IRF, IPS and Hospice Payments

Under final rules released by CMS, the FY 2014 payment rates for: Hospital Inpatient Prospective Payment System (IPPS) will increase by 0.7%, or \$1.2 billion, for hospitals participating in the Hospital Inpatient Quality Reporting (IQR) program and decrease by 2% for non-participating entities; Disproportionate Share Hospitals (DSH) will be conformed to the new PPACA rules; Long-term Care Hospitals (LTCH) will increase by 1.3%, or about \$72 million; Skilled Nursing Facilities (SNF) will increase by 1.3%, or \$470 million and will be rebased on a new market-basket index; Inpatient Rehabilitation Facilities (IRF) will increase by 2.3%, or \$170 million; IPS will increase by 2.3%, or \$115 million; and Hospices will increase by 1%, or \$160 million.

FDA Issues

In light of the efforts in Congress to consider legislation that would increase the FDA's authority over drug compounding pharmacies, Reps. Elijah Cummings (D-MD) and John Tierney (D-MA) released a report from the GAO that they requested on the issue. The GAO report, *Drug Compounding: Clear Authority and More Reliable Data Needed to Strengthen FDA Oversight*, concluded that the FDA's authority over such pharmacies should be clarified given the differing federal circuit court decisions on the extent of the agency's current authority and the resulting gap in oversight of compounding pharmacies. The report said "while FDA and national pharmacy organization officials generally agreed that states regulate the practice of pharmacy and FDA regulates drug manufacturing, there was no consensus on whether compounding drugs in large quantities, in anticipation of individual prescriptions or without prescriptions, and selling those drugs across state lines falls within the practice of pharmacy or is a type of drug manufacturing that should be overseen by FDA." HHS responded that the findings in the report support the need for legislation to allow FDA to appropriately regulate the evolving industry. The combined bills on the issue reported by the Senate Health, Education, Labor and Pensions (HELP) Committee, S. 959 and S. 957, remain pending in the Senate.

Health Legislation Recently Introduced

H.R. 2845 (MEDICARE), to amend Title XVIII of the Social Security Act to allow retail community pharmacies to deliver diabetic testing supplies to Medicare beneficiaries; WELCH; jointly, to the committees on Energy and Commerce and Ways and Means, July 26.

H.R. 2853 (MEDICAL COSTS), to amend the Public Health Service Act to provide for the public disclosure of charges for certain hospital and ambulatory surgical center treatment episodes; LIPINSKI; to the Committee on Energy and Commerce, July 30.

H.R. 2864 (MEDICARE/MEDICAID), to amend titles XVIII and XIX of the Social Security Act to improve oversight of nursing facilities under Medicare and Medicaid by preventing inappropriate influence over surveyors, and for other purposes; ROYBAL-ALLARD; jointly, to the committees on Ways and Means and Energy and Commerce, July 30.

H.R. 2867 (MEDICARE), to amend Title XVIII of the Social Security Act to provide for the recognition of attending physician assistants as attending physicians to serve hospice patients; TERRY; jointly, to the committees on Ways and Means and Energy and Commerce, July 30.

S. 1405 (MEDICARE), to amend Title XVIII of the Social Security Act to provide for an extension of certain ambulance add-on payments under Medicare; SCHUMER; to the Committee on Finance, July 31.

S. 1408 (HIV/AIDS), to address the dramatic increase of HIV/AIDS in minority communities; GILLIBRAND; to the Committee on Health, Education, Labor and Pensions, July 31.

S. 1411 (VETERANS' HEALTH), to specify requirements for the next update of the current strategic plan for the Office of Rural Health of the Department of Veterans Affairs for improving access to, and the quality of, health care services for veterans in rural areas; FRANKEN; to the Committee on Veterans' Affairs, July 31.

S. 1413 (FDA FEES), to exempt from sequestration certain fees of the Food and Drug Administration; PRYOR; to the Committee on the Budget, July 31.

S. 1416 (BLACK LUNG DISEASE), to protect miners from pneumoconiosis (commonly known as black lung disease), and for other purposes; ROCKEFELLER; to the Committee on Health, Education, Labor and Pensions, July 31.

H.R. 2869 (MEDICARE), to amend Title XVIII of the Social Security Act to establish payment parity under Medicare for ambulatory cancer care services furnished in the hospital outpatient department and the physician office setting; ROGERS of Michigan; jointly, to the committees on Energy and Commerce and Ways and Means, July 31.

H.R. 2876 (REFORM), to amend the Internal Revenue Code of 1986 to provide veterans with a one-year exemption from the requirement to maintain minimum essential coverage under the Patient Protection and Affordable Care Act; FLORES; to the Committee on Ways and Means, July 31.

H.R. 2888 (REPRODUCTIVE HEALTH), to authorize assistance to aid in the prevention and treatment of obstetric fistula in foreign countries, and for other purposes; CAROLYN B. MALONEY of New York; to the Committee on Foreign Affairs, July 31.

H.R. 2893 (HIV/AIDS), to address the dramatic increase of HIV/AIDS in minority communities; RANGEL; to the Committee on Energy and Commerce, July 31.

H.R. 2894 (REFORM), to discontinue eligibility of former Members of Congress and their dependents for coverage under the Federal Employees Health Benefit Program (FEHBP) if the Affordable Care Act is repealed; RIBBLE; jointly, to the committees on House Administration and Oversight and Government Reform, July 31.

Health Legislation Recently Introduced cont.

H.R. 2900 (REFORM), to repeal the Affordable Care Act and the Health Care and Education Reconciliation Act of 2010; to amend the Internal Revenue Code of 1986 to repeal the percentage floor on medical expense deductions, expand the use of tax-preferred health care accounts, and establish a charity care credit; to amend the Social Security Act to create a Medicare Premium Assistance Program, reform EMTALA requirements, and to replace Medicaid and the Children's Health Insurance Program with a block grant to the states; to amend the Public Health Service Act to provide for cooperative governing of individual and group health insurance coverage offered in interstate commerce; and for other purposes; BROUN of Georgia; jointly, to the committees on Energy and Commerce, Ways and Means, Education and the Workforce, Natural Resources, the Judiciary, House Administration, Appropriations, and Rules, Aug. 1.

H.R. 2914 (MEDICARE), to prevent abusive billing of ancillary services to the Medicare program, and for other purposes; SPEIER; jointly, to the committees on Energy and Commerce and Ways and Means, Aug. 1.

H.R. 2925 (FEDERAL HEALTHCARE PROGRAMS), to amend Title XI of the Social Security Act to expand the permissive exclusion from participation in federal health care programs to individuals and entities affiliated with sanctioned entities; BRADY of Texas; jointly, to the committees on Energy and Commerce and Ways and Means, Aug. 1.

H.R. 2927 (REFORM), to prevent the implementation of certain tax and fee provisions of the Affordable Care Act until the secretary of the Treasury certifies that reporting requirements relating to employer status and employee income levels and health care status may be made with 100 percent accuracy and without fraud; BILIRAKIS; jointly, to the committees on Ways and Means and Energy and Commerce, Aug. 1.

H.R. 2938 (REFORM), to provide that certain requirements of the Affordable Care Act do not apply if the American Health Benefit Exchanges are not operating on Oct. 1, 2013; JENKINS; jointly, to the committees on Energy and Commerce and Ways and Means, Aug. 1.

H.R. 2941 (VETERANS' HEALTH), to amend Title 38, U.S. Code, to authorize the secretary of veterans affairs to make certain grants to assist nursing homes for veterans located on tribal lands; KIRKPATRICK; to the Committee on Veterans' Affairs, Aug. 1.

H.R. 2949 (REFORM), to delay for one year certain amendments to the Medicaid program made by the Affordable Care Act, and for other purposes; MCMORRIS RODGERS; to the Committee on Energy and Commerce, Aug. 1.

H.R. 2950 (REFORM), to amend the Internal Revenue Code of 1986 to delay the application of the individual health insurance mandate for individuals who have not attained age 27; MCMORRIS RODGERS; to the Committee on Ways and Means, Aug. 1.

H.R. 2951 (REFORM), to require certain preconditions for allowing premium tax credits, reductions in cost sharing, and funding of navigators and related exchange enrollment activities, and for other purposes; MCMORRIS RODGERS; jointly, to the committees on Energy and Commerce and Ways and Means, Aug. 1.

H.R. 2953 (MEDICARE), to provide Medicare payments to Department of Veterans Affairs medical facilities for items and services provided to Medicare-eligible veterans for non-service-connected conditions; MICHAUD; jointly, to the committees on Ways and Means, Energy and Commerce, and Veterans' Affairs, Aug. 1.

H.R. 2957 (HEALTH INFORMATION TECHNOLOGY), to amend the Public Health Service Act and the Social Security Act to extend health information technology assistance eligibility to behavioral health, mental health, and substance abuse professionals and facilities, and for other purposes; MURPHY of Pennsylvania; jointly, to the committees on Energy and Commerce and Ways and Means, Aug. 1.

H.R. 2960 (MEDICARE), to amend Title XVIII of the Social Security Act to require sponsors of Medicare prescription drug plans to implement procedures to prevent fraud and abuse, and for other purposes; PALLONE; jointly, to the committees on Energy and Commerce, Ways and Means, and the Judiciary, Aug. 1.

Health Legislation Recently Introduced cont.

H.R. 2969 (MEDICARE), to amend Title XVIII of the Social Security Act to provide for the recognition of attending physician assistants as attending physicians to serve hospice patients; TERRY; jointly, to the committees on Ways and Means and Energy and Commerce, Aug. 1.

H.R. 2975 (ALZHEIMER'S DISEASE), to amend the Public Health Service Act to authorize grants for training and support services for Alzheimer's patients and their families; WATERS; to the Committee on Energy and Commerce, Aug. 1.

H.R. 2977 (MEDICARE), to amend Title XVIII of the Social Security Act to provide for coverage, as supplies associated with the injection of insulin, of containment, removal, decontamination and disposal of home-generated needles, syringes, and other sharps through a sharps container, decontamination/destruction device, or sharps-by-mail program or similar program under Part D of Medicare; WHITFIELD; jointly, to the committees on Energy and Commerce and Ways and Means, Aug. 1.