HHS | Hart Health Strategies

Health Policy Briefing

September 16, 2013

House Republicans Push ACA Defunding and CR Debate Into This Week or Next

House Passes Bill to Prohibit PPACA Premium Subsidies for Individuals

By a vote of 235-191, on Thursday the House passed H.R. 2775, the "*No Subsidies Without Verification Act*," legislation that would prohibit any federal premium subsidies to be made to individuals enrolled under Patient Protection and Affordable Care Act (PPACA) health insurance exchanges until there is a system in place that verifies an individual's income eligibility as certified by the U.S. Department of Health and Human Services (HHS) Office of Inspector General (OIG). The Statement of Administration Policy (SAP) said the President would veto the bill if it were to reach the President's desk, but it will not proceed beyond the House given opposition to the bill in the Senate by **Majority Leader Harry Reid (D-NV)**. Fending off the need for this legislation, the White House Chief Technology Officer released a statement saying that the Centers for Medicare and Medicaid Services (CMS) technology office has certified the security of the federal data hub that will provide personal and income data to health insurance exchanges to help them verify the eligibility of individuals for premium subsidies. Nonetheless, at a hearing held by a House Homeland Security Subcommittee, Republicans said they still have "grave concerns" about the federal data hub and the security of personal information that will be shared.

Inside

House Passes Bill to Allow Insurance Agents to Operate Multi-state....2
House Republican Leaders Face Continued Threat to Passage of CR....2
Republicans/Unions Give Administration More Angst Over PPACA Implementation....3
New CER Grants by PCORI....3
CMS Rules on PPACA DSH Cuts....3
MedPAC to Examine ACOs Established under the PPACA....4
CHCs Receive PPACA Funding....4
IRS Guidance on PPACA Annual Limits....4
PPACA Opponents Continue to Seek Court Relief....4
Long-Term Care Commission Recommendations....4
CBO Issues Cost Estimate for Medicare Physician Payment Reform....5
HHS Seeks Comments on Strategic Plan....5
CMS Guidance on Inpatient Hospital Services....5
CMS Delays Rule on DME/Physician-Encounter....5
MedPAC Discusses Dual-Eligible and CMMI Models-of-Care....5
FDA Issues....6
Upcoming Health-Related Hearings and Markups....6
Health Legislation Recently Introduced....6

House Passes Bill to Allow Insurance Agents to Operate Multi-state

The House also passed overwhelmingly the bill H.R.1155, the "*National Association of Registered Agents and Brokers Reform Act of 2013*," legislation which would reestablish the National Association of Registered Agents and Brokers (NARAB) as a nonprofit corporation to prescribe, on a multi-state basis, licensing and insurance producer qualification requirements. The legislation would allow such licensed agents to operate in multiple states and facilitate, among other things, their offering of health insurance under PPACA health insurance exchanges.

House Republican Leaders Face Continued Threat to Passage of CR

House Republican leaders were forced to withdraw their efforts last week to advance a continuing resolution (CR), House Joint Resolution 59, which would provide funding for federal agencies through December 15. House Appropriations Committee Chairman Harold Rogers (R-KY) said the short-term CR does not contain controversial riders (such as defunding the PPACA), but provides some flexibility for the funding of certain Interior Department and Veterans Administration (VA) activities. The resolution would otherwise continue federal funding for fiscal year (FY) 2014 at about the same level as for FY 2013 after taking into account the reductions in spending required under sequestration. The legislative maneuver that Republican leaders proposed in an effort to gain enough Republican votes in the House to pass the CR involved the concurrent adoption of another resolution which would result in the defunding of PPACA activities as demanded by a substantial number of conservative Republicans. The move would have required the Senate to vote on both resolutions with the most likely result being a defeat for PPACA defunding and the passage of a clean CR that the President would sign into law. If House Republican leaders cannot resolve the conundrum involving PPACA defunding, Senate Democrats have opined that a government shutdown is inevitable. The extent of the CR hurdle in the House was further demonstrated when 43 House Republicans introduced an alternative (H.R. 2682) providing funding over the 12-month fiscal year beginning October 1st at a level lower ($967 billion) than in FY 2013. The strategic move, authored by Rep. Tom Graves (R-GA), would also zero out funding for all of the PPACA. Senator Tom Coburn (R-OK) has also endorsed the $967 billion spending level as mandated by the Budget Control Act (BCA) for FY 2014 in a letter to Senate Majority Leader Reid (D-NV) and Speaker Boehner (R-OH). Given the impasse over the CR, the House is likely to remain in session during the week of September 23rd to give congressional leaders and the White House time to discuss another legislative route that would not only provide for agency funding into FY 2014 but also provide for an increase in the federal debt limit. House Budget Committee Chairman Paul Ryan (R-WI) has proposed a vote on legislation to delay the PPACA until 2015 as a means to persuade enough Republicans to pass a less contentious CR. The CR is not the only legislation Republican opponents of PPACA are using to change the law. Senator David Vitter (R-LA) has slowed action in the Senate on a pending energy bill until he is given assurance by leaders that he will get a vote on his proposal that would require all congressional staffers, not just members' staff, to obtain their health insurance through state health insurance exchanges.

Republicans/Unions Give Administration More Angst Over PPACA Implementation

The call by organized labor for the Administration to give individuals covered under Taft-Hartley multiemployer health plans the same federal premium subsidies provided to individuals covered under PPACA health insurance exchanges has spurred Senator Orrin Hatch (R-UT) and House Ways and Means Committee Chairman Dave Camp (R-MI) to warn Treasury Secretary Jacob Lew to forego any regulatory move to permit such actions. They said the law was designed to ensure the principle that no individual may receive both the health insurance tax exclusion and the subsidies provided under health insurance exchanges. Senator John Thune (R- SD) also introduced legislation to the same effect. Of note, the Administration released a letter last week stating that the current law does not allow a basis for premium subsidies to be given to employees covered under multiemployer plans. The general president of the Laborers' International Union of North America publically objected to the law's "unintended consequences" and said, if it cannot be fixed legislatively, the law should be repealed. After House Energy and Commerce Committee Republicans sent a letter to fifty-one organizations intending to serve as navigators to help individuals obtain coverage under health insurance exchanges, HHS officials sent their own letter to the committee stating the agency's concern that the members' request for extensive information could interfere with the navigators' work. The agency said that CMS has procedures to carefully monitor navigator grantee performance, will investigate allegations of inappropriate activity and require navigators to undergo appropriate training and submit quarterly financial and progress reports. At a House Energy and Commerce Health Subcommittee hearing on the implementation of PPACA health insurance exchanges, one witness said that there is not a single state that will be completely ready to begin exchange enrollment on October 1st. The federal contractor hired to design the technology for federally facilitated marketplaces (FFMs) testified that, while CMS has modified its contract on several occasions, all key milestones of FFM implementation have been completed and the FFMs are on track to begin October 1. HHS continues to promote the PPACA and offset Republican criticism; for example, the agency said in the "Rate Review Annual Report" that about 6.8 million consumers saved an estimated $1.2 billion on health insurance premiums in 2012 due to the rate review provisions of the PPACA.

New CER Grants by PCORI

The Patient-Centered Outcomes Research Institute (PCORI) announced that the agency is on track to grant over $114 million for 71 new comparative effectiveness research (CER) projects which are to include studies of ways to improve care for and the health of people with heart disease, chronic pain, several types of cancer, obesity, diabetes, kidney disease, autism, respiratory disorders and various mental health conditions.

CMS Rules on PPACA DSH Cuts

CMS issued a final rule regarding the cuts in Medicaid disproportionate share hospital (DSH) program payments mandated under the PPACA. The rule covers only the 2014-2015 period ($500 and $600 million in cuts, respectively), although the law generally provides for about $18.1 billion in cuts over 2014-2020. Because of the ability of states to opt out of the PPACA Medicaid expansion, DSH payments in such states will still be cut without the prospect for increased Medicaid payments that would otherwise have been made under the law's Medicaid expansion.

PPACA Health Reform Update cont.

MedPAC to Examine ACOs Established under the PPACA

At a recent meeting, the Medicare Payment Advisory Commission (MedPAC) chairman suggested that the commission might consider a recommendation about whether Medicare officials should require providers in the next contract rounds of the Accountable Care Organization (ACO) programs to face penalties if they do not achieve savings targets and whether the savings targets that are being set are appropriate for each type of ACO. Staff also brought up a possible approach to encourage beneficiaries to see ACO participating physicians by creating Medigap plans that reduce the out-of-pocket costs for visits to such physicians. Also, the commission announced it will begin examining ACOs and the payment incentives necessary to keep a level playing field between ACOs and fully-capitated Medicare Advantage (MA) plans.

CHCs Receive PPACA Funding

HHS announced that $67 million, $19 million of which is provided pursuant to the PPACA, has been awarded to community health centers (CHC) to establish 32 new health service delivery sites.

IRS Guidance on PPACA Annual Limits

The Internal Revenue Service (IRS) issued guidance regarding PPACA's mandated prohibition on annual dollar limits which is applicable to health reimbursement arrangements (HRAs), flexible savings accounts (FSAs) and other employer-sponsored group health plans. The agency says that a group health plan, including an HRA, used to purchase coverage on the individual market won't be considered as integrated with individual market coverage for the purposes of the annual dollar-limit prohibition or for the preventive services requirements under the PPACA. The guidance also says that FSAs are considered group health plans for purposes of the PPACA mandates unless they are used to only provide excepted benefits.

PPACA Opponents Continue to Seek Court Relief

Citing a favorable en banc ruling in the U.S. Court of Appeals for the Tenth Circuit, the U.S. District Court for the District of Colorado granted a preliminary injunction barring the federal government from enforcing the PPACA's women's preventive services mandate against a for-profit, secular company that operates nursing homes and assisted living facilities. Also, in a petition filed with the U.S. Supreme Court, Liberty University and several other plaintiffs claimed that a decision by the U.S. Court of Appeals for the Fourth Circuit upholding the PPACA employer mandate should be overruled in that the commerce clause and taxing authority under the Constitution does not constitute adequate congressional authority for the mandate.

Long-Term Care Commission Recommendations

The15-member Commission on Long-Term Care established under the American Taxpayer Relief Act of 2012 voted to approve several recommendations but left on the table the issue of how to finance proposed program improvements. Among the 27 recommendations: service delivery improvements involving simpler and usable standard assessment mechanisms and expanded services in less restrictive settings; caregiver improvements involving state certification and broader practice rules; and financing changes including the elimination of the three-day hospital stay requirement for nursing home Medicare coverage and reconsideration of the Medicare requirement that a person receiving home health services be homebound. The Commission was promoted as an alternative to the Community Living Assistance Services and Supports (CLASS) Act included in the PPACA.

Medicare/Medicaid/Public Health Services Corner

CBO Issues Cost Estimate for Medicare Physician Payment Reform

The Congressional Budget Office (CBO) released its estimate of the cost effects of H.R. 2810, legislation passed by the House Energy and Commerce Committee which would eliminate the sustainable growth rate (SGR) framework under current law and replace the system with one based on health care quality. CBO said the reform would result in an additional cost of about $175 billion over the ten year period 2014-2023. The scheduled cut in physician payments of about 24% beginning January 1, 2014 would be replaced by an increase of 0.5% for 2014 through 2018. The House Ways and Means Committee has yet to act on comparable legislation that would contain provisions to offset the $175 billion price tag of the legislation.

HHS Seeks Comments on Strategic Plan

HHS released a document describing proposed program activities involving Medicare, Medicaid and other health-related department activities. Among other things, the strategic plan for 2014-2019 includes activities that would: enhance "Medicare and Medicaid payment accuracy by supporting ongoing initiatives that address the causes of improper payments to ensure that in every case Medicare and Medicaid programs pay the right amount, to the right party, for the right recipient in accordance with the law and agency and state policies"; and " "Invest in health services research to identify the most effective ways to organize, manage, finance, and deliver high quality care, reduce medical errors, and improve outcomes." Comments on the plan are due by October 15.

CMS Guidance on Inpatient Hospital Services

CMS issued guidance clarifying the agency's requirements for physician certification of the medical necessity of inpatient services as a condition of Medicare Part A payment. Certifications must be signed by the physician responsible for the case, or by another physician who has knowledge of the case and who is authorized to do so by the responsible physician or by the hospital's medical staff; although orders for inpatient services may be documented by an individual who is not a physician provided that the documentation is consistent with state law, hospital policies and medical staff bylaws and rules.

CMS Delays Rule on DME/ Physician-Encounter

CMS gave notice that the agency is giving medical providers additional time, until 2014, to comply with the Medicare requirement that such providers have a face-to-face encounter with a Medicare beneficiary within six months of prescribing durable medical equipment.

MedPAC Discusses Dual-Eligible and CMMI Models-of-Care

At a recent meeting, MedPAC members voiced their concerns with the large number of demonstration projects started by the Center for Medicare & Medicaid Innovation (CMMI) which the PPACA directed to test innovative payment and service delivery models to help reduce Medicare expenditures. The MedPAC chairman said he wants to see promising models implemented more quickly and for the agency to distinguish between which models are designed to save Medicare money and which are designed to reform the health delivery system in order to reduce fragmented care. The commission is set to study which state-run models of health-care delivery and payment system reform can be expanded to the national level. MedPAC commissioners also discussed a staff analysis of the CMS Financial Alignment Initiative and the manner in which competition from specialized Medicare Advantage plans called dual eligible special needs plans (D-SNPS) may contribute in discouraging states from participating in the demo designed to integrate care for beneficiaries dually eligible for Medicare and Medicaid. The commission is concerned about the lack of state participation and believes the program could be made more equitable by having CMS estimate savings separately for Medicare and Medicaid and then adjust each program's capitation rates to plans based on such estimates. However, CMS has not followed this recommendation and continues to develop a combined Medicare and Medicaid savings estimate to which the commission objects.

FDA Issues

The FDA announced the issuance of new safety labeling and postmarket study requirements for all extended-release and long-acting opioid analgesics intended to treat pain (such as morphine and oxycodone). The agency said the move is designed to combat the crisis of misuse, abuse, addiction, overdose and death from such drugs.

Upcoming Committee Health Hearings

Senate Special Aging Committee hearing titled "Older Americans: The Changing Face of HIV/AIDS in America;" 2:00 p.m., 562 Dirksen Bldg; Sept. 18.

House Energy and Commerce Environment and the Economy Subcommittee hearing titled "Regulation of Existing Chemicals and the Role of Pre-Emption under Sections 6 and 18 of the Toxic Substances Control Act;" 2:00 p.m., 2123 Rayburn Bldg; Sept. 18.

House Committee on Oversight and Government Reform hearing titled "Federal Implementation of Obamacare: Concerns of State Governments;" 10:00 a.m., 2154 Rayburn Bldg; Sept. 18.

House Energy and Commerce Oversight and Investigations Subcommittee hearing titled "Two Weeks Until Enrollment: Questions for CCIIO;" 10:00 a.m., 2123 Rayburn Bldg; Sept. 19.

Health Legislation Recently Introduced

S. 1487 (REFORM) to limit the availability of tax credits and reductions in cost sharing under the Affordable Care Act to individuals who receive health insurance coverage pursuant to the provisions of a Taft-Hartley plan; THUNE; to the Committee on Finance, Sept. 9.

S. 1488 (REFORM) to delay the application of the individual health insurance mandate, to delay the application of the employer health insurance mandate and for other purposes; COATS; to the Committee on Finance, Sept. 9.

S. 1490 (REFORM), to delay the application of the Affordable Care Act; FLAKE; to the Committee on Finance, Sept. 10

S. 1493, to amend title XVIII of the Social Security Act to encourage the use of dispensing techniques that foster efficiency and reduce wasteful dispensing of outpatient prescription drugs in long-term care facilities; CARDIN; to the Committee on Finance. Sept. 10.

H.R. 3066 (REFORM) to amend the Affordable Care Act to prohibit a government subsidy or contribution for the premiums of a health plan by a member of Congress or a member's staff or congressional leadership or committee staff; COTTON; to the Committee on House Administration, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned, Sept. 9.

Health Legislation Recently Introduced cont.

H.R. 3067 (REFORM) to amend the Affordable Care Act to prohibit a government subsidy for the purchase of a health plan by a member of Congress; CAPITO; to the Committee on House Administration, Sept. 9

H.R. 3071 (REFORM) to amend the Affordable Care Act to provide that no government contribution may be made toward the cost of exchange coverage for any member of Congress or congressional staff; GINGREY; to the Committee on House Administration, Sept. 9.

H.R. 3076 to amend the Affordable Care Act with respect to health insurance coverage for certain congressional staff and political appointees in the executive branch and for other purposes; DESANTIS; to the Committee on Oversight and Government Reform, and in addition to the Committees on House Administration, Ways and Means, and Energy and Commerce, for a period to be subsequently determined by the speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned, Sept. 10.

H.R. 3077 to amend title XVIII of the Social Security Act to permit certain Medicare providers licensed in a state to provide telemedicine services to certain Medicare beneficiaries in a different state; NUNES; to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned, Sept. 10.

H.R. 3078 to amend title XVIII of the Social Security Act to disregard amounts transferred from a traditional IRA to a Roth IRA in computing income for purposes of determining the income-related premiums under parts B and D of the Medicare program and for other purposes; SMITH; to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned, Sept. 10.

S. 1497 (REFORM), to amend the Affordable Care Act to apply the provisions of the Act to certain congressional staff and members of the executive branch; VITTER; to the Committee on Finance, Sept. 12.

S. 1503 (PUBLIC HEALTH), to amend the Public Health Service Act 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); DURBIN; to the Committee on Health, Education, Labor and Pensions, Sept. 12.

H.R. 3091 (MEDICAL RESEARCH), to promote the development of meaningful treatments for patients; LANCE; to the committees on Energy and Commerce, Ways and Means and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned, Sept. 12.

H.R. 3093 (TAXATION), to exclude individuals who receive health insurance coverage pursuant to the terms of a collective bargaining agreement from tax credits and reductions in cost sharing under Affordable Care Act; BLACK; to the committees on Energy and Commerce and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned, Sept. 12.

H.R. 3089 (DRUG COMPOUNDING), to amend Section 503A of the Federal Food, Drug, and Cosmetic Act with respect to pharmacy compounding; GRIFFITH; to the Committee on Energy and Commerce, Sept. 12.

H.Res. 342: A resolution expressing support for the designation of September 2013 as ``National Sepsis and Septic Shock Awareness Month"; to the Committee on Oversight and Government Reform.

H.Res. 344: A resolution directing the Speaker of the House of Representatives to direct, for the purpose of interpreting Office of Personnel Management (OPM) guidance with respect to the Patient Protection and Affordable Care Act, that the definition of ``congressional staff" employed by an ``official office" shall include all committee staff, all joint committee staff, and all staff employed by leadership offices of the House of Representatives; to the Committee on House Administration.