



Health Policy Briefing

September 23, 2013

House Passes FY 2014 CR that Dares the Senate to Agree to the Defunding of Obamacare

House Sets Up Senate this Week for Vote on Defunding Affordable Care Act

Last Friday the House passed and sent to the Senate H.J. Res. 59, the Continuing Appropriations Resolution (CR) for fiscal year (FY) 2014 on basically a party-line vote of 230-189. The \$988 billion CR would fund federal agencies at current levels through December 15th while continuing the sequestration cuts for all federal agencies, including the Department of Defense. Because House Republicans rejected an initial move by their leadership to defund the Patient Protection and Affordable Care Act (PPACA) by means of a two-part CR that would make it easier for Senate Democrats to sever the provision, the Speaker acceded to his conference's demand and included specific language in the CR that would defund the health reform law. **Senate Majority Leader Harry Reid (D-NV)** said the "reckless" defunding provision would be "dead" upon arrival and that the Senate Democrat caucus is 100% in support of his expected move this week to allow a vote that would remove the offending provision and send the resolution back to the House.

Senate Appropriations Committee chair Barbara Mikulski (D-

MD) also said she would possibly convene her committee to report a resolution that would continue current spending without appending other controversial provisions. If this scenario proves correct, the House would then have through this coming weekend to pass the amended measure or risk shutting down federal agency activities at the beginning of fiscal 2014 (October 1st). It is conjectured that **Speaker Boehner (R-OH)** would still like to avoid a government shutdown by passing a cleaner CR and leapfrog the PPACA defunding fight into next month when the Treasury Secretary says the federal debt

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limit will have to be increased to avoid a potential default on federal obligations. To presage this scenario, the CR also includes a provision that would prioritize principal and interest on government debt held by the public and by the Social Security trust fund, thus putting all other federal obligations (including Medicare and Medicaid payments) in jeopardy if the debt limit is reached. The Office of Management and Budget (OMB) issued a statement saying that the President would veto the House-passed CR and the President continues to insist that Congress increase the debt limit without further conditions. It might be noted that recent debt limit legislation has led to other restraints, including the passage of the Budget Control Act provisions requiring sequestration cuts in federal spending. The upcoming battle over the debt limit is likely to include Republican policy insistence on spending reductions equal to any increase in the debt limit and concessions on PPACA, including at least a one-year delay in the individual mandate to match the Administration's delay of the employer mandate until 2015 and a prohibition on federal/employer payments for Congress and all of their staff when obtaining health coverage under PPACA health insurance exchanges. House Republicans may attempt to pass a debt ceiling extension bill as early as this week to get the debate going. Even if the Senate and the House ultimately pass a "clean" CR at the above-described levels, **House Speaker Nancy Pelosi (D-CA)** and other leading committee Democrats have voiced their concern that the CR would cut \$13 billion from the Children's Health Insurance Program (CHIP) program and lead to diminished health coverage under the program. Of note, the Congressional Budget Office (CBO) has avoided providing a complete cost estimate of the House-passed CR including the defunding provision, indicating only that it would reduce federal spending as well as federal revenues over the next ten years. Rejecting the Republican agenda, **President Obama** said last week that "the single most important thing we can do to prevent that [economic chaos] is for Congress to pass a budget, without drama, that puts us on a sound path for growth, jobs, better wages, better incomes...."

PPACA Health Reform Update

PPACA Health Insurance Exchanges May Have Rough Start

At a hearing held by two subcommittees on the House Oversight and Government Reform Committee, the South Carolina Attorney General testified that there is a "need to indefinitely suspend implementation of the Affordable Care Act until security risks are mitigated, privacy protections are provided and legally mandated deadlines are properly met." The witnesses from Kansas and Louisiana expressed concerns over the late technical updates mandated by the government to verify marketplace eligibility and the perceived inadequacy of federal oversight of navigators who are supposed to help consumers choose their health plans. The witness from Florida also testified that the state was concerned enough with the possibility of abuse by navigators that a law was enacted to require navigators to undergo background screenings and disqualify them for engaging in certain illegal activities. The committee's staff also released a report, ***Risks of Fraud and Misinformation with ObamaCare Outreach Campaign: How Navigator and Assister Program Mismanagement Endangers Consumers***, which said that substantial risks of fraud remain because the Administration decided not to require background checks and fingerprinting of individuals hired by Navigator and Assister organizations. Additional problems also were reported last week in connection with the software used to determine federal subsidies to be provided under the federally facilitated marketplaces (FFMs) operated in states that did not elect to set up their own exchanges. Also, the Vermont health insurance exchange announced it will delay by one month the full opening of its health exchange because of untested payment technology. Republicans on the House Energy and Commerce Oversight and Investigations Subcommittee also grilled Gary Cohen, the Director of the Centers for Medicare and Medicaid Services (CMS) Center for Consumer Information and Insurance Oversight (CCIIO), about the safety of the navigator program and the readiness of the FFM. In response to the various charges involving the navigator program, the Democratic staff of the House Energy and Commerce Committee released their own statement to the effect that effective privacy and security protections have been put in place under the PPACA navigator program.

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PPACA Health Reform Update cont.

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In addition, the Attorney General and Health and Human Services (HHS) Secretary announced exchange anti-fraud measures to safeguard personal information, including a dedicated call center for consumer fraud complaints and access to the FTC's Consumer Sentinel Network which will evaluate complaints for possible federal, state and local government law enforcement action. In a report released by HHS, the Administration also touted the benefits of the PPACA exchanges in stating that about 50% of the 23 million uninsured eligible for exchange health plans will have access to plans costing them less than \$100 per month after federal subsidies are considered. HHS also announced that 52 rural health organizations have been awarded \$25,000 each to educate and enroll uninsured individuals and families in rural areas under PPACA health insurance exchanges.

House Republicans Release Alternative to PPACA

In an attempt to answer critics who say that Republicans have no substitute plan to accompany their efforts to repeal or defund the PPACA, the House Republican Study Committee released a proposal (H.R. 3121, the "American Health Care Reform Act") which would: allow a tax deduction of up to \$7,500 for individuals who purchase their own health insurance; permit health insurance to be sold across state lines; provide \$25 billion over 10 years for state high-risk pools; amend the McCarran-Ferguson Act to apply federal antitrust law to health insurance; make Medicare claims and payment data publicly available; end the ability of the government to deny health services based on comparative effectiveness data; provide medical malpractice reforms putting a \$250,000 cap on economic damages; and prohibit federal funds from covering abortions. Republicans have cited increased health care costs as a major reason to alter the existing law. In this regard, the CBO released a long-term budget outlook report containing an estimate that federal health programs will increase from 4.6% of gross domestic product (GDP) to 8% in 2038.

Long-Term Care Commission Issues Report

The 15-member federal advisory commission on long-term care created under the American Taxpayer Relief Act (a.k.a. stimulus package) issued a report to Congress containing recommendations on how to improve long-term care (LTC) for the rapidly increasing aged population. Proposed by Senator Rockefeller (D-WV) after the failure of the Administration to implement the PPACA's LTC Community Living Assistance Services and Supports (CLASS) Act, the commission voted 9-6 for its "Call to Action" recommendations for: 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 a technology clearinghouse; and streamlining the Medicaid waiver process. The commission did not agree on financing approaches but discussed private options, such as tax changes in retirement and health savings accounts to promote long-term care policies; and other current federal health program 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.

PPACA Basic Health Program Proposed Rule

The Centers for Medicare and Medicaid Services (CMS) issued a proposed rule setting out the enrollment, benefits, care delivery and other standards that states would have to follow in establishing so-called Basic Health Programs under the PPACA. If a state establishes a health benefits coverage program for people with incomes between 133% and 200% of the federal poverty level who also do not qualify for Medicaid or CHIP coverage, then the program would be obligated beginning in 2015 to provide coverage through the online health insurance marketplaces and would receive federal funding equal to 95% of the premium tax credits and cost-sharing reductions that would otherwise be provided to other individuals who are enrolled in qualified health plans (QHPs) through the marketplaces. Comments are due by November 25th.

Medicare/Medicaid/Public Health Services Corner

Medicare Advantage Premium Increases

CMS projected that the average monthly Medicare Advantage (MA) plan premium in 2014 will increase by \$1.64 to about \$32.60 and that enrollment will also increase by about 4.7% to 14.9 million.

Proposed Increase in Payments in Underserved Areas

CMS issued a proposed rule under the PPACA that would establish a Medicare Part B prospective payment system (PPS) for federally qualified health centers (FQHCs) that would increase payments for services furnished to Medicare beneficiaries in medically underserved areas. CMS said the annual Medicare spending for the FQHCs would be \$33 million in 2014 and increase to at least \$200 million every year until 2018.

New HHS Initiative to Help Inform Patients of Privacy Rights

The HHS Office for Civil Rights (OCR) and the Office of the National Coordinator for Health Information Technology released three sample notices that providers and plans can use to inform consumers about their health privacy rights. The three model notice options include: a booklet; a notice that presents a summary of the information on the first page followed by a full explanation on the following pages; and a text-only version of the notice. The models can be used to comply with Health Insurance Portability and Accountability Act (HIPAA) requirements for providers and plans to inform patients of their right to request their health information. In another HIPAA guidance initiative, the OCR said that pharmacy refill reminder programs can be run by third-party entities, as long as payments for such services do not exceed fair market value. The OCR also released additional guidance on student immunizations, clinical laboratories and the health information of deceased persons.

NIH/FDA Issues

Tobacco Research Grants

The Food and Drug Administration (FDA) and National Institutes of Health (NIH) announced that the agencies will award up to \$273 million over the next five years toward the development of 14 tobacco research centers whose research will be used to guide FDA tobacco regulation.

NIH Brain Research Advisory Group Reports

An NIH advisory working group to the President's Brain Research Through Advancing Innovative Neurotechnologies (BRAIN) initiative made recommendations that the initiative's first objectives should be to create new tools to investigate animal and human brains to achieve several basic goals, such as determining the number of types of neurons, what neurons do and the best way to study them. The report recommended nine high-priority areas for research that could take multiple years and require collaboration with other agencies and institutions. In general, it is hoped that the research will help develop new treatments for Alzheimer's, Parkinson's and mental illnesses.

Medical Device Identifier Ruling

The FDA issued a final rule that requires most medical devices to carry a unique device identifier (UDI). Manufacturers and other labelers will have from one to seven years to comply, depending on the risk of the device.

Upcoming Committee Health Hearings

Senate HELP Committee hearing titled “U.S. Efforts to Reduce Healthcare-Associated Infections;” 10:00 a.m. 430 Dirksen Bldg; Sept. 24.

Senate HELP Children and Families Subcommittee hearing on newborn screening systems; 10:00 a.m., 430 Dirksen Bldg; Sept. 26.

Health Legislation Recently Introduced

H.R. 3104 (introduced by Rep. Jack Kingston): A bill to clarify the application of all laws, including the Patient Protection and Affordable Care Act, to the Federal Government and Congress, and for other purposes; to the Committee on Oversight and Government Reform, and in addition to the Committee on House Administration, 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.

H.J.RES63 (introduced by Rep. Michael T. McCaul): A resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Office of Personnel Management relating to the treatment of Members of Congress and congressional staff under section 1312 of the Patient Protection and Affordable Care Act; to House committee. Status: Referred to the Committee on House Administration, and in addition to the Committee on Oversight and Government Reform, 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.

H.R. 3112 (introduced by Rep. Thompson of Pennsylvania for himself and Rep. Thompson of California): A bill to amend title XVIII of the Social Security Act to modify the designation of accreditation organizations for orthotics and prosthetics, to apply accreditation and licensure requirements to suppliers of such devices and items for purposes of payment under the Medicare program, and to modify the payment rules for such devices and items under such program to account for practitioner qualifications and complexity of care, and for other purposes; to the Committee on Energy and Commerce, and in addition to the Committee on 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.

H.R. 3113 (introduced by Rep. Pascrell for himself and Rep. Rooney): A bill to amend title III of the Public Health Service Act to provide for the establishment and implementation of guidelines on best practices for diagnosis, treatment, and management of mild traumatic brain injuries (MTBIs) in school-aged children, and for other purposes; to the Committee on Energy and Commerce.

H.R. 3114 (introduced by Rep. Barber): A bill to amend the Internal Revenue Code of 1986 to repeal the increase in the income threshold used in determining the deduction for medical care; to the Committee on Ways and Means.

H.R. 3116 (introduced by Rep. Lance): A bill to promote the development of meaningful treatments for patients; to the Committee on Energy and Commerce, and in addition to the Committees on 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.

H.R. 3117 (introduced by Rep. Lee of California): A bill to bring an end to the spread of HIV/AIDS in the United States and around the world; to the Committee on Foreign Affairs, and in addition to the Committee on 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.

Health Legislation Recently Introduced cont.

H.Res. 348 (introduced by Rep. Neugebauer for himself, Rep. Young of Florida, Rep. Runyan, Rep. King of New York, Rep. Smith of Washington, Rep. Rush, Rep. McIntyre, Rep. Moran, Rep. Conyers, Rep. Bishop of Georgia, Rep. Delbene, and Rep. Connolly): A resolution expressing support for designation of September 2013 as “National Prostate Cancer Awareness Month”; to the Committee on Energy and Commerce.

S. 1516 (introduced by Sen. Menendez): A bill to amend title II of the Public Health Service Act to provide for the establishment and implementation of guidelines on best practices for diagnosis, treatment, and management of mild traumatic brain injuries (MTBIs) in school-aged children, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

S. 1517 (introduced by Sen. Whithouse): A bill to amend the Public Health Services 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; to the Committee on Finance.

S. 1522 introduced by Sen. Sanders for himself and Sen. Schatz): A bill to improve access to oral health care for vulnerable and underserved populations; to the Committee on Finance.

S. 1525 (introduced by Sen. Hatch): A bill to ensure that the personal and private information of Americans enrolling in Exchanges established under the Patient Protection and Affordable Care Act is secured with proper privacy and data security safeguards; to the Committee on Health, Education, Labor, and Pensions.

H.R. 3119 (introduced by Rep. Paulsen for himself, Rep. Lance, Rep. Reed, and Rep. Kline): A bill to prohibit enrollment under Health Care Exchange plans until privacy protections are certified as being in place, and for other purposes; to the Committee on Energy and Commerce.

H.R. 3120 (introduced by Rep. Cummings for himself and Rep. Schakowsky): A bill to improve access to oral health care for vulnerable and underserved populations; to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, the Judiciary, Natural Resources, Veterans’ Affairs, and Armed Services, 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.

H.R. 3121 (introduced by Rep. Roe of Tennessee): A bill to repeal the Patient Protection and Affordable Care Act and related reconciliation provisions, to promote patient-centered health care, and for other purposes; to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, Education and the Workforce, the Judiciary, Natural Resources, House Administration, Appropriations, and Rules, 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.

H.R. 3126 (introduced by Rep. Fincher): A bill to amend the Patient Protection and Affordable Care Act to prohibit a government subsidy for the purchase of a health plan by a Member of Congress; to the Committee on House Administration.

H.R. 3144 (introduced by Rep. McDermott): A bill to amend title XVIII of the Social Security Act to provide Medicare coverage of extended care services without regard to a requirement for a 3-day prior hospitalization, and for other purposes; to the Committee on Ways and Means.

Health Legislation Recently Introduced cont.

H.R. 3150 (introduced by Rep. Cartwright for himself, Rep. Cárdenas, Rep. Clarke, Rep. Grijalva, Rep. Eddie Bernice Johnson of Texas, Rep. Lee of California, Rep. Norton, Rep. Peters of Michigan, Rep. Varas, Rep. Nadler, Rep. Scott of Virginia, Rep. Andrews, and Rep. Perlmutter): A bill to amend title XVIII of the Social Security Act to provide for coverage under the Medicare Program of hearing aids and related hearing services; to the Committee on Energy and Commerce, and in addition to the Committee on 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.