



Health Policy Briefing

September 30, 2013

House Amends CR to Defund PPACA for One Year Thus Threatening a Gov't Shutdown

Government Shutdown Looms on Monday

Last week on a 54-44 party-line vote (not voting were **Senators Hatch (R-UT) and Flake (R-AZ)**) the Senate amended H.J.Res. 59, the House-passed fiscal year (FY) 2013 continuing resolution (CR) to remove the provisions defunding the Patient Protection and Affordable Care Act (PPACA) and prioritizing principal and interest on the government debt in the event the debt limit is not raised in October when the U.S. Treasury exhausts “extraordinary measures” to pay the nation’s outstanding obligations. Before recessing until 2 p.m. Monday, the Senate also changed the short-term date through which spending can continue to November 15th. In turn the House used a weekend session to amend the Senate-passed CR to defund the PPACA for one year with exceptions, repeal the health law’s medical device tax (the 248-174 vote would result in a \$29 billion cost over ten years) and again extend federal funding at an annualized rate of \$986.3 billion until December 15th. The 231 to 192 final vote on the CR refined the one year delay of the individual mandate and exchanges by allowing the provisions already in place (coverage of children up to age 26, etc.) to move forward and also allowing certain entities

to deny abortion coverage based on religious or moral objections. If the Senate and House fail to agree to a CR today (September 30th), the end of this fiscal year, a partial government shutdown would occur resulting in about one-half of all Health and Human Services (HHS) and defense department employees being furloughed. The House also used the weekend session to take up additional legislation, including the passage by voice vote of H.R. 3204, the Drug Quality and Security Act, under suspension of the rules. **House Energy and Commerce Committee Chairman Fred Upton (R-MI)** said the Drug Quality and Security Act is a bipartisan effort to strengthen and secure the

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nation's pharmaceutical distribution supply chain by clarifying the FDA's authority to regulate and oversee compounding pharmacies and by creating a uniform national standard for drug supply chain security. However, plans by House Republican leaders to bring up a bill to increase the federal debt limit containing offsets in federal spending was delayed and could be brought up this week pending an agreement in the Republican conference. **President Obama** reiterated his stance to sign only a "clean" CR and debt ceiling increase. He said the Republican vote to defund PPACA in the CR amounted to a vote to shut down the federal government and that he would not give in to such "blackmail".

PPACA Health Reform Update

PPACA Implementation Continues to Stumble

Even as congressional Republicans seek to delay for one year the effective date of the Patient Protection and Affordable Care Act (PPACA) until 2015, the Administration announced several additional delays of its own. HHS said enrollment under the Small Business Health Option Program (SHOP) for employers with 50 or fewer workers would be delayed until November and that online Spanish language enrollment under exchanges would begin later in October. It was also reported that Medicaid applications will not be able to be electronically transferred to states from the federally facilitated exchanges (FFE) until November. The Treasury Inspector General (IG) for Tax Administration also reported that the Internal Revenue Service (IRS) failed to account for a portion of the funding that it used between 2010 and 2012 to implement the health law. Despite the delays, HHS said that an average of 53 health plans will be made available in 36 FFEs and that premiums will generally be lower than projected. Republicans also continue to question the IRS/Treasury about the adverse effect they say the PPACA tax on insurers will have in increasing small business and individual health insurance premiums.

Medicare/Medicaid/Public Health Services Corner

Senate Actions

Senators Bob Casey (D-PA) and Johnny Isakson (R-GA) touted bipartisan efforts to enable the Senate Health, Education, Labor and Pensions (HELP) Committee to mark up legislation this Wednesday to reauthorize the Children's Hospitals Graduate Medical Education Payment Program. The bill is expected to reauthorize the program for five years at \$300 million per year and expand the number of eligible hospitals. Also, at a Senate HELP Committee hearing the Chairman, Tom Harkin (D-IA), said he will work in a bipartisan fashion in an attempt to solve the severe health problems resulting from the infections that patients contract just by being hospitalized. The Centers for Disease Control and Prevention (CDC) testified that about one in twenty hospitalized patients develop health care-associated infections (HAIs). In addition, Senators John Thune (R-SD), Lamar Alexander (R-TN) and other Republican senators sent a letter to the HHS Secretary requesting the agency to extend for a year the reporting period for Stage 2 of the meaningful use program to allow hospitals and providers to avoid the Medicare reimbursement penalty that begins in 2016.

Medicare Bariatric Coverage

The Centers for Medicare and Medicaid Services (CMS) released a final decision memorandum stating that it is removing the requirement that facilities providing bariatric surgery for treating morbid obesity be certified. The memo said the evidence is sufficient to conclude that continuing the certification requirement wouldn't improve health outcomes.

FDA Issues

FDA Guidance on Mobile Medical Apps

The Food and Drug Administration (FDA) released guidance to software developers which eases the regulation of most mobile medical applications, including those on smartphones and tablets. In general, FDA regulation and enforcement would apply to software products that meet the definition of a device under the Food, Drug and Cosmetic (FD&C) Act and are used as an accessory to a regulated medical device or transform a mobile platform into a medical device. Such devices include mobile apps that use a sensor or lead connected to a mobile platform to display the electronic signal of the heart, eye movement for balance, blood pressure, etc.

Upcoming Committee Health Hearings

House Government Operations Committee: will hold a hearing titled *“Examining the Federal Response to Marijuana Legislation.”* 10 a.m., 2247 Rayburn HOB; Oct. 2.

Senate HELP Committee: Executive Session to mark up *Children’s Hospital GME Support Reauthorization; CHIMP Act Amendments of 2013; H.R. 2094, School Access to Emergency Epinephrine Act; and Older Americans Act Reauthorization;* 10:00 a.m., 430 Dirksen Bldg; Oct. 3.

House Energy and Commerce Health Subcommittee: will hold a hearing to *review the implementation of the Food and Drug Administration Safety and Innovation Act (FDASIA) by the Food and Drug Administration.* 10 a.m., 2123 Rayburn HOB; Oct. 3.

House Veterans’ Affairs Committee, Subcommittee on Health: will hold a hearing titled *“Between Peril and Promise: Facing the Dangers of VA’s Skyrocketing Use of Prescription Painkillers to Treat Veterans.”* 10 a.m., 334 Cannon HOB; Oct. 10.

Health Legislation Recently Introduced

H.R. 3161 (MEDICARE), to protect the Social Security and Medicare trust funds from the public debt limit; FORBES; to the Committee on Ways and Means, Sept. 20.

H.R. 3164 (REFORM), to clarify the application of all laws, including the Affordable Care Act, to the federal government and Congress, and for other purposes; KINGSTON; jointly, to the committees on Oversight and Government Reform, House Administration and Energy and Commerce, Sept. 20.

H.R. 3165 (REFORM), to repeal the Affordable Care Act and take meaningful steps to lower health-care costs and increase access to health insurance coverage without raising taxes, cutting Medicare benefits for seniors, adding to the national deficit, intervening in the doctor-patient relationship or instituting a government takeover of health care; LATHAM; jointly, to the committees on Energy and Commerce, Ways and Means, Education and the Workforce, Natural Resources, the Judiciary, House Administration, Rules and Appropriations, Sept. 20.

H.R. 3168 (MEDICARE), to amend Title XVIII of the Social Security Act to provide for a Medicare established provider system under which providers of services and suppliers representing a low risk for submitting fraudulent Medicare claims are provided certain claim review protections; WILLIAMS; jointly, to the committees on Ways and Means and Energy and Commerce, Sept. 20.

Health Legislation Recently Introduced cont.

H.R. 3170 (REFORM), to provide that the only health plans that the federal government may make available to federal employees responsible for the administration of the Affordable Care Act are those created under the act or offered through a health insurance exchange, and for other purposes; POSEY; jointly, to the committees on Oversight and Government Reform, Energy and Commerce, House Administration and Appropriations, Sept. 23.

H.R. 3171 (MEDICAID), to require the secretary of health and human services to approve waivers under the Medicaid Program under Title XIX of the Social Security Act that are related to state provider taxes that exempt certain retirement communities; WOMACK; to the Committee on Energy and Commerce, Sept. 23.

S. 1545 (HIV/AIDS), to extend authorities related to global HIV/AIDS and to promote oversight of U.S. programs; MENENDEZ; to the Committee on Foreign Relations, Sept. 24.

H.R. 3172 (MILITARY HEALTH), to amend Title 10, U.S. Code, to require the secretary of Defense to use only human-based methods for training members of the Armed Forces in the treatment of severe combat injuries; JOHNSON of Georgia; to the Committee on Armed Services, Sept. 25.

H.R. 3177 (HIV/AIDS), to extend authorities related to global HIV/AIDS and to promote oversight of U.S. programs; ENGEL; to the Committee on Foreign Affairs, Sept. 26.

H.J. Res. 65 (REFORM), requiring reaffirmation of the Affordable Care Act and making continuing appropriations for fiscal year 2014, and for other purposes; CRAWFORD; jointly, to the committees on Appropriations and the Budget, Sept. 25.

H. RES. 356 (RURAL HEALTH CARE), recognizing that access to hospitals and other health-care providers for patients in rural areas of the U.S. is essential to the survival and success of communities in the U.S.; JENKINS; to the Committee on Energy and Commerce, Sept. 25.

S. 1555 (MEDICARE/MEDICAID), to amend titles XVIII and XIX of the Social Security Act to provide for a delay in the implementation schedule of the reductions in disproportionate share hospital payments, and for other purposes; WICKER; to the Committee on Finance, Sept. 26.

H.R. 3198 (REFORM), to amend the Affordable Care Act to prohibit government subsidies for the purchase of health plans by members of Congress and congressional staff and to apply to delegates and resident commissioners to the Congress, and to employees of committees and leadership offices of Congress, the requirement of such act that the only health plans that the federal government may make available to members of Congress and congressional staff are plans created or offered through an exchange established under such Act; PEARCE; jointly, to the committees on House Administration and Energy and Commerce, Sept. 26.