



Health Policy Briefing

October 7, 2013

Federal Government Shutdown Continues as Parties Fail to Negotiate on FY 2014 CR

Budget Impasse Bleeds into Deadline to Increase Federal Debt Limit

October 17, just ten days from today, is the date that **Treasury Secretary Jack Lew** has set as the deadline the Administration says the current federal limit of \$16.669 trillion will be reached. He said Republicans are “playing with fire” if the debt ceiling is not raised and that, lacking congressional action, the nation’s creditworthiness will be jeopardized resulting in another recession. It was clear after last week’s meeting at the White House between President Obama and the top House and Senate leaders that the President had not moved off his position that the fiscal year (FY) 2014 appropriations measure move forward without conditions, i.e. repeal of Patient Protection and Affordable Care Act (PPACA) related provisions, and that the debt limit also be increased without additional extraneous matters. Nonetheless, the House passed another continuing resolution (CR), House Joint Resolution 59, which limited the changes to the health law to a one-year delay in the individual mandate and mandated non-subsidized exchange coverage for the President, Vice President, members of congress and leadership/committee staff and which also requested a conference with the Senate. The refusal of the President and Senate Democrats to negotiate over the CR

and House Republicans to pass a “clean” CR resulted in the federal government shutdown beginning last Tuesday. The stalemate did not recede over the weekend, thus setting up a very contentious session when Congress returns at noon today. House Republicans did attempt to persuade the public that their intent was not to shut down the federal government by passing a series of bills to fund certain critical parts of the government, including pay for the military (which was enacted). However, **Senate Majority Leader Harry Reid (D-NV)** stated his and other Democrat leaders’ opposition to taking up agency specific appropriations considered in the House, including the following health-related measures: H.J.Res.72, the Veterans Benefits Continuing Appropriations Resolution for FY 2014 (passed); H.J. Res. 73 which would fund the National Institutes of Health (NIH) at current levels

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for FY 2014 (passed); and H.J. Res. 77 which would fund the Food and Drug Administration (FDA) at current levels for FY 2014 (passed rule to allow floor consideration sometime this week). The press of the debt limit deadline has moved the discussion among a number of House Republicans from one of merely passing the FY 2014 CR focusing on putting a dent in PPACA to one of how to address both the CR and debt limit, perhaps as one omnibus measure. **House Budget Committee Chairman Paul Ryan (R-WI)** is reportedly readying a measure that would condition the House debt ceiling bill with a “down payment” on reforms to entitlement spending (e.g. Social Security and Medicare) and a commitment to tax reform (together with, perhaps, some fee-based revenue increases). It is possible that the House budget initiative may result in alleviating the effects of sequestration by introducing offsets in long-term entitlement spending, particularly given pressure from the House Committee on Armed Services to ease the cuts scheduled for defense and to substitute annual spending increases of about 2%. **Senator Orrin Hatch (R-UT)** and other Senate Finance Committee Republicans also weighed into the debt ceiling debate in a letter to the Treasury Secretary that focuses on encouraging the enactment of “meaningful” reforms to federal health spending which is projected to far exceed economic growth. Although the Senate has resisted a CR laden with changes to the PPACA, there appears to be growing sentiment among some House and Senate Democrats to consider a repeal of the PPACA’s tax on medical devices as the debt ceiling deadline looms closer. As the shutdown continues, Health and Human Services (HHS) agencies have been forced to curtail their activities: e.g. the FDA will halt most laboratory research programs, some compliance and enforcement activities and routine inspections of some industry establishments; the Centers for Disease Control and Prevention (CDC) will halt its assistance programs for state and local health programs and suspend its annual seasonal influenza program; the Health Resources and Services Administration (HRSA) will delay the quarterly registration period for providers and pharmacies and halt payments for the Children’s Hospitals Graduate Medical Education Program; the NIH will stop accepting new patients in the agency’s clinical trials; and Medicare websites will not be updated, although mandatory Medicare and PPACA programs and payments will continue relatively unaffected due to funding outside the annual appropriations process. If the House-passed measure to pay all federal employees retroactively is enacted, it is possible that federal operations could soon be restored.

PPACA Health Reform Update

PPACA Health Insurance Exchanges Opened October 1st

The PPACA state and federal exchanges opened, but with nearly all of them experiencing technical difficulties which has frustrated the actual signup for coverage by eligible individuals (the Administration will not release actual coverage figures until later). Members of Congress and their staff will be among those electing coverage under the District of Columbia’s Small Business Health Insurance Options Program (SHOP) exchange. Final regulations from the Office of Personnel Management (OPM) require Members and staff to use this exchange for their coverage if they want to receive the federal subsidy that they now receive under the Federal Employees Health Benefits Program (FEHBP) during their working years (once retired they can migrate back to the FEHBP). OPM also announced that Blue-Cross/Blue-Shield organization members will offer 150 multi-state health plan options in twenty state exchanges and in ten federally facilitated exchanges. Within four years multi-state plans must be offered in all states. HHS Secretary Kathleen Sebelius said the federal shutdown will not have consequences for the opening and continued operation of the federally facilitated exchanges. She also said that HHS will “fix” any glitches in the operation of the exchanges and “move on”.

Medicare/Medicaid/Public Health Services Corner

Medicare Coverage for Certain PET Scans

The Centers for Medicare and Medicaid Services (CMS) issued a decision memorandum which finalizes Medicare coverage with evidence development (CED) for the use of amyloid-beta PET imaging agents to exclude Alzheimer's disease in narrowly defined and clinically difficult differential diagnoses and to enrich clinical trials seeking better treatments or prevention strategies for such disease by allowing for selection of patients on the basis of biological as well as clinical and epidemiological factors.

Medicare DSH Payment Rule

CMS issued an interim final rule that will align uncompensated care payments with a hospital's cost reporting period to enable disproportionate-share hospital (DSH) payments to be made timely when the hospital's cost reporting period spans more than one federal fiscal year. Comments are due by November 29.

USP Medicare Part D Model Guidelines Up for Review

The U.S. Pharmacopeial Convention (USP) said it will accept suggestions until October 31st with respect to proposed revisions to the Medicare Part D listing of categories and classes of medicines that Part D plan sponsors can use in their drug formularies. The Medicare Modernization Act (MMA) authorized the USP to develop the list, called "Model Guidelines."

Upcoming Health-Related Hearings and Markups

Postponed – Executive Session, Senate Committee on Health, Education, Labor and Pensions: mark up of 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.

Senate Finance Committee hearing titled "Transforming Medicare Post-Acute Care: Issues and Options"; 10:00 a.m., 219 Dirksen Bldg.; Oct. 8.

House Committee on Oversight and Government Reform: Hearing titled "Examining the IRS's Role in Implementing and Enforcing ObamaCare"; 9:30 a.m., Oct. 9.

House Small Business Subcommittee on Health and Technology: Hearing titled "The Effects of the Health Law's Definitions of Full-time Employee on Small Businesses"; 10:00 a.m., Oct. 9.

House Committee on Veterans' Affairs: Hearing titled "Effect of Government Shutdown on VA Benefits and Services to Veterans"; 10:30 a.m., Oct. 9.

House Energy and Commerce Subcommittee on Health: hearing titled "Reviewing FDA's Implementation of FDASIA"; 10:00 a.m., 2123 Rayburn Bldg.; Oct. 10.

House Veterans' Affairs Subcommittee on Health: hearing titled "Between Peril and Promise: Facing the Dangers of VA's Skyrocketing Use of Prescription Painkillers to Treat Veterans;" 10:00 a.m., 334 Cannon Bldg.; Oct. 10.

Senate Special Aging Committee: hearing on long-term care; 2:15 p.m., 562 Dirksen Bldg.; Oct. 23.

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.

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.

Health Legislation Recently Introduced cont.

S. 1557 (GRADUATE MEDICAL EDUCATION), to amend the Public Health Service Act to reauthorize support for graduate medical education programs in children's hospitals; CASEY; to the Committee on Health, Education, Labor, and Pensions, Sept. 27.

H.R. 3204 (DRUGS), to amend the Federal Food, Drug, and Cosmetic Act with respect to human drug compounding and drug supply chain security, and for other purposes; UPTON; to the Committee on Energy and Commerce, Sept. 27.

H.R. 3213 (APPROPRIATIONS), making appropriations for all departments and agencies of the federal government for fiscal year 2014, and for other purposes; GRAYSON; jointly, to the committees on Appropriations and Ways and Means, Sept. 28.

H.J. Res. 66 (APPROPRIATIONS), making continuing appropriations for fiscal year 2014, and for other purposes; REED; jointly, to the committees on Appropriations, the Budget and Ways and Means, Sept. 27.

H. RES. 362 (PEDIATRIC BONE CANCER), expressing support for designation of Sept. 26, 2014, as "National Pediatric Bone Cancer Awareness Day;" FARENTHOLD; to the Committee on Energy and Commerce, Sept. 27.

H.Res. 364 (ALZHEIMER'S DISEASE), supporting the goals and ideals of "World Alzheimer's Month;" FATTAH; to the Committee on Energy and Commerce, Sept. 27.

H.R. 3229 (NATIVE AMERICAN HEALTH), to amend the Indian Health Care Improvement Act to authorize advance appropriations for the Indian Health Service by providing two-fiscal-year budget authority, and for other purposes; YOUNG of Alaska; jointly, to the committees on the Budget, Natural Resources and Energy and Commerce, Oct. 1.