



## Health Policy Briefing

November 2, 2015

### Congress Approves Two Year Budget Deal, Raises Debt Ceiling

A two-year budget deal that raises the debt ceiling was passed by both the House and the Senate last week, and has been sent to the President's desk. The agreement was negotiated by outgoing Speaker of the House John Boehner (R-Ohio), House Minority Leader Nancy Pelosi (D-Calif.), Senate Minority Leader Harry Reid (D-Nev.), Senate Majority Leader Mitch McConnell (R-Ky.) and the White House. The budget deal raises spending levels above the 2011 Budget Control Act sequestration spending caps by \$80 billion through September 2017. The discretionary spending caps will be raised by \$50 billion in fiscal year (FY) 2016 and by \$30 billion in FY 2017. The additional discretionary dollars are equally divided between defense and non-defense spending, providing appropriators with top-line numbers to craft funding bills for the next two years. The package suspends the limit on borrowing until March 16, 2017. The deal also includes a provision to prevent a significant premium increase for many Medicare enrollees. One third of Medicare beneficiaries are not protected by a "hold harmless" provision that prevents their premiums from rising more than their Social Security paychecks. These beneficiaries would have been subject to a 52 percent premium hike in 2016 without the budget measure, which includes a loan from the federal government paid for by future premium hikes. The budget measures are partially offset by extending the sequester on Medicare and other mandatory spending programs by one year through FY 2025. The bill also restricts hospitals from purchasing off-site locations in order to increase outpatient services covered by Medicare. Additionally, generic drug manufacturers will now be required to pay a rebate under Medicaid should costs of drugs outpace inflation. Brand name drugs are already subject to this rebate. The budget deal is also paid for through repeal of an Affordable Care Act (ACA) requirement that would have forced large employers to automatically enroll new employees in health plans. The House passed the bill by a vote of 266-167, with the support of 79 Republicans. The bill was approved by the Senate in a 64-35 vote, with the support of 18 Republicans. Opposition to the budget agreement came from conservative members in response to the pace and behind the scenes nature of negotiations, in addition to the fact that the agreement raises sequestration-spending caps. Passage of

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the bill ensures that newly elected Speaker of the House Paul Ryan (R-Wis.) will not face any fiscal debates on the budget or debt limit until after the 2016 elections. Legislators will now use their revised top lines with the extra discretionary dollars to work to move either 12 individual spending bills or a single omnibus package. Passage of individual spending bills had previously been barred by Democrats pushing for a larger budget deal. Sen. Reid has pledged that his party would now cooperate moving forward, though Democrats are still expected to oppose certain appropriation bill policy riders, such as those that would block implementation of the ACA.

### ***Budget Deal Could Adversely Impact 21st Century Cures***

The two-year budget deal passed by Congress last week used \$5.4 billion in offsets that had already been proposed to pay for the 21st Century Cures Act (H.R. 6), passed by the House earlier this year. The pay for comes from a sale of oil from the Strategic Petroleum Reserve (SPR). It is unclear whether there is enough oil in the stockpile to accomplish multiple goals, or whether lawmakers on the House Energy and Commerce Committee must now renegotiate new offsets for the bill, which would overhaul the drug and device development and approval process. The budget deal could also impact movement on reconciliation, as it too used the \$7.9 billion in savings resulting from repeal of a provision in the Affordable Care Act (ACA) known as the employer auto-enrollment requirement.

### ***Paul Ryan Elected Speaker of the House***

Rep. Paul Ryan (R-Wis.) was elected Speaker of the House last week. Ryan's only challenger was Rep. Daniel Webster (R-Fla.). Ryan beat Webster in the closed-door Republican conference meeting by a 200-43 vote. On the floor, Ryan received 236 votes for Speaker – more than the 218 required to win on the first ballot. Rep. Daniel Webster received nine votes from the floor. Webster was backed by Rep. Dave Brat (R-Va.), Rep. Curt Clawson (Fla.), Rep. Louie Gohmert (R-Texas), Rep. Paul Gosar (R-Ariz.), Rep. Walter Jones (R-N.C.), Rep. Thomas Massie (R-Ky.), Rep. Bill Posey (R-Fla.), Rep. Randy Webber (R-Texas), and Rep. Ted Yoho (R-Fla.). Minority Leader Nancy Pelosi (D-Calif.) received 184 Democratic votes. Mirroring their votes during the Speaker's contest in January, Rep. Krysten Sinema (D-Ariz.) voted for Rep. John Lewis (D-Ga.) and Rep. Gwen Graham (D-Fla.) voted for Rep. Jim Cooper (D-Tenn.), while Rep. Cooper voted for former Secretary of State Colin Powell. In response to complaints from rank and file membership pushing for more say in the decision-making process, Ryan has planned a series of meetings for later this month to discuss changes to internal GOP rules that would allow more votes to come to the floor, and to potentially overhaul the process by which members are assigned to committees. Ryan is still, however, in favor of making it more difficult for members to oust the Speaker from his leadership position. Outgoing Speaker John Boehner (R-Ohio) officially submitted his resignation on Thursday. After being sworn in as Speaker, Ryan resigned his position as chairman of the powerful Ways and Means Committee. Rep. Kevin Brady, (R-Texas) and Rep. Pat Tiberi (R-Pa.) are pursuing the chairmanship, while Sam Johnson (R-Texas) has been named the interim chairman. Several republicans are interested in filling the slot left open by Rep. Ryan's departure from the committee.

### ***Cost of ACA Benchmark Plan to Rise Next Year***

The price of the benchmark silver plan on the Affordable Care Act's (ACA) health insurance exchanges will rise 7.5 percent on average next year, according to new data released last week. This is a significant increase over the two percent increase that the plans faced last year. The data shows, however, that changes in premium prices vary drastically across the country. Silver plans are the most popular nationwide – 70 percent of enrollees chose a silver plan last year, and 11 percent of customers chose the benchmark plan. The benchmark silver plans are the second-lowest cost option for consumers among silver plans. They help determine health care premium subsidies for low-income beneficiaries in that market. The data also shows that the number of companies and organizations that plan to offer health insurance on the federal marketplace has remained fairly stable. Consumers will have 47 different plan options on average in 2016, down from 55 in 2015, and will have the choice of plans offered by five different insurance companies, the same as the previous year. The third open enrollment period for the exchanges opened on November 1.

### ***JAMA Study Finds Lack of Specialty Providers in Some Health Plans***

As many as 14 percent of health plans sold on the federal government's health insurance marketplace lack at least one common specialty in their networks, according to a new study published in JAMA last week. The research examined the physician directories of 135 health plans across the 34 states that sold insurance through the federal exchange during the 2015 open enrollment period, and found that 19 plans lacked in-network specialists. The plans lacking specialty access were all located within the same nine states, which the researchers declined to name. Providers in psychiatry, rheumatology, and endocrinology were the specialists most likely to be left out of network. The study also found that while some plans included these specialists in network, providers could be located as far as 50 to 100 miles outside of the most populous city where each plan was offered. Researchers conclude that access to specialists is likely worse in more rural areas. These findings could have significant financial implications for plan enrollees, who might face unexpected costs due to expenses associated with out-of-network doctor visits. Five of the 19 plans do not cover any of the expenses for out-of-network visits, while 11 plans require the patient to pay at least half of the cost of the visit.

## **Medicare and Medicaid News**

### ***Top Republicans Raise Concerns About Cost of New Medicaid Enrollees***

Senate Finance Committee Chairman Orrin Hatch (R-Utah) and House Energy and Commerce Committee Chairman Fred Upton (R-Mich.) have **written** to the administration raising concerns about the cost of Medicaid beneficiaries who have enrolled under the Affordable Care Act's (ACA) expansion of the program. Data shows that individuals made eligible for the program under the health care law cost 19 percent more than other enrollees – on average \$5,517 per person. The ACA expanded Medicaid coverage for people up to 138 percent of the poverty line, or \$33,000 for a family of four. The federal government has paid for the cost of new enrollees during the early years of expansion, and the letter urges the Centers for Medicare and Medicaid Services (CMS) to conduct robust oversight to ensure that states do not set higher payment rates for newly eligible adults and shift the costs to the federal government. "States effectively lack economic incentives to be prudent purchasers for the newly-eligible population, because the federal government pays 100 percent of the cost of care for this population," the lawmakers write. Over four million people have gained coverage through the 30 states that have expanded their Medicaid programs since 2014.

## ***Congressional Oversight Leaders Ask CMS About Fraud Prevention System Update***

Republican oversight leaders in the House and Senate have **written** to the Centers for Medicare and Medicaid Services (CMS) asking the administration for more details about the agency's plans to update its Fraud Prevention System (FPS). The system uses predictive analytics and other technology to combat waste, fraud and abuse in the Medicare program. The Government Accountability Office (GAO) estimates that improper payments in the Medicare and Medicaid programs have increased in recent years, totaling \$77.4 billion in fiscal year (FY) 2014. "Given the magnitude of these improper payments, in addition to the fraud and abuse identified in both programs, our Committees have followed the progress of the FPS investment at CMS with great interest," the lawmakers write. "While FPS has successfully used this technology to identify fraud and improper payments, much more needs to be done." The letter was signed by Senate Finance Committee Chairman Orrin Hatch (R-Utah), Senate Judiciary Committee Chairman Chuck Grassley (R-Iowa), House Ways and Means Chairman Paul Ryan (R-Wis.), Ways and Means Subcommittee on Oversight Chairman Peter Roskam (R-Ill.), Ways and Means Subcommittee on Health Chairman Kevin Brady (R-Texas), House Energy and Commerce Chairman Fred Upton (R-Mich.), Energy and Commerce Subcommittee on Oversight Chairman Tim Murphy (R-Pa.), and Energy and Commerce Subcommittee on Health Chairman Joseph Pitts (R-Pa.).

## **Upcoming Congressional Meetings and Hearings**

***House Homeland Security Committee hearing titled "Defending Against Bioterrorism: How Vulnerable is America?" 10:00 a.m., 311 Cannon Bldg.; November 3***

***House Energy and Commerce Health Subcommittee hearing titled "Examining Legislation to Improve Medicare and Medicaid"; 10:15 a.m., 2322 Rayburn Bldg.; November 3***

***House Energy and Commerce Health Subcommittee markup to consider mental health, menu labeling, and synthetic drugs legislation; 3:00 p.m., 2322 Rayburn Bldg. Opening statements only; November 3***

***House Energy and Commerce Health Subcommittee markup to consider mental health, menu labeling, and synthetic drugs legislation; 10:00 a.m., 2123 Rayburn Bldg.; November 4***

***House Ways and Means Health Subcommittee hearing on the status of the Consumer Operated and Oriented Plan (CO-OP) Program; 2:00 p.m., 1100 Longworth Bldg.; November 5***

***House Energy and Commerce Oversight and Investigations Subcommittee hearing titled "Examining the Costly Failures of Obamacare's CO-OP Insurance Loans;" 10:15 a.m., 2322 Rayburn Bldg.; November 5***

***House Veterans' Affairs Health Subcommittee: hearing on veterans' health legislation; 10:00 a.m., 334 Cannon Bldg.; November 17***

***House Energy and Commerce Health Subcommittee hearing titled "Examining the Regulation of Diagnostic Tests and Laboratory Operations;" 2:00 p.m., 2123 Rayburn Bldg.; November 17***

***House Veterans Affairs Committee hearing titled "Choice Consolidation: Assessing VA's Plan to Improve Care in the Community;" 10:30 a.m., 334 Cannon Bldg.; November 18***

## Health Legislation Recently Introduced

**H.R. 3831 (introduced by Rep. Brady of Texas):** A bill to amend title XVIII of the Social Security Act to *extend the annual comment period for payment rates under Medicare Advantage*; 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; October 26

**H. Con. Res. 87 (introduced by Rep. Meadows):** Concurrent resolution *expressing support for designation of October 28 as ``Honoring the Nation's First Responders Day''*; to the Committee on Transportation and Infrastructure; October 26

**H.RES.498 (introduced by Rep. Tim Murphy):** A resolution expressing support for *designation of October 2015 as "National Breast Cancer Awareness Month"*; to the House Committee on Energy and Commerce; October 27

**S.2210 (introduced by Sen. Richard Blumenthal):** A bill to require the Secretary of Veterans Affairs to *carry out a program to establish peer specialists in patient aligned care teams at medical centers of the Department of Veterans Affairs, and for other purposes*; to the Committee on Veterans' Affairs; October 27

**H.R. 3849 (introduced by Rep. Judy Chu of California):** A bill to amend title 10, United States Code, to *ensure access to qualified acupuncturist services for military members and military dependents, to amend title 38, United States Code, to ensure access to acupuncturist services through the Department of Veterans Affairs, to amend title XVIII of the Social Security Act to provide for coverage of qualified acupuncturist services under the Medicare program; to amend the Public Health Service Act to authorize the appointment of qualified acupuncturists as officers in the commissioned Regular Corp and the Ready Reserve Corps of the Public Health Service, and for other purposes*; to the Committee on Energy and Commerce, and in addition to the Committees on Armed Services, Veterans' Affairs, 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; October 28

**H.R. 3851 (introduced by Rep. Gene Green of Texas):** A bill to amend the Public Health Service Act to *authorize appointment of Doctors of Chiropractic to regular and reserve corps of the Public Health Service Commissioned Corps, and for other purposes*; to the Committee on Energy and Commerce; October 28

**S. 2214 (introduced by Sen. Gillibrand):** A bill to amend the Federal Food, Drug, and Cosmetic Act to *require patient medication information to be provided with certain prescription drugs*; to the Committee on Health, Education, Labor, and Pensions; October 28

**H.R.3865 (introduced by Rep. Evan H. Jenkins):** A bill to *provide for alternative and updated certification requirements for participation under Medicaid State plans under title XIX of the Social Security Act in the case of certain facilities treating infants under one year of age with neonatal abstinence syndrome, and for other purposes*; to the House Committee on Energy and Commerce; October 29

**S. 2218 (introduced by Sen. Thune):** A bill to amend the Internal Revenue Code of 1986 to *treat certain amounts paid for physical activity, fitness, and exercise as amounts paid for medical care*; to the Committee on Finance; October 29

**S. 2220 (introduced by Sen. Brown):** A bill to amend title XXVII of the Public Health Service Act to *provide for a special enrollment period for pregnant women, and for other purposes*; to the Committee on Finance; October 29