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HEALTH CARE UPDATE

January 13, 2014

- Bi-partisan staff from all Congressional committees of jurisdiction over Medicare physician pay met last week to discuss potential strategies going forward to pass legislation that would permanently repeal the Sustainable Growth Rate (SGR). At the heart of discussions, continues to be how Congress can pay for a bill that will likely cost at least \$155 billion over 10 years. Based on an American Medical Association-led proposal two years ago that received some bi-partisan support in the Senate, the potential “pay-for” in play that would least upset other health care stakeholders, is through the Overseas Contingency Operation (OCO) funding which is available because the war in Afghanistan is winding down. At least 2 issues are at the center of whether OCO or other pay-fors will gain consensus: 1) whether fiscal hawks, especially conservative House Republicans demand more tangible savings then from a fund that is already expected to automatically diminish at the conclusion of the Afghanistan war; and 2) how much the final SGR replacement bill actually costs which could vary significantly on whether stakeholders push for annual increases in doctor pay or lean more towards freezing current rates.
- Today Senate and House appropriators are expected to release the omnibus FY2014 spending plan, detailing funding levels for health agencies. The omnibus plan is reported to include all annual funding bills, including Labor-HHS spending. The Labor-HHS portion of the funding cycle has been contentious in recent years, serving as a venue for additional debate over the Affordable Care Act (ACA) and other hotly debated issues such as abortion funding. However, gridlock over these politically charged items has impacted health care funding outside of the ACA, including the administration of Medicare, medical research, and other health research grants.
- Last week, the Administration published in the Federal Register a proposed rule to remove special protections guaranteeing seniors access from three classes of drugs. The three classes of drugs—antidepressants, antipsychotics, and immunosuppressants—have received protected status since the Medicare prescription benefit was created in 2006. In the [proposal](#), CMS argues that protected status is no longer necessary to guarantee access and it could save money while combatting overutilization. Many advocates and physicians have raised concern over the proposed rule fearing it will negatively impact the development of innovative therapies at a time where there is increased focus on the neurodegenerative and neuropsychiatric disorders.

Implementation of the Affordable Care Act

Johnson Sues OPM: Senator Ron Johnson (R-WI) has filed a lawsuit against the Office of Personnel Management (OPM) to challenge the policy allowing lawmakers and Congressional staff to receive employer contributions to their health care coverage. Johnson announced his plans in an [op-ed](#).

SCOTUS Will Hear Contraception Challenge: The Supreme Court temporarily allowed religious groups to not cover birth control for their employees. The Court will hear arguments on March 25th in two cases in which businesses are challenging the contraception coverage requirement.

SCOTUS Denies PECOS Challenge: Chief Justice John Roberts blocked a request by the American Physicians & Surgeons, Inc. to stop implementation of the provider Enrollment, Chain and Ownership System (PECOS) that would require non-Medicare physicians to register in order to refer patients to Medicare covered services.

Insurers Must Cover Breast Cancer Pills: CMS [announced](#) that health insurance plans must cover, without cost sharing, the cost of certain breast cancer medications for women at high risk for breast cancer.

White House Opposes GOP ACA Bills: The White House released two statements of administration policy (SAP) opposing the Exchange Information Disclosure Act ([H.R. 3362](#)) and the Health Exchange Security and Transparency Act of 2014 ([H.R. 3811](#)). The House voted on H.R. 3811 Friday, passing it 291-122. H.R. 3362 will be considered this week. The SAPs can be viewed [here](#) and [here](#).

CMS Appoints New Officials: Last week CMS announced the agency's new COO and CIO. Tim Love will serve as chief operating officer and Dave Nelson will serve as chief information officer.

Other Federal Regulatory Initiatives

CMS Attempts to Reign in Poor Performers in Medicare: CMS proposed a [rule](#) to adjust Medicare Advantage and Part D programs to require all doctors prescribing to Medicare patients to be enrolled in Medicare Part D. This will allow the agency to ensure prescriptions are only prescribed by qualified physicians and allow CMS to remove doctors from the program with a pattern of "abusive prescribing" or should their DEA registration be revoked.

CMS Actuaries on Spending Growth: CMS actuaries released their annual [report](#) finding that health care spending grew 3.7 percent in 2012. This was the fourth year in a row of lower than normal spending growth.

HHS OIG Finds EHR Protections Lacking: A [report](#) by the HHS Inspector General found that CMS and its contractors do not have strong enough protections in place to uncover and prevent fraud in electronic health care records.

HHS Strengthens Community Living Options: CMS issued a final [rule](#) to ensure that Medicaid's home and community based services (HCBS) provide full access to community living for older Americans and those with disabilities.

Other Congressional and State Initiatives

Thune Presses for Work Week Fix: Senator John Thune (R-SD) introduced an amendment to the unemployment insurance extension bill considered in the Senate last week that would allow businesses to exclude chronically unemployed individuals that it hires from their calculation of full-time workers' health coverage.

Johanns-Barrasso Introduce ACA Data Protection Bill: Senators Mike Johanns (D-NE) and John Barrasso (R-WY) introduced the Health Exchange Security and Transparency Act that requires the HHS Secretary to notify Americans within two business days if their personal information has been stolen due to a breach of security on the insurance exchanges.

House Education and Workforce on ACA Problems in Schools: The House Education and Workforce released a series of [statements](#) from education professionals criticizing the ACA on higher insurance costs, reduced work hours, and other negative effects on schools.

House Democrats Defend ACA Data Security: Ahead of House votes on Friday last the ACA, Representative Henry Waxman (D-CA) sent a [letter](#) to Democratic staff seeking to underscore the safety of HealthCare.gov.

Thune, Enzi Laud Telemedicine Proposal: Senators John Thune and Mike Enzi (R-WY), with 14 other Senators, [applauded](#) the Federation of State Medical Boards (FSMB)'s proposal to create a multistate physician licensure system for the advancement of telehealth.

Hearings and Mark-Ups Scheduled

House

On January 16, the Oversight and Investigations Subcommittee of House Energy and Commerce Committee will hold a [hearing](#) on the ongoing implementation of the Patient Protection and Affordable Care Act.

On January 16, the Social Security Subcommittee of House Ways and Means Committee will hold a [hearing](#) on Social Security Disability Insurance fraud in New York.

On January 16, the House Oversight and Government Reform Committee will hold a [hearing](#) titled "HHS' Own Security Concerns About HealthCare.gov."

On January 16, the House Science, Space and Technology Committee will hold a [hearing](#) titled "Healthcare.gov: Consequences of Stolen Identity."