Update on the Congressional Landscape

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March 1st marked the official beginning of life under sequestration and, generally speaking, Congress is thus far not facing significant pressure from back home to reverse the across-the-board spending cuts. Congress recently completed an agreement to fund the government for the remainder of fiscal year 2013 (September 30th), and these bills factored in the cuts from sequestration. As a result, it appears that sequestration is here to stay, at least for the near-term.

After completing work on funding for the remainder of the current fiscal year, the House and Senate have now begun work on the fiscal year 2014 spending bills. The next big "cliff" is the expiration of the current debt limit agreement, which is set for May 18th. However, legislation to increase the debt ceiling can be put off until July or August once the U.S. Treasury deploys "extraordinary measures" to continue servicing the nation's debt.

Meanwhile, a bipartisan group of senators and representatives are working on immigration reform, and Congress is carefully watching the implementation of major provisions of the Affordable Care Act that are set to take effect in 2013 and 2014. In particular, there is a focus on the health insurance exchanges which are set to begin enrolling individuals on October 1st.

House Ways & Means Committee Chairman, Dave Camp (R-MI), continues to work on tax reform, releasing in March a third discussion draft which focused on small business tax reform. The previous drafts covered the international tax system and financial products. Senate Finance Committee Chairman, Max Baucus (D-MT), has maintained his support for comprehensive tax reform. Overall, prospects for major reform in 2013 remain uncertain.

During the next several months, Congress is expected to devote time to fiscal year 2014 appropriations bills, ACA oversight and reforms, and continued dialogue on areas of bipartisan interest such as tax reform, immigration reform, and cybersecurity. There is still work being done to forge a "grand bargain" agreement that would include entitlement reform and revenues, but such a deal remains elusive due to a fundamental disagreement between the parties on whether or not new revenues should be included as part of the package.

Physicians Take Two Percent Medicare Pay Cut; Congress Weighs Permanent "Doc Fix"

A two percent Medicare pay cut to physicians took effect on April 1st. The cut is a result of sequestration, which did not fully exempt Medicare but instead capped cuts to the program at two percent. The cuts will also impact other payments to Medicare providers, including incentive payments for "meaningful use" of electronic health records (EHRs). Medical groups have cautioned that the cuts may have an outsized impact on their community, because the industry is already contending with other recently enacted spending reductions.

The cut comes at a time when lawmakers are trying to secure a deal on permanent repeal of the Medicare Sustainable Growth Rate (SGR) formula, which will require a roughly 25 percent reimbursement cut in 2014. Current proposals in Congress would offset the cost of a fix with long-term structural payment reforms rather than provider cuts. House Energy & Commerce Chairman, Fred Upton (R-MI), has said he would like to see a permanent repeal bill on the House floor by the end of this summer.

In February, the House Energy & Commerce Committee republicans (jurisdiction over health issues) and the House Ways & Means Committee republicans (jurisdiction over tax/revenue issues) issued a release outlining their efforts to develop the principles of a permanent "doc fix" and physician payment reform. Rep. Michael Burgess, MD, (R-TX), who introduced temporary "doc fix" legislation in the last Congress, called the proposal a "serious step" towards repealing SGR and replacing it with a payment system that preserves access to care. The committees jointly endorsed a three phase process to achieve payment reform: "(1) Repeal the SGR and provide certainty for physicians through 'predictable, statutorily-defined physician payment rates;' (2) Reform Medicare's FFS system to a model that rewards quality of care; and (3) Use the new model to reward physicians who deliver efficient care."

According to the principles set forth by the authors, reform must also:

- "Not increase the deficit;
- Involve the physician community and other stakeholders;
- Foster clinically meaningful (not government determined) care for patients;
- Encourage achievable improvements in quality, efficiency, and patient outcomes based on physician-endorsed measures;
- Be applicable to all specialties, practice arrangements, and geographic locations;
- Reward the value rather than the volume of services;
- Motivate all stakeholders to adopt reforms; and
- Strengthen Medicare for seniors."

Proponents of permanent repeal argue that the cost of this measure was most recently estimated by the Congressional Budget Office (CBO) at $138 billion, which represents a steep discount from the previous score which came in at $245 billion. However, there is acknowledgement on both sides of the Capitol that an agreement on how to offset the full cost of repeal may be difficult to achieve by the end of the year.

Government Funding Measure Passes Congress with Senate Modifications

On March 21st, the House gave final approval to the six-month continuing resolution (CR) to fund the government through the end of FY 2013, sending the bill to the President for his signature. Last week, the Senate

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took up H.R. 933, the Department of Defense, Military Construction, and Veterans Affairs and Full-Year Continuing Appropriations Act, 2013. Senate Appropriations Chairwoman, Barbara Mikulski (D-MD), and Ranking Member, Richard Shelby (R-AL), offered a substitute amendment that added three additional appropriations bills, including the FY 2013 Agriculture, Rural Development, FDA, and Related Agencies and FY 2013 Commerce, Justice, Science, and Related Agencies bills.

The Senate considered over a dozen amendments to the legislation, including an amendment that would have increased funding for certain agencies within HHS, but not altered the overall cost of the bill. Among other provisions, the amendment would have provided $140 million in additional funding for the National Institutes of Health (NIH) over the CR proposed level. The amendment was defeated by a vote of 54-45, with 60 votes required for adoption. An amendment to defund the Affordable Care Act was defeated 45-52.

Many Senators expressed a desire to provide additional flexibility for agencies to deal with across the board cuts resulting from the sequester, but most of these amendments were defeated or not offered out of concern that it would poison the bill's chances in the House.

The Senate approved the legislation by a vote of 73-26, and the House followed by approving the final Senate-passed bill by a vote of 318-109.

HHS Grants Additional Approvals of State Insurance Exchanges; Releases Essential Health Benefits Final Rule

In March, HHS gave conditional approvals to proposed insurance exchanges in Iowa, Michigan, New Hampshire, and West Virginia. According to HHS, the Agency has now conditionally approved of "some form of exchange marketplace" in 24 states and the District of Columbia. Exchanges in the remaining 26 states are expected to be run by the federal government.

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However, a number of Affordable Care Act proponents in Congress have raised concerns that the six-month spending bill that was signed into law could delay implementation of the exchanges because of the decreased funding levels resulting from sequestration. HHS continues to express optimism that it will meet the October 1st open enrollment deadline for the exchanges.

On February 20th, HHS released a final rule on essential health benefits (EHBs), that health insurers are required to cover under the Affordable Care Act. The rule addresses essential benefits for 10 categories, including emergency services. According to the rule, as part of coverage of EHBs, a health plan must "(1) provide coverage for emergency department services provided out-of-network without imposing any requirement under the plan for prior authorization of services or any limitation on coverage for the provision of services that is more restrictive than the requirements or limitations that apply to emergency department services received from network providers, and (2) apply the same cost sharing in the form of a copayment or coinsurance for emergency department services for an out-of-network provider — as would apply to an in-network provider."

Senate, House Pass Competing Budget Resolutions

On March 23rd, the Senate completed work on the Fiscal Year 2014 Budget Resolution offered by Senate Budget Committee Chair, Patty Murray (D-WA). The resolution was agreed to by a vote of 50-49, with four Democrats joining all 45 Republicans in opposition to the measure. During the "vote-o-rama" that lasted over 12 hours, the Senate called up a total of 101 amendments, and roughly one-fourth were healthcare related amendments.

Notably, the Senate approved: (1) an amendment to repeal the 2.3 percent excise tax on medical devices that was included in the Affordable Care Act; (2) an amendment to fully fund the Biomedical Advanced Research and Development Authority (BARDA) and the BioShield Special Reserve Fund; and (3) an amendment to raise the eligibility age of the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) from 23 years to 26 years. Senator Murray offered the Fiscal Year 2014 House Budget authored by Representative Paul Ryan (R-WI) as a substitute amendment, and it failed by a vote of 40-59.

The repeal of the medical device tax, which was offered by Senate Finance Committee Ranking Member, Orrin Hatch (R-UT), and Senator Amy Klobuchar (D-MN), was passed by a vote of 79-20, with 34 Democrats joining all Republicans in support of the amendment.

The underlying budget resolution is non-binding, but proponents of the repeal argue that the vote demonstrates bipartisan support for repeal. The Medical Device Access and Innovation Protection Act (S. 232), which would repeal the tax, currently has 29 Senate co-sponsors. Companion legislation in the House current has 212 co-sponsors. Neither bill specifies how the $30 billion cost of repeal would be offset.

Meanwhile, on March 21st, the House approved the Fiscal Year 2014 Budget Resolution authored by House Budget Committee Chairman, Paul Ryan (R-WI). The measure was approved by a vote of 221-207, with 10 Republicans joining all Democrats in opposition. In his floor remarks, Chairman Ryan said that the proposal represented a "responsible, balanced budget." He said that Republicans were committed to strengthening Medicare. House Budget Committee Ranking Member, Chris Van Hollen (D-MD), stated that the Ryan Budget "violates important commitments we've made to our seniors." He said that the budget would turn Medicare into a "voucher program."

Overall, Chairman Ryan indicated that his budget would balance in 10 years, reducing the federal deficit by $4.6 trillion over this time period and preserving sequestration. Chair Murray said that the Senate plan would reduce the deficit by $1.85 trillion over 10 years, and would undo sequestration using a mix of revenue increases and spending cuts. The House and Senate are not expected to be able to successfully reconcile their budget resolutions.

PAHPA Reauthorization Bill Signed Into Law

In March, President Obama signed into law H.R. 307, the Pandemic and All-Hazards Preparedness Reauthorization Act (PAHPA). The legislation reauthorizes several key programs relating to medical countermeasures and public health preparedness. Notably, it provides authorization for the Project Bioshield Special Reserve Fund at $2.8 billion between fiscal years 2014-2018. Since the program's creation in 2004, funding has been used to help develop vaccines and other medical technologies to enhance public emergency preparedness.

Senator Thune Introduces Emergency Services Bill

In February, Senator John Thune (R-SD) introduced S. 328, the Strengthening Rural Access to Emergency Services Act. The legislation would amend EMTALA to "allow certain critical access hospitals and sole community hospitals to use interactive telecommunications systems to satisfy requirements with respect to having a physician available to stabilize an individual with an emergency medical condition under the Medicare program."

Under the proposal, the federal emergency room staffing requirement is considered satisfied if (1) the physician available by an interactive telecommunications system is board certified in emergency medicine or pediatric emergency medicine and (2) a nurse practitioner or physician assistant is onsite in the emergency department.

House Lawmakers Propose Medicaid Expansion Repeal

On March 25, Representative Matt Salmon (R-AZ) introduced H.R. 1404, the Medicaid Expansion Repeal and State Flexibility Act. The legislation would repeal the Medicaid expansion included in the ACA, and would also repeal ACA's minimum essential coverage requirement for Medicaid "benchmark" benefits. The legislation was introduced with five co-sponsors: Representatives Diane Black (R-TN), Trent Franks (R-AZ), Duncan Hunter (R-CA), Doug LaMalfa (R-CA), and David Schweikert (R-AZ). ■