"Fiscal Cliff" Agreement Signed Into Law: Includes Temporary "Doc Fix"

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On January 2, President Obama signed into law H.R. 8, the American Taxpayer Relief Act of 2012 (ATRA). The legislation addressed a range of the "Fiscal Cliff" issues on a permanent or temporary basis. It included a one-year doc fix that extends current Medicare physician payment rates through December 31, 2013. The $25 billion fix was fully paid for by a mix of healthcare cuts, including: (1) repeal of the Community Living Assistance Services and Supports (CLASS) program); (2) re-basing of State Disproportionate Share Hospital (DSH) allotments for fiscal years 2021 and 2022; (3) adjustment of the equipment utilization rate for advanced imaging services; (4) Medicare payment of competitive prices for diabetic supplies and elimination of overpayment for diabetic supplies; (5) Re-basing end stage renal disease (ESRD) payments for dialysis drugs and Medicare payment adjustments for non-emergency ambulance transports for ESRD beneficiaries; (6) Documentation and Coding (DCI) adjustments to recover over-payments to hospitals resulting from utilization of Medicare Severity Diagnosis Related Groups (MS-DRGs); and (7) elimination of all funding for the Medicare Improvement Fund.

A number of Members on both sides of the aisle have expressed their preference for a permanent "doc fix." In February, the Congressional Budget Office (CBO) dramatically reduced the cost estimate for a permanent "doc fix," from $245 billion to $138 billion. This change strengthens the position of advocates for a permanent fix, but it remains far from clear whether Republicans and Democrats can achieve a bipartisan consensus on how to pay for this measure.

In addition to the one-year "doc fix," the bill includes a number of other Medicare extensions, including the physician work index, payment for outpatient therapy services, and ambulance add-on payments.

With the repeal of the CLASS program, the agreement established a new Commission on Long-Term Care composed of 15 Members appointed by the President and House and Senate Leaders. The Commission is tasked with developing a plan for the "establishment, implementation, and financing of a comprehensive, coordinated, and high-quality system that ensures the availability of long-term services and supports for individuals in need of such services and supports, including elderly individuals, individuals with substantial cognitive or functional limitations, other individuals who require assistance to perform activities of daily living, and individuals desiring to plan for future long-term care needs."

The bill also extended tax provisions of the 2001 and 2003 cuts for certain taxpayers. Notably, the lower rates expired for those with incomes above $400,000 ($450,000 for married filing jointly), with capital gains and dividends rates also increasing at this threshold. A deal was cut on the estate tax, with an increased exemption level ($5.12M) indexed for inflation. There was also a permanent fix to the alternative minimum tax (AMT).

The legislation delayed for two months the across-the-board discretionary spending cuts known as sequestration. The sequester was scheduled to begin impacting Federal agencies on January 1st, because Congress failed to enact at least $1.2 trillion in additional spending reductions following the passage of the Budget Control Act of 2011. These cuts would result in a cut of 8.2 percent for most accounts, although cuts to the Medicare program are capped at two percent. The legislation paid for the $24 billion cost to "turn off" sequestration for two months with a mix of spending cuts and revenue increases. The White House and Congressional Democratic Leadership have said that any further deficit reduction should be paired with revenues, while Congressional Republicans are opposed to any new tax increases. Absent an agreement, sequestration is set to start at the beginning of March.

House Approves Emergency Preparedness Legislation

On January 22, the U.S. House of Representatives passed H.R. 307, the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (PAHPA). The measure was approved by a vote of 395-29. H.R. 307 would facilitate the development of medical countermeasures (MCMs) to address our nation's public health preparedness infrastructure, including those mitigating a chemical, biological, radioactive, or nuclear (CBRN) attack. The legislation reauthorizes the Hospital Preparedness Program (HPP), which assists in the enhancement of medical surge capacity and other emergency preparedness measures at the state and local government level.

The bill reauthorizes $52 million annually through fiscal year 2017 for the National Disaster Medical System (NDMS). NDMS was established to assist the federal government in its medical response to a public health emergency. Finally, the bill reauthorizes the Medical Reserve Corps and the Emergency System for Advance Registration of Volunteer Health Professionals to help train and coordinate volunteers in response to a major disaster.

There are indications that the Senate may take up this bill in the near-term. It is possible that it could be taken up as a free-standing bill. There has also been some speculation that PAHPA could be passed in the Senate as part of the Animal Drug User Fee Act (ADUFA), which must be reauthorized this year. No specific plans for advancing the bill have yet been announced.

Fiscal Year 2014 Budget and Appropriations Process

The next several months are shaping up to be a busy time for the Congressional Appropriations and Budget Committees. The President's FY 2014 budget missed the February 4 release deadline, and is expected sometime in mid-March.

Meanwhile, Senate Democrats and House Republicans both face unique challenges as they prepare budget resolutions for FY 2014.

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The Senate will attempt to adopt a budget resolution for the first time since April 2009. In a memorandum sent to her colleagues, Senate Budget Committee Chair Patty Murray (D-WA) indicated that she will pursue a budget deal that is "balanced, fair for the middle class, and calls on the wealthiest Americans to pay their fair share." The 20 Senate Democrats that face re-election in 2014 represent a key voting block that is needed to secure support for this budget.

In the House, Republican Leadership has pledged to support a budget that balances in 10 years. This presents a steep challenge to Budget Committee Chairman Paul Ryan (R-WI), who will produce a leaner budget than the one that passed the House in 2012. Chairman Ryan's previous budget included major reforms to entitlement spending, including Medicare and Medicaid.

The House and Senate must also contend with the uncertainty of sequestration, which will start on March 1st in the absence of a deal to delay these cuts. If allowed to take effect for the remainder of 2013, sequestration will reduce the amount of money available in the budget by about $85 billion.

As a provision included in the deal to suspend the debt ceiling until May 19th, pay will be withheld for members of Congress serving in a chamber that does not approve a budget resolution by April 15th.

Obamacare Implementation Continues: Congress Continues to Consider Modifications

In January the IRS began receiving payments from medical device manufacturers, from a new 2.3 percent tax on the sale of medical devices. The measure was designed to raise $30 billion over 10 years to help offset the cost of Obamacare. A repeal measure passed the House in June 2012, but the Senate did not act to repeal or delay the tax. Opponents of the tax have indicated that they will continue to work with Congressional champions to seek full repeal.

Other major changes to Obamacare that could be considered in the 113th Congress include repeal of the health insurance tax set to take effect in 2014, and repeal of the Independent Payment Advisory Board (IPAB), which will begin impacting Medicare spending in 2015.

Four more key provisions of the health reform law are set to take effect in 2014: (1) health insurance exchanges (which CMS now wants to call "health care marketplaces"); (2) the employer mandate to provide health insurance; (3) "essential health benefit packages," which each plan sold through an exchange must offer; and (4) the individual mandate to purchase health insurance. Congress will continue to monitor and hold hearings on the requirement for states to establish these exchanges, and on related guidance from HHS. Congress is also expected to exercise its oversight authority to examine both the impact of the employer mandate on small and large businesses and IRS enforcement of the individual mandate.

CMS Releases Final Rule on Physician Payment Transparency

On February 1st CMS published a final rule entitled, "National Physician Payment Transparency Program: Open Payments." According to a CMS fact sheet, the rule will "make information publicly available about payments or other transfers of value from certain manufacturers of drugs, devices, biologicals and medical supplies covered by Medicare, Medicaid, and the Children's Health Insurance Program (CHIP), defined as applicable manufacturers, to physicians and teaching hospitals, which are defined as covered recipients." CMS was required to issue the rule as part of a provision in Obamacare that was designed to foster greater transparency in the healthcare market.

The law requires these covered manufacturers to prepare an annual report to HHS that details all payments (i.e., gifts, fees, travel) to covered recipients, including physicians. Manufacturers are also required to report ownership and investment interests held in these entities by physicians and their immediate family members.

CMS indicated that data collection will begin on August 1, 2013, to allow sufficient preparation time for manufacturers and group purchasing organizations (GPOs). The data will be reported from August through December of 2013. CMS will release the data by September 30, 2014.

Additional Legislative Efforts

H.R. 574, the Medicare Physician Payment Innovation Act, was introduced in February by Reps. Allyson Schwartz (D-PA) and Joe Heck (R-NV). The bill provides for a permanent "doc fix" and annual positive payment updates for physicians over years 2015 to 2018. Additionally, the legislation requires CMS to test and evaluate new physician payment and delivery models by October 2017, and provides incentives for physician participation in these models. In 2019, physicians utilizing the new CMS-approved model will have the opportunity to receive higher pay in exchange for quality, efficiency, and cost improvemenwts. As the year progresses we expect additional "doc fix" proposals to be introduced in the House and Senate.

H.R. 235, the Veteran Emergency Medical Technician Support Act of 2013, would provide demonstration grants to states with EMT shortages. The legislation streamlines state EMT certification and licensure requirements for veterans who have completed military EMT training while serving in the Armed Forces. It makes it easier for them to become licensed EMTs without having to go through duplicative training. The bill authorizes $1 million for these grants over the next five years (FY 2014-2018). The House Energy & Commerce Committee reported the measure in a bipartisan vote and it is expected to have broad support in a vote before the full House. The legislation was introduced by Rep. Adam Kinzinger (R-IL) and Rep. Lois Capps (D-CA). ■