

K&L GATES

The 113th Congress, the Fiscal Crisis, and Health Care

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Who is the 113th Congress?

- Most diverse Congress in history
 - More women
 - More minorities
 - 20 physicians (same as 112th Congress)
- Control of Congress same as 112th
 - Democratic-run Senate
 - Republican-led House
- Politics and policies same as 112th Congress
 - Partisan and divided

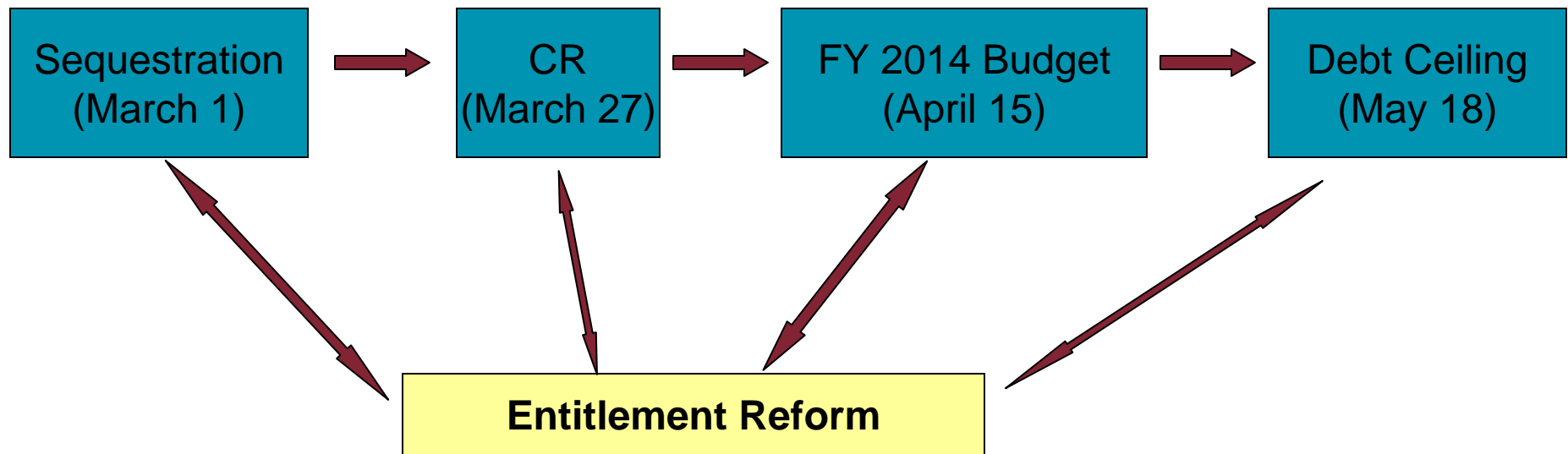
What issues are facing the 113th Congress?

- Fiscal Issues
 - Sequestration
 - Continuing Resolution
 - FY 2014 Budget
 - Debt Ceiling
 - Entitlement Reform
- Health Care
 - Health Reform
 - Repeal/Defunding Efforts
 - Implementation
 - Mental Health
 - Dual Eligibles
 - Sustainable Growth Rate (“doc fix”)
 - Wage Index
- Immigration

Fiscal Issues

- Sequestration
- Continuing Resolution (CR)
- FY 2014 Budget
- Entitlement Reform
- Debt Ceiling

Timeline



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What Happens Under Sequestration?

Background

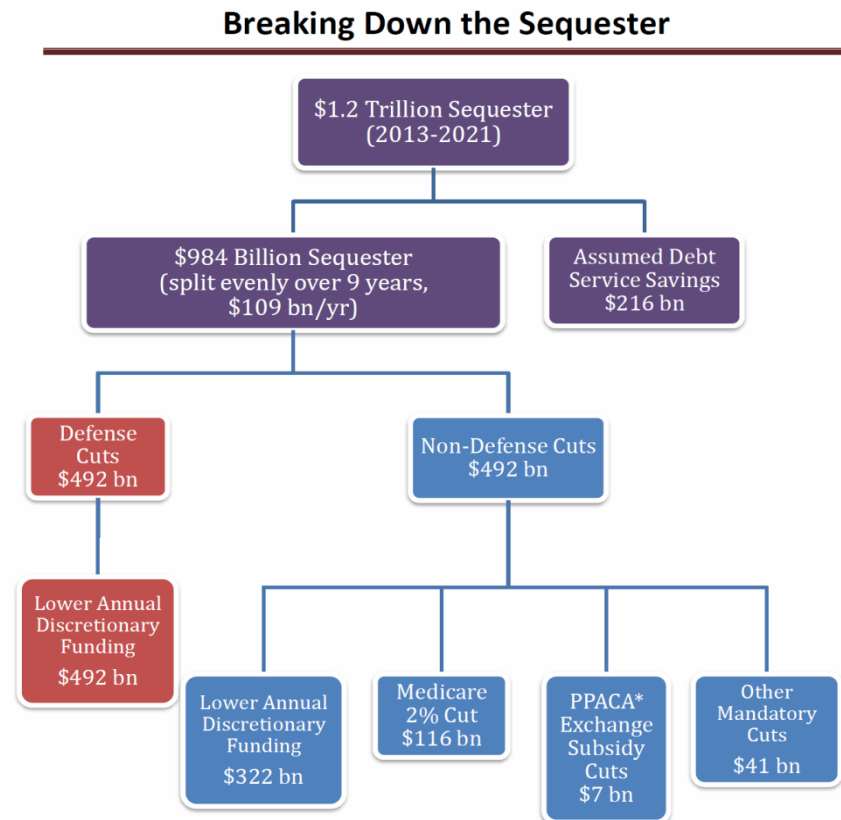
- In 2011, Congress passed legislation to raise the debt ceiling
- The law established a “Supercommittee” to come up with savings of \$1.2 trillion or more; the failure of the Supercommittee would result in automatic across the board cuts (“sequestration”)
- Supercommittee was unable to reach an agreement on savings
- Automatic cuts were scheduled to go into effect at the beginning of 2013
- On January 2, the President signed into law a bill to delay sequestration until March 1

What happens under Sequestration?

- If Congress fails to stop the sequester by March 1
 - Automatic, across the board cuts of up to \$1.2T over 10 years; may be less
 - \$85B in 2013 alone
 - Cuts split evenly between defense and non-defense

- Medicare cuts capped at 2 percent (about \$10 billion)
 - Cuts can only be made to providers and insurers

- Medicaid not subject to cuts




Loren Adler and Shai Akabas, Bipartisan Policy Center, Everything You Ever Wanted to Know About the Sequester (May 18, 2012), available at <http://bipartisanpolicy.org/blog/2011/11/bca-sequester>.

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Continuing Resolution

Continuing Resolution

- Last year, Congress passed a six-month continuing resolution (CR) to fund the federal government until March 27, 2013 at FY 2012 levels
- At that point, Congress will either have to pass another CR to fund the government for the rest of the fiscal year, or pass FY 2013 appropriations legislation
- It is likely that Congress will pass another CR to fund the government for the rest of FY 2013, and focus on passing a budget resolution for FY 2014



FY 2014 Budget

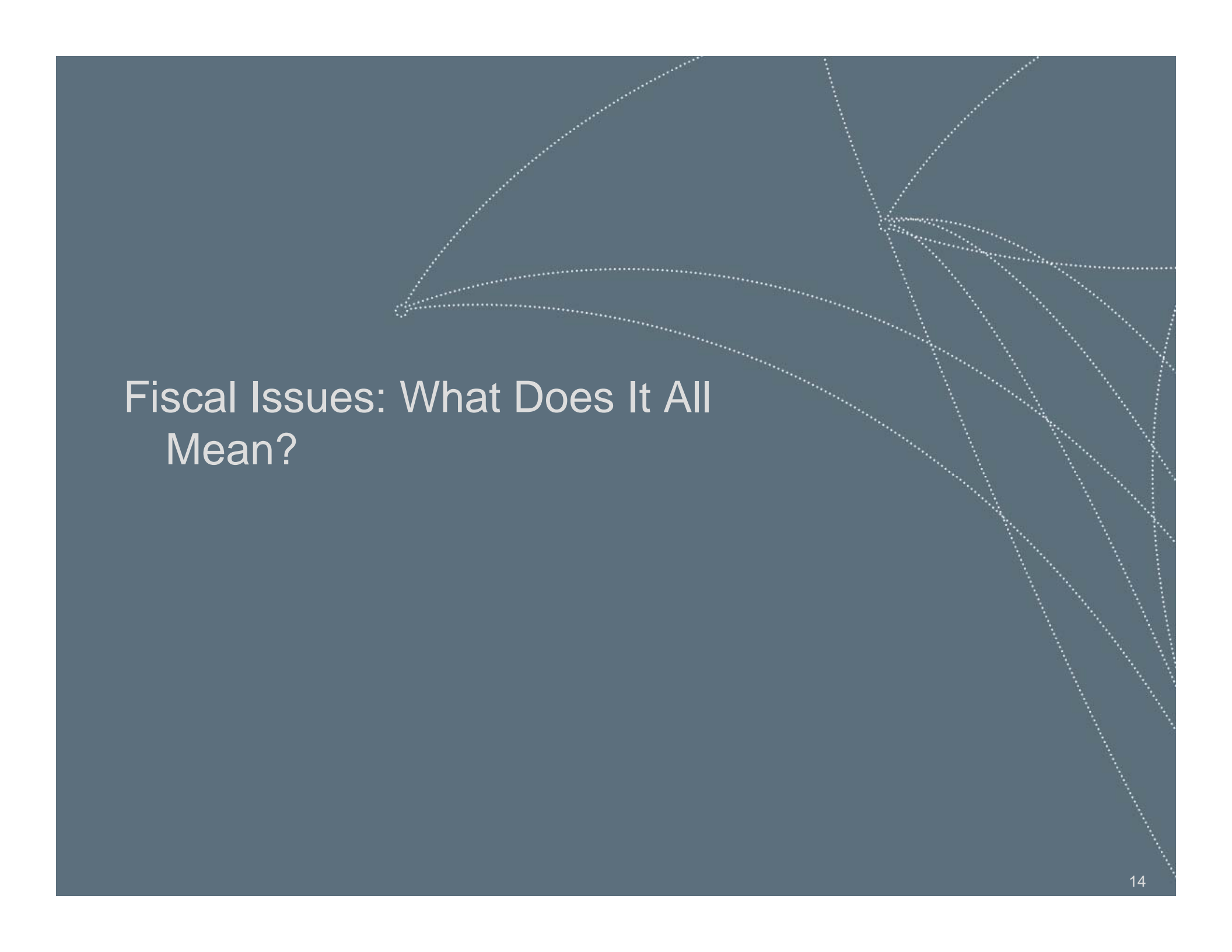
FY 2014 Budget

- As part of the deal to increase the debt ceiling, Congress must pass a budget resolution for FY 2014 (starting October 1, 2013)
- House Republicans intend to pass a bill that balances the budget in 10 years
 - Entitlement reform expected to play major role
- Senate Democrats have stated that they will pass a budget for FY 2014; no details on what it will entail

Debt Ceiling

Debt Ceiling

- On February 4, the President signed the “No Budget, No Pay Act of 2013” into law to suspend the debt ceiling
 - The law covers all the debt accrued by the government beyond the current limit of \$16.4 trillion from now through May 18
 - The law also suspends salaries for lawmakers in either chamber if they fail to pass an FY 14 budget resolution by April 15
- To secure Republican votes to pass the bill, House Speaker Boehner committed to push a balanced budget
- Republicans have said that they are willing to let the sequester go into effect on March 1



Fiscal Issues: What Does It All Mean?

Entitlement programs are on the “chopping block”

- Both parties agree on the need to address the federal deficit
- A major area of focus is entitlement reform
 - Republicans want to make structural changes to Medicare and Medicaid
 - Majority of Americans oppose any structural changes
 - Democrats want to make small changes to the programs
- Ultimately, both parties will have to compromise
 - Health care providers may have the most to lose

Possible Medicare Cuts

- Consolidating payments for direct and indirect medical education cost and reducing federal payments for graduate medical education
- Reducing or eliminating Medicare “disproportionate share” adjustments
- “Rebasing” and “merging” the Medicare hospital wage index with the wage indices applicable to various providers
- Imposing cost sharing for the first 20 days of a stay in a Skilled Nursing Facility
- Reducing or eliminating payment incentives to providers adopting new health information technologies

Possible Medicare Cuts, cont'd

- Requiring a larger co-payment for home health episodes covered by Medicare
- Reforming cost-sharing structures for Medicare and Medigap insurance
- Reducing Medicare's payment rates across the board in high-cost areas
- Eliminating the Medicare Critical Access Hospital, Medicare-Dependent Hospital, and Sole Community Hospital programs
- Requiring manufacturers to pay a minimum rebate on drugs covered under Medicare Part D for low-income beneficiaries

Possible Medicare Cuts, cont'd

- Eliminating “quality” bonus for Medicare Advantage plans
- Developing a new payment system (such as bundling payments) for medical devices and supplies
- Reducing or eliminating Medicare payments for drugs outside of Part D

Possible Medicaid Cuts

- Allowing states to fully enroll a greater proportion of Medicaid recipients in managed care programs (e.g., certain disabled populations)
- Limiting benefits to some Medicaid eligible groups (e.g., women with dependent children)
- Increasing co-payments applicable to some benefits or for some recipients — particularly for Medicaid recipients not enrolled in managed care programs
- Establishing more limited benefits (e.g., severely limit the number of covered hospital days)
- Limiting benefits to Medicaid recipients using emergency room or other high cost services unnecessarily

What Does It All Mean?

- How Congress resolves the fiscal crisis will have an immediate and long-term effect on health care in this country
 - The legislative process gives health care providers many avenues to influence policy
 - Engage with all Members of Congress as well as local officials
- Congress is looking for ways to reduce the federal deficit
 - Innovation often equals cost savings: stakeholders who can convince Members of Congress that innovative new programs will reduce cost will be at an advantage

Health Care Issues

- Health Reform
 - Repeal/Defunding Efforts
 - Implementation
- Mental Health
- Dual Eligibles
- Sustainable Growth Rate (“Doc Fix”)
- Wage Index

Health Reform

Repeal/Defunding Efforts

- Republicans will continue repeal efforts by focusing on unpopular provisions of the health reform law
 - E.g., IPAB, medical device tax, individual mandate
- Republicans will also focus on defunding some programs
 - Fiscal cliff deal rescinded unobligated CO-OP funding
 - Congress cut \$5 billion from Prevention and Public Health Fund
- Even Democrats may be forced to consider savings from health reform as a way to tackle the deficit

Implementation

- The Obama Administration is expected to issue guidance and regulations implementing many of the major provisions that go into effect in 2013/2014, including:
 - The individual mandate
 - Essential health benefits
 - The employer mandate
 - DSH payment reduction
 - The health insurance tax
- Most of the implementation efforts will be at the state and local level

Implementation: State and Local

- States with Democratic governors more likely to implement health reform law; Republican governors less likely
- More than half of states have failed to establish health insurance exchanges
- Several states with Republican governors have refused to expand the Medicaid program
 - Kansas Gov. Sam Brownback and Iowa Gov. Terry Branstad have refused to include Medicaid expansion in their budget recommendations

Exchanges

- The health reform law requires each state to establish a health insurance exchange (i.e., a marketplace to purchase insurance)
 - If a state refuses to establish an exchange, the federal government will set up an exchange for the state
- With the exception of a few states like Massachusetts, Vermont, and Maryland, most states will not be ready without federal assistance
- It is unclear whether the federal government will be able to ensure that every state has an exchange before the enrollment period begins later this year

Medicaid Expansion

- PPACA requires states to expand Medicaid to individuals with incomes up to 133% FPL
- The Supreme Court ruled last year that the federal government cannot withhold all Medicaid funds from states that refuse to expand the program
- Several states with Republican governors have refused to expand Medicaid
 - The Obama Administration is working with states to come up with a compromise
 - The Administration may decide to withhold money from states through other means, such as Medicaid DSH payments

Mental Health



Mental Health

- Renewed interest in mental health issues following the Connecticut shooting last year
 - The Senate HELP Committee held a hearing on mental health on January 24, 2013—its first hearing on the issue in six years
 - The House Appropriations Committee also held a briefing on mental health and substance abuse programs on January 24

- Focus on two laws:
 - Mental Health Parity and Addictions Equity Act of 2008
 - Requires insurers to treat mental health the same as physical health when it comes to coverage
 - PPACA mental health provisions
 - Promotes increased access to mental health coverage, and includes mental health coverage as part of “essential health benefits”

Mental Health, cont'd

- Congress asking the Administration to finalize regulations for these two laws
- Some Democrats also demanding more funding for mental health issues
- Many states have also decided against cutting mental health funding

Dual Eligibles

Dual Eligibles

- “Dual eligibles” are individuals who are eligible for, and enrolled in, both Medicare and Medicaid
- Represent a small percentage of Medicare and Medicaid patients, but are among the sickest, poorest, and most expensive patients
- Major area of focus for health care savings
 - Various proposals and demonstration programs to manage care of duals
 - Accountable Care Organizations (ACOs)
 - Medicare Advantage Special Needs Plans (MA-SNPs)
 - Managed Care Organizations (MCOs)
 - Program of All-inclusive Care for the Elderly (PACE)



Sustainable Growth Rate (“Doc Fix”)

The “Doc Fix”

- As part of the American Taxpayer Relief Act of 2012, Congress voted to extend the Medicare doc fix for one year
- Last year, Congress held hearings to discuss how to fix the SGR formula
- The issue has gained momentum in 2013, after the Congressional Budget Office reduced its 10-year cost estimate for the doc fix from \$243 billion to \$138 billion

The “Doc Fix,” cont’d

- House members determined to find permanent solution
 - Bipartisan bill sponsored by Reps. Allyson Schwartz (D-PA) and Joe Heck (R-NV) on February 6 to repeal the SGR
 - Ways and Means Chairman Dave Camp (R-MI) and Energy and Commerce Chairman Fred Upton (R-MI) announced a blueprint on February 7 to repeal the SGR
 - Energy and Commerce Health Subcommittee has scheduled a hearing on the SGR for February 14
- So far, none of the proposals have identified a way to pay for the SGR repeal
- Still unclear whether Congress will pass a permanent fix this year

Wage Index

Wage Index

- The health reform law amended the Balanced Budget Act of 1997 by requiring CMS to compute the wage index budget neutrality adjustment on a national basis—not on a state-by-state basis
- As a result, hospitals in Massachusetts have seen a dramatic increase in payments while other states have seen a decrease
- It is unlikely that the current Congress will reverse the impact of the health reform law on the wage index
- However, as Congress works on reducing the deficit, Congress will have to make major changes to the Medicare reimbursement system, and the wage index will be one of the areas of focus

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Health Care Issues: What Does It All Mean?

What Does It All Mean?

- 2013 will determine how health reform is implemented
 - Don't get left behind: stakeholders can shape implementation through the regulatory process by meeting with HHS, Treasury and other Departments involved in promulgating regulations
- States will play a major role in shaping implementation
 - All politics is local: stakeholders can mobilize vulnerable populations (elderly, disabled, children) into effective grass-roots tools by working with advocacy groups

What Does It All Mean?

- Care coordination will be key to health care savings
- Congressional partisanship and division will impede implementation
 - Meet with members on both sides of the aisle
- Possibility of new funding for mental health
- Possibility of grand bargain on the “doc fix” and wage index, but the need for offsets may impede these efforts

Immigration

Immigration

- Both parties have made immigration a major area of focus for 2013
 - Republicans more open to comprehensive immigration reform
 - Bipartisan bill to increase visas for skilled foreign-born workers
- Recent OIG report shows that Medicare improperly paid more than \$120 million for services delivered to undocumented immigrants and incarcerated residents
 - Highlights economic impact of immigration on the health care system



Immigration Reform: What Does It All Mean?

What Does It All Mean?

- Comprehensive immigration reform will likely include creating a path to citizenship
 - Path to citizenship = more individuals enrolled in Medicaid = a decrease in uncompensated care provided by hospitals