POWERS

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ATTORNEYS AT LAW

MEMORANDUM

To: **American Society of Transplant Surgeons**

From: **Powers Legislative Practice Group**

Date: **February 16, 2016**

Re: **Comprehensive Synopsis of President's FY 2017 Federal Budget Proposal Emphasizing the Impact on Health Care**

Overview

On Tuesday, February 9, 2016, President Obama released the Administration's federal budget for fiscal year (FY) 2017. According to budget documents and Administration officials, the President's budget proposes that Congress set the federal spending level at $4.1 trillion, which would result in a budget deficit of approximately $500 billion for FY 2017. Fiscal year 2017 begins on October 1, 2016.

The budget is forecasted to reduce the cumulative federal budget deficit by $2.9 trillion over 10 years through increased taxes, including capital gains tax, a $10-a-barrel tax on oil, a 0.07 percent fee on larger banks, and other taxes on more affluent Americans. The budget includes an increase of $2.8 trillion in taxes, which is almost twice the amount of the President's FY2016 budget request.

Key aspects of the President's overall budget include "clean" transportation projects, funds for increased cybersecurity initiatives and programs to teach computer science and to train first-time job seekers.

The following provides bulleted highlights of the President's budget for HHS. For the HHS budget in brief, click here. We continue to analyze more detailed documents that reflect the Administration's priorities known as "budget justifications" which are prepared by each program operating component within HHS (e.g. Health Resources and Services Administration (HRSA) and Centers for Medicare & Medicaid Services (CMS)), and will distribute relevant information accordingly.

Health and Human Services

The President's budget for the Department of Health and Human Services (HHS) is estimated to garner savings of $242 billion over 10 years. The budget proposes a total of $82.8 billion to fund myriad programs under HHS. The budget calls for Medicare legislative proposals that will save a net $419.4 billion over ten years, Medicaid legislative proposals that will add $22.2 billion in costs over 10 years, and also proposes to extend the Children's Health Insurance Program (CHIP) for two more years, through FY 2019.

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MEDICARE

- $419.4 billion in savings over 10 years.
  - Extends the life of the Medicare Hospital Insurance Trust Fund by over 15 years.
- Total projected spending in FY 2017:
  - Part A $202.1 billion
  - Part B $192.9 billion
  - Part C $204.7 billion
  - Part D $109.7 billion
- Reforms Medicare Advantage Payments to improve the efficiency and sustainability of the program (saves $77.2 billion over 10 years).
- Ends the loophole that allows some high-paid professionals to avoid paying Medicare and Social Security payroll taxes. The Budget further closes gaps between the Self-Employment Contributions Act (SECA) tax and the NIIT to ensure that all high-income individuals fully contribute to Medicare, either through the NIIT or through payroll or SECA taxes.
- Establishes a bonus payment for hospitals cooperating with certain alternative payment models (APMs) (no budget impact).
- Establishes a hospital-wide readmissions reduction measure (no budget impact).
- Eliminates Medicare's 190-day lifetime limit on inpatient psychiatric facility services (costs $2.4 billion over 10 years).
- Strengthens the Independent Payment Advisory Board's (IPAB) authority to reduce long-term costs (saves $36.4 billion over 10 years). [***Note***: This is perhaps one of the most specious budget proposals as the IPAB is highly controversial and members of the IPAB board have not even been appointed at this point in time.]
- Reduces coverage of bad debt from 65% to 25% over a three-year phase-in (saves $32.9 billion over 10 years).
- Modernizes funding for end stage renal disease (ESRD) networks by changing the withhold from 50 cents to $1.50 per treatment, to be updated annually by the consumer price index (no budget impact).
- Further increases premiums for Medicare Parts B and D for higher income beneficiaries beginning in 2020 (saves $41.2 billion over 10 years).
- Modifies the Part B deductible for new enrollees starting in 2020 (saves $4.2 billion over 10 years).
- Allows the Secretary of HHS to collect application fees for individual providers, starting at $50 (no budget impact).
- Amends the in-office ancillary services exception to the physician self-referral law to prohibit referrals for advanced imaging, anatomic pathology services, radiation therapy, and rehabilitation therapy services, with exceptions for clinically integrated practices required to show cost containment, as defined by the Secretary, effective calendar year 2017 (saves $5.0 billion over 10 years).
- Adds certain behavioral health providers to the Electronic Health Record Incentive Programs (costs Medicare $760 million over 10 years).

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Medicare Post-Acute Care

- Implements value-based purchasing for additional providers beginning in 2018, including skilled nursing facilities, home health agencies, ambulatory surgical centers, hospital outpatient departments, and community mental health centers (no budget impact).
- Reduces payment updates by 1.1% annually for certain post-acute care providers, including long term acute care hospitals, inpatient rehabilitation hospitals and units, home health agencies, and under an accelerated schedule for skilled nursing facilities (saves $86.6 billion over 10 years).
- Implements bundled payment for post-acute care starting in 2021 (saves $9.9 billion over 10 years).
- Re-establishes the so-called "75% Rule" requiring inpatient rehabilitation hospitals and units to admit a minimum of 75% of patient cases with one or more of 13 designated conditions. The current percentage is set by statute at 60% (saves $2.2 billion over 10 years).
- Extends prior authorization to all Medicare fee-for-service items and related services, particularly those that are at the highest risk for improper payment. (HHS doesn't further specify which items and services it considers to be highest risk) (saves $75 million over 10 years).
- Introduces home health co-payments of $100 per home health episode for new beneficiaries (saves $1.3 billion over 10 years).

Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS)

- Provides authority to expand competitive bidding for certain durable medical equipment to all prosthetics and orthotics (in addition to inhalation drugs, ostomy, tracheostomy, and urological supplies (saves $3.8 billion over 10 years).

Medicare Appeals

- Calls for a $143 million increase for the Office of Medicare Hearings and Appeals (OMHA) over the FY 2016 spending level of $107 million, for a total budget of $250 million in FY 2017.
    - Of the $250 million requested, $125 million is "mandatory" spending taken from collections from Recovery Auditors, otherwise known as RACs. This $125 million in annual mandatory funding would have to be specifically approved by Congress through legislation independent of the budget process.
    - The budget also proposes the implementation of refundable filing fees for appeals at every level of the administrative appeals process for the purpose of funding additional Administrative Law Judges (ALJs) ($5 million).
- Includes $44.2 million to support greater CMS participation in ALJ hearings at OMHA, increase efforts to decrease the backlog through new adjudication and settlement activities, and invest in automating the first and second level appeals levels in the Medicare Appeals System.
- Allows CMS to retain a portion of RAC recoveries to implement actions that prevent fraud and abuse (costs $2.5 billion and saves $3.3 billion in non-scorable savings over 10 years).
- Pays recovery auditors after Qualified Independent Contractor (reconsideration level) decisions on appealed claims rather than after redetermination level (no budget impact).

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- Requires a surety bond or escrow account to cover overturned recovery auditor determinations (no budget impact).
- Other provisions include: establishing a higher amount in controversy in order to have standing to appeal denied claims ($1,500 in CY 2016 and updated annually), expediting claims where there is no material fact in dispute, remanding appeals to the redetermination level with introduction of new evidence, and consolidating claims (no budget impact).

Drugs

- Prevents prescription drug abuse in Medicare Part D by requiring high-risk beneficiaries to fill prescriptions of controlled substances though specific pharmacies and providers (no budget impact).
- Aligns Medicare drug payment policies with Medicaid policies for low-income beneficiaries (saves $121.3 billion over 10 years).
- Encourages low-income Medicare beneficiaries to use generic drugs through lowering such co-pays and raising co-pays for brand drugs (saves $9.6 billion over 10 years).

Accountable Care Organizations

- Allows CMS to assign beneficiaries to Federally Qualified Health Centers (FQHCs) and rural health clinics participating in the Medicare Shared Savings Program (MSSP) (saves $80 million over 10 years).
- Allows accountable care organizations to pay beneficiaries for primary care visits up to the applicable Medicare cost-sharing amount (saves $70 million over 10 years).
- Expands basis for beneficiary assignment for accountable care organizations from primary care physicians to nurse practitioners, physician assistants, and clinical nurse specialists (saves $150 million over 10 years).

MEDICAID

- Extends the enhanced reimbursement rate for Medicaid primary care services through December 31, 2017 (costs $9.5 billion over 10 years).
- Requires prior authorization for Medicare fee-for-service items (saves $75 million over 10 years).
- Allows states to develop health home programs for age-specific beneficiaries with chronic conditions (costs $1.1 billion over 10 years).
- Cuts fraud, waste, abuse and improper payments in Medicaid (saves $790 million in savings over 10 years).
- Expands funding for the Medicaid Integrity Program (costs $580 million and saves 1.3 billion in non-scorable savings over 10 years).

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Drugs

- Promotes program integrity for Medicaid drug coverage (no budget impact).
- Creates a federal-state Medicaid negotiating pool for high-cost drugs (saves $5.8 billion over 10 years)
- Lowers Medicaid drug costs and strengthens the Medicaid drug rebate program (saves $5.6 billion over 10 years).
- Requires states to monitor high utilizers and prescribers of Medicaid prescription drugs (saves $770 million over 10 years).
- Creates demonstration to reduce over-prescription of psychotropic drugs through screening, assessment and treatment of foster care youth and children (costs $500 million in State Grants and Demonstrations costs, $567 million in Medicaid costs, and $250 million in mandatory child welfare costs over 10 years).

Home and Community-Based Services

- Creates eight-year Medicaid long-term care state plan option for up to five states (costs $4.1 billion over 10 years).
- Expands eligibility for the Home and Community Based Services (HCBS) 1915(i) State Plan Option (costs $374 million over 10 years).
- Allows states to provide 1915(i) enrollees that are medically needy with full Medicaid benefits (costs $9 million over 10 years).
- Allows states to provide HCBS waiver services to children eligible for psychiatric residential treatment facilities (costs $1.6 billion over 10 years).
- Allows states to expand eligibility for Community First Choice Option (costs $3.9 billion over 10 years).

DUAL ELIGIBLE PROPOSALS

- Ensures retroactive part D coverage of newly eligible low-income beneficiaries (costs $100 million in Medicare costs over 10 years).
- Improves alignment of Medicare Savings Program and Part D low-income subsidy income and asset definitions (costs $394 million in Medicaid costs over 10 years).
- Allows federal and state cooperation in reviewing dually eligible beneficiary special needs plans' (D-SNPs) marketing materials (no budget impact).
- Integrates Medicare and Medicaid appeals processes (no budget impact).

PROGRAM INITIATIVES AND FUNDING

Administration for Community Living

- Proposes an increase of $28 million, for a total of $2.0 billion, for the Administration for Community Living (ACL); (this is the relatively new agency that combines aging and disability programs under DHHS, including the National Institute of Disability, Independent Living, and Rehabilitation Research (NIDILRR), the Brain Injury State Grant program, the Paralysis Resource Center, and the Limb Loss Resource Center).
- $1.3 billion for services to assist older adults in remaining independent.

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  - Includes $31 million for these services in Tribal communities.
- An increase of $10 million, for a total of $358 million, for in-home and community-based services to help older adults live independently.
- $10 million for Projects of National Significance
- Funds three programs transferred from the Department of Education by the Workforce Opportunity Act of 2014:
  - $104 million for NIDILRR;
  - $101 million, for Independent Living programs; and
  - $32 million for the Assistive Technology program.
- $8 million for the Aging and Disability Resource Centers.
- $9 million for the Traumatic Brain Injury Program, transferred to ACL from the Health Resources and Services Administration in FY 2016.
- $8 million for the Paralysis Resource Center.
- $3 million for the Limb Loss Resource Center.

Agency for Healthcare Research and Quality (AHRQ)

- An increase of $41 million, for a total of $470 million. This budget proposal stands in sharp contrast to the zero funding proposal offered by the House in last year's appropriations process.
- An increase of $1 million, for a total of $23 million, for the AHRQ health information technology (HIT) research portfolio to develop the evidence base on what works to improve the use of HIT across the healthcare system.

Centers for Disease Control and Prevention (CDC)

- An increase of $87 million for CDC and the Agency for Toxic Substances and Disease Registry, for a total of $11.9 billion.
- An increase of $5 million, for a total of $1.1 billion for domestic HIV/AIDS, viral hepatitis, sexually-transmitted infections, and tuberculosis prevention.
- A decrease in $60 million, for a total of $1.1 billion, for chronic disease prevention and health promotion activities.
- $136 million for National Center on Birth Defects and Developmental Disabilities programs (same funding as FY 2016).
- An increase of $63 million, for a total of $299 million for injury prevention and control activities.

Centers for Medicare & Medicaid Services (CMS)

- $1.0 TRILLION in mandatory and discretionary outlays, a net increase of $26 billion above the FY 2016 level.
  - Proposes targeted savings of $357.3 billion to CMS mandatory health programs over the next decade through proposals described in this memorandum.

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Program Integrity

- Invests $199 million in FY 2017, which along with other programs will yield $25.7 billion in gross savings over ten years.
- $2.0 billion in funding for Health Care Fraud and Abuse Control (HCFAC) in FY 2017.

Graduate Medical Education (GME)

- Better aligns GME payments with patient care costs (saves $17.8 billion over 10 years).
- $295 million in mandatory funding in each year between FY 2017 and FY 2021 for the Children's Hospital GME Program to help eligible hospitals provide graduate training for pediatricians and pediatric subspecialists and enhance their ability to provide care to low-income patients.
- Invests a total of $1.3 billion for HRSA workforce programs, including $715 million in mandatory funding to provide access to high-quality health care professionals, particularly those living in areas across the country with shortages of health professionals. This funding includes investments in GME, the National Health Service Corps, and workforce diversity efforts.
- Strengthens and extends the Teaching Health Center Graduate Medical Education Program with a request for $527 million in new mandatory funding in FY 2018 through FY 2020. This program increases access in underserved communities by supporting primary care resident training in community-based, patient care settings.

National Institutes of Health (NIH)

- Increases total NIH funding by $825 million to $33.1 billion.
    - $18.2 billion of that total finances research project grants.
- An increase of $680 million, for a total of $6.3 billion for cancer research and treatment development to support the Vice President's Cancer Moonshot initiative by pursuing new vaccine technology, innovative diagnostic tests, expanding access to clinical trial data, and enabling investigations at academic sites or public-private partnerships worthy of potential breakthrough status.
- An increase of $100 million, for a total of $300 million for the Precision Medicine Initiative (PMI).
    - HHS-wide funding totals $309 million (includes NIH, FDA, ONC, and OCR funds)
    - PMI tailors medicine to each individual's genetics, and was launched in 2016.
- A total of $413 million, in support of the Administration's National Strategy to Combat Antibiotic Resistant Bacteria (same funding as FY 2016).
- A total of $910 million on Alzheimer's research (same funding as FY 2016).
- An increase of $45 million, for a total of $195 million, towards the Brain Research through Advancing Innovative Neurotechnologies (BRAIN) Initiative including potential new projects to develop and test new devices for mapping and tuning brain circuitry and ways to address data from the brain.
- Maintains $3.0 billion from FY 2016 for HIV/AIDS research.

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Health Resources and Services Administration (HRSA)

- An increase of $3 million, for a total of $157 million to support program management.
- $24 million for the Division of Transplantation, which administers a variety of organ donation and transplantation programs. This represents no increase over the FY 2016 funding level.
- $5.1 billion for health centers, including $3.75 billion in mandatory resources to serve over 27 million patients with primary care services in FY 2017.

340B Drug Pricing

- An increase of $7 million in budget authority, for a total of $17 million, for the 340B Drug Pricing program.
- Implements a user fee totaling $9 million to provide long-term financing for the program.
- Administration seeks new rulemaking authority to ensure adherence to the program's principles, compliance with the law, and effective utilization of the 340B program.

Substance Abuse and Mental Health Services Administration (SAMHA)

- An increase of $590 million, for a total of $4.3 billion, to improve America's behavioral health, which can lead to improved physical health and lower overall health costs;
- An increase of $15 million (for a total of $108 million) continues to support the President's Now is the Time initiative within the Substance Abuse and Mental Health Services Administration (SAMHSA) to treat students and young adults for mental health issues and promote mental health through early identification of mental illness.
- Continues to provide $533 million for the Community Mental Health Services Block Grant.
- Proposes a set-aside of up to 10 percent of the $119 million within the Children's Mental Health Services Program to focus on youth at clinical high risk for a first psychotic episode.

Office of the National Coordinator for Health Information Technology

- An increase of $22 million, for a total of $82 million for the Office of the National Coordinator for Health Information Technology (ONC).

Office for Civil Rights

- An increase of $4 million, for a total of $43 million for the Office for Civil Rights (OCR).

Public Health and Social Services Emergency Fund

- $51 million for the HHS Cybersecurity Program, which maintains the FY 2016 budget.

Department of Veterans Affairs

- An increase of $33 million for a total of $663 million for medical and prosthetic research.

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JOINT PROGRAM INITIATIVES

Food Safety

- An increase of $212 million, for a total of $1.6 billion to support food safety initiatives of the Food and Drug Administration (FDA) and CDC.

Prescription Drug and Opioid Use

- $559 million in new mandatory and discretionary funding across HHS in FY 2017 to address the growing epidemic of prescription drug and opioid abuse.
- Increases of $510 million, for a total of $557 million in programs will expand the availability of Naloxone and medication-assisted treatment (MAT); (SAMHSA)
- $460 million per year for two years is targeted for cooperative agreements with states to support evidence-based programs that help people access treatment and target commonly-identified barriers that prevent individuals from seeking and successfully completing treatment. (SAMHSA)
- An increase of $25 million, for a total of $50 million, for MAT in the Prescription Drug and Opioid Addiction Program in communities (within 45 states) suffering from high rates of addiction. (SAMHSA)
- $12 million (same as FY 2016) for state grants enabling the purchase of the overdose-reversing drug Naloxone, and equipping and training first responders in high-risk areas to use it. (SAMHSA)
- An increase of $10 million, for a total of $80 million, to address prescription drug opioid abuse issues by supporting comprehensive translation and dissemination of CDC's Prescription Drug Overdose guidelines.

TRIBAL HEALTH

- Increases funding to the Indian Health Service (IHS) by $402 million to $6.6 billion.
- Extends 100 percent federal match in Medicaid to all Indian health programs (costs $80 million over 10 years)
- Provides a consistent definition of "Indian" in the Affordable Care Act (costs $520 million over 10 years to the Treasury, but no budgetary impact to HHS)
- An increase of $356 million to maintain and grow health care services and programs for American Indians and Alaska Natives.
- A total of $363 million to increase access to critical behavioral health services for youth and families, including:
    - $21 million to integrate behavioral health with primary care services
    - $4 million to implement ten "Zero Suicide" pilot projects.
- An increase of $47 million, for total of $570 million for HIS facilities for construction across Indian Country.

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