



# THE COMMITTEE ON ENERGY AND COMMERCE

## INTERNAL MEMORANDUM

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February 24, 2012

To: Members and Staff, Subcommittee on Health

From: Majority Staff

Re: February 29, 2012, Markup of H.R. 452

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On Wednesday, February 29, 2012, at 10:00 a.m. in 2123 Rayburn House Office Building, the Subcommittee on Health will meet in an open markup session to consider H.R. 452, the “Medicare Decisions Accountability Act of 2011”.

On July 13, 2011, the Subcommittee on Health held a hearing examining the effects and consequences of the Independent Payment Advisory Board (IPAB).

### **Background**

PPACA established the IPAB to “reduce the per capita rate of growth in Medicare spending.”<sup>1</sup> Under PPACA an annual process was established, to begin in 2013, whereby the Medicare spending growth rate is monitored and targets established. Working with the findings of the Actuary Office of the Centers for Medicare and Medicaid Services (CMS), the IPAB will eventually make annual proposals through the Department of Health and Human Services (HHS) to the Congress to obtain enabling legislation to set Medicare spending tied to the gross domestic product (GDP). By April 30 of each year—beginning in 2013—the Office of the Actuary at CMS will project whether the Medicare per-capita spending growth rate in the following two years will exceed a targeted rate. Initially, the targeted rate of spending growth will be based on the projected five-year average percentage increase in the Consumer Price Index (CPI) for all urban consumers and the Consumer Price Index for all urban consumers for medical care.

H.R. 452 would repeal Section 3403 and Section 10320 of the Patient Protection and Affordable Care Act (PPACA) that established the IPAB.

### **Overview of IPAB Targets**

Beginning with the 2018 Determination Year, the target for the Medicare spending growth rate will be set at the nominal gross domestic product per capita plus 1.0 percent. (President Obama’s FY2013 Budget proposes that this be changed to GDP plus 0.5 percent.)<sup>2</sup> If future Medicare spending is expected to exceed the targets, the IPAB will propose

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<sup>1</sup> Section 3403, Patient Protection and Affordable Care Act (Public Law 11-148).

<sup>2</sup> FY 2013, Budget in Brief, U.S. Department of Health and Human Services; p. 55.

recommendations to Congress and the President to reduce the growth rate. The IPAB's first set of recommendations would be proposed on January 15, 2014.

Spending rate reductions will be established at:

- 0.5 percent in 2015
- 1.0 percent in 2016
- 1.25 percent in 2017
- 1.5 percent in 2018 and beyond.

The IPAB Board will be composed of 15 members appointed by the President with the advice and consent of the Senate. As such, the members are officers of the United States under the appointments clause of the U.S. Constitution. The Secretary of Health and Human Services, the Administrator of CMS, and the Administrator of the Health Resources and Services Administration are ex-officio non-voting members. The Chairperson is appointed by the President from among the members of the Board. Each appointed member may serve two consecutive six year terms. Appointed members of the Board will be compensated at a rate equal to Level III of the Executive Schedule (\$165,300 for 2011), and the Chairperson will be compensated at a rate equal to Level II (\$179,700 for 2011). At present, the Administration has not nominated any members of the Board.

The budget for the Board for FY2012 is \$15 million, with annual adjustments based on increases in the CPI; this is slightly more than the Medicare Patient Advisory Commission (MedPAC) budget. The Board will be funded out of the Medicare trust funds—specifically, 60 percent of the Board's funds will come from the Federal Hospital Insurance Trust Fund and 40 percent from the Federal Supplementary Medical Insurance Trust Fund.

### **The IPAB Process**

Each year, beginning in 2013, the CMS Chief Actuary determines whether the projected per capita Medicare expenditures will exceed certain target levels. The *target growth rate* will initially be calculated based on the midpoint between the five-year average overall inflation (using the Consumer Price Index for all items and services, the CPIu) and five-year average medical inflation (using the Consumer Price Index for medical inflation, the CPIm). However, beginning with the 2018 Determination Year, the *target growth rate* will be tied to the growth of the economy, based on the five-year average increase in the nominal Gross Domestic Product (GDP) plus one percentage point. If the Chief Actuary determines that Medicare per capita spending will exceed the targets, the Chief Actuary is required to establish an *applicable savings target* for the Implementation Year. This sets in motion a three-year sequence of events.

Since hospitals, skilled nursing facilities, long-term care hospitals and other providers are exempt from IPAB cuts through 2019 and laboratory services through 2015, some are concerned that physicians will be disproportionately affected by IPAB recommendations.

### **Fast Track Proposal/Implementation Process**

By September 1 of each Determination Year, the Board will submit a draft of its proposal for review to the Secretary of Health and Human Services and to MedPAC for consultation. The

Board transmits its annual proposal to Congress and the President on January 15 of each Proposal Year, beginning 2014. The proposal is referred to the House Committee on Energy and Commerce, the House Committee on Ways and Means, and the Senate Committee on Finance. The committees of referral must report an IPAB-implementing bill or legislation that achieves at least the same level of targeted reductions in Medicare spending growth as are contained in the IPAB plan. If Congress does not take action on the recommendations, the Secretary automatically implements the Board's proposals on August 15 of the Proposal Year and the recommendations that relate to payment rate changes that take effect on a fiscal year basis take effect on October 1 of the Proposal Year. Recommendations relating to payment rate changes that take effect on a calendar year basis take effect on January 1 of the Implementation Year.

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Should you have any questions regarding the markup, please contact John O'Shea or Ryan Long at 225-2927.