ML STRATEGIES

Effect of a Government Shutdown on Medicare, Medicaid, and Other ACA-Related Operations

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- Funding for Medicare and Medicaid is mandatory, meaning it is not subject to annual appropriations that lapse during a shutdown.
- In the HHS shutdown contingency plan for FY2012, “Operations of the Center for Consumer Information and Insurance Oversight would continue as funding was provided through the Affordable Care Act.”
- State and Federal exchanges would also be able to operate in the event of a government shutdown.
- If Congress fails to replace the “sequester” in the Continuing Resolution or upcoming debt limit legislation, Medicare providers will face a 2% reduction in FY2014.

If the federal government is forced to shut down as a result of a budget impasse in Congress, discretionary programs and federal employees would be the most affected, while payments for Medicare services, the Affordable Care Act (ACA), and other mandatory programs would continue, albeit at a slower rate if the government were to undergo a long term shut down. For example, during the 1995–1996 government shutdown, Medicare continued to pay physicians and hospitals according to prevailing payment rates, since claims are made out of the Medicare trust funds and not current appropriations.

Medicare and Medicaid Funding Remains Mandatory

Funding for Medicare and Medicaid is mandatory, meaning it is not subject to annual appropriations that lapse during a shutdown. Based on Office of Management and Budget and Department of Health & Human Services guidance the last time a government shutdown was anticipated as a possibility (April 2011), providers billing Medicare and Medicaid were told that they should expect their claims to be paid on time in the short term. However, HHS employees, who answer Medicare billing questions and process enrollment applications, among others, are paid through annual appropriations and would have been affected by the shutdown. Any closure that lasted weeks or longer, could therefore have disrupted the programs, because fewer federal employees would have been available to administer them.

In April 2011, HHS estimated that 62% of its 76,000 employees would have stopped working by the second day of a shutdown, with the rest allowed to continue, according to a HHS contingency staffing plan posted on its website. HHS agencies that handle many grants or have many workers would have been affected more quickly. For example, HHS calculated that 76% of the 5,470 employees at the Centers for Medicare & Medicaid Services would have been furloughed immediately.

CMS Has Mandatory Funding to Continue ACA Implementation

The HHS shutdown contingency plan for FY2012 stated that, “Operations of the Center for Consumer Information and Insurance Oversight would continue as funding was provided through the Affordable Care Act.” This includes insurance rate reviews, assessment of a portion of insurance premiums that are used on medical services, establishment of exchanges, operation of the pre-existing condition insurance program and the early retiree reinsurance program. CMS has the most mandatory funding of any HHS agency, and components like the Center for Consumer Information and Insurance Oversight that administers the health insurance exchanges, would be able to operate at near full capacity based on mandatory funding.

In a July 29, 2013 memo to Senator Tom Coburn (R-OK), the Congressional Research Service (CRS) outlined the “potential effects of a funding lapse and related government shutdown on the implementation” of the ACA. The CRS found that, if the government were to shut down, funding for the ACA would continue. The CRS report finds that the federal government would be able to rely on sources of funding other than annual discretionary appropriations to support implementation (such as multiple-year and no-year discretionary appropriations still available for mandatory funds) and that agencies may continue to perform certain activities under the Antideficiency Act, which generally prohibits operations in the absence of appropriations.

The ACA created the Health Insurance Reform Implementation Fund (HIRIF) to which the law appropriated $1 billion. According to the HHS shutdown contingency plan, which was prepared in anticipation of an FY2012 shutdown, notwithstanding government shutdown implementation activities at CMS would have continued because of the mandatory HIRIF funding in the law. The CRS report to Senator Coburn specifies that, in the absence of any FY2013 discretionary spending, HHS would likely use funds from the following sources:

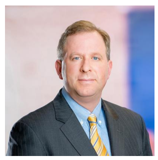
- Approximately $235 million in unobligated HIRIF funds carried over from FY2012;
- $454 million in mandatory funds from the Prevention and Public Health Fund (PPHF);
- $450 million in no-year funds from the nonrecurring expenses fund (NEF); and
- Approximately $116 million from the Secretary's authority to transfer funds from other HHS accounts.

State and Federal exchanges would also be able to operate in the event of a government shutdown. HHS is already currently using funding from ACA and other nondiscretionary funding sources to establish federally facilitated exchanges and related IT (such as data hubs) and to engage in consumer outreach and education. This would continue. In addition, penalties associated with the individual mandate (which begin December 31, 2013) would still be levied by the IRS on those who do not acquire health insurance as the IRS has indicated that even if the shutdown spanned tax filing season in early 2015, it would still process all electronic returns and those paper returns that contain remittances.

Conclusion

Although a government shutdown for any period of time could result in delays in claims processing, audits, and other administrative functions, most essential functions of Medicare, Medicaid, and ACA implementation will continue to operate under emergency and mandatory funding.

Authors



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Alex Hecht is a trusted attorney and policy strategist with over 20 years of experience advising clients across a broad range of industries on how to navigate complex policy environments. His strategic insight and hands-on experience in both legislative and regulatory arenas empower clients to advance their priorities with clarity and confidence in an evolving policy landscape.

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