



MEMORANDUM

May 9, 2013

To: Sen. Tom Coburn
Attention: Josh Trent

From: Christopher M. Davis, Analyst on Congress and the Legislative Process

Subject: **Independent Payment Advisory Board: Contingent Development by the Secretary of Health and Human Services of a Legislative Proposal Relating to Medicare**

This memorandum responds to your rush request to CRS for clarification of what would happen under the terms of the Patient Protection and Affordable Care Act (ACA) in the event that the Independent Payment Advisory Board (IPAB) established by that Act failed to submit a legislative proposal to Congress for its consideration as required in years in which specific fiscal conditions are met.

Development of IPAB Proposal

The Independent Payment Advisory Board was established by Sections 3403 and 10320 of the Patient Protection and Affordable Care Act.¹ The IPAB is charged by that law with developing proposals to “reduce the per capita rate of growth in Medicare spending.”² The Act lays out detailed criteria related to Medicare spending which would trigger a requirement that the IPAB submit recommendations to both Congress and the President, accompanied by, among other things, implementing legislation.³

Under the mechanism created by the Act, the Secretary of Health and Human Services must implement the IPAB’s legislative proposals unless Congress affirmatively acts to amend or block them within a stated period of time and under circumstances specified in the Act.

Section 3403(d) of the Act establishes special “fast track” parliamentary procedures governing House and Senate committee consideration, and Senate floor consideration, of legislation implementing the IPAB proposal. These procedures differ from the parliamentary mechanisms the chambers customarily use to consider most legislation and are designed to ensure that Congress can act promptly on the implementing legislation, should it choose to do so. It accomplishes this goal by mandating the immediate introduction of the legislation in Congress; establishing strict deadlines for committee and Senate floor consideration; and placing certain limits on the amending process. The procedures established by the Act permit Congress to amend the IPAB-implementing legislation, but only in a manner that achieves at least the

¹ P.L. 111-148. 124 Stat. 489, 125 Stat 949.

² Sec. 3403(b).

³ For more information on these criteria, see: CRS Report R41511, *The Independent Payment Advisory Board*, by Jim Hahn and Christopher M. Davis.

same level of targeted reductions in Medicare spending growth as are contained in the IPAB plan. The Act bars Congress from changing the IPAB fiscal targets in any other legislation it considers as well, and establishes procedures whereby a super-majority vote is required in the Senate to waive this requirement.

Contingent Development of Proposals by the Secretary of HHS

Under the terms of the Affordable Care Act, if the IPAB is required in a given year to develop a proposal for submission to Congress and fails to do so by the deadlines established by the Act, the Secretary of Health and Human Services is required to do so in its stead. Specifically, Section 3403(c) (5) of the Act states:

(5) CONTINGENT SECRETARIAL DEVELOPMENT OF PROPOSAL.— If, with respect to a proposal year, the Board is required, but fails, to submit a proposal to Congress and the President by the deadline applicable under paragraph (3)(A)(i), the Secretary shall develop a detailed and specific proposal that satisfies the requirements of subparagraphs (A) and (C) (and, to the extent feasible, subparagraph (B)) of paragraph (2) and contains the information required paragraph (3)(B)). By not later than January 25 of the year, the Secretary shall transmit— (A) such proposal to the President; and (B) a copy of such proposal to the Medicare Payment Advisory Commission for its review.

Section 3404(c)(4) states:

(4) PRESIDENTIAL SUBMISSION TO CONGRESS.— Upon receiving a proposal from the Secretary under paragraph (5), the President shall within 2 days submit such proposal to Congress.

These provisions appear to create a requirement that the Secretary of Health and Human Services develop and submit such a proposal for reducing the per capita growth in Medicare spending in the absence of a required IPAB recommendation, regardless of the reason that the IPAB has not submitted a proposal within the required time frame.

Fast Track Procedures Apply to All Submitted Plans

Under section 3403(d) of the Act, the special “fast track” parliamentary procedures governing House and Senate committee consideration, and Senate floor consideration, of legislation apply to both a proposal developed by the IPAB and one developed by the Secretary in the absence of an IPAB recommendation. Specifically, in describing the provisions governing mandatory introduction and subsequent congressional consideration of such legislation, the Act begins, “On the day on which a proposal is submitted by the Board or the President to the House of Representatives and the Senate under subsection (c)(3)(A)(i) *or subsection (c)(4)....*”⁴ Section 3403(d) then goes on to elaborate the expedited procedures which would apply to either proposal. In short, should the IPAB fail to submit a package of recommendations in a required submission year, the Secretary is obligated by law to do so. In either event, such legislation would be governed by the “fast track” procedures established by the Act.

I trust that this information is helpful. If you have questions or I can be of any additional assistance, please do not hesitate to contact me at :

⁴ Emphasis added.