Weekly Checkup: IPAB Controversy- Appointments, Quorums and Other Questions

Emily Egan | January 24, 2013

To say that the Affordable Care Act’s Independent Payment Advisory Board (IPAB) is not very popular is an understatement. IPAB has been criticized even by left-leaning lawmakers that support the rest of the ACA, and some wonder if anyone qualified would ever even want to serve on the board (a full time job with lower pay relative to what health experts could earn elsewhere). As shown in Figure 1, the IPAB is to have 15 members, 12 appointed in consultation with party leaders in both Houses of Congress and 3 chosen exclusively by the president. Assuming President Obama can find willing board members, there are new questions about the use of recess appointments to fill these controversial positions. Given a recent ruling by a federal appeals court, which may limit the types of recess appointments that are considered constitutional, the ability for the President to appoint board members swiftly, without confirmation, is somewhat hampered. He may not even need to appoint all fifteen members to constitute a quorum, raising further questions about potential partisanship.

Figure 1: Potential IPAB Scenarios

As a recent CRS report pointed out, “It is possible that [President Obama] could, in fact, make recess appointments only to those membership slots that are likely to be filled by members of his own party... If the President were to make such recess appointments, 9 of the 15 member positions would be filled, and this number would be, as noted above, sufficient to provide a quorum for the board to conduct business.”

*Emily Egan (eegan@americanactionforum.org) is a Healthcare Research Analyst at the American Action Forum.*
Should the Administration be unable to find willing participants, the IPAB’s duties would fall to HHS Secretary Kathleen Sebelius. If an unelected 15-member panel making cuts to Medicare likely to become law is controversial, concentrating that power to one unelected official would cause even more heartburn.

These are a lot of questions surrounding a board that is scheduled to submit their proposals to HHS by September 1, 2013. Will IPAB cause the Administration to miss even more ACA deadlines?