



## Health Policy Briefing

November 16, 2015

### Senate Parliamentarian Makes Reconciliation Ruling

The Senate parliamentarian has ruled that the provisions to repeal the individual and employer mandates in the reconciliation bill do not pass the complex rules for using the fast track budget tool. The Byrd Rule is a five-part test that determines what language can be protected from a filibuster through reconciliation, requiring that the primary purpose of legislative provisions affect spending and revenues. The rule bars “extraneous matter” where budgetary effects are only incidental to policy changes. The parliamentarian found that repeal of the mandates was merely incidental. Overruling the parliamentarian’s decision would require 60 votes, and in this case would be blocked by Senate Democrats. The parliamentarian decided, however, that the bill was “privileged,” which means it can still avoid a filibuster. Republicans have said that they will restore the mandate repeal measures with a substitute amendment from the floor. But the reconciliation bill has hit other stumbling blocks since being passed by the House of Representatives. Several moderate Republicans in the Senate have voiced opposition to the use of reconciliation to defund Planned Parenthood, while more conservative members have argued that the bill does not go far enough to repeal the Affordable Care Act (ACA). With a 54-member majority, Republicans can only afford three defections for the bill to pass on the floor because Democrats are expected to unanimously vote against it. If passed, however, the bill will surely face a presidential veto.

### Senate Passes VA, Military Construction Spending Bill

The Senate passed the fiscal year (FY) 2016 spending bill for military construction and veterans’ benefits last week. The bill was agreed to by a vote of 93-0 on the eve of Veteran’s Day. It appropriates \$1.1 billion in funding for veterans’ care above the President’s budget request, and includes special protections for doctor and nurse whistleblowers who expose problems with access to and quality of veterans’ health care. The bill will also increase VA research funding on prosthetics. House and Senate lawmakers will continue the process of negotiating an FY 2016 omnibus-spending bill. It remains unclear

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how many spending bills will be a part of the omnibus package. Appropriators are working to determine how to allocate the extra funding resulting from the two-year budget and debt ceiling deal. The deal raised sequester caps by \$50 billion for FY 2016, with half of that total going to defense programs. The remaining \$25 billion will be divided up among the 11 other spending bills that collectively fund the rest of the federal government. Republicans strongly desire to pass new spending bills for FY 2016, rather than using continuing resolutions, which would mean a continuation of policies written when Democrats controlled the Senate. Democrats, however, continue to voice opposition to the Republican insertion of contentious policy riders, like the potential defunding of Planned Parenthood, into spending bills. In the House, appropriators plan to hold members-only listening sessions on the six spending bills that did not pass the House earlier this year in order to receive input on the measures. The session on spending for the Department of Agriculture and the Food and Drug Administration (FDA) will be held on November 18, and the session on funding for the U.S. Departments of Labor, Health and Human Services, and Education will be held on November 19. Congress has until December 11 to pass a government-funding bill in order to avoid a shutdown.

### ***Lawmakers Applaud CDC Opioid Draft Guideline***

A group of eight senators have **written** to the Director of the Centers for Disease Control and Prevention (CDC) in support of the agency's recently released **Draft Guideline for Opioid Prescribing**. The purpose of the guideline is to reduce unnecessary prescription of the painkillers. Physicians would be encouraged to recommend non-pharmacological therapy for chronic, non-cancer pain, prescribe the lowest opioid dose and the fewest number of pills that would be effective for the patient, and regularly evaluate patient risk to the opioids they are prescribed. The signatories believe that these guidelines "reflect the latest science and represent a commonsense approach that will help us reduce opioid addiction and diversion and save lives without compromising access to needed treatment." The letter was signed by Sens. Joe Manchin III (D-W.V.), Ed Markey (D-Mass.), Tammy Baldwin (D-Wis.), Dianne Feinstein (D-Calif.), Sen. Jeanne Shaheen (D-N.H.), Bill Nelson (D-Fla.), Richard Blumenthal (D-Ct.), and Angus King (I-ME).

### ***Report Released on State Health Disparities***

The Robert Wood Johnson Foundation and the University of Wisconsin Public Health Institute have released a large **report** examining health gaps within each state. The report analyzes how wide gaps are on measures like uninsured rates, obesity rates, poverty rates, and premature death rates and what is driving those differences. The report also provides strategies to address factors that influence the differences between states and counties.

## **Medicare and Medicaid News**

### ***Major Entitlements Account for Nearly Half of Federal Spending***

The country's three major entitlement programs – Medicare, Medicaid, and Social Security – account for almost half of the nation's budget, according to the Congressional Budget Office (CBO). While military spending has shrunk in recent years, spending on these entitlement programs has grown from 45 percent of total spending in fiscal year (FY) 2013 to 48 percent in FY 2015, totaling \$1.77 trillion. The programs reached a record 9.9 percent of gross domestic product (GDP) in 2015. The expansion of the Medicaid program following passage of the Affordable Care Act (ACA) accounted for a 16 percent increase in Medicaid spending.

## Upcoming Congressional Meetings and Hearings

*House Veterans' Affairs Health Subcommittee: hearing on veterans' health legislation; 10:00 a.m., 334 Cannon Bldg.; November 17*

*Senate Health, Education, Labor and Pensions Committee: hearing on the Nomination of Dr. Robert Califf to serve as FDA Commissioner; 10:00 a.m., 430 Dirksen Bldg.; November 17*

*Senate Finance Committee: hearing titled "Physician Owned Distributors: Are they Harmful to Patients and Payers?"; 2:00 p.m., 215 Dirksen Bldg.; November 17*

*House Energy and Commerce Health Subcommittee hearing titled "Examining the Regulation of Diagnostic Tests and Laboratory Operations;" 2:00 p.m., 2123 Rayburn Bldg.; November 17*

*House Energy and Commerce Committee: markup of legislation including H.R. 1321, the Microbead-Free Waters Act, H.R. 3014, the Medical Controlled Substances Transportation Act, H.R. 3537, Synthetic Drug Control Act of 2015, H.R. 3716, the Ensuring Terminated Providers Are Removed from Medicaid and CHIP Act, and H.R. 3821, the Medicaid Directory of Caregivers Act (opening statements only); 4:00 p.m., 2123 Rayburn Bldg.; November 17*

*House Energy and Commerce Committee: markup of legislation including H.R. 1321, the Microbead-Free Waters Act, H.R. 3014, the Medical Controlled Substances Transportation Act, H.R. 3537, Synthetic Drug Control Act of 2015, H.R. 3716, the Ensuring Terminated Providers Are Removed from Medicaid and CHIP Act, and H.R. 3821, the Medicaid Directory of Caregivers Act; 10:00 a.m., 2123 Rayburn Bldg.; November 18*

*Senate Health, Education, Labor and Pensions Committee: markup to consider legislation including H.R. 2820 Stem Cell Therapeutic and Research Reauthorization Act of 2015 and S. 1719 Recognize, Assist, Include, Support, and Engage Family Caregivers Act of 2015 S. 1719 Recognize, Assist, Include, Support, and Engage Family Caregivers Act of 2015; 10:00 a.m., 430 Dirksen Bldg.; November 18*

*House Veterans Affairs Committee hearing titled "Choice Consolidation: Assessing VA's Plan to Improve Care in the Community;" 10:30 a.m., 334 Cannon Bldg.; November 18*

*House Energy and Commerce Oversight and Investigations Subcommittee: hearing titled "U.S. Public Health Preparedness for Seasonal Influenza: Has the Response Improved?" 10:00 a.m., 2322 Rayburn Bldg.; November 19*

*Senate Special Aging Committee hearing on prescription drug prices; time and place TBA; December 9*

## Health Legislation Recently Introduced

- S. 2259 (introduced by Sen. Cantwell):** A bill to amend title XVIII of the Social Security Act to improve the way beneficiaries are assigned under the Medicare shared savings program by also basing such assignment on primary care services furnished by nurse practitioners, physician assistants, and clinical nurse specialists; to the Committee on Finance; November 9
- S. 2261 (introduced by Sen. Thune):** A bill to amend title XVIII of the Social Security Act to improve the way beneficiaries are assigned under the Medicare shared savings program by also basing such assignment on services furnished by Federally qualified health centers and rural health clinics; to the Committee on Finance; November 9
- S. 2262 (introduced by Sen. Inhofe):** A bill to amend title XVIII of the Social Security Act to cover screening computed tomography colonography as a colorectal cancer screening test under the Medicare program; to the Committee on Finance; November 10
- S. 2265 (introduced by Sen. Udall):** A bill to improve the provision of health care by the Department of Veterans Affairs to veterans in rural and highly rural areas, and for other purposes; to the Committee on Veterans' Affairs; November 10
- S. 2279 (introduced by Sen. Merkley):** A bill to require the Secretary of Veterans Affairs to carry out a program to increase efficiency in the recruitment and hiring by the Department of Veterans Affairs of health care workers that are undergoing separation from the Armed Forces, to create uniform credentialing standards for certain health care professionals of the Department, and for other purposes; to the Committee on Veterans' Affairs; November 10