



Health Policy Briefing

November 17, 2014

President's Promise of Executive Order on Immigration May Upend FY 2015 Omnibus Bill

House May Squelch Lame-Duck Omnibus for FY 2015

Republicans had little time to relish their election victory and choose their leaders before they were confronted with the President's firm statement that he will issue an Executive Order providing relief from deportation for certain illegal immigrants and their children. Reconfirmed as House Speaker for the 114th Congress, John Boehner (R-OH) said that "We're going to fight the President tooth and nail if he continues down this path..." However, Senator Mitch McConnell (R-KY), elected by the Senate Republican Conference as the next Senate Majority Leader, reiterated his stance that there will be no government shutdown stemming from the President's executive order. Speaker Boehner indicated that all options are on the table to fight the President's action, but that he will wait until this week to determine the strategy going forward after conferring with the House Republican Conference. While some Republican members would seek to defund the order in an appropriations measure, others are pushing to abandon the urging of Republican appropriators for the passage of an omnibus bill and instead are advocating for the passage of a series of short-term continuing resolutions (CRs) extending into early next year. To salvage an omnibus deal, current Majority Leader Harry Reid (D-NV), who was elected incoming Minority Leader by the Senate Democratic Caucus, is urging the President to hold off on his executive action until after the appropriations measure has been negotiated and passed. Complicating the process is the President's request for supplemental funding for Ebola in the

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amount of \$6.2 billion and for both war efforts and border security. The contentious environment between Republicans and the President does not appear to give much hope to an opening for the completion this year of legislation to reform the sustainable growth rate (SGR) Medicare physician payment system. The legislative environment may not improve much next year when Republicans unveil their fiscal year (FY) 2016 budget proposal which published sources report would attempt to defund significant portions of the Patient Protection and Affordable Care Act (PPACA) and reform Medicare and Medicaid along the lines pushed by House Budget Committee Chairman Paul Ryan (R-WI), who could possibly be the next chairman of the House Ways and Means Committee due to the retirement of the current chairman, Rep. Dave Camp (R-MI).

Hearings on Ebola Crisis

At the Senate Appropriations Committee hearing on the President's funding request to help fight Ebola, Senator Richard Shelby (R-AL), Ranking Republican of the committee, expressed the need for close congressional scrutiny of the use of the money, but did not overtly object to the request. Senator Thad Cochran (R-MS), who is also seeking the committee's chairmanship next year, expressed his concern about the inadequacy of the amount of money requested to create more than fifty regional Ebola treatment centers in West Africa. Yet to be determined is whether the funding will be designated as "emergency" funding falling outside of the discretionary budget caps established under the current FY 2015 spending agreement. At a House Foreign Affairs Committee hearing on the issue, there appeared to be bipartisan agreement on the need for the funding which includes \$2.1 billion for the U.S. Agency for International Development (USAID) and for related humanitarian assistance. However, several members were skeptical of the efforts of the World Health Organization (WHO) and hinted that restrictions on the allocation of resources to the agency might be forthcoming to force the agency to become a positive force rather than a hindrance to efforts to combat and reduce the spread of the disease.

House Passes Health Bills

Indicating bipartisan support for several health measures, the House gave unanimous consent to the passage of: S. 2141, the Sunscreen Innovation Act; and S. 2539, the Traumatic Brain Injury Reauthorization Act. Another bill that may be pushed through the House during the lame-duck session is H.R. 5059, the Clay Hunt Suicide Prevention for American Veterans Act. Republican leadership has expressed their concern that the President may also "poison the well" to enact bipartisan immigration reform should he act unilaterally on immigration.

PPACA Health Reform Update

PPACA 2015 Enrollment Begins Amid Reduced Expectations

U.S. Department of Health and Human Services (HHS) officials have lowered expectations for the number expected to enroll for 2015 via PPACA exchanges in that they now estimate that between 9 to 9.9 million individuals will sign up, a reduction from the 13 million estimated to be enrolled by the Congressional Budget Office (CBO). Part of the decrease may be due to the estimate that only 83% of current enrollees are expected to reenroll for 2014. On a positive note, the Centers for Medicare and Medicaid Services (CMS) reported that the number of plans being offered has increased and that premiums for Bronze-level plans will only increase by 3%. However, it was reported that insurers are concerned about the "back-end" problems that still exist in the HealthCare.gov system which may result in individuals being billed for their current coverage in 2015 even though they may have elected a different plan for 2015. The Internal Revenue Service (IRS) announced that the agency will finalize by January 1st the Form 8962 needed to establish premium tax credits for individuals enrolled under the law's exchanges.

PPACA Health Reform Update cont.

IRS/CMS Clarify PPACA Tax Credit Eligibility for Pregnant Women

The IRS and CMS issued guidance clarifying that women who are enrolled in a qualified health plan (QHP) prior to becoming pregnant but then become eligible for Medicaid or the Children's Health Insurance Program (CHIP) after becoming pregnant may remain enrolled in their QHP and continue to receive premium tax credits, or may enroll in Medicaid or CHIP. If after childbirth the mother does not remain eligible for Medicaid or CHIP coverage, then she will be required to enroll in a QHP to maintain coverage needed to claim PPACA premium tax credits.

Supreme Court Review of Legality of Certain Individual Tax Subsidies

As previously reported, the U.S. Supreme Court granted a petition for certiorari in the *King v. Burwell* case in which the U.S. Court of Appeals for the District of Columbia Circuit held that the IRS did not adhere to the black letter of the health care law when it ruled that individuals who buy health insurance on the federal HealthCare.gov exchange are eligible for tax credit subsidies even though they reside in states electing not to establish their own health insurance exchanges. As a result of the action by the Supreme Court, the U.S. Court of Appeals for the District of Columbia Circuit granted a motion to hold in abeyance the case *Halbig vs. Burwell* which was previously scheduled for an en banc hearing by the lower court. States like Illinois and Delaware that do not operate their own state-run health insurance exchanges (but may assume partial responsibilities) will have to make major changes if the Supreme Court invalidates the IRS regulation.

Court of Appeals Rules in Favor of PPACA Accommodation

The U.S. Court of Appeals for the District of Columbia Circuit ruled that the final PPACA regulations providing accommodation for nonprofit religious organizations that object to providing contraceptive coverage to their employees doesn't violate the Religious Freedom Restoration Act. The court said the final women's preventive services regulations do not significantly burden the free religious exercise rights of Priests for Life and similarly situated organizations because it doesn't require the organizations to do anything other than self-certify that they are nonprofit religious groups that object to contraceptive coverage on religious grounds.

Medicare/Medicaid/PHSA Corner

Ebola Drives HIPAA Relief

The HHS Office of Civil Rights issued a bulletin stating that protected health information under the Health Insurance Portability and Accountability Act (HIPAA) may be disclosed without a patient's permission in public health emergency situations, such as the ongoing Ebola outbreak. HHS said that the HIPAA Privacy Rule "protects the privacy of patients' health information (protected health information) but is balanced to ensure that appropriate uses and disclosures of the information still may be made when necessary to treat a patient, to protect the nation's public health, and for other critical purposes."

MACPAC Seeks Comments on Transition from CHIP to Alternative Coverage

The Medicaid and CHIP Payment and Access Commission (MACPAC) is asking for comments by December 19 on matters which would allow for seamless coverage from CHIP to other coverage such as Medicaid and PPACA plans.

Medicare/Medicaid/PHSA Corner cont.

***CMS Notice Sets Forth Ambulance
Preauthorization Trial***

CMS announced that the agency will require prior authorization in New Jersey, Pennsylvania and South Carolina for non-emergency ambulance services that are typically covered by Medicare.

***Proposed Medicare Coverage for Certain Imaging
Services***

CMS released a proposed decision memo that, if finalized, would provide for the institution of Medicare coverage for low-dose imaging to screen people at high risk for lung cancer. Comments are due by December 10.

IOM Report on EHR Factors

The Institute of Medicine (IOM) released the second of two reports which in this case describes twelve social and behavioral factors that should be included in electronic health records (EHR) in order for providers to be eligible for incentive payments. The factors are: alcohol use; depression; educational attainment; financial resource strain; intimate partner violence for women of reproductive age; median household income; physical activity; race/ethnicity; residential address; stress; social isolation; and tobacco use.

FDA Study of Advertising Effects

The Food and Drug Administration (FDA) gave notice that the agency is seeking comments on a study of the impact of direct-to-consumer (DTC) advertising frequency on the perception by individuals diagnosed with seasonal allergies of related risk and benefit information.

Upcoming Congressional Hearings and Markups

House Energy and Commerce Oversight and Investigations Subcommittee: hearing titled “Update on the U.S. Public Health Response to the Ebola Outbreak.” 1 p.m., 2123 Rayburn; November 18.

House Foreign Affairs Africa, Global Health, Global Human Rights and International Organizations Subcommittee: hearing titled “Fighting Ebola: A Ground-Level View.” 10 a.m., 2172 Rayburn; November 18.

House Veterans’ Affairs Committee: hearing to be held on VA’s Longstanding Information Security Weaknesses are Increasing Patient Wait Times and Allowing Extensive Data Manipulation; 1:30 PM; 334 Cannon HOB; November 18.

House Energy and Commerce Health Subcommittee: hearing titled “Examining Medical Product Development in the Wake of the Ebola Epidemic;” 10:00 a.m., 2123 Rayburn Bldg.; November 19.

House Science, Space and Technology Oversight Subcommittee: hearing titled “The Role of the White House Chief Technology Officer in the HealthCare.gov Website Debacle.” 10 a.m., 2318 Rayburn; November 19.

House Veterans’ Affairs Subcommittee on Health: will hold a hearing on the following health bills: H.R. 4720 (Medal of Honor Priority Care Act); H.R. 4977 (COVER Act – related to mental health issues); H.R. 5059 (Clay Hunt SAV Act - related to mental health and suicide prevention); H.R. 5475 (to improve newborn care); and H.R. 5484 (Toxic Exposure Research Act); 2:00 p.m., 334 Cannon House Bldg.; November 19.

Senate HELP Committee: markup to consider pending health legislation and labor nominations, including S. 2917 — Adding Ebola to the FDA Priority Review Voucher Program Act and H.R. 669 — Sudden Unexpected Death Data Enhancement and Awareness Act; 10:00 a.m., 430 Dirksen Bldg.; November 19.

Senate Homeland Security and Governmental Affairs Committee: hearing titled “Preparedness and Response to Public Health Threats: How Ready Are We?” 10 a.m., 342 Dirksen; November 19.

Senate Veterans’ Affairs Committee: hearing titled “Veterans’ Mental Health and Suicide.” 10 a.m., 418 Russell; November 19.

Senate HELP Primary Health and Aging Subcommittee: hearing titled “Why Are Some Generic Drugs Skyrocketing In Price?” 1:00 p.m., 430 Dirksen Bldg.; November 20.

Health Related Legislation Recently Introduced

S. 2917 (TROPICAL DISEASES), to expand the program of priority review to include Ebola; HARKIN; to the Committee on Health, Education, Labor and Pensions, Nov. 12.

H.R. 5686 (VETERANS' HEALTH), to amend Title 38, U.S. Code, to establish the Physician Ambassadors Helping Veterans program to seek to employ physicians at the Department of Veterans Affairs on a without compensation basis in practice areas and specialties with staffing shortages and long appointment waiting times; CULBERSON; to the Committee on Veterans' Affairs, Nov. 12.

H.R. 5688 (EBOLA VIRUS OUTBREAK), to impose special limitations on the issuance of visas to, and the admission into the U.S. of, aliens having certain associations with countries with widespread and intense transmissions of Ebola virus disease; SAM JOHNSON of Texas; to the Committee on the Judiciary, Nov. 12.

H.R. 5694 (EBOLA VIRUS OUTBREAK), to prohibit certain flights from landing in the United States and to prohibit the issuance of certain visas to protect the U.S. from the Ebola virus, and for other purposes; ROSS; jointly, to the committees on Energy and Commerce, Transportation and Infrastructure and the Judiciary, Nov. 12.

H.R. 5707 (EBOLA VIRUS OUTBREAK), to direct the president to take action to protect against the transmission of Ebola virus from individuals traveling to the U.S. from abroad, and for other purposes; YOHO; to the Committee on Energy and Commerce, Nov. 13.