



## Health Policy Briefing

November 3, 2014

### Tuesday Elections to Determine Fate of Appropriations/Doc-Fix/Ebola Funding in FY 2015

#### *Actions in Lame-Duck Session Undetermined*

With the House of Representatives scheduled to return for legislative business on November 12th for two weeks and then again from December 1-12, it remains to be seen how much legislative work will be accomplished in the 'lame-duck' session beyond addressing a continuing resolution (CR) – the fiscal year (FY) 2015 appropriations extensions with is set to expire on December 11th. In advance of Tuesday's congressional elections, Republican leaders have yet to show their preference for gaining agreement on an omnibus appropriations bill or another short-term CR which would probably extend into February or March 2015. The expected request by the Administration for additional Ebola funding will make the decision on the level and form that the extension will take that much more difficult.

#### *Revised CDC Ebola Guidelines Receive Provider Approval*

The Administration reacted to criticisms from Republicans and others by stepping-up the protections health providers should follow in treating potential and actual Ebola patients. The new guidelines from the Centers for Disease Control and Prevention (CDC) remain voluntary, however, while New Jersey continues to enforce a strict mandatory quarantine of travelers returning from West Africa and several other states have or are considering the stricter path to protect their citizens. Also, the governor of Maine took action against a nurse returning from the area after she left her home and engaged with the media and general public, but a District Court judge eased restrictions. Despite the CDC's adherence to voluntary guidelines and the quarantine of returning health workers, the Secretary of Defense followed the advice of the Joint Chiefs of Staff to require all troops returning from the affected areas to undergo a mandatory 21-day quarantine. Up to 4,000 military personnel may ultimately be deployed

*continued on page 2*

#### *Inside*

Fate of Obamacare Lies in Hands of Supreme Court and Potential Republican Congress.....	2
SHOPs to Begin under HealthCare.gov in Five States....	2
Health Plan ID Requirement Delayed.....	2
Enhanced Federal Matching Funds for IT Development.....	2
CMS Releases Final Payment Rules for Physicians, Hospitals, HHA and ESRD Facilities.....	3
Push to Restrict MA Plan Ability to Limit Provider Networks.....	3
MACPAC Considers Extension of Medicare Payment Rates for MDs.....	3
Upcoming Congressional Hearings and Markups.....	4

*continued from page 1*

to West Africa to address the crisis while the U.S. Agency for International Development (USAID) takes a lead role in the effort. It is likely that the Administration will request supplemental funding for USAID and other agencies involved in the Disaster Assistance Response Team (CDC, DoD, Interior and Forest Service) when Congress reconvenes next week.

## **PPACA Health Reform Update**

### ***Fate of Obamacare Lies in Hands of Supreme Court and Potential Republican Congress***

In advance of Tuesday's congressional elections, Republicans continue with their threats to repeal or curtail various elements of the Patient Protection and Affordable Care Act (PPACA) or 'Obamacare.' However, Senate Minority Leader Mitch McConnell (R-KY) publicly admitted that a repeal of the law is problematic with President Obama still in office for the next two years due to his veto power. Nonetheless he indicated that, if Republicans ascend to the majority in the Senate, the power of the purse will be used to curtail spending on regulations and presidential orders that Republicans view as overstepping statutory or constitutional authority. The Administration, still recovering from the early missteps in building HealthCare.gov, received another demand from Rep. Lamar Smith (R-TX), the Chairman of the House Science, Space and Technology Committee in the form of a subpoena to former U.S. Chief Technology Officer Todd Park to testify at a November 19th hearing. He said that he wants the American people to be assured that their personal information used in connection with the website is secure. The Supreme Court could also either confirm or overturn the Internal Revenue Service (IRS) ruling which allows PPACA individual tax-credit subsidies to be made to individuals who elect coverage under HealthCare.gov in states that have not set up their own health insurance exchanges. A discussion by the Court of whether or not to take up the issue as pleaded by the plaintiffs in *King v. Burwell* took place last week and a decision could come later this week. In another development, the 5th U.S. Circuit Court of Appeals will hear arguments on December 2nd in a lawsuit that alleges the PPACA is unconstitutional on the grounds that it is a "tax" law that should have originated in the House rather than the Senate (although the Act bears a House bill number inasmuch as the Senate gutted the House measure and substituted the provisions of Obamacare). Several House and Senate Republicans have joined in supporting this challenge to the law. In addition, despite the permanent injunction given to Hobby Lobby Stores, Inc. in the *Burwell* decision by the U.S. Supreme Court, the Administration is arguing in the U.S. District Court for the Western District of Oklahoma that the injunction for privately-held corporations should be suspended given the promulgation of revised regulations regarding the PPACA mandate that plans provide no-cost insurance for contraceptive drugs, devices and related services.

### ***SHOPs to Begin under HealthCare.gov in Five States***

The U.S. Department of Health and Human Services (HHS) gave notice that when the HealthCare.gov enrollment begins on November 15th the so-called federally facilitated Small Business Health Options Program (FF-SHOP) will be available for the employees of small businesses to elect coverage in Delaware, Illinois, Missouri, New Jersey and Ohio.

### ***Health Plan ID Requirement Delayed***

The Centers for Medicare and Medicaid Services (CMS) announced that large self-insured health plans and entities covered by the Health Insurance Portability and Accountability Act (HIPAA), including providers, health plans and healthcare clearinghouses, will not have to meet the regulatory requirement that they obtain unique, 10-digit Health Plan Identifiers (HPIDs) by the November 5th deadline until further notice given problems encountered under the program.

### ***Enhanced Federal Matching Funds for IT Development***

CMS notified state officials that the agency will make permanent the previously temporary 90% federal matching funds to allow states to design and maintain information technology systems that they use in enrolling beneficiaries in the Medicaid program and other individuals under their state-run health insurance exchanges. States will have to meet additional criteria, such as incorporating a standardized method for determining income eligibility, to receive the enhanced matching funds.

## Medicare/Medicaid/PHSA Corner

### ***CMS Releases Final Payment Rules for Physicians, Hospitals, HHA and ESRD Facilities***

**C**MS issued final Medicare payment rules under which physicians could see a 21.2% reduction from current rates between April and November 2015 if Congress does not act on either another temporary fix or permanent legislation to replace the sustainable growth rate (SGR) formula. For physicians managing the care of beneficiaries with two or more chronic conditions, CMS will make a payment of \$40.39 up to once per month for non-face-to-face chronic care management services. The 2017 Physician Quality Reporting System (PQRS) payment adjustments will include 20 new individual quality measures and two new measure groups. The final rule also removes 50 measures from the PQRS. Of note, CMS said it will revise the process used for establishing fee schedule payment rates by allowing for public comments to be made on changes before they become effective. The CMS final outpatient prospective payment rule for hospitals for 2015 will allow for an increase of 2.3% over the level of payments this year. Among other things, the Outpatient Prospective Payment System (OPPS) rule also encourages the packaging of items and services for 25 high-cost device related services by allowing for an encounter-based comprehensive payment. CMS said that ambulatory surgical center (ASC) payment rates will increase by 1.4%. The CMS final rule for end-stage renal disease (ESRD) facilities includes a zero percent increase in the payment rate and a \$30 million increase in outlier threshold payment amounts. Among other things, the rule includes the PPACA mandate for the use of competitive bidding for durable medical equipment. The CMS final rule for home health agencies provides for a reduction of 0.3% in the payment rate for 2015. Among other things, the rule also includes the establishment of a minimum threshold for the submission of Outcome and Assessment Information Set (OASIS) assessments for purposes of quality reporting compliance.

### ***Push to Restrict MA Plan Ability to Limit Provider Networks***

**S**enator Richard Blumenthal (D-CT) and Rep. Rosa DeLauro (D-CT) announced that they are prepared to press for the passage of their legislation, the Medicare Advantage Participant Bill of Rights Act (H.R. 4998/S. 2552), which would require Medicare Advantage organizations to offer 60 days' notice to enrollees before removing a physician from their provider networks and prohibit such removal in the middle of a plan year.

### ***MACPAC Considers Extension of Medicare Payment Rates for MDs***

**T**he Medicaid and CHIP Payment and Access Commission (MACPAC) discussed whether to recommend that Congress extend the 100% matching federal funds program for states that pay Medicare rates to primary care physicians serving the Medicaid population. A recommendation was not made in that the commission concluded there is a lack of data on the effectiveness of the current policy. In related news, CMS said that regulations are coming next year with respect to managed care organizations providing services to Medicaid beneficiaries.

## **Upcoming Congressional Hearings and Markups**

***Senate Appropriations Committee: hearing to be held on U.S. Government Response to the Ebola Outbreak; 2:00 PM; SD-G50 Dirksen SOB; November 12.***

***House Veterans' Affairs Committee: hearing to be held on Assessing the Implementation of the Veterans Access, Choice, and Accountability Act of 2014; 10:00 AM; 334 Cannon HOB; November 13.***

***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); 9:00 a.m., 334 Cannon Building; November 14.***

***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.***