



## Health Policy Briefing

December 22, 2014

### Senate Closes Out 113th Congress with Passage of Tax Extenders, EARLY and ABLE Acts

#### *Senate Clears Final Legislation Before Adjourning Sine Die*

Before adjourning until January 6, 2015, the Senate sent to the President for his signature the following bills previously passed by the House: **H.R. 5185**, the EARLY Act Reauthorization of 2014, legislation which reauthorizes through fiscal year (FY) 2019 the Young Women’s Breast Health Education and Awareness Requires Learning Young Act of 2009; **H.R. 4276**, to extend and modify a pilot program on assisted living services for veterans with traumatic brain injury, the Veterans Traumatic Brain Injury Care Improvement Act; **H.R. 3979**, the \$513.4 billion National Defense Authorization Act for Fiscal Year 2015; and **H.R. 5771**, legislation extending various tax provisions through December 31, 2014. The so-called tax-extenders legislation includes the Achieving a Better Life Experience (ABLE) Act provision, aka **H.R. 647**, which will make tax-free savings accounts available for people with disabilities and their caretakers to cover qualified expenses such as education, housing and transportation. Notably, the cost of the provision is offset by prohibiting the Centers for Medicare and Medicaid Services (CMS) from allowing Medicare coverage for erectile dysfunction (ED) vacuum pumps (savings are estimated at \$444 million over 10 years). Objections by retiring Senator Tom Coburn (R-OK) to the content of **H.R. 5059**, the Clay Hunt Suicide Prevention for American Veterans Act, were left unresolved and the Senate left without further consideration of the House-passed bill. The legislation would have directed the Secretary of Defense and the Secretary of Veterans Affairs: to provide for the conduct of annual evaluations of mental health care and suicide prevention programs of the Department of Defense and the Department of Veterans Affairs; to review the terms or characterization of the discharge or separation of certain individuals from the armed forces; and to require a pilot program on loan repayment for psychiatrists who agree to serve in the Veterans Health Administration of the Department of Veterans Affairs.

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### *FY 2015 and FY 2016 Appropriations*

Last Tuesday the President signed into law **H.R. 83**, the Consolidated and Further Continuing Appropriations Act for 2015 (Public Law 113.183), which sets up a skirmish early next year between the White House and the new Republican House and Senate majority over the President's immigration policy carried out as directives included in Executive memoranda. In general, **H.R. 83** would extend FY 2015 federal funding until September 30, 2015 for all federal agencies with the exception of the Department of Homeland Security. The \$1.013 trillion in discretionary and non-discretionary spending under the so-called CROmnibus is consistent with the Ryan/Murray budget deal which has guided Congress in setting federal spending levels through this year. The funding for Homeland Security would extend only through February 27th which would give congressional Republicans the leverage they seek to defund or scale-back the President's executive actions which allow certain undocumented immigrants to remain in the United States and become eligible for various benefits, such as Social Security and Medicare. While House Budget Committee Chairman Tom Price (R-GA) has indicated a desire to finish up the FY 2016 budget resolution in regular order, a fight with President Obama on the immigration issue could stretch out the early spring timeline for the start of the budget period. Whether the House and Senate Budget committees will agree to hard spending caps for FY 2016 defense and non-defense spending levels (e.g. \$523 billion and \$492.3 billion, respectively as set under the debt limit law) or decide to defer to the sequestration process will be determined largely by the new Republican leaders—House Majority Leader John Boehner (R-OH) and Senate Majority Leader Mitch McConnell (R-KY); Senate Budget Committee Chairman Mike Enzi (R-WY) and his House counterpart Rep. Tom Price (R-GA); House Appropriations Committee Chairman Hal Rogers (R-KY) and the yet-to-be-elected Senate Appropriations Committee Chairman; House Ways and Means Chairman Paul Ryan (R-WI) and Senate Finance Committee Chairman Orrin Hatch (R-UT); among others. In any event, Republican leaders in both houses have indicated their intent to pass individual FY 2016 appropriations bills before the end of the current fiscal year in order to avoid a continuation of the last-minute omnibus approach.

### *Senate Votes to Confirm U.S. Surgeon General*

Last Monday the Senate voted 51-43 to confirm President Obama's nominee, Dr. Vivek Murthy, as the next Surgeon General. Dr. Murthy is the former president and co-founder of Doctors for America.

## **PPACA Health Reform Update**

### *PPACA Open Season Extended for Some*

The U.S. Department of Health and Human Services (HHS) reported that health care plan enrollment under HealthCare.gov amounted to almost 2.5 million individuals with three days to go before the November 15th end of the Patient Protection and Affordable Care Act (PPACA) open enrollment season. Individuals covered in 2014 who did not access the website for 2015 will be automatically re-enrolled in the same or similar plans unless they subsequently make new plan decisions, in which case the effective date would be February 1, 2015. The next report on enrollment is expected to be released on December 23rd. The agency projects total enrollment to climb to 9-10 million by the end of 2015. Thirty-seven states will use the federal exchange for enrollment of their residents in 2015 while individuals residing in the remaining states will rely on their own state-run exchanges for health coverage. California announced that it is extending its open enrollment season until December 21 for individuals who started applying before December 15 and New York has extended its period through December 20. The PPACA was also instrumental in expanding Medicaid and the Children's Health Insurance Program (CHIP) enrollment to about 9.7 million individuals through October. The White House Council of Economic Advisers said that the expanding coverage base has resulted in reducing the percentage of the population remaining uninsured to 11.3%, the lowest ever recorded.

## PPACA Health Reform Update cont.

### *State Innovation Model Awards*

The CMS Center for Medicare and Medicaid Innovation (CMMI) announced it has awarded more than \$665 million in the second round of the PPACA's State Innovation Model (SIM) program to 28 states and DC to design and test health care payment and service delivery models. The SIM initiative is intended to support states in planning and implementing a customized, fully developed proposal capable of creating statewide health transformation to improve health care.

### *U.S. Supreme Court and PPACA*

As previously reported, the U.S. Supreme Court will take up and render a decision this term in the case of *King v. Burwell* in which the U.S. Court of Appeals for the District of Columbia Circuit held that the Internal Revenue Service (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. Democrats on the House Committee on Energy and Commerce released a staff report which estimates that individuals in 35 states will lose up to \$65 billion in 2016 PPACA tax credit premium subsidies if the high court agrees with the appeals court decision and overturns the IRS ruling. The high court also said that on January 9th it will hear arguments in the *Association of American Physicians & Surgeons, Inc. v. Burwell* case in which the plaintiffs argue that the individual mandate also violates the takings clause under the Constitution.

## Medicare/Medicaid/PHSA Corner

### *Senate Committee Reports on Generic Drug Use*

The Senate Special Committee on Aging issued a final report under the chairmanship of Sen. Bill Nelson (R-FL) which asks the Government Accountability Office (GAO) to investigate the reasons why certain generic drug prices have recently increased. The report also made recommendations that could lead to greater generic drug use by seniors under Medicare Part D: providing incentives to prescription drug plan sponsors who increase the use of generics; finding innovative ways to expand generic drug usage among low-income subsidiary beneficiaries; increasing education of beneficiaries and health professionals on the safety, effectiveness and cost benefits of generic drugs; and improving investigations of questionable pharmacy billing practices that thwart efforts to provide incentives for generic usage.

**Medicare/Medicaid/PHSA Corner cont.*****MedPAC on PCIP, SGR, Payment Setting Differentials, Payment Freezes***

**A**t its December 18th meeting, the Medicare Payment Advisory Commission (MedPAC) indicated support for elevating primary care service reimbursement rates by replacing the current primary care bonus under the Primary Care Incentive Payment Program (PCIP). The recommended substitute would provide for a prospective per-beneficiary payment under the PCIP accompanied by an offset that would reduce by 1.4% the fees for all services in the fee schedule, except for evaluation and management (E&M). While MedPAC will not vote in January on replacing the Medicare physician payment regime based on the sustainable growth rate (SGR), it is expected that the commission will again include in its March 2015 report a previous recommendation that the SGR be replaced by a 10-year path of legislative updates with higher updates for primary care than other services. The commission also said it intends to include in its March report to Congress: a reduction or elimination of differences in payment rates between outpatient departments and physician offices for selected ambulatory payment classifications; a change that would set long-term care hospital base payment rates for non-chronically critically ill (CCI) cases equal to those of acute care hospitals and redistribute the savings to create additional inpatient outlier payments for CCI cases in inpatient prospective payment system hospitals with the change phased in over a three-year period from 2016 to 2018; and an increase in payment rates for the acute care hospital inpatient and outpatient prospective payment systems in 2016 by 3.25% concurrent with the change to the outpatient payment system and also an installation of the change to the long-term care hospital payment system. In addition, the commission may also recommend that there be no update in the current payment rates in 2016 for kidney dialysis, hospice care and services provided by stand-alone surgical centers.

***CMS Announces Penalties for Failure to Reduce Hospital Errors***

**C**MS announced that 724 hospitals will have their Medicare payments reduced by 1% for FY 2015 for failing to adequately control hospital-acquired medical conditions. The agency also announced updates to the Hospital Compare website and the Physician Compare website.

***FDA Proposes Electronic-Based Rule on Product Labeling***

**T**he Food and Drug Administration (FDA) has asked for comments by March 18 on a proposed rule that would require the electronic distribution to health care professionals of prescribing information for drug and biological products, rather than require their distribution in paper form (with some exceptions). Every time there is a change in labeling, drug manufacturers would be required to submit the prescribing information to the FDA for posting on the FDA's labeling repository website.