



## Health Policy Briefing

May 20, 2013

### House Appropriators Begin Debate on FY 2014 Spending; PPACA Repeal Bill Passed

#### *House Appropriations Committee Begins FY 2014 Spending Allocation Process*

On Tuesday the House Appropriations Committee will approve the FY 2014 302(b) spending allocations for each of its subcommittees and then take up the FY 2014 Military Construction/Veterans' Affairs appropriations bill passed last week in subcommittee. The MilCon/VA allocation totals about \$73.3 billion and the Labor/Health and Human Services/Education subcommittee is expected to be allocated about \$122 billion. Chairman Harold Rogers (R-KY) said the austere subcommittee allocations are necessary in order to adhere to the House budget resolution's FY spending cap of \$967 billion (a reduction from FY 2013 appropriations totaling \$1.043 trillion). The House bill also includes \$344 million for the development of a single, joint electronic health record system between the VA and the Department of Defense. The Senate Appropriations Committee is expected to target a higher figure than the House; and during a budget hearing Chairwoman Barbara Mikulski (D-MD) said that she would do all she can to cancel the Budget Control Act (BCA) sequester that would shave about \$19 billion from

the National Institutes of Health (NIH) budget over the next nine years. In related budget news, the Congressional Budget Office (CBO) released updated budget projections for FY 2013-2023 showing that accumulated deficits will shrink by about \$618 billion due mainly to slower growth in health spending for Medicare, Medicaid and other federal health programs. As a result, the 10-year Medicare baseline was lowered by \$85 billion and the Medicaid baseline was lowered by \$77 billion.

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### ***House E&C Committee Passes Drug Supply Chain Safeguards***

**B**y voice vote the House Energy and Commerce Committee passed H.R. 1919, the Safeguarding America's Pharmaceuticals Act of 2013, legislation designed to help ensure drug safety by establishing a uniform national standard for securing the pharmaceutical distribution supply chain. The bill would require lot-level tracking and require the Food and Drug Administration (FDA) to propose (but not finalize) regulations on unit-level tracking by 2027. Committee Democrats offered several unsuccessful amendments, including one by Rep. Frank Pallone (D-NJ) which would have required final regulations on unit-level tracking within 10 years. Critical of the bill language, which fails to require a timeline for final regulations, Rep. Henry Waxman (D-CA) said the Pallone amendment is identical to the language the Senate HELP Committee will take up May 22.

## **PPACA Health Reform Update**

### ***House Votes to Repeal PPACA***

**L**ast Thursday the House voted 229-195 to pass H.R. 45, the Patient's Rights Repeal Act, which would fully repeal all aspects of the Patient Protection and Affordable Care Act (PPACA). Republican leaders hailed the repeal as a response to clear the way for patient-centered reforms that lower health costs and protect jobs. The White House threatened a veto and said the bill would "cost millions of hard working middle class families the security of affordable health coverage and care they deserve. It would increase the deficit and detract from the work the Congress needs to do to focus on the economy and create jobs."

### ***Republicans Call on GAO to Investigate HHS Secretary Solicitations***

**R**epublican leaders on the House Ways and Means and Energy and Commerce Committees sent letters to Health and Human Services (HHS) Secretary Kathleen Sebelius requesting information on the actions HHS has taken to solicit donations from insurers and others to help promote the PPACA and enrollment in health insurance exchanges. They say that such actions raise questions of compliance with the Antideficiency Act, which bars augmentation of congressional appropriations, and with federal ethics regulations. The Secretary was given until May 27 to respond. Senator Orrin Hatch (R-UT), Ranking Republican of the Senate Finance Committee and other committee republicans sent a similar letter asking for HHS to respond by June 7. Senator Lamar Alexander (R-TN), Ranking Republican of the Senate Health, Education, Labor and Pensions (HELP) Committee, said he is also requesting the Government Accountability Office (GAO) to investigate the Secretary's actions and charged that they were an effort "to avoid the constitutional limits on the Department of Health and Human Services' appropriations by fundraising for, and coordinating with, the private nonprofit Enroll America. These actions are inconsistent with federal separation of powers principles and may violate federal appropriations laws."

### ***States to Enforce PPACA Standards in FFMs***

**A**ccording to guidance released by the Centers for Medicare and Medicaid Services' (CMS) Center for Consumer Information and Insurance Oversight (CCIIO), the agency is encouraging states to enforce the PPACA standards applicable to health insurers with respect to plans offered under federally facilitated marketplaces (FFMs). CMS said that if states do not agree to enforce the standards that the federal government would enforce them by means of civil money penalties and the decertification of plans. In the 17 states (and DC) electing to run their own state-based exchanges, the CCIIO said it intends to propose that such entities submit annual reports, including but not limited to financial statements and summaries of eligibility determinations, enrollments, appeals, errors, privacy safeguards, fraud and abuse determinations, as well as data on financial sustainability, efficiency, consumer satisfaction and quality of care. The CCIIO also posted a guide, Navigators and Other Marketplace Assistance Programs, providing information about assistance and outreach under the PPACA.

## PPACA Health Reform Update cont.

### ***PCIP Provider Reimbursements Lowered to Medicare Rates***

**C**MS issued an interim final regulation which requires the PPACA's Pre-Existing Condition Insurance Plans (PCIPs) to lower payments for medical services to those allowed under Medicare. Due to higher than expected claims costs, CMS is attempting to keep PCIP high-risk enrollees from having their coverage terminated before 2014 as the \$5 billion cap on PCIP funding approaches.

### ***Final Medical Loss Ratio Rules Issued***

**C**MS issued final regulations defining the medical loss ratio (MLR) rules applicable under the PPACA to Medicare Advantage and Medicare Part D Rx plan sponsors. In general, under the rule such entities must pay out a minimum of 85% of premium revenue to clinical services, prescription drugs and other benefits. Penalties for noncompliance include enrollment sanctions and contract termination under various circumstances.

### ***New Bundled Payment Model Initiative***

**C**MS' Center for Medicare and Medicaid Innovation (CMMI) announced that additional acute care hospitals and organizations that seek to convene acute care hospitals in a facilitator convener role are eligible to participate in Model 1 of the Bundled Payments for Care Improvement Initiative. Submissions are due by July 31.

### ***PPACA Health Care Innovation Awards***

**C**MS announced that up to \$1 billion will be awarded to applicants demonstrating that they can improve care for those with specialized needs, rapidly reduce outpatient/post-acute care costs and test ways for providers to transform their financial and clinical models within three years under Medicare, Medicaid and CHIP. Letters of intent to participate in the second round of the Health Care Innovation Awards are due from June 14 to August 15.

### ***New CBO Estimate of Insured Under PPACA***

**T**he CBO released new estimates of the impact on the number left uninsured under the PPACA after considering the latest regulations that will exempt 500,000 to one million individuals from penalties otherwise imposed under the law's individual mandate. CBO estimated that about 25 million U.S. residents will gain coverage, two million fewer than estimated in February, and that 31 million will remain uninsured, one million more than previously estimated. The CBO also said that 24 million will enroll under health insurance exchanges, one million fewer than previously estimated, and that 13 million will enroll in Medicaid and SCHIP, one million more than previously estimated.

## Medicare/Medicaid/Public Health Services Corner

### *Permanent CMS Administrator Confirmed*

Last week the Senate voted 91-7 to confirm Marilyn Tavenner as the permanent CMS Administrator.

### *Medicare Doc Fix This Year?*

**A**t a Senate Finance Committee hearing held to discuss problems and solutions with respect to the current Medicare physician payment sustainable growth rate (SGR) formulation, Chairman Max Baucus said “We must permanently repeal this broken formula and we need to do it this year...” He said the revised CBO cost estimate of the doc fix, about \$138 billion over ten years, provides a window of opportunity to install short-term, ready-to-go solutions that will allow Congress to transition the current system into a value-based model. The Medicare Payment Advisory Commission’s (MedPAC) executive director said the organization’s previous recommendations could be modified so as to repeal the SGR, reduce reimbursements for specialty physicians annually by 3% or less for three years followed by a freeze for primary care physicians, and set a schedule of fee updates over ten years. A witness from the Brookings Institution testified that a transition to a new system could be aided by merging the various Medicare incentive payment programs into a “care coordination payment.”

### *DSH Payment Reductions Proposed*

**C**MS issued a proposed rule implementing the PPACA-mandate that aggregate reductions to state Medicaid disproportionate share hospital (DSH) allotments be made annually from FY 2014 through FY 2020. Under the proposed reduction methodology, that might be refined after two years, the statewide DSH allotments for all states would be reduced as follows: \$500 million in FY 2014; \$600 million in FY 2015; \$600 million in FY 2016; \$1.8 billion in FY 2017; \$5 billion in FY 2018; \$5.6 billion in FY 2019; and \$4 billion in FY 2020. The reductions for particular states would vary depending on the level of DSH expenditures, uninsured individuals, section 1115 adjustments and other factors. With respect to another Medicaid issue, the GAO issued a report to Senator Orrin Hatch (R-UT) and Rep. Fred Upton (R-MI) which includes a finding that the current funding formula for Medicaid state payments does not take into account geographic cost differences and demand for services. The report suggests that the Federal Medical Assistance Percentage (FMAP) payments can be made more equitable by incorporating such data from additional sources.

## Upcoming Health-Related Hearings/Markups

House Energy and Commerce Subcommittee on Oversight and Investigations: will hold a hearing titled “*Health Insurance Premiums Under the Patient Protection and Affordable Care Act*,” 4:00 p.m., 2123 Rayburn Bldg; May 20.

House Ways and Means Health Subcommittee: will hold the first in a series of hearings on *bipartisan Medicare reform proposals*; 10:00 a.m., 1100 Longworth Bldg; May 21.

House Appropriations Committee: will meet to consider a report on the revised 302(b) sub-allocations of budget allocations for FY 2014 and mark up draft legislation that would make *FY 2014 appropriations for military construction/VA programs*. 11 a.m., 2359 Rayburn; May 21.

House Veterans’ Affairs Health Subcommittee: will hold a hearing on legislation regarding *veterans’ health*. 10 a.m., 334 Cannon; May 21.

Senate Special Aging Committee: will hold a hearing on the *ten-year anniversary of the Medicare prescription drug program*; 2:00 p.m., 366 Dirksen Bldg.; May 22.

Senate HELP Committee: will mark up the *Pharmaceutical Compounding Quality and Accountability Act and the Drug Supply Chain Security Act*; 10:00 a.m., 430 Dirksen Bldg; May 22.

Senate Homeland Security and Governmental Affairs Financial and Contracting Oversight Subcommittee: will hold an oversight hearing on *business practices of durable medical equipment companies*. 2 p.m., 342 Dirksen; May 22.

House Energy and Commerce Subcommittee on Oversight and Investigations: will hold a hearing “*Examining Substance Abuse and Mental Health Services Administration Role in Delivering Services to the Severely Mentally Ill*,” 10:00 a.m., 2123 Rayburn Bldg; May 22.

House Energy and Commerce Health Subcommittee: will hold a hearing titled “*Examining Drug Compounding*,” 10:00 a.m., 2322 Rayburn Bldg; May 23.

Senate Homeland Security and Governmental Affairs Subcommittee on Efficiency and Effectiveness of Federal Programs and the Federal Workforce: will hold a hearing titled “*Improving Federal Health Care in Rural America: Developing the Workforce and Building Partnerships*.” 10 a.m., 342 Dirksen; May 23.

## Health Legislation Recently Introduced

**S. 931 (BREAST CANCER)**, to amend the Public Health Service Act to raise awareness of, and to educate breast cancer patients anticipating surgery, especially patients who are members of racial and ethnic minority groups, regarding the availability and coverage of breast reconstruction, prostheses, and other options; BLUNT; to the Committee on Health, Education, Labor and Pensions, May 13.

**H. RES. 212 (MENTAL HEALTH)**, expressing support for designation of May 2013 as Mental Health Month; MURPHY of Pennsylvania; to the Committee on Energy and Commerce, May 13.

**S. 942 (WOMEN’S HEALTH)**, to eliminate discrimination and promote women’s health and economic security by ensuring reasonable workplace accommodations for workers whose ability to perform the functions of a job are limited by pregnancy, childbirth, or a related medical condition; CASEY; to the Committee on Health, Education, Labor, and Pensions, May 14.



## Health Legislation Recently Introduced cont.

**S. 945** (MEDICARE), to amend Title XVIII of the Social Security Act to improve access to diabetes self-management training by authorizing certified diabetes educators to provide diabetes self-management training services, including as part of telehealth services, under Part B of Medicare; SHAHEEN; to the Committee on Finance, May 14.

**S. 946** (ABORTION), to prohibit taxpayer-funded abortions, and for other purposes; WICKER; to the Committee on Finance, May 14.

**S. 948** (MEDICARE), to amend Title XVIII of the Social Security Act to provide for coverage and payment for complex rehabilitation technology items under Medicare; SCHUMER; to the Committee on Finance, May 14.

**H.R. 7** (ABORTION), to prohibit taxpayer funded abortions; SMITH of New Jersey; jointly, to the committees on Ways and Means, the Judiciary, and Energy and Commerce, May 14.

**H.R. 1958** (PRESCRIPTION DRUGS), to prohibit wholesalers from purchasing prescription drugs from pharmacies, and to enhance information and transparency regarding drug wholesalers engaged in interstate commerce; CUMMINGS; to the Committee on Energy and Commerce, May 14.

**H.R. 1971** (TRICARE), to direct the secretary of defense to provide certain TRICARE beneficiaries with the opportunity to retain access to TRICARE Prime; KLINE; to the Committee on Armed Services, May 14.

**H.R. 1975** (WOMEN'S HEALTH), to eliminate discrimination and promote women's health and economic security by ensuring reasonable workplace accommodations for workers whose ability to perform the functions of a job are limited by pregnancy, childbirth, or a related medical condition; NADLER; jointly, to the committees on Education and the Workforce, House Administration, Oversight and Government Reform, and the Judiciary, May 14.

**H.R. 1976** (MEDICAID), to amend Title XIX of the Social Security Act to provide access to certified professional midwives for women enrolled in Medicaid; PINGREE of Maine; to the Committee on Energy and Commerce, May 14.

**H.R. 1980** (VETERANS' HEALTH), to amend Title 38, U.S. Code, to prohibit the secretary of veterans affairs from requesting additional medical examinations of veterans who have submitted sufficient medical evidence provided by nondepartment medical professionals and to improve the efficiency of processing certain claims for disability compensation by veterans, and for other purposes; WALZ; to the Committee on Veterans' Affairs, May 14.

**S. 935** (VETERANS' HEALTH), to amend Title 38, U.S. Code, to prohibit the Secretary of Veterans Affairs from requesting additional medical examinations of veterans who have submitted sufficient medical evidence provided by nondepartment medical professionals and to improve the efficiency of processing certain claims for disability compensation by veterans, and for other purposes; FRANKEN; to the Committee on Veterans' Affairs, May 15.

**S. 955** (HEALTH CENTER VOLUNTEERS), to amend the Public Health Service Act to provide liability protections for volunteer practitioners at health centers under Section 330 of such act; THUNE; to the Committee on Health, Education, Labor and Pensions, May 15.

**S. 957** (PHARMACEUTICAL DISTRIBUTION), to amend the Federal Food, Drug, and Cosmetic Act with respect to the pharmaceutical distribution supply chain; BENNET; to the Committee on Health, Education, Labor and Pensions, May 15.

**S. 959** (COMPOUNDING DRUGS), to amend the Federal Food, Drug, and Cosmetic Act with respect to compounding drugs; HARKIN; to the Committee on Health, Education, Labor and Pensions, May 15.

**S. 961** (EMERGENCY MEDICAL SERVICES), to improve access to emergency medical services, and for other purposes; BLUNT; to the Committee on Health, Education, Labor and Pensions, May 15.

## Health Legislation Recently Introduced cont.

**S. 962** (REFORM), to prohibit amounts made available by the Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 from being transferred to the Internal Revenue Service for implementation of such acts; HELLER; to the Committee on Finance, May 15.

**S. 963** (MEDICAID), preventing an unrealistic future Medicaid augmentation plan; COBURN; to the Committee on Finance, May 15.

**S. 966** (MEDICAL FLEXIBLE SPENDING ACCOUNTS), to amend the Internal Revenue Code of 1986 to increase participation in medical flexible spending arrangements; CARDIN; to the Committee on Finance, May 15.

**H.R. 1982** (MEDICARE), to amend Section 1862 of the Social Security Act with respect to the application of Medicare secondary payer rules to workers' compensation settlement agreements and Medicare set-asides under such agreements; REICHERT; jointly, to the committees on Ways and Means and Energy and Commerce, May 15.

**H.R. 1984** (BREAST CANCER), to amend the Public Health Service Act to raise awareness of, and to educate breast cancer patients anticipating surgery, especially patients who are members of racial and ethnic minority groups, regarding the availability and coverage of breast reconstruction, prostheses, and other options; LANCE; to the Committee on Energy and Commerce, May 15.

**H.R. 1993** (REFORM), to prohibit the Internal Revenue Service from hiring new employees to enforce the federal government's invasion into the health care lives of U.S. citizens; FORBES; to the Committee on Ways and Means, May 15.

**H.R. 2001** (VETERANS' HEALTH), to amend Title 38, U.S. Code, to improve the ability of health care professionals to treat veterans via telemedicine; RANGEL; to the Committee on Veterans' Affairs, May 15.

**H.R. 2003** (DRUGS), to amend the Federal Food, Drug, and Cosmetic Act to require the label of drugs intended for human use to contain a parenthetical statement identifying the source of any ingredient constituting or derived from a grain or starch-containing ingredient; RYAN of Ohio; to the Committee on Energy and Commerce, May 15.

**S. 972** (ICD-10 HIPAA CODES), to prohibit the secretary of health and human services replacing ICD-9 with ICD-10 in implementing the Health Insurance Portability and Accountability Act code set standards; COBURN; to the Committee on Health, Education, Labor and Pensions, May 16.

**S. 981** (ABORTION), to direct the Federal Trade Commission to prescribe rules prohibiting deceptive advertising of abortion services, and for other purposes; MENENDEZ; to the Committee on Commerce, Science, and Transportation, May 16.

**S. 983** (REFORM), to prohibit the secretary of the treasury from enforcing the Affordable Care Act and the Health Care and Education Reconciliation Act of 2010; CORNYN; to the Committee on Finance, May 16.

**H.R. 2009** (REFORM), to prohibit the secretary of the treasury from enforcing the Affordable Care Act and the Health Care and Education Reconciliation Act of 2010; PRICE of Georgia; to the Committee on Ways and Means, May 16.

**H.R. 2010** (REFORM), to amend the Affordable Care Act to apply to delegates and resident commissioners to the Congress, and to employees of committees and leadership offices of Congress, the requirement of such act that the only health plans that the federal government may make available to members of Congress and Congressional staff are plans created or offered through an exchange established under such act; BARR; jointly, to the committees on House Administration and Energy and Commerce, May 16.

**H.R. 2019** (PEDIATRIC RESEARCH), to eliminate taxpayer financing of presidential campaigns and party conventions and reprogram savings to provide for a 10-year pediatric research initiative through the common fund administered by the National Institutes of Health, and for other purposes; HARPER; jointly, to the committees on Energy and Commerce, House Administration, and Ways and Means, May 16.

**Health Legislation Recently Introduced cont.**

**H.R. 2022 (REFORM)**, to prohibit the implementation or enforcement of any requirement of the Affordable Care Act until certifications are made that taxpayer information is not and will not be used for targeting any individual or group that provides information to the Internal Revenue Service for political reasons or on the basis of political views, and for other purposes; BLACK; jointly, to the committees on Ways and Means and Energy and Commerce, May 16.

**H.R. 2023 (PUBLIC HEALTH)**, to direct the secretary of health and human services to develop a national strategic action plan to assist health professionals in preparing for and responding to the public health effects of climate change, and for other purposes; CAPPS; to the Committee on Energy and Commerce, May 16.

**H.R. 2027 (MEDICARE)**, to amend Section 1877 of the Social Security Act to modify the requirements for hospitals to qualify for the rural provider and hospital exception to physician ownership or investment prohibition to take into account hospitals that were under construction or development at the time of imposing such requirements, hospital expansions, and hospitals in financial distress, and for other purposes; JOHNSON of Texas; jointly, to the committees on Energy and Commerce and Ways and Means, May 16.

**H.R. 2030 (ABORTION)**, to direct the Federal Trade Commission to prescribe rules prohibiting deceptive advertising of abortion services; MALONEY; to the Committee on Energy and Commerce, May 16.

**H.R. 2031 (CLINICAL TRIALS)**, to amend Title IV of the Public Health Service Act to expand the clinical trial registry data bank, and for other purposes; MARKEY; to the Committee on Energy and Commerce, May 16.

**H.R. 2033 (MEDICAL NEUTRALITY)**, to provide for medical neutrality and to establish accountability for violations of the principle of medical neutrality, and for other purposes; MCDERMOTT; jointly, to the committees on Foreign Affairs and the Judiciary, May 16.

**H.R. 2037 (MENTAL HEALTH)**, to establish a demonstration grant program to recruit, train, deploy, and professionally support psychiatric physicians in Indian health programs; SCHRADER; jointly, to the committees on Energy and Commerce and Natural Resources, May 16.