



## Health Policy Briefing

May 26, 2014

### Congress Focuses on VA Scandal; Senate Allocates FY 2015 Agency Appropriations

#### *FY 2015 Appropriations Actions*

Over the objection of Republican members, the Senate Appropriations Committee approved **Chairwoman Barbara Mikulski's (D-MD)** recommended 302(b) spending allocations (i.e., caps) for all subcommittees. Of note, the Labor/Health and Human Services (HHS)/Education subcommittee was allocated \$156.8 billion which is slightly above the \$155.7 allocated by the House Appropriations Committee. The chairwoman said that the allocations for all twelve subcommittees were, in total, consistent with the \$1.014 trillion discretionary cap enacted as part of last year's Murray/Ryan budget deal. Republicans objected because they said it would circumvent the budget cap by, among other things, changing mandatory programs within the Labor/HHS/Education spending bill to achieve savings of about \$2 billion. Both the House Appropriations Subcommittee and the Senate Appropriations Committee passed their version of fiscal year (FY) 2015 Agriculture/Food and Drug Administration (FDA) appropriations with the House providing \$2.6 billion in discretionary funding to the FDA (an increase of \$23 million over FY 2014) and the Senate providing \$2.588 billion (\$36 million above FY 2014).

**Senator Alexander (R-TN)** said he had obtained report language in the Senate bill which instructs the FDA to consult with doctors, pharmacists and patients in the implementation of the legislation which gives the agency greater authority over compounding pharmacies. Also of note, the House bill encourages the FDA to develop abuse-deterrent formulations of opioids to help prevent prescription drug abuse while also providing flat-line funding for biologics and for devices and radiological health. The Senate Appropriations Committee also approved the Military Construction/Veterans

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Administration (VA) spending bill which provides \$158.6 billion to the VA with \$65.1 billion in discretionary spending (\$1.85 billion above FY 2014). Addressing the VA scandal, the Senate committee said that “in response to allegations of misconduct at a number of VA medical centers in an effort to conceal patient scheduling delays by keeping secret wait lists, and the recognition that such practices may not be isolated incidents, the bill provides an additional \$5 million above the budget request for the VA’s Office of Inspector General (OIG) to conduct a nationwide investigation throughout all Veterans Integrated Service Networks of scheduling practices and procedures. The bill also prohibits the payment of performance bonuses to Veterans Health Administration (VHA) medical directors, assistant medical directors and Senior Executive System employees until the investigation is completed and reforms have been instituted.” The scandal has also induced the chairman of the Senate Veterans’ Affairs Committee to say he will soon be considering legislation to address the matter.

### ***House Legislative Actions***

**T**he House passed the National Defense Authorization Act (NDAA) for FY 2015 which, among other things: directs the Department of Defense (DOD) to carry out Defense Health Program (DHP) Research and Development (RDT&E) activities with respect to traumatic brain injuries; requires the DOD Office of Health to work in collaboration with the National Institutes of Health (NIH) to: (1) identify targets and biomarkers for triple negative breast cancer; and (2) provide information useful in biomarker selection, drug discovery and clinical trials design; requires the treatment of developmental disabilities under TRICARE to include behavioral health treatment, including applied behavioral analysis; authorizes the services to establish cooperative health care agreements between military installations and local or regional health care entities; authorizes the Uniformed Services University of the Health Sciences to enter into contracts with and make grants to other nonprofit entities; authorizes the peer reviewed medical research program to consider selecting medical research projects relating to hydrocephalus; finds that the DOD and VA have failed to implement a solution that allows seamless electronic sharing of medical health care data; requires DOD to provide for a one-on-one mental health assessment of each member during each 180-day period that the member is deployed; directs the Comptroller General (CG) to report to the defense and appropriations committees evaluating similarities and differences in the approaches to identifying and recovering improper payments across Medicare and TRICARE. The House Committee on Energy and Commerce also reported the following health legislation: H.R. 1098, the Traumatic Brain Injury Reauthorization Act of 2013; H.R. 3548, the Improving Trauma Care Act of 2013; and H.R. 4080, the Trauma Systems and Regionalization of Emergency Care Reauthorization Act. This week the House will consider Rep. Benishek’s (R-MI) bill, H.R. 2072, Demanding Accountability for Veterans Act; Rep. Coffman’s (R-CO) bill, H.R. 4261, the Gulf War Health Research Reform Act of 2014; and Rep. Michaud’s (D-ME) bill, H.R. 4399, the Comprehensive Department of Veterans Affairs Performance Management and Accountability Reform Act of 2014.

### ***Vote on Confirmation of New HHS Secretary Upcoming***

**L**ast week the Senate Finance Committee voted 21-3 to approve the President’s nomination of Sylvia Mathews Burwell to replace Kathleen Sebelius as Secretary of HHS. The Senate Majority Leader said the nomination would be brought to the full Senate for a vote during the first week in June. The White House also elevated Kristie Canegallo to be the Deputy Chief of Staff who will focus on the implementation of the Patient Protection and Affordable Care Act (PPACA) and information technology reform.

## PPACA Health Reform Update

### *Republicans Pounce on PPACA Misdeeds*

Republican leaders of the House Energy and Commerce and Ways and Means Committees expressed their displeasure with reports that up to one million individuals who obtained coverage under HealthCare.gov may have received subsidy payments exceeding amounts to which they may be entitled. The House Energy and Commerce Committee sent letters to HHS and PPACA contractors demanding documents explaining the scope of the problem and when they first were made aware of the problem. House Ways and Means Committee Republicans leaders also sent a letter to the Treasury Secretary demanding information on the number of individuals who provided income verification and the status of any Internal Revenue Service (IRS) determination of the accuracy of the information. Republicans said that as a result of the overpayments the individuals receiving overpayments will receive letters from the IRS in an attempt to recoup the overpayments. House Speaker John Boehner (R-OH) issued the following statement charging that the HealthCare.gov website “continues to be a black hole into which millions of dollars are disappearing by the day.” In addition, House and Senate Republicans sent separate letters to the leaders of Center for Medicare and Medicaid Services (CMS) and HHS seeking more information about potential penalties for states with a backlog of Medicaid applications.

### *PPACA Grants for Delivery System Reform*

HHS announced that it will provide up to \$110 million in PPACA Health Innovation Awards to twelve recipients for projects focusing on: reducing costs for dual eligibles; improving care for patients with special needs; testing improved financial and clinical models for specific types of providers; and linking clinical care delivery to preventive health and the health of different socioeconomic groups. Letters of intent to apply for the awards are due by June 6th and applications are due July 21st.

### *Senator Rockefeller Calls for MLR Rebates in Medicaid/CHIP*

At a Senate hearing, Senator Jay Rockefeller (D-WV) promoted his legislation, S. 1787, which would follow the framework of the PPACA which requires insurers to rebate to consumers any premium income they receive under the law which falls short of the 80% MLR (minimum loss ratio) requirement. He said that the nearly \$2 billion refunded under the PPACA demonstrates the need for insurers to abide by the same rule for the managed care plans they operate under Medicaid and the Children’s Health Insurance Program (CHIP) programs.

## Medicare/Medicaid/PHSA Corner

### *Republicans Promote Payment Reforms*

At a hearing held by the House Energy and Commerce Health Subcommittee, Chairman Joe Pitts (R-PA) said that the policies in two separate pieces of legislation should be looked at because they have been proposed as possible means to pay for the reform of the Medicare physician payment system (SGR reform). Rep. Mike Rogers’ (R-MI) H.R. 2869, the Medicare Patient Access to Cancer Treatment Act of 2014, intends to provide for payment parity under the Medicare program for ambulatory cancer care services furnished in the hospital outpatient department and the physician office setting while Rep. David McKinley’s (R-WV) legislation, the Bundling and Coordinating Post-Acute Care (BACPAC) Act of 2014, would establish a site-neutral bundled payment model for PAC services. One witness from the hospital industry opposed site-neutral payments, saying that it would have devastating consequences for Medicare patients. However, the Medicare Payment Advisory Commission (MedPAC) witness said that reducing payment differentials across certain sites of outpatient care and bundling payments for post-acute care could result in cost savings and the improvement of care coordination.

## **Medicare/Medicaid/PHSA Corner cont.**

### ***House Ways and Means Takes Testimony on Hospital “Two Midnight” Rule***

Subcommittee Chairman Kevin Brady (R-TX) said he does not think that hospitals are doing anything wrong in response to the Medicare less than “two-midnight policy” which incentivizes Recovery Audit Contractors (RACs) to scrutinize such claims, thus forcing hospitals to put patients into outpatient observation status. A CMS spokesman said that the agency is reviewing the rule and examining new means of reforming the current reimbursement structure to help reduce the use of observation status by hospitals. Legislation by Reps. Jim Gerlach (R-PA) and Joseph Crowley (D-NY) would delay the enforcement of the rule until the start of the new fiscal year on October 1st.

### ***Government Oversight Committee Focuses on Medicare Appeal Backlogs***

At a House Committee on Oversight and Government Reform Health Subcommittee hearing, the Chairman, James Lankford (R-OK), said the third level of Medicare appeals has a massive backlog of 460,000 claim appeals that could take up to 28 months to resolve individually. There appeared to be a bipartisan agreement that the role Recovery Audit Contractors (RAC) has contributed to the delay. Witnesses from the Government Accountability Office (GAO) and the HHS OIG testified that the RAC program needs reform, such as ensuring that all RACs operate using the same Medicare coverage and payment guidelines. The CMS witness said that the agency is in the process of revising the RAC program to reflect the concerns of the affected parties.

### ***Senators Again Ask CMS to Delay DME Competitive Bidding***

Senators John Thune (R-SD) and about thirty other senators sent a letter to CMS saying that “Before you move forward in implementing competitive bidding nationally, we request that you allow the OIG to complete their investigation on competitive bidding licensure problems and verification of Round 2 single payment amounts and give Congress time to review the results...”

### ***Delay in EHR Mandate Proposed***

CMS issued a proposed rule under which providers and hospitals that are unable to obtain an electronic health record (EHR) system with the latest meaningful use program certification can participate in the program in 2014 using certain existing EHR systems.

### ***CMS Issues Final MA/Part D Provider-Abuse Rule***

CMS issued a final rule under which most providers who prescribe drugs under Medicare Part D will be required to be enrolled in Medicare. The rule also allows CMS to revoke a physician or eligible professional’s enrollment if the agency determines that there has been a pattern or practice of prescribing that is abusive, represents a threat to the health and safety of Medicare beneficiaries or otherwise fails to meet other Medicare requirements.

### ***Rule on Prior Authorization of Medicare Equipment***

CMS published a proposed rule under which prior authorization would be required earlier in the purchasing process of certain medical equipment. CMS said that the fraud and error prevention measure would likely save Medicare \$740 million over ten years. CMS also proposed to expand Medicare demonstration projects which would require prior authorization for power mobility devices, the use of hyperbaric oxygen therapy and repetitive scheduled nonemergency ambulance transport.

## Upcoming Health-Related Hearings and Markups

**House Energy and Commerce Health Subcommittee:** will mark up pending legislation, including: H.R. 4631, the Combating Autism Reauthorization Act; H.R. 4299, the Improving Regulatory Transparency for New Medical Therapies Act; and H.R. 4709, the Ensuring Patient Access to Effective Drug Enforcement Act. 2 p.m., 2123 Rayburn; May 28.

**House Veterans' Affairs Committee:** will hold a hearing to receive testimony from Department of Veterans Affairs' officials regarding the alleged destruction of an alternate wait list associated with the Phoenix Veterans Affairs Health Care System. 7:30 p.m., 334 Cannon; May 28.

**House Veterans' Affairs Oversight and Investigations Subcommittee:** will hold a hearing titled "Assessing Inadequacies in VA Data Usage for and Services Provided to Visually-Impaired Veterans." 10 a.m., 334 Cannon; May 29.

**House Appropriations Committee:** will mark up the FY 2015 Agriculture Appropriations bill; 9 a.m., location TBA; May 29.

**House Ways and Means Human Resources Subcommittee:** will hold a hearing titled "Caring for Our Kids: Are We Overmedicating Children in Foster Care?" 2 p.m., 1100 Longworth; May 29.

## Health Legislation Recently Introduced

**H.R. 4673** (MEDICARE), to amend Title XVIII of the Social Security Act to provide bundled payments for post-acute care services under parts A and B of Medicare, and for other purposes; MCKINLEY; jointly, to the committees on Ways and Means and Energy and Commerce, May 19.

**H.R. 4676** (MEDICARE/MEDICAID), to amend titles XVIII and XIX of the Social Security Act to apply the Medicare restriction on self-referral to State plan requirements under Medicaid, and for other purposes; MCDERMOTT; jointly, to the committees on Energy and Commerce and Ways and Means, May 19.

**H.R. 4677** (REFORM), to amend the PPACA to require states with failed insurance exchanges to reimburse the federal government for amounts provided under grants for the establishment and operation of the exchanges; REED; to the Committee on Energy and Commerce, May 19.

**H. RES. 586** (HIV/AIDS), supporting the goals and ideals of National Asian and Pacific Islander HIV/AIDS Awareness Day; BORDALLO; to the Committee on Energy and Commerce, May 19.

**S. 2359** (MEDICARE), to amend Title XVIII of the Social Security Act to protect and preserve access of Medicare beneficiaries in rural areas to health-care providers under Medicare, and for other purposes; FRANKEN; to the Committee on Finance, May 20.

**S. 2361** (MEDICARE), to amend Title XVIII of the Social Security Act to crack down on fraud in the Medicare program to protect seniors, people with disabilities and taxpayers; NELSON; to the Committee on Finance, May 20.

**S. 2362** (VETERAN'S HEALTH), to prohibit the payment of performance awards in fiscal year 2015 to employees in the Veterans Health Administration, and for other purposes; FISCHER; to the Committee on Veterans' Affairs, May 20.

**H.R. 4682** (TRICARE), to provide for coordination between the TRICARE program and eligibility for making contributions to a health savings account; STEWART; jointly, to the committees on Ways and Means and Armed Services, May 20.

**Health Legislation Recently Introduced cont.**

**H.R. 4683** (RESPITE CARE), to amend Title XXIX of the Public Health Service Act to reauthorize the program under such title relating to lifespan respite care; LANGEVIN; to the Committee on Energy and Commerce, May 20.

**H.R. 4690** (EMERGENCY MEDICAL SERVICES), to authorize the National Emergency Medical Services Memorial Foundation to establish a memorial in the District of Columbia and its environs, and for other purposes; LYNCH; to the Committee on Natural Resources, May 20.

**H.R. 4695** (MEDICARE), to amend Title XVIII of the Social Security Act to add sleep apnea screening to the initial preventive physical examination under Medicare; BURGESS; jointly, to the committees on Energy and Commerce and Ways and Means, May 21.

**H.R. 4701** (DISEASE RESEARCH), to provide for scientific frameworks with respect to vector-borne diseases; GIBSON; to the Committee on Energy and Commerce, May 21.

**H.R. 4709** (PRESCRIPTION DRUG ABUSE), to improve enforcement efforts related to prescription drug diversion and abuse, and for other purposes; MARINO; jointly, to the committees on Energy and Commerce and the Judiciary, May 21.

**S. 2383** (REFORM), to direct the Office of the Actuary of the Centers for Medicare & Medicaid Services and the comptroller general of the U.S. to study the impact of the PPACA on small businesses; ALEXANDER; to the Committee on Finance, May 22.

**S. 2400** (EMERGENCY MEDICAL SERVICES), to provide for improvement of field emergency medical services, and for other purposes; BENNET; to the Committee on Health, Education, Labor and Pensions, May 22.

**S. 2401** (VETERANS' HEALTH), to amend Title 38, U.S. Code, to establish the Office of the Medical Inspector within the Office of the Under Secretary for Health of the Department of Veterans Affairs; TESTER; to the Committee on Veterans' Affairs, May 22.

**S. 2405** (TRAUMA CARE), to amend Title XII of the Public Health Service Act to reauthorize certain trauma care programs, and for other purposes; REED; to the Committee on Health, Education, Labor and Pensions, May 22.

**S. 2406** (TRAUMA CARE), to amend Title XII of the Public Health Service Act to expand the definition of trauma to include thermal, electrical, chemical, radioactive and other extrinsic agents; REED; to the Committee on Health, Education, Labor and Pensions, May 22.

**H.R. 4720** (VETERANS' HEALTH), to amend Title 38, U.S. Code, to increase the priority for enrollment of Medal of Honor recipients in the health-care system of the Department of Veterans Affairs; WALBERG; to the Committee on Veterans' Affairs, May 22.

**H.R. 4725** (VETERANS' HEALTH), to amend Title 38, U.S. Code, to ensure that all veterans are eligible to participate in hospice care programs of the secretary of veterans affairs; COLLINS of New York; to the Committee on Veterans' Affairs, May 22.

**H.R. 4728** (REFORM), to direct the Office of the Actuary of the Centers for Medicare & Medicaid Services and the comptroller general of the U.S. to study the impact of the PPACA on small businesses; FINCHER; jointly, to the committees on Ways and Means, Education and the Workforce, Energy and Commerce, the Judiciary, Natural Resources, House Administration, Rules and Appropriations, May 22.

**H.R. 4735** (REFORM), to amend the PPACA to provide for a temporary shift in the scheduled collection of the transitional reinsurance program payments; NOLAN; to the Committee on Energy and Commerce, May 22.

**H.RES. 595** (OBSTETRIC FISTULA), supporting the goals and ideals of May 23 as the International Day to End Obstetric Fistula, to significantly raise awareness and intensify actions towards ending obstetric fistula; DELAURO; to the Committee on Oversight and Government Reform, May 22.