



Health Policy Briefing

June 16, 2014

Congress Focuses on Appropriations and VA Reform Legislation

Appropriations Issues

Last week the House Appropriations Committee passed H.R. 4870, the FY 2015 appropriations bill for the Department of Defense and related agencies which the House of Representatives will take up this week. It appears that, with the primary defeat and July 1st resignation of **Representative Eric Cantor (R-VA)** as House Majority Leader, further consideration in the House of the fiscal year (FY) 2015 Agriculture/Food and Drug Administration (FDA) appropriations bill will be put off until later this summer. The House Appropriations Committee will meet on Wednesday to consider revisions to its initial decisions on 302(b) allocations. The Defense subcommittee of the Senate Appropriations Committee has also scheduled a hearing on proposed FY 2015 appropriations for programs under its jurisdiction. While the Senate Appropriations Subcommittee on Labor, Health and Human Services (HHS) and Education approved by voice vote its version of the FY 2015 \$156.8 billion spending bill (which includes \$30.5 billion for the National Institutes of Health (NIH), a \$605 million increase), its fate is uncertain given that **Senate Majority Leader Harry Reid (D-NV)** has instructed the Senate Appropriations Committee to put off consideration (i.e., mark up) of the bill. It may be that the Senate will wait until after the November elections to package up this bill and other more controversial spending bills into an omnibus appropriations measure to be considered during the lame-duck session. However, the Senate is scheduled to debate H.R. 4660, the FY 2015 mini-omnibus bill which includes appropriations for the following agencies: Agriculture/FDA; Commerce/Justice/Science; and Transportation/Housing and Urban Development (HUD). The Senate is also expected to soon take up the H.R. 4486, the FY 2015 Military Construction/Veterans Affairs (VA) bill which was reported by the chamber's appropriations committee in May.

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Veterans' Reform Legislation Conference

This week the House is scheduled to vote on a motion to go to conference on the bipartisan bill introduced by Senators Bernie Sanders (I-VT) and John McCain (R-AZ), the Veterans' Access to Care through Choice, Accountability and Transparency Act of 2014 (S. 2450), which passed the Senate on a vote of 93 to 3. The Senate substituted the substance of its VA reform into H.R. 3230, legislation previously passed in the House. The House also passed a similar version of VA reform, H.R. 4810, on a unanimous vote of 426 to zero. A House-Senate conference will seek to reach agreement on the legislation's \$50 billion cost for additional health care and \$35 billion in new mandatory spending over ten years. The House may insist that the bill be paid for through a supplemental appropriations bill. The Senate waived a budget point of order requiring a cost offset that left the bill relying in part on emergency appropriations. The Senate version includes provisions: allowing veterans to seek medical care outside of the VA system if they experience above average wait times or live over 40 miles from a VA hospital or clinic; allowing the VA Secretary to fire employees without pay (but giving them expedited treatment under the Merit Systems Protection Board) and expedited authority to hire more doctors, nurses and other medical providers; and that authorize 26 major medical facility leases in 18 states. The House and Senate moved expeditiously on the legislation after the VA released an internal audit of 731 medical facilities showing that 57,436 veterans are waiting for care and that an additional 63,869 veterans have enrolled in VA health care over the past 10 years and have not been seen for an appointment.

Health Legislation Advances in House E&C Committee

The House Energy and Commerce Committee unanimously adopted the following two bills, readying them for consideration in the House: H.R. 4299, the Improving Regulatory Transparency for New Medical Therapies Act, which would require the Drug Enforcement Agency (DEA) to issue an interim final rule on the scheduling of a new drug no later than 45 days after receiving a scheduling recommendation from the FDA; and H.R. 4709, the Ensuring Patient Access and Effective Drug Enforcement Act, which would help prevent prescription drug abuse through better collaboration between industry and regulators.

PPACA Health Reform Update

PPACA Health Reform Oversight and Agency Actions

At a hearing held by the House Ways and Means Health and Oversight subcommittees, Republican members declared that of the \$1 trillion in health reform act subsidies to be paid over a decade the IRS does not currently have the capability to accurately verify the income eligibility of over one million exchange enrollees. Subcommittee Democrats defended the Patient Protection and Affordable Care Act (PPACA) and stated that about 6.8 million individuals and families will receive tax credits this year averaging about \$4,400. Nonetheless, supporters of the Act acknowledged that many individuals will have to repay some or all of the tax subsidies advanced when their actual income exceeds the amount which is declared in their initial application. In another hearing held by the House Energy and Commerce Health Subcommittee, Chairman Joe Pitts (R-PA) lamented the restrictive nature of the physician and hospital networks made available under PPACA health insurance plans. Witnesses said that the restrictions on provider networks and drug formularies offered under the current plans are likely to become more prevalent under Medicare and other insurer plans. The witness from the National Association of Insurance Commissioners (NAIC) said that states, and not federal law, should have control over the networks offered by insurers. In another effort by Republicans to question the authority of HHS to make payments to health insurers under the PPACA's risk corridor provisions, Representative Fred Upton (R-MI) and Senator Jeff Sessions (R-AL) sent a letter to the recently confirmed HHS Secretary, Sylvia Mathews Burwell, maintaining that payments without approval through congressional appropriations are illegal and that they should be halted absent such authority. In an administrative action, the Center for Medicare and Medicaid Services (CMS) said the agency is seeking applications by June 30th from eligible entities for up to \$60 million in payments to support health-care navigators. HHS also announced that it will allow 18 states to put off until 2016 the PPACA provision allowing workers in a small business to choose their health insurance plans rather than having their employer make the choice under the Small Business Health Options Program (SHOP) program.

Medicare/Medicaid/PHSA Corner

Medicare FFS in Crosshairs of Senate Finance Committee Chairman

In a public forum, Senate Finance Committee Chairman Ron Wyden (D-OR) spoke out against fee-for-service (FFS) medical reimbursements, particularly as it applies under Medicare. He said he wants to “take a machete” to the FFS model and hopes to move legislation next year to reform the current sustainable growth rate (SGR)-based Medicare physician payment system.

Autism Act Reauthorization Agreement

Senators Robert Menendez (D-NJ) and Mike Enzi (R-WY) said they have reached a bipartisan/bicameral agreement on a five-year reauthorization of the Combating Autism Act. The House Energy and Commerce Committee recently reported out of committee H.R. 4631 which contains the agreed upon language that changes the name to “the Autism Collaboration, Accountability, Research, Education and Support Act of 2014, i.e. the Autism CARES Act of 2014” and that requires a report from HHS having recommendations on how to make improvements for young adults with autism spectrum disorder and for transitioning them from school-based services to services available to adults.

Reimbursements to Increase for Certain Medicare Hospitals

CMS gave notice that about 600 low-volume hospitals and another 118 Medicare-dependent hospitals will receive payment increases from April 1 through this September 30th as required under the Protecting Access to Medicare Act of 2014.

MedPAC and MACPAC Reports to Congress

This week the House Ways and Means Committee will hold a hearing on the report from the Medicare Payment Advisory Commission (MedPAC) which includes a discussion of the means by which the current Medicare payment rules and quality improvement incentives will need to be reconciled among the Medicare Advantage (MA), Accountable Care Organizations (ACO) and fee-for-service payment programs. MedPAC suggests that Medicare should not pay more for the same care across different sites of service, and savings could be achieved if payments were equalized between skilled nursing facilities and inpatient rehabilitation facilities. A report from the Medicaid and CHIP Payment and Access Commission (MACPAC) recommended that Congress extend funding for the Children’s Health Insurance Program (CHIP) for another two fiscal years to avoid a situation in which currently insured children would go uninsured. The report also addressed the role of Medicaid in financing long-term services.

FDA to Issue Guidance on Off-Label Use

The FDA issued a letter stating that it will issue further guidance to device and drug manufacturers with respect to their responsibilities in making comments about the unapproved or off-label use of their products.

Upcoming Health-Related Hearings and Markups

House Ways and Means Health Subcommittee: will hold a hearing on the Medicare Payment Advisory Commission June report to Congress. 10 a.m., 1100 Longworth; June 18.

House Veterans' Affairs Committee: will hold a hearing titled "Non-VA Care: An Integrated Solution for Veteran Access." 10:15 a.m., 334 Cannon; June 18.

Senate Appropriations Defense Subcommittee: will hold a hearing on proposed FY 2015 appropriations for programs under its jurisdiction. 10 a.m., 192 Dirksen; June 18.

Senate Special Aging Committee: will hold a hearing titled "Brain Injuries and Diseases of Aging;" 2:15 p.m., 562 Dirksen Bldg.; June 25.

Health Legislation Recently Introduced

H.RES. 615 (REFORM), expressing the sense of the House of Representatives that members who vote in favor of the establishment of a public, federal government run health insurance option are urged to forgo their right to participate in the Federal Employees Health Benefits Program (FEHBP) and agree to enroll under that public option; FLEMING; to the Committee on House Administration, June 10.

S. 2461 (CHIP), to amend Title XXI of the Social Security Act to extend and improve the Children's Health Insurance Program, and for other purposes; ROCKEFELLER; to the Committee on Finance, June 11.

S. 2462 (REFORM), to amend the Internal Revenue Code of 1986 to exempt certain educational institutions from the employer health insurance mandate; THUNE; to the Committee on Finance, June 11.

H.R. 4840 (PRIVACY), to amend Title II of the Social Security Act to preclude use of the Social Security account number on government-issued identification cards issued in connection with Medicare, Medicaid and SCHIP benefits, and for other purposes; ISRAEL; jointly, to the committees on Ways and Means and Energy and Commerce, June 11.

H.R. 4841 (VETERANS' HEALTH), to improve the access of veterans to medical services from the Department of Veterans Affairs, and for other purposes; KIRKPATRICK; jointly, to the committees on Veterans' Affairs, Oversight and Government Reform and the Budget, June 11.

H.R. 4843 (MEDICARE), to amend Title XVIII of the Social Security Act to provide for a limitation under Medicare on charges for contract health services provided to Indians by Medicare providers of services and suppliers; MCCOLLUM; jointly, to the committees on Energy and Commerce, Ways and Means and Natural Resources, June 11.

H.RES. 619 (WOMEN'S HEALTH), recognizing that cardiovascular disease continues to be an overwhelming threat to women's health and the importance of providing basic, preventive heart screenings to women wherever they seek primary care; HERRERA BEUTLER; to the Committee on Energy and Commerce, June 11.

S. 2467 (VETERANS' HEALTH), to prohibit the secretary of veterans affairs from altering available health care and wait times for appointments for health care for certain veterans, and for other purposes; PRYOR; to the Committee on Veterans' Affairs, June 12.

S. 2468 (VETERANS' HEALTH), to amend Title 38, U.S. Code, to expand eligibility for reimbursement for emergency medical treatment and to require that the Department of Veterans Affairs be treated as a participating provider for the recovery of the costs of certain medical care, and for other purposes; HIRONO; to the Committee on Veterans' Affairs, June 12.

Health Legislation Recently Introduced cont.

S. 2471 (MEDICAL DEBT), to amend title 11 of the U.S. Code to provide bankruptcy protections for medically distressed debtors, and for other purposes; WHITEHOUSE; to the Committee on the Judiciary, June 12.

H.R. 4853 (MEDICARE), to amend Title XVIII of the Social Security Act to allow individuals to elect to receive the Medicare Summary Notice electronically, and for other purposes; RENACCI; jointly, to the committees on Ways and Means and Energy and Commerce, June 12.

H.R. 4857 (MEDICARE), to amend Title XVIII of the Social Security Act to modify payment under Medicare for outpatient department procedures that utilize drugs as supplies, and for other purposes; REED; jointly, to the committees on Energy and Commerce and Ways and Means, June 12.

H.R. 4861 (VETERANS' HEALTH), to establish the Commission on Access to Care to undertake a comprehensive evaluation and assessment of access to health care at the Department of Veterans Affairs; HECK of Washington; to the Committee on Veterans' Affairs, June 12.

H.R. 4862 (VETERANS' HEALTH), to direct the secretary of veterans affairs to meet with certain advisory committees to receive administrative and policy recommendations to improve the health care system of the Department of Veterans Affairs, and for other purposes; HECK of Washington; to the Committee on Veterans' Affairs, June 12.

H.R. 4865 (ACCESS), to amend the Internal Revenue Code of 1986 to ensure that working families have access to affordable health insurance coverage; KUSTER; to the Committee on Ways and Means, June 12.

H.RES. 623 (DYSLEXIA), recognizing the importance of dyslexia and other specific learning disabilities and promoting research, education and awareness; BEATTY; to the Committee on Education and the Workforce, June 12.