



## Health Policy Briefing

June 23, 2014

### Conferees Named in VA Reform Negotiations; Senate Stalls Appropriations Bills

#### House Acts on FY 2015 Appropriations Bills; Senate Stalls

Last week the House passed H.R. 4870, the fiscal year (FY) 2015 Department of Defense (DoD) Appropriations Act, which appropriates \$491 billion in discretionary budget authority (an increase of about \$4.1 billion) in accord with the House’s adherence to the \$1.014 trillion cap under the Bipartisan Budget Act of 2013 and Pathway for SGR Reform Act of 2013. In the Senate it was another story when **Majority Leader Harry Reid (D-NV)** halted consideration of H.R. 4660 which the Senate Appropriations Committee used to develop a “minibus” for three FY 2015 spending measures: Agriculture/Food and Drug Administration (FDA), Commerce/Justice/Science, and Transportation/House and Urban Development (HUD) agencies. The bill was pulled when agreement could not be reached on amendments that Republicans wanted to offer, including overturning the Environmental Protection Agency’s (EPA) rule on carbon pollution standards. Also, the House Appropriations Subcommittee on Financial Services and General Government released its FY 2015 appropriations bill which includes policy riders that, among other things, would deny funding for the implementation by the Internal Revenue Service (IRS) of the tax provisions of the Patient Protection and Affordable Care Act (PPACA) and require the U.S. Department of Treasury to submit monthly reports to Congress documenting how many individuals have not paid the full premium the preceding month for coverage under the law.

#### Health Legislation Considered by House Subcommittee

The House Energy and Commerce Health Subcommittee adopted the following bills, as amended, by voice vote, readying them for consideration by the full committee in July: H.R. 4771, the Anabolic Steroid Control Act ; H.R. 4250, the Sunscreen Innovation Act; H.R. 4701, the Vector-Borne Disease Research

*continued on page 2*

#### Inside

Conferees to Take Up Legislation Addressing VA Scandal.....	2
Sebelius Defends Health Reform and HHS Moves Forward on the Law.....	2
MedPAC Weighs In on ACO Program Shortcomings.....	3
Senate Finance Seeks Comments on Health Care Data Use.....	3
House E&C Health Subcommittee Hearing on MedPAC Recommendations.....	3
CMS Announces 5-Star Rating System for Hospitals.....	3
HHS Stays With Orphan Drug Discount Rule.....	3
FDA Issues.....	3
Upcoming Health-Related Hearings and Markups.....	4
Health Legislation Recently Introduced.....	4

*continued from page 1*

Accountability and Transparency Act; H.R. 669, the Sudden Unexpected Death Data Enhancement and Awareness Act; H.R. 594, the Paul D. Wellstone Muscular Dystrophy Community Assistance, Research and Education Amendments of 2013; and H.R. 4290, the Wakefield Act. In addition, the House of Representatives will take up under “suspension of the rules” the following health bills: H.R. 1098, the Traumatic Brain Injury Reauthorization Act; H.R. 1281, the Newborn Screening Saves Lives Reauthorization Act; H.R. 3548, the Improving Trauma Care Act of 2014; H.R. 4080, the Trauma Systems and Regionalization of Emergency Care Reauthorization Act; and H.R. 4631, the Autism CARES Act of 2014. In the Senate, Majority Leader Harry Reid (D-NV) gained approval to take up in the Senate legislation introduced by Sen. Mark Pryor (D-AR), S. 2491, that (1) would deny the use of budget reconciliation to change the eligibility for or benefits provided under the Medicare program; and (2) use a “sense of the Senate” provision to oppose raising the eligibility age for Medicare and privatizing the program.

### ***Conferees to Take Up Legislation Addressing VA Scandal***

**O**n Wednesday the House voted in favor of a motion to go to conference on H.R. 4810 and H.R. 3230, the Veterans’ Access to Care through Choice, Accountability and Transparency Act of 2014, which is bipartisan legislation introduced by Senators Sanders (I-VT) and McCain (R-AZ) that passed the Senate on a vote of 93 to 3. The Congressional Budget Office (CBO) estimated cost of the legislation, \$54 billion for the Senate bill and \$44 billion for the House bill, appears to be the major hurdle for the conferees to overcome. Under both bills CBO estimates that veterans will be able to access care in the private sector in significant numbers.

## **PPACA Health Reform Update**

### ***Sebelius Defends Health Reform and HHS Moves Forward on the Law***

**F**ormer U.S. Department of Health and Human Services (HHS) Secretary Kathleen Sebelius publicly denounced House Republicans and other opponents of the PPACA health reform law and the President followed suit in his video presentation to a conference designed to encourage enrollment. HHS reported in a brief labeled “Premium Affordability, Competition, and Choice in the Health Insurance Marketplace, 2014” that individuals receiving federal tax subsidies paid on average only \$69 per month for the silver plans they chose under the federal exchange. The Centers for Medicare and Medicaid Services (CMS) also released a new web-based program, From Coverage to Care, to assist individuals in understanding their health benefits and obtaining health care (among the documents is “A Roadmap to Better Care and a Healthier You”). Despite the above, Senators Orrin Hatch (R-UT) and Chuck Grassley (R-IA) released a report by the HHS federal exchange contractor stating that the agency was warned about the potential problems related to the HealthCare.gov website as early a year before its operation as well as the serious code defects only a month before it went online last October 1st. Republicans took another shot at the law’s risk corridor program at a House Oversight and Government Reform subcommittee hearing in which Senator Jeff Sessions (R-AL) testified in support of a Congressional Research Service (CRS) finding that the Administration does not have the authority to pay insurers under the program without further action by the Congress to enact explicit appropriations. Rep. Jim Jordan (R-OH) said that a survey of 48 insurers and cooperatives shows that about \$1 billion in payments will be made under the program this year. However, the Acting Director of the Center for Consumer Information and Insurance Oversight (CCIIO) testified that the Administration believes the program will ultimately be budget neutral and that, if not, HHS does have the authority under the law to collect user fees from insurers. Republicans also disputed the operability of a statement in the President’s FY 2015 budget to the effect that “such sums as may be collected from authorized user fees” may be credited to the risk corridor program and be available under expended. New HHS Secretary Sylvia Mathews Burwell also sent a letter citing the agency’s legal authority for such payments using a similar argument. In other PPACA actions, the IRS issued final regulations with respect to the law’s provisions allowing a 90-day waiting period if the employee is “otherwise eligible” to enroll in a plan before the 90 days begin (i.e. having met the plan’s substantive eligibility conditions such as being in an eligible job classification, achieving job-related licensure requirements or satisfying a reasonable and bona fide employment-based orientation period up to one month).

### *MedPAC Weighs In on ACO Program Shortcomings*

The Medicare Payment Advisory Commission (MedPAC) sent CMS a letter containing several recommendations to help the PPACA's accountable care organization (ACO) program overcome shortcomings through regulation and legislation. To improve the certainty of meeting ACO financial targets, MedPAC recommended that CMS improve beneficiary assignment and simplify quality measurements and the evaluation process. To strengthen program incentives, MedPAC said that ACOs should participate not only in shared savings but in financial risks under a two-sided payment model.

### *Medicare/Medicaid/PHSA Corner*

#### *Senate Finance Seeks Comments on Health Care Data Use*

Finance Committee Chairman Ron Wyden (D-OR) and Senator Chuck Grassley (R-IA) said they are seeking comments on the use of health care data that they say has great potential for use by consumers, providers and payers to improve choice and quality of care. They asked for comments on the following: what data should be made more publicly available; how the data should be presented to the public; what reforms should be undertaken to improve the accessibility and usability of data for consumers, payers and providers; and what the current obstacles preventing access to data are and what can be done to remove them. Responses are due by August 12th.

#### *House E&C Health Subcommittee Hearing on MedPAC Recommendations*

Ways and Means Health Subcommittee Chairman Kevin Brady (R-TX) said that the MedPAC report "will not just sit on a shelf" and that the various MedPAC recommendations will be considered for improvements to Medicare. The MedPAC report discussed the issue of having Medicare make the same payments for the same care across different sites of service and suggested that savings could be achieved if payments were equalized between skilled nursing facilities and inpatient rehabilitation facilities. This was disputed by a witness representing Inpatient Rehabilitation Facilities (IRFs). Members also discussed MedPAC's previously suggested benefit redesign as an alternative to the fee-for-service payment model. Ranking Democrat Jim McDermott (D-WA) said that any change should ensure that beneficiaries are protected from having to pay a higher share of costs than they do now. In related news, the House Energy and Commerce Committee released another White Paper as part of its "21st Century Cures" initiative which asks for comments on "the development a digital health care ecosystem" and the use of human genome data to provide personalized care. Comments are due by July 22, 2014.

#### *CMS Announces 5-Star Rating System for Hospitals*

CMS announced that it will add a so-called "five star" rating system for hospitals, home health agencies and dialysis providers under the agency's Hospital Compare, Dialysis Facility Compare and Home Health Compare websites.

#### *HHS Stays With Orphan Drug Discount Rule*

Despite a recent negative court ruling, HHS and the Health Resources and Services Administration (HRSA) issued a statement to the effect that they will continue to abide by final regulations which would allow 340B covered entities affected by the orphan drug exclusion to purchase orphan drugs at 340B prices when orphan drugs are used for indications other than treating the rare disease or condition for which the drug received an orphan designation.

#### *FDA Issues*

The FDA issued draft guidance which states that the agency will not enforce regulations on computer medical device data systems (MDDSs) used to store, display or collect medical data because they pose a low risk to patients. The agency also released two other draft guidance documents for drug and device manufacturers relating to the presentation of risk-benefit information and correcting third-party misinformation on social media.

## Upcoming Health-Related Hearings and Markups

**House Energy and Commerce Committee: will hold a roundtable titled “21st Century Cures Roundtable: Digital Health Care;” 10:00 a.m., 2123 Rayburn Bldg.; June 24.**

**House Energy and Commerce Oversight and Investigations Subcommittee: will hold a hearing titled “Medicare Program Integrity: Screening Out Errors, Fraud, and Abuse;” 10:00 a.m., 2123 Rayburn Bldg.; June 25.**

**Senate HELP Committee: will vote on legislation to reauthorize federal autism programs, a bill to amend the Employee Retirement Income Security Act of 1974, and nominations; 10:00 a.m., 430 Dirksen Bldg.; June 25.**

**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.R. 4875 (VETERANS’ HEALTH)**, to direct the secretary of veterans affairs to publish information on the provision of health care by the Department of Veterans Affairs, and for other purposes; **BOUSTANY**; to the Committee on Veterans’ Affairs, June 17.

**H.R. 4879 (DRUGS)**, to amend the Federal Food, Drug, and Cosmetic Act to provide for expedited review of drugs and biological products to provide safer or more effective treatment for males or females, to amend the Public Health Service Act to enhance the consideration of sex differences in basic and clinical research, and for other purposes; **COOPER**; to the Committee on Energy and Commerce, June 17.

**S. 2491 (MEDICARE)**, to protect Medicare under Title XVIII of the Social Security Act with respect to reconciliation involving changes to Medicare; **PRYOR**; read the first time, June 18.

**S. 2492 (ACCESS)**, to amend the Internal Revenue Code of 1986 to increase access for the uninsured to high quality physician care; **SCOTT**; to the Committee on Finance, June 18.

**H.R. 4887 (VETERANS’ HEALTH)**, to expand the research and education on and delivery of complementary and alternative medicine to veterans, and for other purposes; **BROWNLEY of California**; to the Committee on Veterans’ Affairs, June 18.

**H.R. 4888 (PEDIATRIC HEALTH)**, to provide for the identification and dissemination of best practices for medical professionals and other health-care providers relative to neonatal abstinence syndrome, and for other purposes; **CLARK of Massachusetts**; to the Committee on Energy and Commerce, June 18.

**H.R. 4896 (BUDGET)**, to prohibit congressional recesses until Congress adopts a concurrent resolution on the budget that results in a balanced federal budget by fiscal year 2024, and for other purposes; **RIBBLE**; to the Committee on Rules, and in addition to the Committee on the Budget, June 18.

**H.R. 4898 (VETERANS’ HEALTH)**, to amend Title 38, United States Code, to direct the secretary of veterans affairs to provide hospital care and medical services in non-department facilities for veterans waiting longer than 14 days for an appointment in a department facility, and for other purposes; **SINEMA**; to the Committee on Veterans’ Affairs, June 18.

**S. 2501 (MEDICARE)**, to amend Title XVIII of the Social Security Act to make improvements to the Medicare Hospital Readmissions Reduction Program; **MANCHIN**; to the Committee on Finance, June 19.

**H.R. 4900 (VETERANS’ HEALTH)**, to amend the Internal Revenue Code of 1986 to prevent veterans from being disqualified from contributing to health savings accounts by reason of receiving medical care for service-connected disabilities under programs administered by the Department of Veterans Affairs; **SAM JOHNSON of Texas**; to the Committee on Ways and Means, June 19.

## Health Legislation Recently Introduced

**H.R. 4917 (MEDICAL DEBT)**, to amend Title 11 of the U.S. Code to provide bankruptcy protections for medically distressed debtors, and for other purposes; SHEA-PORTER; to the Committee on the Judiciary, June 19.

**H.R. 4918 (PHARMACEUTICAL REVIEW)**, to require the Food and Drug Administration to expedite review of pharmaceuticals that are approved for marketing in the European Union; STIVERS; to the Committee on Energy and Commerce, June 19.

**H.R. 4920 (MEDICARE)**, to amend Title XVIII of the Social Security Act to require state licensure and performance guarantees for entities submitting bids under the Medicare durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) competitive acquisition program, and for other purposes; TIBERI; jointly, to the committees on Energy and Commerce and Ways and Means, June 19.

**H.RES. 631 (POST TRAUMATIC STRESS DISORDER)**, supporting the goals and ideals of Posttraumatic Stress Disorder Awareness Month; to the Committee on Oversight and Government Reform, June 19.