



## Health Policy Briefing

June 30, 2014

### Congress Recesses Leaving Appropriations Schedule & VA Reform Unfinished

#### *Congress to Return the Week of July 7th*

As members of Congress head to their 4th of July parades they left unresolved bi-chamber agreements on both important appropriations matters and the competing bills intended to rectify the long waiting times and other problems plaguing the Veterans Affairs (VA) health care system. The House and Senate conferees on the two versions of H.R. 3230, the “Veterans’ Access to Care through Choice, Accountability, and Transparency Act of 2014” do not appear to have reached agreement on a means to pay for the Congressional Budget Office (CBO) estimated cost of the legislation, between \$44 and \$50 billion per year, or to forgo seeking an offset and passing off the cost as “emergency spending”. As to appropriations, the **Senate Appropriations Chair Barbara Mikulski (D-MD)** may attempt to resuscitate the “minibus” consisting of the fiscal year (FY) 2015 Agriculture/Food and Drug Administration (FDA) and Commerce/Justice/Science and Transportation/ House and Urban Development (HUD) appropriations bills; although she said that she may attempt to bring to the Senate floor another combination of bills or possibly single bills such as the Military-Construction/VA bill already approved by the House. In any event it appears that the always controversial Labor/ Health and Human Services (HHS)/Education appropriations bill will be left to be taken up by means of a year-end omnibus bill or continuing resolution (CR) despite the intent of **House Appropriations Committee Chairman Harold Rogers (R-KY)** to have the House complete all twelve appropriations bills by the August recess. The House approved several health-related bills last week, including “Combating Autism” reauthorization legislation (H.R. 4631), and the Senate Health, Education, Labor and Pensions (HELP) Committee approved a similar autism reauthorization measure (S. 2449). The House also sent to the Senate the following bills:

H.R. 4080, the Trauma Systems and Regionalization of Emergency Care Reauthorization Act; H.R. 3548, the Improving Trauma Care Act of 2014; H.R. 1281, the Newborn Screening Saves Lives Reauthorization Act; and H.R. 1098, the Traumatic Brain Injury Reauthorization Act. The intent of Congress to seek a means to overhaul  
*continued on page 2*

#### *Inside*

Administration Issues PPACA Rules Clarifying Enrollment and Tax Credits.....	2
Senators Ask CMS to Reveal Changes to Medicare MD Payment Codes.....	2
Medicare Improper Payments Under Fire in House Hearing.....	2
House E&C Committee 21st Century Cures Roundtable on Health Data.....	3
MedPAC Concerned with Hospice Preauthorization of Part D Drugs.....	3
FDA Generic Drug Label Rule Contested.....	3
Health Legislation Recently Introduced.....	3

*continued from page 1*

future Medicare post-acute care payments was also demonstrated when **Senate Finance Committee Chairman Ron Wyden (D-OR)** and **House Ways and Means Committee Chairman Dave Camp (R-MI)** released a discussion draft of bipartisan legislation, the Improving Medicare Post-Acute Care (PAC) Transformation Act of 2014, which they said would standardize Medicare data so as to compare quality across PAC settings; improve hospital and PAC discharge planning; and, use such information to help reform PAC payments (via site neutral or bundled payments or some other reform) while ensuring continued beneficiary access to the most appropriate setting of care.

## PPACA Health Reform Update

### *Administration Issues PPACA Rules Clarifying Enrollment and Tax Credits*

**T**he U.S. Department of Health and Human Services (HHS) issued proposed rules that would allow those who enrolled under HealthCare.gov this year to continue their enrollment as long as they do not change their coverage choices or amount of tax credit subsidies. However, if individuals seek to change either one of the above they would have to again use the HealthCare.gov website or otherwise renew coverage through federal call centers or an insurance broker or application counselor. State-run exchanges can choose to follow the same rules or write their own rules for renewal. The Internal Revenue Service (IRS) also issued final regulations spelling out the rules when small employers (taxable and tax exempt) having 25 or fewer employees are entitled to tax credits when they pay at least 50% of the premiums for their covered employees.

## Medicare/Medicaid/PHSA Corner

### *Senators Ask CMS to Reveal Changes to Medicare MD Payment Codes*

**S**enators Johnny Isakson (R-GA), John McCain (R-AZ), John Thune (R-SD), Kay Hagen (D-NC) and seven others sent a letter to the Centers for Medicare and Medicaid Services (CMS) Administrator requesting that the agency be more “transparent” in resetting Medicare physician payment codes by including the modifications in the upcoming proposed Medicare Part B fee schedule rather than in the final rule so providers can better provide feedback and have more time to adjust to the changes.

### *Medicare Improper Payments Under Fire in House Hearing*

**A**t a House Energy and Commerce Oversight and Investigations Subcommittee hearing the Chairman, Tim Murphy (R-PA), expressed his displeasure that the Government Accountability Office (GAO) continues to include the nation’s health programs among the government’s “high-risk” programs with about \$50 billion in misspent payments in 2013 alone. He complained that providers can still participate in Medicare even if they have had a history of fraudulent activity. The recovery audit contractor (RAC) program also came under fire by several members for what they said was the cause for payment delays to their supplier constituents. Testimony was given that full funding for the Office of Inspector General (OIG) would greatly help the effort to combat Medicare fraud and GAO testified that greater use of prepayment claims review could help reduce improper payments. In related news, the HHS OIG published a special fraud alert which warns that laboratories that make payments to physicians to collect, process and package patient specimens or to establish databases to collect patient testing data could violate the Stark anti-kickback law.

## Medicare/Medicaid/PHSA Corner cont.

### *House E&C Committee 21st Century Cures Roundtable on Health Data*

Responding to the House Energy and Commerce Committee's White Paper seeking comments on "developing a digital health care ecosystem", the Food and Drug Administration (FDA) witness said that digital health data has to be accurate and reliable as well as interoperable with health information systems, and that the FDA tries to engage in "smart" regulation which means knowing when to just stay out of the way of new technologies when it makes sense to do so. The Cleveland Clinic witness also indicated that such data should be used to "seek out patients who need care, rather than waiting until they get an illness that brings them through our doors." The issue of FDA approval for the marketing of genetic testing services to individuals was discussed with several members indicating their concern with the privacy of this and other digital health information.

#### *MedPAC Concerned with Hospice Preauthorization of Part D Drugs*

The members of the Medicare Payment Advisory Commission (MedPAC) sent a letter to the CMS Administrator advising the agency to issue an improved regulatory proposal that would allow hospice patients to "obtain timely access to needed drugs even in the event of a dispute between the hospice and Part D plan over financial responsibility." Similar sentiments were relayed to CMS in letters from both House and Senate members. The current CMS policy to require prior authorization for all drugs for hospice patients was originally instituted to rectify the inappropriate billing that had preceded the rule.

#### *FDA Generic Drug Label Rule Contested*

Senator Lamar Alexander (R-TN) and Rep. Bob Goodlatte (R-VA) sent a letter to the Office of Management and Budget (OMB) saying that the rule on generic drug label updates recently proposed by the FDA should be given a renewed cost-benefit analysis in that they contend that the proposed rule fails to take into consideration litigation-associated costs and raises novel legal and policy issues.

## Health Legislation Recently Introduced

**H.R. 4930** (MEDICAID/CHIP), to amend titles XIX and XXI of the Social Security Act to provide states with the option of providing services to children with medically complex conditions under Medicaid and the Children's Health Insurance Program through a care coordination program focused on improving health outcomes for children with medically complex conditions and lowering costs, and for other purposes; BARTON; to the Committee on Energy and Commerce, June 20.

**H.R. 4942** (VETERANS' HEALTH), to amend Title 38, U.S. Code, to increase the number of graduate medical education residency positions at hospitals administered by the secretary of veterans affairs; TITUS; to the Committee on Veterans' Affairs, June 23.

**H. RES. 640** (DISABILITY AWARENESS), supporting the goals and ideals of Helen Keller Deaf-Blind Awareness Week; TAKANO; to the Committee on Education and the Workforce, June 23.

**S. 2515** (MEDICAID), to ensure that Medicaid beneficiaries have the opportunity to receive care in a home and community-based setting; HARKIN; to the Committee on Finance, June 24.

**H.R. 4944** (PARASITIC DISEASE), to require the submission of a report to the Congress on parasitic disease among poor Americans; JOHNSON of Georgia; to the Committee on Energy and Commerce, June 24.

**H.R. 4951** (RURAL HEALTH), to provide incentives to physicians to practice in rural and medically underserved communities, and for other purposes; BERA; to the Committee on the Judiciary, June 24.