



## Health Policy Briefing

June 9, 2014

### Senate Confirms New HHS Secretary; House to Take Up VA and FY 2015 FDA Bill

#### *Secretary Burwell to Assume Duties Monday*

With the Senate having voted 78-17 to confirm the nomination of **Sylvia Mathews Burwell** to become the next Secretary of the Department of Health and Human Services (HHS), Ms. Burwell will assume her position on Monday, June 9 after her swearing in ceremony.

#### *Congress to Quickly Address VA Waiting List and Administrative Problems*

Last Thursday the **Senate Veterans' Affairs (VA) Committee Chairman Bernie Sanders (I-VT)** and **Senator John McCain (R-AZ)** announced that a bipartisan agreement has been reached on legislation to address the various problems facing the VA. The legislation is said to contain various accountability measures, including new authority for the VA Secretary to immediately fire VA officials for cause; the hiring of new doctors and nurses; and allowing patients who experience long waiting times (or who reside beyond 40 miles from a VA facility) to seek alternative and private care; and the authorization of funding for 26 new VA major medical facilities. The firing authority to be contained in the bill may obviate the need for the Senate to consider the House-passed bill, H.R. 4031, which is still pending in the Senate. A hearing on the legislation is expected soon after the bill is introduced and little opposition is expected to be mounted over the cost of the bill; although, the Senate may follow up the vote on the bipartisan Sanders/McCain bill with a somewhat revised Military Construction/VA appropriations bill. The House has also scheduled for Tuesday a vote on H.R. 2072, the Demanding Accountability for Veterans Act, which would require the VA Inspector General (IG), upon determining that the VA Secretary has not appropriately responded to an IG report that recommends actions to be taken by the Secretary to address a VA public health or safety issue, to notify the Secretary and the congressional veterans committees of such failure and require the Secretary to: (1) within 15 days after such notification, to submit to the IG a list of the names of each responsible VA manager and the matter for which the manager is responsible; (2)

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within 7 days after such submission, to notify each such manager of the covered issue; (3) to direct such manager to resolve the issue, (4) to provide the manager with appropriate counseling and a mitigation plan for resolving the issue; and (5) to ensure that a manager's performance review includes an evaluation of actions taken with respect to such issue. The bill would also prohibit the Secretary from paying a bonus or award to any manager whose issue remains unresolved.

### ***Appropriations Matters***

**T**he House of Representatives is scheduled on Tuesday to vote on H.R. 4800, the fiscal year (FY) 2015 Agriculture, Rural Development, Food and Drug Administration (FDA) and Related Agencies Appropriations Act which provides the FDA with \$4.5 billion in total funding (\$2.6 billion in discretionary funding which is an increase of \$23 million over FY 2014). To expedite the consideration of appropriations bills in the Senate this month, the Appropriations Committee Chair Barbara Mikulski (D-MD) is seeking to cluster several FY 2015 spending bills into "minibuses" which could include the Agriculture/FDA bill, as was the case for the FY 2012 spending bill.

## **PPACA Health Reform Update**

### ***Eligibility of Many PPACA "Enrollees" Still in Doubt***

**H**HS gave notice that individuals who are required to submit additional information to verify their eligibility while enrolling under the HealthCare.gov website during open enrollment have 90 days to comply, while those who were given an extended period for enrollment will have their compliance period extended in a similar fashion. The House Energy and Commerce Committee also said that documents show that up to 4 million individuals may have outstanding problems with their applications with respect to income, citizenship and other issues. HHS warned that, without sufficient proof of eligibility, up to 2.1 million applicants will have their coverage terminated. The process HHS uses is still reported to be a manual one. The issue will be aired on Tuesday by two House Ways and Means subcommittees. The problems that seven state-based health insurance exchanges have had also came under fire from Republicans on the House Energy and Commerce Committee. The committee has asked HHS for information on the extent to which the agency supervised the state marketplaces while awarding them \$1.3 billion in Patient Protection and Affordable Care Act (PPACA) start-up funds. The chairman of the House Small Business Committee also sent a letter to the Center for Medicare and Medicaid Services (CMS) to obtain information related to the enrollment of individuals under the SHOP program (Small Business Health Options Program). CMS also released figures showing that an additional 6 million individuals were enrolled under Medicaid and the Children's Health Insurance Program (CHIP) than before the open enrollment season began. However, the Administration's relaxation of the rules for meeting the PPACA's exemption from the individual mandate has led the Congressional Budget Office (CBO) to reduce its estimate of the number of non-compliers from 4 million to 2 million which is expected to reduce Internal Revenue Service (IRS) penalty collections to about \$4.2 billion in 2016.

## **Medicare/Medicaid/PHSA Corner**

### ***Medicaid AMP Figures Delayed***

**C**MS gave notice that it is still in the process of formulating guidance for the states in connection with the determination of the final Medicaid average manufacturer price (AMP) federal upper limits (so-called FULs). Pending notice to the states, the agency will delay giving a new date when the maximum Medicaid reimbursement rate for multiple-source drugs will be provided to pharmacies and other affected parties. Senators Mark Warner (D-VA) and Johnny Isakson (R-GA) have urged HHS to allow a one-year transition period for states to fully implement the federal upper limits.

## Medicare/Medicaid/PHSA Corner cont.

### *Republicans Question ONC Authority for Safety Center*

Chairman Fred Upton (R-MI) and other House Energy and Commerce Republicans sent a letter to the Office of the National Coordinator for Health Information Technology (ONC) asking for information about the statutory authority that the agency used to request FY 2015 funding to establish a Health IT Safety Center and collect user fees from electronic health record vendors. They also questioned the agency's authority to participate in health IT regulatory activities with the Food and Drug Administration (FDA) and the Federal Communications Commission (FCC). The ONC has also publicized its proposed ten-year plan to coordinate federal agency and marketplace efforts which transcend the current meaningful use program to better share health information for the use in clinical and public health decision making. The goal for the first three years will be to improve the interoperability of existing systems and data exchange among vendors to aid patients and providers in care coordination.

### *HHS Alerts CHCs to New Funding*

HHS has given notice to community health centers (CHCs) that they have until July 1st to apply for up to \$300 million in additional PPACA funding to assist in expanding their primary care medical capacities in underserved communities.

### *Medicare Coverage of Screenings for HCV*

CMS issued a coverage decision memorandum stating that Medicare will cover FDA-approved screenings for hepatitis C virus (HCV) in adults at "high risk" of infection and for Medicare-eligible adults born between 1945 and 1965 who are not at high risk.

## Upcoming Health-Related Hearings and Markups

*House Energy and Commerce Committee: will mark up pending legislation, including: HR 4299 — A bill to amend the Controlled Substances Act with respect to drug scheduling recommendations by the HHS secretary, and with respect to registration of manufacturers and distributors seeking to conduct clinical testing; HR 4709 — Ensuring Patient Access and Effective Drug Enforcement Act; and HR 4631 — A bill to reauthorize certain provisions of the Public Health Service Act relating to autism; 4:00 p.m., 2123 Rayburn Bldg.; June 9 and 10:00 a.m., June 10.*

*House Ways and Means Health and Oversight Subcommittees: will hold a joint hearing on the verification system for income and eligibility for tax credits under the 2010 health care law; 10:30 a.m., 1100 Longworth Bldg.; June 10.*

*Senate Appropriations Labor, Health and Human Services, Education and Related Agencies Subcommittee: will mark up the FY 2015 appropriations bill for Labor, Health and Human Services, and Education, and Related Agencies; 2:30 p.m., 124 Dirksen Bldg.; June 10.*

*House Energy and Commerce Health Subcommittee: will hold a hearing titled "21st Century Cures: Examining the Role of Incentives in Advancing Treatments and Cures for Patients;" 10:00 a.m., 2322 Rayburn Bldg.; June 11.*

*House Energy and Commerce Health Subcommittee will hold a hearing on the 2010 health care law, its mandates and its effect on physician and prescription drug access, 10:00 a.m., 2123 Rayburn Bldg.; June 12.*

*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. 4755** (MEDICARE), to amend Title XVIII of the Social Security Act to include recreational therapy among the therapy modalities that constitute an intensive rehabilitation therapy program in an inpatient rehabilitation hospital or unit; THOMPSON of Pennsylvania; to the Committee on Ways and Means, May 29.

**H.R. 4759** (VETERANS' HEALTH), to direct the secretary of veterans affairs to carry out a pilot program under which eligible veterans may elect to receive hospital care and medical services at non-Department of Veterans Affairs facilities, and for other purposes; LOBIONDO; to the Committee on Veterans' Affairs, May 29.

**H.R. 4760** (VETERANS' HEALTH), to amend Title 38, U.S. Code, to improve the ability of veterans to receive health care at private medical facilities; RIBBLE; to the Committee on Veterans' Affairs, May 29.

**H.R. 4762** (MEDICARE), to amend Title XVIII of the Social Security Act to cover transitional care services to improve the quality and cost effectiveness of care under Medicare; BLUMENAUER; jointly, to the committees on Energy and Commerce and Ways and Means, May 29.

**H.R. 4765** (CHILDREN'S OBESITY), to address childhood obesity, and for other purposes; FUDGE; jointly, to the committees on Energy and Commerce, Agriculture, Education and the Workforce, the Judiciary, Financial Services and Natural Resources, May 29.

**H.R. 4766** (VETERANS' HEALTH), to prohibit the secretary of veterans affairs from paying bonuses to certain employees of the Department of Veterans Affairs until the backlog of disability claims is resolved, to establish a commission to evaluate such backlog and for other purposes; GARDNER; jointly, to the committees on Veterans' Affairs and Armed Services, May 29.

**H.R. 4771** (ANABOLIC STEROIDS), to amend the Controlled Substances Act to more effectively regulate anabolic steroids; PITTS; jointly, to the committees on Energy and Commerce and the Judiciary, May 29.

**H.R. 4774** (VETERANS' HEALTH), to require accountability in the Veterans Health Administration; STOCKMAN; to the Committee on Veterans' Affairs, May 29.

**H.R. 4775** (TAXATION), to amend the Internal Revenue Code of 1986 to exempt certain educational institutions from the employer health insurance mandate, and for other purposes; MESSER; jointly, to the committees on Ways and Means and Education and the Workforce, May 30.

**H.R. 4777** (HEALTH SAVINGS ACCOUNTS), to amend the Internal Revenue Code of 1986 to modify rules relating to health savings accounts; BURGESS; jointly, to the committees on Ways and Means and the Judiciary and Energy and Commerce, May 30.

**H.R. 4779** (VETERANS' HEALTH), to amend Title 38, U.S. Code, to ensure that veterans who experience extended waiting times for appointments at medical facilities of the Department of Veterans Affairs may receive care at non-department facilities; DENHAM; to the Committee on Veterans' Affairs, May 30.

**H.R. 4780** (MEDICARE), to amend Title XVIII of the Social Security Act to provide for a five-year extension of the rural community hospital demonstration program; YOUNG of Alaska; to the Committee on Ways and Means, May 30.

**H.R. 4781** (MEDICARE), to amend Title XVIII of the Social Security Act to provide payment under Part A of Medicare on a reasonable cost basis for anesthesia services furnished by an anesthesiologist in certain rural hospitals in the same manner as payments are provided for anesthesia services furnished by anesthesiologist assistants and certified registered nurse anesthetists in such hospitals; JENKINS; to the Committee on Ways and Means, May 30.

**H.R. 4783** (MENTAL HEALTH), to protect individuals by strengthening the nation's mental health infrastructure, improving the understanding of violence, strengthening firearm prohibitions and protections for at-risk individuals and improving and expanding the reporting of mental health records to the National Instant Criminal Background Check System; THOMPSON of California; jointly, to the committees on the Judiciary and Energy and Commerce, May 30.

## Health Legislation Recently Introduced cont.

**S. 2413** (VETERANS' HEALTH), to improve the provision of medical services and benefits to veterans, and for other purposes; SANDERS; to the Committee on Veterans' Affairs, June 2.

**H.R. 4796** (QUALIFIED HEALTH PLANS/MEDICAID), to direct the secretary of health and human services to conduct outreach efforts to provide certain health insurance information to individuals enrolled in qualified health plans offered through an exchange established under Title I of the Affordable Care Act or state plans under Medicaid under Title XIX of the Social Security Act, and for other purposes; JACKSON LEE; to the Committee on Energy and Commerce, June 2.

**H.R. 4798** (ALZHEIMER'S DISEASE), to authorize the secretary of health and human services to award grants for Alzheimer's disease research; ISRAEL; to the Committee on Energy and Commerce, June 2.

**S. 2422** (VETERANS' HEALTH), to improve the access of veterans to medical services from the Department of Veterans Affairs and for other purposes; SANDERS; read the first time June 3.

**S. 2423** (VETERANS' HEALTH), to improve wait times for appointments for hospital care, medical services and other health care from the Department of Veterans Affairs, to improve accountability of employees responsible for long wait times for such appointments and for other purposes; SHAHEEN; to the Committee on Veterans' Affairs, June 3.

**S. 2424** (VETERANS' HEALTH), to provide veterans with the choice of medical providers and to increase transparency and accountability of operations of the Veterans Health Administration of the Department of Veterans Affairs, and for other purposes; MCCAIN; to the Committee on Veterans' Affairs, June 3.

**S. 2425** (VETERANS' HEALTH), to require the secretary of veterans affairs to carry out a pilot program to reduce the shortage of psychiatrists in the Veterans Health Administration of the Department of Veterans Affairs by repaying loans for certain psychiatrists, to carry out a pilot program to provide housing allowances to health-care providers of the Veterans Health Administration who accept assignment at rural and highly rural clinics, and for other purposes; BEGICH; to the Committee on Veterans' Affairs, June 4.

**S. 2430** (REFORM), to establish the Office of the Special Inspector General for Monitoring the PPACA, and for other purposes; ROBERTS; to the Committee on Health, Education, Labor and Pensions, June 4.

**S. 2434** (ACCESS), to amend the Internal Revenue Code of 1986 to ensure that working families have access to affordable health insurance coverage; FRANKEN; to the Committee on Finance, June 5.

**S. 2437** (LIFE SCIENCE), An original bill making appropriations for Departments of Commerce and Justice, and Science, and Related Agencies for the fiscal year ending Sept. 30, 2015, and for other purposes; from the Committee on Appropriations; MIKULSKI; placed on the calendar, June 5.

**S. 2446** (REFORM), to require the Congressional Budget Office to annually report changes in direct spending and revenue associated with the PPACA; JOHNSON of Wisconsin; the Committee on the Budget, June 5.

**H.R. 4805** (REFORM), to delay the provision of the PPACA premium and cost-sharing subsidies until the eligibility verification process for such subsidies is completed, and for other purposes; BLACK; jointly, to the committees on Energy and Commerce and Ways and Means, June 5.