



## Health Policy Briefing

July 1, 2013

### GOP/Democrats Remain at Odds over Health Issues/Appropriations

#### *Immigration Reform Passes Senate*

Before Congress recessed for the July 4th recess, the Senate voted 68-32 to pass S. 744, immigration reform legislation that would authorize billions in new funding to strengthen border security and provide a new legal roadmap for illegal immigrants to earn citizenship. Three new categories of immigration status would be created: registered provisional immigrants (RPIs); “blue card” farm workers; and “non-immigrant” V-visa status for individuals whose family members have filed immigrant visa petitions on their behalf. However, individuals obtaining such status would not be eligible immediately for federal health benefit entitlements under Medicaid, the Children’s Health Insurance Program (CHIP), and the Patient Protection and Affordable Care Act (PPACA). In general, RPIs would have to wait for a minimum of 10-15 years to obtain lawful permanent resident status or full citizenship to be eligible for federal subsidized health coverage under such programs. Nonetheless, RPIs would be able to obtain non-subsidized coverage in PPACA health insurance exchanges. **House Speaker John Boehner (R-OH)** said the bill was “dead

on arrival” in the House which he said will proceed to mark up several incremental reform bills instead. The divide in the House and Senate over immigration reform is also present with respect to the outstanding appropriations spending bills. The House is poised to take up H.R. 2410, the Agriculture/Food and Drug Administration (FDA) fiscal year (FY) 2014 appropriations bill, when it returns during the week of July 8th.

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## ***Veterans' Legislation Advances***

**T**he House Veterans' Affairs Subcommittee on Oversight and Investigations unanimously passed several health-related bills last week: H.R. 1792, legislation that would require the Veterans Administration (VA) to disclose all cases of certain infectious diseases diagnosed at VA health facilities in accordance with state law and allow state fines to apply for such failures; and H.R. 1490, legislation that direct to VA to develop regulations, with several exceptions for MRIs and ultrasound procedures, ensuring that VA patients cannot be subject to "visual recording" during their treatment without their informed consent or under specific circumstances such as a court order.

## **PPACA Health Reform Update**

### ***Republicans Continue Attacks on PPACA as Businesses Ask for Law's Delay***

**A**t a hearing last week on the PPACA held by the House Energy and Commerce Oversight and Investigations Subcommittee, representatives of the U.S. Chamber of Commerce, the National Retail Federation and the National Federation of Independent Businesses testified that Congress should take action to delay the implementation of the PPACA, particularly as its provisions relate to employer-sponsored group health plans (such as the broad definition of minimum "essential health benefits"). In general, many business organizations are urging Congress to change the definition of "full-time employee" from 30 hours to 40 hours in order to head off what they say could be a move by businesses to reduce employee work hours below 30 to avoid the employer health coverage mandate. Of note, former Centers for Medicare and Medicaid Services (CMS) Administrator Mark McClellan discussed a report, "Health Care Solutions from America's Business Community: The Path Forward for U.S. Health Reform," which includes recommendations for more flexibility for group health plans under the PPACA to achieve greater value in health care, more affordable coverage options and greater access to higher quality, prevention-oriented care. In addition, Republicans on the House Ways and Means Committee sent a letter to Department of Health and Human Services (HHS) Secretary Kathleen Sebelius asking for a response by July 12th as to how the agency will ensure that an individual's personal and health information will be protected in the Federal Data Services Hub that will be established to implement PPACA health insurance exchanges/marketplaces expected to begin operations in October.

### ***HHS Says Exchanges Will be Open for Enrollment on Time***

**C**MS announced that the HealthCare.gov website has been updated to contain new consumer information and features and that a 24-hour toll-free marketplace call center will be available to provide consumers with educational information until October 1st when the call center will begin assisting them with plan selection and the completion of applications. HHS will soon provide community health centers with \$150 million in grants to help with PPACA outreach and enrollment. In August, \$54 million in grants will be awarded to "navigators" who will assist people in enrolling under the federal backup exchange. HHS also announced that over 120 health insurers have indicated their interest in participating in the federally operated online marketplaces opening for enrollment on October 1st. Although HHS does not have the authority to reject proposed insurer rates, plans proposing "outlier" rates will be referred to state insurance departments for any actions that they may seek to take under state law.

## PPACA Health Reform Update cont.

### *Final Individual Mandate Rules Issued*

**H**HS issued a final rule, Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions (CMS-9958-F), which sets forth the “shared responsibility” requirements that individuals obtain ‘minimum essential coverage’ (MEC) or be subject to a “shared responsibility payment” assessed by the Internal Revenue Service (IRS). Exemptions allowed under the rule (e.g. for individuals offered coverage that is “unaffordable”, for individuals who would be Medicaid eligible in states not expanding Medicaid under the PPACA, for individuals not offered MEC by their employer, and for other case-by-case hardships) will result in an estimated 24 million individuals choosing to forego health coverage. For purposes of the rule, the definition of MEC includes the following statutory categories: employer-sponsored coverage (including COBRA coverage and retiree coverage); coverage purchased in the individual market; Medicare Part A coverage; Medicaid coverage; CHIP coverage; some types of veterans health coverage; the TRICARE health care program for members of the military; coverage for Peace Corps volunteers; and the non-appropriated fund health benefit program of the Department of Defense; and the following non-statutory categories: Medicare Advantage plans; refugee medical assistance; self-funded student health coverage with plan years beginning in 2013; and other categories that may be designated by HHS. The agency also released “Guidance on Hardship Exemption Criteria and Special Enrollment Periods, which will be applied under the federally facilitated marketplaces operating in the 33 states electing not to establish their own exchange. Exemptions from the shared responsibility payment for uninsured individuals otherwise eligible under the Federally-facilitated Exchanges (FFE) include: persons with household income below the tax filing threshold; those who cannot afford coverage; individuals who experience a hardship, a short coverage gap, are incarcerated, or are not lawfully present; and members in a health care sharing ministry or in certain religious sects. The IRS/Treasury also released related guidance on the determination of individual eligibility for premium tax credits when health coverage is obtained in a state health insurance exchange or the federal FFE (whether the tax credits under the FFE are lawful is still being contested by congressional Republicans and other parties). The IRS also proposed rules requiring health insurance marketplaces to report certain information (e.g. personal identifiers, plan chosen and related premiums, etc.) to the IRS with respect to the premium tax credits for which an individual may be eligible (i.e. when income is 100-400% of the federal poverty level). The IRS also released additional guidance providing transitional relief from the shared responsibility payment for individuals in plans with plan years ending in 2014.

### *CMS Rules on Privacy*

**A**s reported above, Republicans have raised concerns regarding the possible breach of identity and medical information in connection with health insurance exchanges and their navigators. In this connection, CMS has issued proposed rules that federally facilitated exchanges (FFE), state exchanges and non-exchange entities associated with FFEs and state exchanges should have written policies and procedures for handling and reporting data breaches, including the means by which they would protect the privacy and security of consumers’ personally identifiable information. Comments are due by July 19th.

### *Final Coverage Rules on Contraception Services*

**T**he IRS, Department of Labor and HHS issued final rules which require health insurers to cover certain contraception services with no cost sharing. The agencies said that the rules provide for an “accommodation” for nonprofit religious organizations, such as hospitals and universities affiliated with religious groups that object to contraceptive coverage. While such organizations would not have to contract or pay for such coverage, the insurer must include such coverage at no cost in the policy issued. For self-insured plans, the nonprofit religious organization must provide notice to its third party administrator that it objects to contraceptive coverage and the administrator must then notify plan participants that it is providing separate no-cost contraceptive coverage. A “religious employer” as defined under the Internal Revenue Code, such as a church, is exempt from the mandate.

## Medicare/Medicaid/Public Health Services Corner

### *Doc Fix Markup in House Set for July*

Republicans on the House Energy and Commerce (E&C) Committee released a new draft of legislation designed to replace the current Medicare physician payment “sustainable growth rate” (SGR) formulation. Health Subcommittee Chairman Joe Pitts said the intent is to deal with the problem now, first in a July markup, and to avoid having to continually make annual fixes. In general, the proposal would replace the current system with an enhanced fee-for-service system, while allowing providers to opt out and participate in alternative payment models that would be first evaluated by HHS contractors via 3-year demonstration programs. House Ways and Means Chairman Dave Camp (R-MI) called the E&C draft an important step and said he would work with the other committee to make a long-term solution a reality. It is expected that the committees will develop a means to offset the \$139 billion ten-year cost of the legislation before it reaches the House floor.

### *House Energy and Commerce Health Legislative Agenda*

The House Energy and Commerce Health Subcommittee Chairman Joe Pitts (R-PA) announced at a Friday hearing that the subcommittee will likely take up another set of three health bills this summer, either individually or en block. H.R. 1416 would target sequestration by eliminating such cuts from applying to Medicare’s reimbursement of Part B physician-administered drugs, including cancer drugs. The bill sponsor, Rep. Renee Ellmers (R-NC), said the cuts were an “unintended consequence” of the Budget Control Act (BCA), but Democrats said that it only illustrates the need to eliminate sequestration entirely. H.R. 1428 is legislation that would provide Medicare coverage for immunosuppressive drugs for kidney transplant recipients beyond the 36 months allowed under current law. Witnesses said there is no rationale for the limit and said removing the limit could help contain the costs, including re-transplantation, that transplant recipients incur when they cannot afford to continue House/Senate Hearings Focus on Medicare Reforms manufacturers extend to wholesalers in the calculation of a drug’s average sales price (ASP).

### *House/Senate Hearings Focus on Medicare Reforms*

At a House Energy and Commerce Health Subcommittee hearing, “A 21st Century Medicare: Bipartisan Proposals to Redesign the Program’s Outdated Benefit Structure,” witnesses said that the program lacks catastrophic cost protections while permitting comprehensive Medigap coverage that serves to dissuade Medicare beneficiaries from being cost conscious. They suggest reforms that strike a better balance between better financial protection and preserving incentives to consume care wisely. While some suggest combining the Medicare Part A and B deductibles, it was said that such a unified deductible could increase costs for 71% of beneficiaries, including those without a hospital inpatient stay. At a Senate Finance Committee hearing, “Health Care Quality: The Path Forward,” Chairman Max Baucus (D-MT) questioned whether Medicare needs to use 1,100 different quality measures to assess provider performance. Witnesses said that the current system for measuring quality is inadequate and fails to align the measures among different medical practices, lacks clear goals and could be improved by focusing more on patient-reported experience and treatment outcomes. Senator Orrin Hatch (R-UT) said the collection of data to assess quality needs to be as streamlined as much as possible and should be an outgrowth of routine clinician workflow. Witnesses said a consensus is needed to make the improvements necessary and that reform of the Medicare physician payment SGR system would offer a vehicle for the needed changes.

**Medicare/Medicaid/Public Health Services Corner cont.*****Senate Oversight of RAC and Medicare Drug Abuse***

**A**t another Senate Finance Committee hearing, the Medicare Recovery Audit Contractor program (RAC) came under fire for overburdening hospitals and physicians. The Senate Committee on Homeland Security & Governmental Affairs held a hearing focused on “Curbing Prescription Drug Abuse in Medicare”. The HHS Office of the Inspector General presented findings of a review which summarizes that prescription drug abuse is an epidemic being subsidized by taxpayers and that Medicare Part D paid more than \$5 million for prescriptions not ordered by authorized prescribers. Witnesses from the OIG and DEA agreed that the Part D program needs more oversight to protect patient safety and address fraud and abuse. Members were in agreement that the OIG recommendations to prevent abuse should be quickly implemented.

***Medicare HHA Payments to Decrease  
in CY 2014***

**C**MS issued a proposed rule under which Medicare payments to home health agencies (HHA) would decrease by 1.5%, about \$290 million, in CY 2014. The rule also makes changes to the quality reporting system. Comments are due by August 26.

***CMS Rule to Coordinate Hospice/LTC***

**C**MS issued a final rule which intends to improve the coordination between hospices and long-term care hospitals to eliminate duplication and conflicting services beginning August 26th. The rule revises the qualification requirements for skilled nursing facilities and nursing facilities and requires long-term care (LTC) facilities to develop a written agreement with a hospice if a resident elects to receive hospice care.

***Dual-Eligible Grants***

**C**MS announced \$12 million in grants under which states may participate in a new ombudsmen program to help enrollees who are to receive care in 2014 through the CMS Financial Alignment Initiative (which will test new methods to deliver care and cut expenditures for Medicare/Medicaid dual-eligibles).

***Physician Compare Website Updated***

**C**MS announced that it has redesigned its Physician Compare website to make it easier for patients to find the information they are seeking, including information on the specialties offered by doctors and group practices; whether a physician is using electronic health records; what, if any, board certifications the doctor has; and whether the physician is affiliated with hospitals and other health care professionals.



## Health Legislation Recently Introduced

**S. RES. 182** (DENTAL HYGIENE), congratulating the American Dental Hygienists' Association on the 100th anniversary of the profession of dental hygiene and commending its work to improve the oral health of the people of the United States; CARDIN; considered and agreed to, June 21.

**S. 1220** (MEDICARE), to amend Title XVIII of the Social Security Act to preserve access to rehabilitation innovation centers under Medicare; KIRK; to the Committee on Finance, June 25.

**S. 1223** (DISEASE RESEARCH), to amend the Public Health Service Act to expand and intensify programs of the National Institutes of Health and the Centers for Disease Control and Prevention with respect to translational research and related activities concerning cavernous angioma, and for other purposes; UDALL of New Mexico; to the Committee on Health, Education, Labor, and Pensions, June 26.

**S. 1228** (MEDICARE), to establish a program to provide incentive payments to participating Medicare beneficiaries who voluntarily establish and maintain better health; WYDEN; to the Committee on Finance, June 26.

**H.R. 2476** (TAXATION), to amend the Internal Revenue Code of 1986 to allow a \$1,000 refundable credit for individuals who are bona fide volunteer members of volunteer firefighting and emergency medical service organizations; HANNA; to the Committee on Ways and Means, June 24.

**H.R. 2477** (MEDICARE), to amend Title XVIII of the Social Security Act to provide for coverage of cancer care planning and coordination under Medicare; CAPPES; jointly, to the committees on Energy and Commerce and Ways and Means, June 25.

**H.R. 2480** (PATIENT HANDLING), to direct the secretary of labor to issue an occupational safety and health standard to reduce injuries to patients, nurses, and all other health care workers by establishing a safe patient handling, mobility, and injury prevention standard, and for other purposes; CONYERS; jointly, to the committees on Education and the Workforce, Energy and Commerce, and Ways and Means, June 25.

**H.R. 2484** (PHYSICIANS), 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 25.

**H.R. 2500** (MEDICARE), to amend Title XVIII of the Social Security Act to modernize payments for ambulatory surgical centers under Medicare, and for other purposes; NUNES; jointly, to the committees on Energy and Commerce and Ways and Means, June 25.

**H.R. 2504** (MEDICARE), to amend Title XVIII of the Social Security Act to ensure more timely access to home health services for Medicare beneficiaries under Medicare; WALDEN; jointly, to the committees on Ways and Means and Energy and Commerce, June 26.

**H.R. 2519** (VETERANS' HEALTH), to direct the secretary of state, the secretary of health and human services, and the secretary of veterans affairs to provide assistance for individuals affected by exposure to Agent Orange, and for other purposes; LEE of California; jointly, to the committees on Veterans' Affairs, Energy and Commerce, and Foreign Affairs, June 26.

**H.R. 2521** (DISEASE RESEARCH), to amend the Public Health Service Act to expand and intensify programs of the National Institutes of Health and the Centers for Disease Control and Prevention with respect to translational research and related activities concerning cavernous angioma, and for other purposes; BEN RAY LUJÁN of New Mexico; to the Committee on Energy and Commerce, June 26.

**H.R. 2524** (MEDICARE), to establish a program to provide incentive payments to participating Medicare beneficiaries who voluntarily establish and maintain better health; PAULSEN; jointly, to the committees on Ways and Means and Energy and Commerce, June 26.

**S. 1239** (DISEASE RESEARCH AND AWARENESS), to expand the research and awareness activities of the National Institute of Arthritis and Musculoskeletal and Skin Diseases and the Centers for Disease Control and Prevention with respect to scleroderma, and for other purposes; GILLIBRAND; to the Committee on Health, Education, Labor and Pensions, June 27.

## Health Legislation Recently Introduced cont.

**S. 1244** (APPROPRIATIONS), original bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending Sept. 30, 2014, and for other purposes; PRYOR; from the Committee on Appropriations; placed on the calendar, June 27.

**S. 1247** (CHILDREN'S HEALTH), to improve and enhance research and programs on childhood cancer survivorship, and for other purposes; REED; to the Committee on Health, Education, Labor and Pensions, June 27.

**S. 1251** (CANCER PROGRAMS), to establish programs with respect to childhood, adolescent, and young adult cancer; REED; to the Committee on Health, Education, Labor and Pensions, June 27.

**S. 1255** (VETERANS' HEALTH), to amend the Internal Revenue Code of 1986 to provide for a deduction for travel expenses to medical centers of the Department of Veterans Affairs in connection with examinations or treatments relating to service-connected disabilities; HELLER; to the Committee on Finance, June 27.

**S. 1256** (PHARMACEUTICALS), to amend the Federal Food, Drug, and Cosmetic Act to preserve the effectiveness of medically important antimicrobials used in the treatment of human and animal diseases; FEINSTEIN; to the Committee on Health, Education, Labor and Pensions, June 27.

**S. 1265** (MEDICARE), to amend Title XVIII of the Social Security Act to delay the implementation of round 2 of the Medicare DMEPOS Competitive Acquisition Program for competitive acquisition areas in Tennessee, and for other purposes; ALEXANDER; to the Committee on Finance, June 27.

**H.R. 2545** (MEDICARE), to amend Title XVIII of the Social Security Act to provide for an expert advisory panel regarding relative value scale process used under the Medicare physician fee schedule, and for other purposes; MCDERMOTT; jointly, to the committees on Energy and Commerce and Ways and Means, June 27.