



Health Policy Briefing

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Congress Passes Veterans' Health Reform Legislation Before Recessing for Five Weeks

Congress Approves Veterans' Health Reform Legislation

President Obama said he will sign into law H.R. 3230, the *Veterans' Access to Care Through Choices, Accountability, and Transparency Act of 2014*, after both the House and Senate approved the legislation before recessing until the second week of September. The legislation faltered until **House Veterans' Affairs (VA) Chairman Jeff Miller (R-FL)** and **Senate Chairman, Bernie Sanders (I-VT)** reached agreement over last weekend. The legislation contains \$17 billion in funding to the Department of Veterans Affairs of which \$5 billion will go to hire new VA staff for an expected increase in caseloads and \$15 billion to pay for medical services outside the VA for veterans' who live more than 40 miles from a VA facility or who experience wait times over 30 days.

Senator Tom Coburn's (R-OK) budget point of order was voted down 86-6 after he objected to the \$12 billion in new spending not otherwise offset under the legislation (\$5 billion of the bill's total spending would be offset through other accounts within the VA committees' jurisdiction). Also included are provisions that allow for the firing of senior executives for poor performance; and that establish a new 15-member commission to study how the VA should be restructured over the next 20 years to better deliver health care to veterans.

Inside

House Passes Resolution Authorizing Lawsuit Challenging PPACA Implementation.....	2
Additional Health Legislation Advances Before Recess.....	2
PPACA Remains in Republican Crosshairs Before Recess.....	3
Federal Courts Rule in Challenges to PPACA.....	3
Medicare Part A, Band D Reports.....	4
Senate Aging Committee Hears Critics of Recovery Audit Contractor Program.....	4
GAO Critical of CMS Medicaid Oversight.....	4
Members Ask for Guidance from States on Extension of CHIP.....	4
IOM Issues Report Calling for Changes to GME Program.....	5
HHS Sets Final ICD-10 Transition Date.....	5
CMS Final Payment Rules for IPFs and IRFs.....	5
Bundled Payments Initiative Adds Providers.....	5
Health Legislation Recently Introduced.....	5

House Passes Resolution Authorizing Lawsuit Challenging PPACA Implementation

On a 225-201 vote the House passed H. Res. 676 which authorizes the House to bring suit against executive agency actions to delay the Patient Protection and Affordable Care Act's (PPACA) employer mandate and related penalties for non-compliance. The proposed civil action seeks injunctive relief regarding the "failure of the President" or any other Administration official "to act in a manner consistent with their duties under the Constitution and laws of the United States" with respect to the implementation of any provision of the PPACA. House Speaker John Boehner (R-OH) said the effort is "about protecting the Constitution we swore to uphold..." while the President called it a political stunt. Whether federal courts will even rule that the House has "standing" to pursue the lawsuit is the major legal hurdle that will confront House appointed lawyers as the suit proceeds.

Additional Health Legislation Advances Before Recess

The Senate sent to the President for his signature the ***Autism Collaboration, Accountability, Research, Education and Support Act of 2014*** (H.R. 4631, nicknamed the Autism CARES Act) which reauthorizes the Combating Autism Act. Under the legislation the U.S. Department of Health and Human Services (HHS) would be directed to designate an official to oversee and prevent duplication among national autism spectrum disorder research, services and support activities and provide a report to Congress on young adults with autism spectrum disorder and services provided as their transition from school-based services to services available to adults. The House unanimously passed H.R. 3635, the ***Safe and Secure Federal Websites Act***, legislation that would force HHS to subject the HealthCare.gov website and any future versions to be certified by the Government Accountability Office (GAO) that they are secure from cyber attack with respect to key elements (such as Social Security numbers) before the public has access to the process. The House also unanimously passed H.R. 4709, ***Ensuring Patient Access and Effective Drug Enforcement Act***, legislation designed to improve collaboration among regulators and those they regulate so as to help prevent prescription drug abuse. In addition, on a 27-20 vote the House Energy and Commerce Committee passed H.R. 3522, the ***Employee Health Care Protection Act***, which would allow group health coverage in effect in 2013 to continue to be offered to employers in the future for the benefit of both previously covered and future enrollees without violating the PPACA's minimum essential coverage provisions. The Committee also voted 31-11 to pass H.R. 4067, legislation that extends the current freeze on the Centers for Medicare and Medicaid Services (CMS) regulation that requires critical access and small rural hospital physicians to directly supervise outpatient therapy services.

PPACA Health Reform Update

PPACA Remains in Republican Crosshairs Before Recess

At a House Energy and Commerce Committee hearing, the CMS Principal Deputy Administrator testified that the agency initially underestimated the scope and technical difficulties involved in developing the nationwide website HealthCare.gov which he said led to the cost that has escalated to \$840 million through March as reported by GAO. GAO issued a report, *Ineffective Planning and Oversight Practices Underscore the Need for Improved Contract Management*, which recommends that CMS take immediate steps to mitigate the escalating costs and ensure the successful performance of the website and its constituents. CMS responded that organizational changes have been made and individuals given specific roles to address the problems. However, the deputy administrator admitted that while the website performance will improve, it will not function perfectly. He also said that the site has never been successfully breached in a cyber attack. At a hearing held by the committee's Health Subcommittee, testimony was taken on the problems created by PPACA-related group health insurance plan cancellations, a subject addressed by the above-mentioned bill approved by the committee. A witness from the American Enterprise Institute said that about 170 million individuals will see their plans "change or disappear" as a result of the provisions of the PPACA, among them 9 million persons whose plans were cancelled outright. A witness from the Heritage Foundation testified that the law's risk corridor program may not be needed while another witness from the Georgetown University's Health Policy Institute said that a similar program operating under Medicare Part D has demonstrated that the program may actually save taxpayers money. A second committee, the House Oversight and Government Reform Committee, also weighed in with a report critical of the same insurance risk payment program—ObamaCare's Taxpayer Bailout of Health Insurers and the White House's Involvement to Increase Bailout Size—which also included White House correspondence indicating that health insurers might have to increase premiums by 20% or more in the absence of the program. The House Energy and Commerce and Ways and Means Committee Chairmen along with Senators Orrin Hatch (R-UT), Chuck Grassley (R-IA) and Tom Coburn (R-OK) also sent a letter to the CMS administrator asking for details on the payments made to website contractors and whether any payments were withheld due to lack of performance. In a reverse play in support of the law, Rep. Elijah Cummings (D-MD), the Ranking Member of the House Committee on Oversight and Government Reform, sent a letter to the Republican governors of Texas, Florida and North Carolina asking them to respond with the reasons why their states did not expand Medicaid as encouraged under the PPACA.

Federal Courts Rule in Challenges to PPACA

The U.S. Court of Appeals for the District of Columbia Circuit rendered an opinion in *Sissel v. HHS* which found that the individual mandate under the PPACA was not an improper exercise of congressional power under the Constitution's origination clause, despite the fact that the final bill language was installed when the Senate struck the House-passed bill language and inserted its own version. The court reasoned that the PPACA is legislation that only incidentally raises revenue and therefore is not a "revenue raising" measure subject to the origination clause mandate that such bills originate in the House. In another action, the plaintiffs in *King v. Burwell* filed a petition in the U.S. Supreme Court for a review of the adverse decision they received in the U.S. Court of Appeals for the Fourth Circuit which found that the IRS acted within its power to interpret the health law as allowing for individual tax credits to be made available to individuals enrolled under HealthCare.gov in states that did not set up their own exchanges. In a separate case, the U.S. Court of Appeals for the District of Columbia Circuit upheld a challenge to the individual tax credit being available in non-electing states. While there appears to be a split in the two courts, another outcome could be forthcoming if the Department of Justice's petition for an en banc review in the DC Circuit is granted.

Medicare/Medicaid/PHSA Corner

Medicare Part A, B and D Reports

The trustees' report of the Medicare Hospital Insurance (Part A) Trust Fund contains a finding that the program's reserve will be depleted in 2030 which is four years longer than estimated earlier, although outgo will exceed income beginning in 2023. The Federal Supplementary Medical Insurance (Part B) Trust Fund also contains a projection that Part B beneficiary premiums will remain the same in 2015 as for 2014. Of note, the report assumes that this will be achieved under the assumption that Congress will pass another temporary fix for the sustainable growth rate (SGR) formula under the Medicare physician payment methodology. In another action, CMS released 2015 estimates for Medicare Part D premiums which are projected to increase by about \$1 to \$32 per month. The trustees and CMS indicated that the improved cost projections are based on the historically low growth rate of health care costs currently being experienced.

Senate Aging Committee Hears Critics of Recovery Audit Contractor Program

At a Senate Special Committee on Aging hearing, the chief of hospital medicine of the University of Wisconsin School of Medicine and Public Health testified that the level of problems found under the current Medicare Recovery Audit Contractor (RAC) program is cause for a major reform of the system. She said that the RAC program has led to overpayment determinations that have routinely been overturned on appeal. With the rise in the percentage of hospital patients placed in observation status and not admitted as inpatients, thus raising the costs for beneficiaries, she said that any change in policy regarding observation status must be accompanied by reform of the RAC program.

GAO Critical of CMS Medicaid Oversight

At a House Oversight Subcommittee on Energy Policy, Health Care and Entitlements hearing, the HHS Office of Inspector General (OIG) testified that states need to improve their oversight of Medicaid providers and that CMS also needs to improve its oversight of states to detect and prevent efforts to inappropriately shift costs to the federal government. The GAO unveiled a report and an agency spokesperson testified that states have been relying on inappropriate methods of financing their Medicaid programs and have increasingly been using funds from individual providers and local governments to finance their programs. GAO said the Medicaid program remains on its list of high-risk federal programs despite making recommendations that CMS improve its auditing, data collection and guidance to states. The Director of the CMS Center for Medicaid and CHIP responded that the agency has been taking steps to implement GAO's recommendations.

Members Ask for Guidance from States on Extension of CHIP

In a letter sent to the governors in all states, Senators Wyden (D-OR) and Hatch (R-UT) and Reps. Upton (R-MI) and Waxman (D-CA) asked for responses by the end of October as to whether the Children's Health Insurance Program (CHIP) should be extended and, if so, what funding and other changes need to be made to make the program work better.

Medicare/Medicaid/PHSA Corner cont.

IOM Issues Report Calling for Changes to GME Program

The Institute of Medicine (IOM) issued a report critical of the current structure of Graduate Medical Education (GME) funding and offered Congress several policy options. The IOM report stated that the GME payment rules reflect an earlier era and discourage physician training outside the hospital where most health care is delivered. Although the report said current funding levels should be maintained, it recommended that the current payment system be phased out over ten years and reconfigured so that physicians are trained to provide better individual care and better population health while striving to lower costs. Also recommended was the establishment of an HHS GME Policy Council to develop a strategic plan for the allocation of GME financing and the makeup of specialists in the physician workforce. The report said CMS should also establish a CMS center to manage the operational aspects of the program and distribute funds directly to GME-sponsoring organizations.

HHS Sets Final ICD-10 Transition Date

HHS issued a final rule under which hospitals and health insurers would be required to transition to the International Classification of Diseases, 10th Revision (ICD-10) on October 1, 2015, the first date for adoption allowed under the Protecting Access to Medicare Act of 2014.

CMS Final Payment Rules for IPFs and IRFs

CMS issued final rules for fiscal year (FY) 2015 Medicare payments providing for changes as follows: an increase of 2.1%, about \$120 million, for 1,626 inpatient psychiatric facilities along with new quality measures and reporting requirements under the inpatient psychiatric facility (IPF) quality reporting program; and an increase of 2.4%, about \$180 million, for 1,100 inpatient rehabilitation facilities (IRFs).

Bundled Payments Initiative Adds Providers

CMS announced that under Phase I of the Bundled Payments for Care Improvement (BPCI) initiative the agency has added an additional 4,122 providers eligible to enter into pilot program payment arrangements that include financial and performance accountability for episodes of care. The pilot program created under the PPACA is intended to increase the quality of care and the level of coordinated care while lowering Medicare costs.

Health Legislation Recently Introduced

H.R. 5213 (HEALTH SYSTEM REFORM), to amend the Internal Revenue Code of 1986 to simplify the treatment of seasonal positions for purposes of the employer shared responsibility requirement; RENACCI; to the Committee on Ways and Means, July 28.

H.R. 5214 (CLINICAL DATA REGISTRIES), to require the secretary of health and human services to provide for recommendations for the development and use of clinical data registries for the improvement of patient care; OLSON; to the Committee on Energy and Commerce, July 28.

H.R. 5218 (ORGAN AND TISSUE DONOR REGISTRIES), to amend the Public Health Service Act to establish a National Organ and Tissue Donor Registry Resource Center, to authorize grants for state organ and tissue donor registries, and for other purposes; CLAY; to the Committee on Energy and Commerce, July 28.

Health Legislation Recently Introduced cont.

H.R. 5230 (APPROPRIATIONS), making supplemental appropriations for the fiscal year ending Sept. 30, 2014, and for other purposes; ROGERS of Kentucky; to the Committee on Appropriations, July 29.

H.R. 5232 (MEDICARE), to amend Title XVIII of the Social Security Act to require hospitals to provide certain notifications to individuals classified by such hospitals under observation status rather than admitted as inpatients of such hospitals; DOGGETT; jointly, to the committees on Ways and Means and Energy and Commerce, July 29.

S. 2687 (CONTRACEPTIVES), to amend Title 10, U.S. Code, to ensure that female members of the armed forces and their families have access to the contraception they need in order to promote the health and readiness of all members of the armed forces, and for other purposes; SHAHEEN; to the Committee on Armed Services, July 30.

S. 2689 (MEDICARE), to amend Title XVIII of the Social Security Act to specify coverage of continuous glucose monitoring devices, and for other purposes; COLLINS; to the Committee on Finance, July 30.

S. 2694 (MEDICAID), to amend Title XIX of the Social Security Act to extend the application of the Medicare payment rate floor to primary care services furnished under Medicaid and to apply the rate floor to additional providers of primary care services; BROWN; to the Committee on Finance, July 30.

S. 2701 (HEALTH PLAN ENROLLMENT), to require the secretary of health and human services to address certain inconsistencies between the self-attested information provided by an applicant in enrolling in a health plan on an exchange and being determined eligible for premium tax credits and cost-sharing reductions or in being determined to be eligible for enrollment in a state Medicaid plan or a state child health plan under the state Children's Health Insurance Program and the data received through the Federal Data Services Hub or from other data sources; VITTER; to the Committee on Finance, July 30.

S. 2707 (TRICARE), to provide for coordination between the TRICARE program and eligibility for making contributions to a health savings account; MORAN; to the Committee on Finance, July 30.

H.R. 5263 (ORGAN DONORS), to promote and protect from discrimination living organ donors; NADLER; jointly, to the committees on Energy and Commerce, Oversight and Government Reform, House Administration, Education and the Workforce and Financial Services, July 30.

H.R. 5274 (MEDICARE), to amend Title II of the Social Security Act to allow voluntary agreements for Social Security and Medicare coverage of employees of Guam and American Samoa; BORDALLO; to the Committee on Ways and Means, July 30.

H.R. 5279 (TAXATION), to amend the Internal Revenue Code of 1986 to impose an excise tax on sugar-sweetened beverages, to dedicate the revenue from such tax to the prevention, treatment and research of diet-related health conditions in priority populations, and for other purposes; DELAURO; jointly, to the committees on Ways and Means and Energy and Commerce, July 30.

H.R. 5286 (VETERANS' HEALTH), to amend Title 38, U.S. Code, to provide for a more equitable geographic allocation of funds appropriated to the Department of Veterans Affairs for medical care; LARSON of Connecticut; to the Committee on Veterans' Affairs, July 30.

H.R. 5294 (MINORITY HEALTH), to improve the health of minority individuals, and for other purposes; ROYBAL-ALLARD; jointly, to the committees on Energy and Commerce, Ways and Means, Agriculture, Education and the Workforce, the Budget, Veterans' Affairs, Armed Services, the Judiciary and Natural Resources, July 30.

H.R. 5298 (INSURANCE REGULATION), to amend the Internal Revenue Code of 1986 to exempt student workers for purposes of determining a higher education institution's employer health care shared responsibility; TURNER; to the Committee on Ways and Means, July 30.

Health Legislation Recently Introduced cont.

H.RES. 697 (OVARIAN CANCER AWARENESS), expressing support for the designation of September as National Ovarian Cancer Awareness Month; DELAURO; to the Committee on Oversight and Government Reform, July 30.

S. 2722 (NEONATAL ABSTINENCE SYNDROME), to facilitate identification and dissemination of evidence-informed recommendations for addressing maternal addiction and neonatal abstinence syndrome and to provide for studies with respect to neonatal abstinence syndrome; MCCONNELL; to the Committee on Health, Education, Labor and Pensions, July 31.

S. 2728 (MEDICARE), to amend Title XVIII of the Social Security Act to provide community-based medical education payments to primary care teaching centers, to provide for a Medicare indirect medical education performance adjustment and to increase Medicare graduate medical education transparency, and for other purposes; MURRAY; to the Committee on Finance, July 31.

S. 2731 (MEDICARE), to amend Title XVIII of the Social Security Act to provide for the application of Medicare secondary payer rules to certain workers' compensation settlement agreements and qualified Medicare set-aside provisions; NELSON; to the Committee on Finance, July 31.

S. 2733 (INSURANCE REGULATION), to establish a certification process for opting out of the individual health insurance mandate; MCCAIN; to the Committee on Finance, July 31

S. 2738 (VETERANS' HEALTH), to establish in the Department of Veterans Affairs a national center for research on the diagnosis and treatment of health conditions of the descendants of veterans exposed to toxic substances during service in the armed forces, to establish an advisory board on exposure to toxic substances, and for other purposes; BLUMENTHAL; to the Committee on Veterans' Affairs, July 31.

S. 2746 (CHILDREN'S HEALTH), to amend the Public Health Service Act to improve the health of children and help better understand and enhance awareness about unexpected sudden death in early life; BROWN; to the Committee on Health, Education, Labor and Pensions, July 31.

S. 2749 (INSURANCE REGULATION), to establish a board of directors and chief executive officer to oversee the federal exchange and state exchanges, and to provide health insurance oversight; SHAHEEN; to the Committee on Health, Education, Labor, and Pensions, July 31.

S. 2755 (SUBSTANCE ABUSE), to prevent deaths occurring from drug overdoses; REED; to the Committee on Health, Education, Labor and Pensions, July 31.

S. 2772 (APPROPRIATIONS), making supplemental appropriations for the fiscal year ending Sept. 30, and for other purposes; FLAKE; read the first time, July 31.

H.R. 5304 (MEDICARE), to amend Title XVIII of the Social Security Act to provide for treatment of audiologists as physicians for purposes of furnishing audiology services under Medicare, to improve access to the audiology services available for coverage under Medicare and to enable beneficiaries to have their choice of a qualified audiologist to provide such services, and for other purposes; JENKINS; jointly, to the committees on Energy and Commerce and Ways and Means, July 31.

H.R. 5313 (INSURANCE REGULATION), to amend the Affordable Care Act to allow sole proprietors and the spouses and domestic partners of sole proprietors to purchase insurance on the small business exchange, and for other purposes; SEAN PATRICK MALONEY of New York; to the Committee on Energy and Commerce, July 31.

H.R. 5328 (INSURANCE REGULATION), to amend the Public Health Service Act to prohibit application of preexisting condition exclusions and to guarantee availability of health insurance coverage in the individual and group market, contingent on the enactment of legislation repealing the Affordable Care Act, and for other purposes; COFFMAN; to the Committee on Energy and Commerce, July 31.

Health Legislation Recently Introduced cont.

H.R. 5332 (VETERANS' HEALTH), to promote identification of veterans and their health needs in furnishing of items and services under the Medicare, Medicaid and other programs, and for other purposes; CROWLEY; jointly, to the committees on Energy and Commerce and Ways and Means, July 31.

H.R. 5333 (VETERANS' HEALTH), to amend Title 38, U.S. Code, to ensure that a service animal of a patient receiving inpatient medical care at a medical facility of the Department of Veterans Affairs is able to access the room of the patient; DAINES; to the Committee on Veterans' Affairs, July 31.

H.R. 5339 (SUBSTANCE ABUSE TREATMENT), to authorize the administrator of the Substance Abuse and Mental Health Services Administration, acting through the director of the Center for Substance Abuse Treatment, to award grants to states to expand access to clinically appropriate services for opioid abuse, dependence or addiction; FOSTER; to the Committee on Energy and Commerce, July 31.

H.R. 5340 (PROGRAM EXCLUSIONS), to amend Title XI of the Social Security Act to expand the permissive exclusion from federal health programs to include certain individuals with prior interest in sanctioned entities and entities affiliated with sanctioned entities and to provide a criminal penalty for the illegal distribution of Medicare, Medicaid or CHIP beneficiary identification or provider numbers, and for other purposes; FRANKEL of Florida; jointly, to the committees on Energy and Commerce and Ways and Means, July 31.

H.R. 5342 (VETERANS' HEALTH), to direct the secretary of veterans affairs to expeditiously grant privileges to members of the armed forces who are health-care providers to provide hospital care and medical services in medical facilities of the Department of Veterans Affairs; HECK of Nevada; to the Committee on Veterans' Affairs, July 31.

H.R. 5353 (MEDICARE/MEDICAID), to amend Title XIX of the Social Security Act to extend for five years payment parity with Medicare for primary care services furnished under Medicaid, and for other purposes; LEWIS; to the Committee on Energy and Commerce, July 31.

H.R. 5364 (CHIP), to amend Title XXI of the Social Security Act to extend and improve the Children's Health Insurance Program, and for other purposes; PALLONE; jointly, to the committees on Energy and Commerce and Ways and Means, July 31.

H.R. 5373 (MEDICARE/MEDICAID), to amend titles XVIII and XIX of the Social Security Act to establish a minimum direct care registered nurse staffing requirement at nursing facilities and skilled nursing facilities under Medicare and Medicaid and for other purposes; SCHAKOWSKY; jointly, to the committees on Ways and Means and Energy and Commerce, July 31.

H.R. 5380 (MEDICARE), to amend Title XVIII of the Social Security Act to provide for a phased-in expansion of telehealth coverage under Medicare; THOMPSON of California; jointly, to the committees on Energy and Commerce and Ways and Means, July 31.

H.R. 5384 (REFORM), to amend the Public Health Service Act to extend health plan coverage to dependent children in the individual and group market, contingent on the enactment of legislation repealing the PPACA, and for other purposes; VALADAO; to the Committee on Energy and Commerce, July 31.

H.RES. 709 (LIFE SCIENCE), recognizing the importance of transformative breakthroughs in biomedicine, biotechnology and life sciences in the diagnosis, management, curing and treatment of illness and the existence of a "Valley of Death" in biotechnology and life sciences funding that stifles innovation and impedes translational medical research; VARGAS; to the Committee on Energy and Commerce, July 31.