



Health Policy Briefing

September 22, 2014

Congress Exits After Passing CR; House Targets PPACA as November Election Looms

Federal Spending Continued Until December 11, 2014

After the House voted 319-108 to pass H.J. Res. 124, the continuing resolution (CR) making appropriations for fiscal year (FY) 2015 until December 11, the Senate voted 78-22 to send the measure to the President for his signature. Clearing this hurdle, the House and Senate recessed for the next seven weeks to allow their members to campaign for the November 4 elections. In general, the resolution includes an across-the-board cut of 0.0554% in order to bring spending within the \$1.012 trillion FY 2014 discretionary level agreed to in the Bipartisan Budget Agreement. Of note, the Department of Defense made two reprogramming requests to the congressional defense panels to obtain authority to transfer \$1 billion in accord with the President’s plan involving the use of U.S. troops to provide logistical operations and training of health care workers in an effort to help arrest the spread of Ebola in Africa. The resolution also includes \$30 million for the Centers of Disease Control and Prevention (CDC) and \$58 million for the U.S. Department of Health and Human Services (HHS) Biomedical Advanced Research and Development Authority (BARDA), \$88 million in total, to advance the Administration’s response to the Ebola crisis. The CR does not resolve differences among Democrats and Republicans on the level of funding for HHS during the remainder of the fiscal year. House Democrat Labor/HHS/ Education appropriators released a draft that would, for example, provide: the CDC with \$638.4 million for efforts related to immunizations and respiratory diseases; \$866.3 million for the Health Resources and Services Administration (HRSA) health workforce programs; \$5.033 billion for the National Cancer Institute (NCI); \$2.37 billion for the Ryan White HIV/ AIDS program; and \$186 million for substance abuse prevention efforts within the Substance Abuse and Mental Health Services Administration (SAMHSA). The House Appropriations Committee chairman previously indicated his desire to pass further appropriations by means of an omnibus measure when Congress returns after the elections.

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Health Legislation Cleared Before Congress Adjourns

The House acted last week on the Senate passed version of S. 2154, the Emergency Medical Services for Children Reauthorization Act, and the President signed the bill into law. The Senate also sent to the President the bill H.R. 4994, the Improving Medicare Post-Acute Care Transformation Act (IMPACT Act), that would require providers to submit standardized data by 2019 to allow Medicare to compare quality across different post-acute care settings in long-term care hospitals, inpatient rehabilitation facilities, skilled nursing facilities and home health agencies. Sponsors intend that the data obtained will assist in making changes to post-acute payment system via a new site-neutral or bundled payment system, etc. To help boost compliance the bill would allow HHS to reduce payments to skilled nursing facilities by 2% if they fail to report the required information. The bill also included several hospice program integrity provisions. The Senate also sent to the President the House-passed bill H.R. 4276, the Veterans' Traumatic Brain Injury Care Improvement Act of 2014, which among other things increases to \$250 million a comprehensive service program for homeless veterans. In addition, the Senate sent to the President for his signature the House-passed bills H.R. 4771, the Designer Anabolic Steroid Control Act of 2014; and H.R. 594, the Paul D. Wellstone Muscular Dystrophy Community Assistance, Research and Education Amendments of 2014. The Senate also passed S. 2539, the Traumatic Brain Injury Reauthorization Act, and S. 2141, the Sunscreen Innovation Act, which amends the Federal Food, Drug, and Cosmetic Act to provide an alternative process for the review of safety and effectiveness of nonprescription sunscreen active ingredients.

House Passes Bill to Repeal PPACA Medical Device Tax

Before adjourning, the House took one last shot at the Patient Protection and Affordable Care Act (PPACA) by passing H.R. 4, tax legislation that among other things would repeal the PPACA's 2.3% medical device excise tax. However, the Senate rejected the unanimous consent request by Senator David Vitter (R-LA) to pass H.R. 3522, the Employee Health Care Protection Act, the House-passed bill that would allow health insurers to continue to offer group health insurance coverage in 2014 outside of PPACA exchanges to the extent that such policies were offered on any date in 2013 (even though they do not meet PPACA minimum essential coverage provisions).

PPACA Health Reform Update

House Republicans Take Parting Shot at Obamacare

At a House Oversight and Government Reform Committee hearing held before Congress adjourned, the Centers for Medicare and Medicaid Services (CMS) Administrator Marilyn Tavenner touted the PPACA, saying "A new wave of evidence shows that the Affordable Care Act is working to make health-care coverage more affordable, accessible and of higher quality, for families, seniors, businesses and taxpayer alike..." Nonetheless, upon questioning she admitted that only about 7.3 million people had paid for their exchange-related health coverage on August 15th which is 9% less than the 8 million figure reported by CMS in May. Chairman Darrell Issa (R-CA) and other Republicans peppered the Administrator with questions about the security of HealthCare.gov and missing emails. Rep. Issa said that "this administration has not complied with, nor caused their key executives including political appointees, to comply with the federal records act..." which he said has hindered his committee's investigation of the law's implementation. In response the CMS Administrator said that the website has not had a major data security problem that has accessed personally identifiable information, despite what the committee insists is evidence from a Government Accountability Office (GAO) audit that the website has had thirteen security incidents. Another House committee, the Small Business Subcommittee on Health and Technology, held a hearing in which Chairman Chris Collins (R-NY) pressed a CMS official in charge of state health insurance exchanges about the lack of response to earlier requests on the level of enrollment under the Small Business Health Options Program (SHOP). The witness responded that after CMS has collected the data from the state SHOPS it will give the information to Congress and the public as soon as it's available. On a positive note, HHS reported that \$290 million in savings for individuals and \$703 million in savings for small employers resulted from the law's provisions requiring the reporting of premium increases over 10%. Also, CDC reported that the PPACA reduced

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PPACA Health Reform Update cont.

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the percentage of individuals in the U.S. without health insurance by 2% earlier this year. However, the agency also said that about 42 million individuals lacked health insurance in 2013. Covered individuals also face additional hurdles in keeping their plans and subsidies. CMS reported that about 115,000 individuals have yet to verify their citizenship or immigration status to ensure they are eligible for coverage and will lose it beginning in October if they fail to certify their status. Another 279,000 households may have their premium subsidies reduced or eliminated in 2015 if they do not clear up discrepancies in their reported income.

ACOs Reported to Save Medicare Money

Accountable Care Organizations (ACOs) created under the PPACA were reported by CMS to have saved Medicare more than \$372 million via the Pioneer ACO Model and Medicare Shared Savings Program (MSSP). ACOs also qualified for shared savings payments of \$445 million. In 2013 over 125,000 eligible professionals who were ACO providers or suppliers qualified for incentive payments for reporting their quality of care through the Physician Quality Reporting System (PQRS). The agency said that over 360 Medicare ACOs have been established in 47 states and cover over 5.6 million Medicare beneficiaries.

Medicare/Medicaid/PHSA Corner

Efforts to Address Problem of Antibiotic Resistance

At a House Energy and Commerce Subcommittee on Health hearing, Chairman Joe Pitts (R-PA) said that the Antibiotic Development to Advance Patient Treatment (ADAPT) Act is but one of a series of proposals that should be considered as part of an initiative to provide more incentives for the development of antibiotic drugs and diagnostics to combat antibiotic resistance. The CDC has said that antibiotic resistance is associated with about two million infections each year resulting in 23,000 deaths and about \$20 billion in treatment costs. Rep. Henry Waxman (D-CA) said that means also need to be adopted to reduce the overuse and misuse of such drugs. Janet Woodcock, the Director of the Food and Drug Administration's (FDA) Center for Drug Evaluation and Research (CDER) also described the President's executive order directed to help combat antibiotic resistance. The order directs that a task force be created which includes the Secretaries of HHS, DoD and the U.S. Department of Agriculture (USDA) to develop a National Strategy for combating anti-resistant drugs. The President's Council of Advisors on Science and Technology (PCAST) also released a report containing recommendations for the task force in order to better track the use of antibiotics, improve the stewardship of existing drugs and develop incentives for new drugs. The PCAST said that federal spending should be doubled to \$900 million for tracking and researching antibiotic use and should be increased by another \$800 million annually for the development of new antibiotics. The executive order also established a \$20 million prize from the National Institutes of Health (NIH) and the Biomedical Advanced Research and Development Authority (BARDA) to develop a test that hospitals can use to quickly identify highly resistant bacterial infections.

Medicare/Medicaid/PHSA Corner cont.

Members Object to CMS Letters to State Medicaid Agencies

Senators Orrin Hatch (R-UT) and Lamar Alexander (R-TN) and Rep. Fred Upton (R-MI) sent a letter to the CMS Administrator objecting to letters the agency sent to six states because of the backlogs in their Medicaid programs. The members said the challenges states are having with Medicaid applications “are problems that CMS itself directly contributed to or created.” The letters gave the states only ten days to submit their plans for reducing the backlogs.

CHIP Extension Promoted in Senate

At a hearing of the Senate Finance Subcommittee on Health Care, Sen. Jay Rockefeller (D-WV) said that the Children’s Health Insurance Program (CHIP) should not be allowed to lapse next September and should be extended through FY 2019. A witness said there is some urgency in passing an extension soon given the state budgeting season. Douglas Holtz-Eakin, former director of the Congressional Budget Office (CBO) said that the PPACA has changed the coverage landscape and that the CHIP program needs to be refined to be more efficient in covering the intended population.

CMS Releases New Instructions for Hospital Settlement Program

The CMS program intended to reduce the volume of hospital patient status claims pending in the appeals process, through an “administrative agreement”, was modified by the agency to make clear that the agreement is a one-time settlement offer (for 68% of the disputed amount), that the settlement request is voluntary and that payment under a completed settlement will be made within 60 days. Nonetheless, House Ways and Means Health Subcommittee Chairman Kevin Brady (R-TX) sent a letter to the HHS Secretary calling for the process to be halted and stating that settling all appeals without reviewing the merits of the appeals or coming up with any plan to address the backlog hurts the integrity of Medicare and is a waste of taxpayer dollars.

IOM Promotes End of Life Program Changes

In a report released by the Institute of Medicine (IOM), *Dying in America: Improving Quality and Honoring Individual Preferences Near the End of Life*, the institute recommends that Medicare, Medicaid and other health delivery programs be restructured to better address the needs of people nearing the end of life and reduce the current drive for the most expensive care. The IOM recommended: Government health insurers and care delivery programs as well as private health insurers should cover the provision of comprehensive care for individuals with advanced serious illness who are nearing the end of life; Professional societies and other organizations that establish quality standards should develop standards for clinician-patient communication and advance care planning that are measurable, actionable, and evidence based; and Educational institutions, credentialing bodies, accrediting boards, state regulatory agencies, and health care delivery organizations should establish the appropriate training, certification, and/or licensure requirements to strengthen the palliative care knowledge and skills of all clinicians who care for individuals with advanced serious illness who are nearing the end of life; Federal, state, and private insurance and health care delivery programs should integrate the financing of medical and social services to support the provision of quality care consistent with values, goals, and informed preferences of people with advanced serious illness nearing the end of life; and Civic leaders, public health and other governmental agencies, community-based organizations, faith-based organizations, consumer groups, health care delivery organizations, payers, employers, and professional societies should engage their constituents and provide fact-based information about care of people with advanced serious illness to encourage advance care planning and informed choice based on the needs and values of individuals.

MA Average Premiums to Increase

CMS estimated that average Medicare Advantage premiums will increase by nearly \$3 in 2015 to \$33.90 per month, but said that as beneficiaries shift to lower-cost plans the average cost may be somewhat less.

Health-Related Legislation Recently Introduced

S. 2804 (DISEASE RESEARCH), to amend the Public Health Service Act with regard to research on asthma, and for other purposes; GILLIBRAND; to the Committee on Health, Education, Labor and Pensions, Sept. 15.

S. 2808 (INSURANCE REGULATION), to authorize health insurance issuers to continue to offer for sale current group health insurance coverage in satisfaction of the minimum essential health insurance coverage requirement, and for other purposes; VITTER; to the Committee on Finance, Sept. 15.

H.R. 5464 (APPROPRIATIONS), making appropriations for Department of Labor, Health and Human Services and Education and related agencies for the fiscal year ending Sept. 30, 2015, and for other purposes; DELAURO; to the Committee on Appropriations, Sept. 15.

H.R. 5465 (HEALTH SAVINGS ACCOUNTS), to amend the Internal Revenue Code of 1986 to expand health savings accounts; BERA of California; to the Committee on Ways and Means, Sept. 15.

H.RES. 725 (VETERANS' HEALTH), commending the Departments of Defense and Veterans Affairs for their joint campaign to raise awareness during September, Suicide Prevention Month, to reduce suicide among members of the U.S. Armed Forces and veterans; ESTY; jointly, to the committees on Armed Services and Veterans' Affairs, Sept. 15.

S. 2813 (PROSTATE CANCER), to establish the National Prostate Cancer Council for improved screening, early detection, assessment and monitoring of prostate cancer, and to direct the development and implementation of a national strategic plan to expedite advancement of diagnostic tools and the transfer of such tools to patients; BOXER; to the Committee on Health, Education, Labor, and Pensions, Sept. 16.

S. 2818 (MEDICARE), to amend Title XVIII of the Social Security Act to add physical therapists to the list of providers allowed to utilize locum tenens arrangements under Medicare; GRASSLEY; to the Committee on Finance, Sept. 18.

S. 2825 (CONTROLLED SUBSTANCES), to amend the Controlled Substances Act to treat as dispensing the delivery of a controlled substance by a pharmacy to a practitioner, pursuant to a patient-specific prescription of the practitioner, under certain circumstances; BROWN; to the Committee on the Judiciary, Sept. 18.

S. 2830 (NATIVE AMERICANS), to permanently reauthorize the special diabetes programs for Indians; TESTER; to the Committee on Health, Education, Labor and Pensions, Sept. 16.

H.R. 5475 (CHILDREN'S HEALTH), to amend Title 38, U.S. Code, to improve the care provided by the secretary of veterans affairs to newborn children; COLLINS of Georgia; to the Committee on Veterans' Affairs, Sept. 16.

H.R. 5481 (MEDICARE/MEDICAID), to continue the use of a three-month quarter EHR reporting period for health care providers to demonstrate meaningful use for 2015 under the Medicare and Medicaid EHR incentive payment programs, and for other purposes; ELLMERS; jointly, to the committees on Energy and Commerce and Ways and Means, Sept. 16.

H.R. 5484 (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; BENISHEK; jointly, to the committees on Veterans' Affairs and Armed Services, Sept. 16.

H.R. 5498 (PRIMARY CARE), to establish a demonstration program to facilitate physician reentry into clinical practice to provide primary health services; SARBANES; to the Committee on Energy and Commerce, Sept. 16.

S. 2839 (SUBSTANCE ABUSE), to authorize the attorney general to award grants to address the national epidemics of prescription opioid abuse and heroin use; WHITEHOUSE; to the Committee on the Judiciary, Sept. 17.

Health-Related Legislation Recently Introduced cont.

S. 2841 (HEALTH DISPARITIES), to provide for a study by the Institute of Medicine on health disparities, to direct the secretary of health and human services to develop guidelines on reducing health disparities, and for other purposes; BOOKER; to the Committee on Health, Education, Labor and Pensions, Sept. 17.

S. 2842 (CAREGIVERS), to amend the Public Health Service Act to establish a Caregiver Corps program; CASEY; to the Committee on Health, Education, Labor and Pensions, Sept. 17.

S. 2844 (9/11 PROGRAMS), to reauthorize the World Trade Center Health Program and the September 11th Victim Compensation Fund of 2001, and for other purposes; GILLIBRAND; to the Committee on Health, Education, Labor, and Pensions, Sept. 17.

H.R. 5503 (9/11 PROGRAMS), to reauthorize the World Trade Center Health Program and the September 11th Victim Compensation Fund of 2001, and for other purposes; CAROLYN B. MALONEY of New York; jointly, to the committees on Energy and Commerce, the Budget and the Judiciary, Sept. 17.

H.R. 5507 (HEALTH DISPARITIES), to provide for a study by the Institute of Medicine on health disparities, to direct the secretary of health and human services to develop guidelines on reducing health disparities, and for other purposes; PASCARELL; jointly, to the committees on Energy and Commerce and Ways and Means, Sept. 17.

H.R. 5518 (VETERANS' HEALTH), to amend Title 38, United States Code, to improve the continuing professional education reimbursement provided to health professionals employed by the Department of Veterans Affairs; MCNERNEY; to the Committee on Veterans' Affairs, Sept. 17.

H.R. 5523 (RETIREE HEALTH BENEFITS), to amend the Employee Retirement Income Security Act of 1974 and the National Labor Relations Act to protect the health benefits of retirees, and for other purposes; SLAUGHTER; to the Committee on Education and the Workforce, Sept. 17.

H.R. 5524 (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; SPEIER; to the Committee on Armed Services, Sept. 17.

H. RES. 733 (CLINICAL RESEARCH), expressing support for designation of the month of September Clinical Research Innovation Month; PETERS of California; to the Committee on Energy and Commerce, Sept. 17. Pensions; Sept. 18.

S.2851 (NIH on Tourettes): A bill to amend the Public Health Service Act to provide for the expansion, intensification, and coordination of the programs and activities of the National Institutes of Health with respect to Tourette syndrome; MENENDEZ; to the Committee on Health, Education, Labor, and Pensions; Sept. 18.

S. 2862 (Controlled Substances): A bill to amend the Controlled Substances Act with respect to drug scheduling recommendations by the Secretary of Health and Human Services, and with respect to registration of manufacturers and distributors seeking to conduct clinical testing, and for other purposes; HATCH; to the Committee on Health, Education, Labor, and Pensions; Sept. 18.

S. 2864 (Climate Change Health): A bill to direct the Secretary of Health and Human Services to develop a national strategic action plan to assist health professionals in preparing for and responding to the public health effects of climate change, and for other purposes; MARKEY; to the Committee on Health, Education, Labor, and Pensions; Sept. 18.

S. 2902 (FDA Cosmetics): A bill to prohibit the sale or distribution of certain cosmetics containing synthetic plastic microbeads; Gillibrand; to the Committee on Health, Education, Labor, and Pensions; Sept. 18.

S. 2908 (PPACA): A bill to amend the Internal Revenue Code of 1986 to expand eligibility for the refundable credit for coverage under a qualified health plan, and for other purposes; Feinstein; to the Committee on Finance; Sept. 18.