



Health Policy Briefing

September 29, 2014

Ebola Response and PPACA Implementation is Focus of Congress during Recess

Ebola Response from DoD and CDC

After the Department of Defense (DoD) requested reprogramming authority for a total of \$1 billion in response to the Ebola national security threat, the House Appropriations Committee approved the request only if DoD provides Congress with additional information including the agency’s allocation of funds and the goals and timeline for the mission. Final approval will not be completed until three other defense-related committees also give their approval. **Chairman Harold Rogers (R-KY)** said “The Ebola outbreak is clearly a crisis that has reached a level of international health and security concern. I agree that additional funding is now necessary to help the affected region and to stop the spread of this horrible and rapidly growing epidemic...” When finalized, the \$1 billion will be added to the \$175 million in federal funds already allocated for Ebola and the \$88 million included in the CR that Congress approved before the recess. The urgency of the funding was highlighted by the Centers for Disease Control and Prevention (CDC) in releasing their estimate that any delay of a swift and strong international response to the Ebola epidemic could result in up to 1.4 million individuals could becoming infected in Liberia and Sierra Leone by the end of next January.

Lame Duck Health Agenda Shaping Up

Senator Jay Rockefeller (D-WV) has expressed his intent to try to include an extension of the Children’s Health Insurance Program (CHIP) from October 1, 2015 to October 1, 2019 in any year-end omnibus appropriations or tax extenders bill that may be taken up when Congress returns after the November elections. There may be push-back, however, given the bipartisan letter sent to governors by the House Energy and Commerce Committee and the Senate Finance Committee requesting responses to six detailed questions relating to whether and how CHIP should be extended and what additional policy changes should be made related to that program. The committees requested responses by the end of October. Of note, the Congressional Budget Office (CBO) has estimated that a two year extension of CHIP would cost about \$5

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billion whereas legislation to permanently replace the sustainable growth rate (SGR) formula in the Medicare physician reimbursement system would cost about \$130 billion. The omnibus or tax extenders measures are also being eyed by supporters of the permanent SGR fix to accomplish that goal this year. If Republicans take control of the Senate, the political calculus for legislative action on these and other health issues will likely be recalculated in the lame-duck session.

PPACA Health Reform Update

Health Reform Law Given Positive Marks by Administration

U.S. Department of Health and Human Services (HHS) Secretary Sylvia Mathews Burwell used a news conference to extol what she said is the expanded coverage (reducing the percentage of uninsured by 26%) and the lowering of health-care costs resulting from the passage of the Patient Protection and Affordable Care Act (PPACA). In this regard, the Centers for Medicare and Medicaid Services (CMS) also reported that almost eight million individuals enrolled in Medicaid or CHIP from October 1, 2013 through this July, thus bringing the total enrollment up to 67 million persons. The Secretary reported that hospital uncompensated care costs are expected to decrease by about \$5.7 billion this year because of the expansion in health coverage. Also on the positive side, HHS reported that there will be a 25% increase in the number of health insurers who will participate in PPACA health insurance exchanges in 2015. Nonetheless, Secretary Burwell admitted that only 7.3 million individuals enrolled under HealthCare.gov actually paid their premiums, a reduction from the 8 million coverage figure often touted by the President as an indication of the law's success. She said that HHS is prioritizing its implementation strategy moving forward by making the necessary corrections to HealthCare.gov, cleaning up the back-end functionality of the system with insurers and adding functionality for renewing and enrolling in coverage. However, she remained noncommittal on the level of improvement that will be completed when open enrollment begins October 1st as well as the number of individuals who will be successfully enrolled in the coming fiscal year.

Health Reform Law Failings Cited

The HHS Office of Inspector General (OIG) issued the first of several coming reports on the extent to which information security controls have been implemented under HealthCare.gov and several state exchanges in order for them to meet relevant federal requirements and guidelines. The report found that the websites and databases in the federal exchange and some state health insurance exchanges are still vulnerable to attack, putting personally identifiable information at risk. The OIG said CMS must improve security by, among other things: implementing an effective enterprise scanning tool to test for website vulnerabilities; and detecting and defending against website vulnerability scanning and simulated cyber-attacks directed at HealthCare.gov. In another report released by the Government Accountability Office (GAO), ***Patient Protection and Affordable Care Act: Procedures for Reporting Certain Financial Management Information Should Be Improved***, the agency was unable to consistently verify the reliability of most of the data it received from CMS regarding the financial resources used to implement the private health insurance and marketplace provisions of the PPACA. The report was issued in response to a request by House Ways and Means Committee Chairman Dave Camp (R-MI) and Subcommittee on Oversight Chairman Charles Boustany (R-LA).

Administration Receives Win from Court in Challenges to PPACA

The U.S. Court of Appeals for the Seventh Circuit issued a ruling that upheld a lower court's decision that dismissed a lawsuit challenging the Internal Revenue Service's (IRS) regulation that delayed enforcement of the PPACA's employer mandate (see [*Ass'n of Am. Physicians & Surgeons, Inc. v. Koskinen*](#)). The court held that the plaintiffs, Dr. Robert McQueeney and the Association of American Physicians and Surgeons Inc., did not have standing to assert claims that the agency had violated the separation of powers doctrine or the 10th Amendment by delaying the enforcement of the provision.

Medicare/Medicaid/PHSA Corner***HHS/CDC Grants to Prevent Chronic Disease/Treat Mental Disorders***

HHS announced that the CDC will make 193 grants awards totaling almost \$212 million to the states and DC to help reduce rates of death and disability due to tobacco use, obesity, diabetes, heart disease and stroke. The agencies said that these causes account for seven out of 10 deaths among Americans each year and for over 80% of the \$2.7 trillion national medical care tab. HHS also said that \$48 million in “Now is the Time” grants will be made to fund Project AWARE (Advancing Wellness and Resilience in Education) efforts to support teachers, schools and communities in responding to mental health issues among youth, creating safe and secure schools and promoting the mental health of students. Another \$34 million will be awarded for use in training over 4,000 new mental health providers who treat children, adolescents and young adults.

Studies to Help Veterans Avoid Opioid Painkillers

The National Institutes of Health (NIH) National Center of Complementary and Alternative Medicine, the VA Health Services Research and Development Division, and the National Institute on Drug Abuse announced they will sponsor 13 research studies costing about \$21.7 million in a five-year effort to find alternatives to opioid painkillers for veterans experiencing chronic pain.

Members Ask for HIPAA Privacy Rule Relief

Reps. Tom Marino (R-PA) and Peter DeFazio (D-OR) sent a letter to the HHS Secretary asking that the agency provide mobile app developers with more up-to-date, clear and easier-to-understand guidance on complying with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule.

FDA Campaign to Stem Counterfeit Drugs

In response to what federal prosecutors have identified as fake offers and counterfeit medications from rogue pharmacies, the Food and Drug Administration (FDA) said it began faxing flyers to providers that offer information on how to identify the bogus offers, such as missing safety information and unfamiliar dosing instructions.