



## Health Policy Briefing

May 5, 2014

### House Appropriators to Finalize FY 2015 Allocations; PPACA Legislation Considered

#### *FY 2015 Appropriations Bills Proceed in House*

Last week the House approved H.R. 4486, the \$ 165 billion fiscal year (FY) 2015 Military Construction-Veterans Affairs (VA) appropriations bill, which includes a bipartisan agreement to fund the VA at \$158.2 billion (\$64.7 billion of which is for discretionary spending). This represents an increase in VA funding of \$10.3 billion over FY 2014. The bill also includes \$58.7 billion in advance appropriations for FY 2016 VA medical services, facilities, support and compliance. This week the House Appropriations Committee is scheduled to approve the 302(b) allocations (the capped level of funding allowed) for the remaining subcommittees, including Labor-Health and Human Services (HHS)-Education. The allocations will be consistent with the FY 2015 revenue and spending aggregates adopted in the Ryan/Murray budget deal. The aggregates and House authorizing committee allocations were filed last week in the Congressional Record by **House Budget Committee Chairman Paul Ryan (R-WI)**. The appropriations process will again tackle Obamacare, the latest action addressing the health law was included in the draft FY 2015 Commerce-Justice-Science bill which would prohibit the Census Bureau from changing the methodology it currently uses to assess the number of insured/uninsured in its annual population survey. The House Republicans, as well as **Senators Orrin Hatch (R-UT), Lamar Alexander (R-TN) and John Thune (R-SD)**, have been critical of the Bureau's move to change the survey questions which they said could overstate the number of insured after the Patient Protection and Affordable Care Act's (PPACA) effective date.

#### *Inside*

- House Passes Exception to PPACA for Expatriate Health Plans.....2
- House Ways and Means Committee Passes Tax Extenders Bill.....2
- Republicans Dispute PPACA 8 Million Enrollment Figure.....2
- House Members Seek Help in Advancing Telemedicine.2
- House Members Grill CMS on Removal of SS Numbers on Medicare Cards.....3
- House Members Ask for Changes to MD Payment Code Timing.....3
- Comments Requested on Final PPS Rule for Health Centers in Underserved Areas.....3
- CMS Proposes New Payment Rules for Inpatient LTC Hospitals, SNFs, IPFs, and IRFs .....3
- Meaningful Use Payments.....3
- Increased Scrutiny for Surgical Mesh.....4
- Senators Ask FDA to Help Curb Painkiller Drug Abuse.....4
- Upcoming Health-Related Hearings and Markups.....4
- Health Legislation Recently Introduced.....5

### ***House Passes Exception to PPACA for Expatriate Health Plans***

The House voted 268-150 to pass H.R. 4414, legislation that would “deem” health plans for Americans living outside the U.S. as meeting the PPACA’s “minimum essential coverage” requirements for employer-sponsored plans. Adopted was an amendment offered by Reps. Devin Nunes (R-CA) and John Carney (D-DE) which would extend additional “minimum value” protections and the continued subjection of such plans to the applicable provisions of Employee Retirement Income Security Act (ERISA) and the Public Health Service Act (PHSA) prior to the passage of the PPACA. At this time, the fate of the bill in the Senate is uncertain. The future direction the Administration will take to implement the PPACA is expected to be hotly debated during the Senate Health, Education, Labor and Pension (HELP) Committee hearings to be held May 8th on the nomination of Sylvia Mathews Burwell to become the next Secretary of the U.S. Department of Health and Human Services (HHS).

### ***House Ways and Means Committee Passes Tax Extenders Bill***

On a 22-12 vote, the House Ways and Means Committee passed H.R. 4438, legislation providing for a research and development tax credit of 20% which the Joint Tax Committee estimated will reduce revenues by almost \$156 billion over 10 years.

## **PPACA Health Reform Update**

### ***Republicans Dispute PPACA 8 Million Enrollment Figure***

HHS said that of the more than 8 million individuals who have “enrolled” under PPACA exchanges through March 31st (2.6 million in state-run exchanges) that 28% are ages 18-34 which is below the 40% targeted by insurers for enrollment from this age group insurers to avoid unreasonable rate increases. The enrollees selected the “silver” plan 65% of the time and 85% were found to be eligible for PPACA tax credit subsidies. The number of exemptions applied for under the perceived lax rules laid out by HHS turned out to be relatively low in that only about 77,000 applications were filed and approved. HHS also ruled that individuals who before May 2nd obtained health coverage meeting PPACA minimums through other means, outside the exchanges, would not be subject to the penalties for non-coverage in 2014. In related news, House Energy and Commerce Committee Republicans used a report from staff which maintains that only 67% of the individuals who purportedly “enrolled” under the federal exchange in 34 states had paid their first month’s premium by April 20. The report relied on responses from 160 health insurance providers. The committee’s Oversight and Investigations Subcommittee has scheduled a hearing on May 7 to obtain statements on the record from several large health insurers and related groups. In the Senate, Sen. David Vitter (R-LA) said he would again try to bring up an amendment to energy legislation that would deny members and their staff the employer contributions that have traditionally been provided under the Federal Employees Health Benefits Program (FEHBP).

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

### ***House Members Seek Help in Advancing Telemedicine***

During a House Energy and Commerce Health Subcommittee hearing, Chairman Joe Pitts (R-PA) said his subcommittee is “looking for specific policy and legislative ideas on how the federal government can support technology adoption in our health care programs for the express and explicit purpose of reducing costs and increasing the overall quality and efficiency of the programs”, especially for rural patients. Witnesses said that one barrier that needs addressing is the outdated Medicare reimbursement for tele-health consultations and other services. The full committee also released a “white paper” asking the health care community for input on how members can help quicken the discovery, development and delivery of new medical treatments. The committee intimated that the Food and Drug Administration (FDA) approval process for drugs and devices is outmoded and in need of improvement. A Roundtable discussion on the issue is scheduled for May 6th.

## Medicare/Medicaid/PHSA Corner cont.

### *House Members Grill CMS on Removal of SS Numbers on Medicare Cards*

**A**t a hearing held by the House Ways and Means Health Subcommittee, the Deputy Administrator of the Centers for Medicare and Medicaid Services (CMS) was grilled in a bipartisan way as to why the agency has failed to remove Social Security numbers from Medicare cards. Chairman Kevin Brady (R-TX) said he may introduce a package of bills dealing with the issues raised in the hearing, including Social Security numbers and data sharing with the states.

### *House Members Ask for Changes to MD Payment Code Timing*

**A** letter was sent to CMS by Reps. Sander Levin (D-MI), Henry Waxman (D-CA) and 48 other House members asking the agency to allow physicians more than the 60 days they have to comment before new payment codes become effective. An earlier letter sent to CMS and spearheaded by Rep. Bill Cassidy (R-LA) and others suggests that the agency should “begin publishing these reimbursement changes in the annual proposed rules as opposed to waiting until the interim final rules...” CMS has indicated that October 1, 2015 will be the official implementation date for the ICD-10 code set.

### *Comments Requested on Final PPS Rule for Health Centers in Underserved Areas*

**C**MS asked for comments by July 1st on a final rule introducing a new prospective payment system for federally qualified health centers principally serving Medicare beneficiaries in medically underserved areas. Under the rule mandated by the PPACA, such centers will, with some exceptions, receive a single encounter rate per beneficiary per day for all services provided which is expected to increase total payments by about \$1.3 billion over five years, about a 32% increase.

### *CMS Proposes New Payment Rules for Inpatient LTC Hospitals, SNFs, IPFs, and IRFs*

**U**nder a proposed rule issued by CMS setting forth the payments for inpatient and long-term care hospitals in FY 2015, the agency said their Medicare payments would increase in FY 2015 by 1.3% and 0.8%, respectively. The rule also includes instructions for complying with the PPACA’s requirements to disclose charges online and in response to requests. The agency’s proposed rule relating to skilled nursing facilities said payments would increase 2%, about \$750 million, in FY 2015. CMS also proposed to increase Medicare payments to inpatient psychiatric facilities by 2.1% in FY 2015, or about \$100 million. The proposed FY 2015 Medicare payment rule relating to inpatient rehabilitation facilities would update quality measures and reporting requirements and provide for payment increases amounting to about \$160 million. Comments on the proposals are due by June 30th.

### *Meaningful Use Payments*

**C**MS released information showing that the agency has paid almost \$23 billion in incentive payments to physicians and hospitals participating in the meaningful use program. The largest share of the incentive money for electronic health record adoption, \$14.3 billion, went to hospitals.

**FDA Issues*****Increased Scrutiny for Surgical Mesh***

**T**he FDA issued a proposed order which said that the agency would reclassify surgical mesh for transvaginal treatment of pelvic organ prolapse (POP) from a moderate-risk device (class II) to a highest-risk device (class III). Manufacturers would also be required to: submit a premarket approval application to enable the agency to evaluate the safety and effectiveness of such devices; and submit evidence from clinical trials that the devices are safe and effective.

***Senators Ask FDA to Help Curb Painkiller Drug Abuse***

**S**enators Patrick Leahy (D-VT) and Richard Blumenthal (D-CT) sent a letter to the FDA requesting that the agency expedite the review of painkillers with built-in properties. They asked the agency to brief them on certain FDA approved pain management drugs that they said lack abuse-deterrent properties.

**Upcoming Health-Related Hearings and Markups**

***House Energy and Commerce Health Subcommittee: will hold a roundtable discussion on the state of biomedical innovation in America and methods to accelerate the process of bringing new treatment to patients; 3:00 p.m., 2123 Rayburn Bldg.; May 6.***

***House Energy and Commerce Oversight and Investigations Subcommittee: will hold a hearing on the PPACA and health insurance enrollment data; 10:15 a.m., 2123 Rayburn Bldg.; May 7.***

***Senate Appropriations Labor, Health and Human Services, Education, and Related Agencies Subcommittee: will hold a hearing on proposed FY 2015 appropriations for agencies, programs and activities under its jurisdiction; 10:00 a.m., 138 Dirksen Bldg.; May 7.***

***Senate Special Aging Committee: will hold a hearing titled, "The Fight Against Cancer: Challenges, Progress, and Promise;" 2:15 p.m., 562 Dirksen Bldg.; May 7.***

***Senate HELP Committee: will hold a confirmation hearing on the nomination of Sylvia Mathews Burwell to be secretary of Health and Human Services; 10:00 a.m., 106 Dirksen Bldg.; May 8.***

## Health Legislation Recently Introduced

**H.R. 4492** (MILITARY HEALTH), to amend Title 10, U.S. Code, to provide for the availability of breast-feeding support, supplies and counseling under the TRICARE program; CAPPs; to the Committee on Armed Services, April 28.

**H.R. 4494** (REGENERATIVE MEDICINE), to launch a national strategy to support regenerative medicine through funding for research and commercial development of regenerative medicine products and development of a regulatory environment that enables rapid approval of safe and effective products, and for other purposes; DEGETTE; to the Committee on Energy and Commerce, April 28.

**H.R. 4496** (RISK POOLS), to establish universal access programs to improve high risk pools and reinsurance markets to ensure coverage for individuals with pre-existing conditions, and for other purposes; GARDNER; to the Committee on Energy and Commerce, April 28.

**H.R. 4498** (MEDICINAL MARIJUANA), to provide for the legitimate use of medicinal marijuana in accordance with the laws of the various states; GRIFFITH of Virginia; to the Committee on Energy and Commerce, April 28.

**S. 2268** (PUBLIC HEALTH GRANTS), to establish grant programs to improve the health of border-area residents and for all hazards preparedness in the border area, including bioterrorism, infectious disease and non-communicable emerging threats, and for other purposes; UDALL of New Mexico; to the Committee on Health, Education, Labor and Pensions, April 29.

**H.RES. 556** (MENTAL HEALTH), expressing support for the designation of May 2014 as Mental Health Month; MURPHY of Pennsylvania; to the Committee on Energy and Commerce, April 29.

**H. RES. 560** (MINORITY HEALTH AWARENESS), promoting minority health awareness and supporting the goals and ideals of National Minority Health Month in April 2014, which include bringing attention to the health disparities faced by minority populations of the U.S., such as American Indians, Alaska Natives, Asian Americans, African Americans, Hispanic Americans and Native Hawaiians or other Pacific Islanders; AL GREEN of Texas; to the Committee on Oversight and Government Reform, April 30.