



Health Policy Briefing

July 14, 2014

Congress Stalemates on Appropriations and Turns to Supreme Court/PPACA Agenda

PPACA Becomes Congressional Focal Point for Pre-August Recess Actions

The Senate appears at a standstill in its attempt to follow the House’s lead in approving fiscal year (FY) 2015 appropriations, although the Senate Appropriations Committee is scheduled to mark up the Defense bill this week. The House is prepared to leave the FY 2015 Labor/Health and Human Services (HHS)/Education appropriations bill in the wake after passing the Energy/Water bill and setting up the Financial Services bill for a vote this week. It appears that the House Appropriations Committee will take its final action before the August recess when it marks up the FY 2015 Interior/Environment bill this week. With appropriations at a standstill between the two bodies, Senate Democrats and House Republicans have geared up for another legislative confrontation over Obamacare. **House Speaker John Boehner (R-OH)** and others released a draft of a House Resolution which would authorize 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. The resolution will be taken up in the House Rules Committee on Wednesday. While the President called the action a “stunt”, the Chairman of the House Rules Committee, **Rep. Pete Sessions (R-TX)**, said that Congress has a duty to uphold the balance of power. In response, **House Minority Whip Steny Hoyer (D-MD)** said “It is deeply disappointing that Speaker Boehner and House Republicans are choosing to waste time and taxpayers’ dollars with a political lawsuit whose sole objective is to score partisan points....This is not what the American people want.”

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The **Senate Majority Leader Harry Reid (D-NV)** also stated his intent to take aim at the Supreme Court's ruling in favor of Hobby Lobby Stores, Inc. which he said is the worst decision in the last 25 years and that "It's wrong for five men to decide what happens to women in America." The "Protect Women's Health from Corporate Interference Act" (S. 2578, H.R. 5051) would overturn the Supreme Court ruling which allows non-publicly traded for-profit corporations to disregard the PPACA's "preventive health services" related to birth control for women. The legislative findings say the need for the bill is: to reinstate contraception coverage; to prevent employers from discriminating against their employees and dependents; and to restore the original intent of the Religious Freedom Restoration Act of 1993 (which the Supreme Court used as the basis for its ruling). The bill achieves the desired aim without directly amending the PPACA. It also remains to be seen whether the House and Senate can reach a resolution in conference on how to either pay for or ignore the \$38 billion cost of the Veterans Affairs (VA) reform legislation (H.R. 3230) which the Congressional Budget Office (CBO) recently lowered from \$50 billion.

House Passes Veterinarians Controlled Substance Legislation

Last week the House passed H.R. 1528, legislation that would allow licensed veterinarians to transport and dispense controlled substances outside of their usual veterinary practice locations.

PPACA Health Reform Update

Supreme Court Opens Another Round on PPACA Coverage

In the Hobby Lobby decision the Supreme Court hinted that the Administration could have avoided the court's adverse ruling if it had pursued for non-publicly held for-profit corporations the same sort of "accommodation" that it gave to non-profit religious organizations exempting them from certain PPACA contraceptive coverage. However, the Court appeared to also call that accommodation into question in connection with its July 3rd order which granted the non-profit Wheaton College an injunction which, for the time being, exempts the college from having to file an accommodation form with HHS which the religious institution says would violate its religious freedom.

HHS/CMS Report on PPACA Activities

The Centers for Medicare and Medicaid Services (CMS) reported that enrollment in Medicaid and the Children's Health Insurance Program (CHIP) at the end of May 2014 exceeded by 6.5 million individuals the programs' enrollment before last October's start of the PPACA. The U.S. Department of Health and Human Services (HHS) also announced that public/non-profit private entities, including tribal, faith-based and community-based organizations may apply by August 21 for up to a total of \$100 million in PPACA funding to establish about 150 new community health centers. Under round two of the PPACA's Health Care Innovation Awards program, CMS will also award from \$2-24 million over three years to grantees to test innovative health-care models that help lower costs and improve health care in federal outpatient and post-acute settings and in special needs populations. HHS also announced that it has provided over \$83 million in PPACA grants to train more than 550 primary care resident physicians in sixty teaching health centers.

Medicare/Medicaid/PHSA Corner

Senate Committee Recommends Medicare RAC Changes

The Senate Special Committee on Aging released a report critical of the Medicare Recovery Audit Contractors (RAC) program that recommends RACs be paid based on their success in reducing improper payment rates to give them incentive to focus on potential areas of improper payments. Chairman Bill Nelson (D-FL) said “We need to find out how to reduce improper payments, how to cull out the bad from the good, while making sure doctors and nurses spend more time with their patients instead of the paperwork...” At a committee roundtable on the subject, a representative of RACs said the program has saved Medicare over \$8 billion since its inception while hospital witnesses were critical of the program’s administrative burdens and resulting delay in Medicare payments. The report makes a number of recommendations for CMS which the committee will monitor for implementation.

More on CY 2015 Medicare Payment Rules

As part of the CMS proposed Medicare physician payment rule for calendar year (CY) 2015, the agency said that ACOs (accountable care organizations) would have to meet 4 new measures for quality reporting, including ones focusing on avoiding admissions due to multiple chronic conditions. The proposal would also award bonus points for improved quality over time as an incentive for increased payments. The same proposed rule also included a requirement for physicians providing chronic care management services to use an electronic health record or other health information exchange platform to ensure that patient information is electronically accessible to other providers. The rule also proposed that Medicare cover the following telemedicine services for: psychotherapy; annual wellness visits; and prolonged services office visits. The proposal would impact the Sunshine Act rules by seeking to eliminate the specified exemption related to continuing medical education (CME) programs funded by drug and device manufacturers and instead rely upon more general exemptions.

Million Hearts Contest

The Office of the National Coordinator for Health Information Technology (ONC) announced a contest with monetary awards, the Electronic Health Records (EHR) Innovations for Improving Hypertension Challenge, which is designed to identify practices that use clinical decision support to achieve the most clinically successful evidence-based blood pressure treatment protocols. The agency intends to urge widespread use of the successful models. The two-phase submissions are due by October 6 and October 27 respectively.

FDA Issues

Senators David Vitter (R-LA), Chuck Grassley (R-IA), Dean Heller (R-NV) and Angus King (I-ME) sent a letter to the Food and Drug Administration (FDA) asking the agency for changes to proposed regulations under the Food and Drug Administration Safety and Innovation Act (FDASIA) of 2012 which allows the agency to destroy drugs with a value of \$2,500 or less when they are prohibited from being re-imported. They maintain that the proposed rules “present a health threat to hundreds of thousands of Americans who receive their drugs from safe, licensed and legal pharmacies in Canada.” They asked the FDA to require that patients be notified six months in advance that their drugs could be destroyed and to phase-in the final regulations over two five-year periods. The FDA also gave notice that it will extend until August 7th the comment period on their previous notice regarding opioid packaging, storage and disposable system design and functionality. Finally, at a House Energy and Commerce Health Subcommittee hearing the Director of the FDA’s Center for Drug Evaluation and Research testified that the agency does not need new legislation to bring patient perspectives into the regulatory process to help speed the development of medicines despite views to the contrary by some disease organizations.

Upcoming Health-Related Hearings and Markups

House Energy and Commerce Committee: will hold opening statements on a markup to consider bills addressing public health and economic issues, including H.R. 594 — Paul D. Wellstone Muscular Dystrophy Community Assistance, Research and Education Amendments; H.R. 669 — Sudden Unexpected Death Data Enhancement and Awareness Act; H.R. 4290 — Wakefield Act; H.R. 4771 — Designer Anabolic Steroid Control Act; and H.R. 4250 — Sunscreen Innovation Act; 4:00 p.m., 2123 Rayburn Bldg.; July 14.

House Energy and Commerce Committee: will markup to consider bills addressing public health and economic issues, including H.R. 594 — Paul D. Wellstone Muscular Dystrophy Community Assistance, Research and Education Amendments; H.R. 669 — Sudden Unexpected Death Data Enhancement and Awareness Act; H.R. 4290 — Wakefield Act; H.R. 4771 — Designer Anabolic Steroid Control Act; and H.R. 4250 — Sunscreen Innovation Act; 10:00 a.m., 2123 Rayburn Bldg.; July 15.

Senate Finance Committee: will hold a hearing titled “Chronic Illness: Addressing Patients’ Unmet Needs;” 10:00 a.m., 215 Dirksen Bldg.; July 15.

House Energy and Commerce Oversight and Investigations Subcommittee: will hold a hearing titled “Review of CDC Anthrax Lab Incident;” 10:00 a.m., 2123 Rayburn Bldg.; July 16.

House Energy and Commerce Health Subcommittee: will hold a hearing titled “Failure to Verify: Concerns Regarding PPACA’s Eligibility System;” 10:15 a.m., 2322 Rayburn Bldg.; July 16.

House Energy and Commerce Communications and Technology Subcommittee and Health Subcommittee: will hold a hearing on advancements in technology and health care; 9:30 a.m., 2123 Rayburn Bldg.; July 17.

Senate HELP Primary Health and Aging Subcommittee: will hold a hearing titled “More Than 1,000 Preventable Deaths a Day Is Too Many: The Need to Improve Patient Safety;” 10:00 a.m., 430 Dirksen Bldg.; July 17.

Health Legislation Recently Introduced

H.R. 5022 (VETERANS' HEALTH), to amend Title 38, U.S. Code, to improve dental health care for veterans, and for other purposes; VARGAS; to the Committee on Veterans' Affairs, July 8.

S. 2578 (INSURANCE REGULATION), to ensure that employers cannot interfere in their employees' birth control and other health-care decisions; MURRAY; read the first time, June 9.

H.R. 5047 (VETERANS' HEALTH), to prohibit the Secretary of Veterans Affairs from altering available health care and wait times for appointments for health care for certain veterans, and for other purposes; PETERS of Michigan; to the Committee on Veterans' Affairs, July 9.

H.R. 5048 (VETERANS' HEALTH), to expand and improve care provided to veterans and members of the armed forces with mental health disorders or at risk of suicide, to review the terms or characterization of the discharge or separation of certain individuals from the armed forces, to require a pilot program on loan repayment for psychiatrists who agree to serve in the Veterans Health Administration of the Department of Veterans Affairs, and for other purposes; PETERS of Michigan; jointly, to the committees on Veterans' Affairs and Armed Services, July 9.

H.R. 5051 (INSURANCE REGULATION), to ensure that employers cannot interfere in their employees' birth control and other health-care decisions; SLAUGHTER; jointly, to the committees on Education and the Workforce, Energy and Commerce and Ways and Means, July 9.

S. 2586 (MEDICARE), to establish a smart card pilot program under Medicare; KIRK; to the Committee on Finance, July 10.

H.R. 5054 (VETERANS' HEALTH), to amend Title 38, U.S. Code, to establish within the Department of Veterans Affairs an Office of Whistle-Blower and Patient Protection; KIRKPATRICK; to the Committee on Veterans' Affairs, July 10.

H.R. 5059 (VETERANS' HEALTH), to direct the secretary of defense and the secretary of veterans affairs to provide for the conduct of annual evaluations of mental-health-care and suicide-prevention programs of the Department of Defense and the Department of Veterans Affairs, to review the terms or characterization of the discharge or separation of certain individuals from the armed forces, to require a pilot program on loan repayment for psychiatrists who agree to serve in the Veterans Health Administration of the Department of Veterans Affairs, and for other purposes; WALZ; jointly, to the committees on Veterans' Affairs and Armed Services, July 10.