



Congress to Return to Appropriations and Health Legislation; New CMS Administrator

Senate Republicans Oppose Certain House Provisions in War Supplemental

As reported last week, the House-passed \$75 billion Supplemental Appropriations Act of 2010 (H.R. 4899) contains, among other budget and health matters, an amendment to strengthen the Federal Trade Commission’s ability to restrict “pay for delay” payments by brand-name drug manufacturers to their generic competitors to delay the manufacture and marketing of less costly generic drugs (CBO estimates that the federal government will save more than \$2.4 billion over 10 years in lower drug costs for Medicare, Medicaid, military and veteran health programs). On July 9th, the FTC Chairman, **Jon Leibowitz**, appeared before the Senate Judiciary Committee’s Subcommittee on Antitrust, Competition Policy and Consumer Rights and testified that the FTC’s “top competition priority” is to stop pay-for-delay agreements. However, the Generic Pharmaceutical Association (GPhA) has expressed its opposition to the House language stating that it will delay consumer access to affordable medicines by severely restricting drug patent litigation settlements. It is not clear that the Senate will include this provision when it takes up the war supplemental this week, even though the House pay-for-delay provision was originally passed in the Senate

Judiciary Committee. In addition, Senate Republicans have signaled that they will not accept the \$16 billion in domestic funding included in the House bill (with \$10 billion to protect public school teachers from layoffs this fall). Adding to the hurdles for passage in the Senate, **President Obama** has issued a veto threat if the final legislation contains the House’s \$800 million in cuts to the “Race to the Top” education program.

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Repeal or no Repeal?

Last week it was reported that **Senate Minority Leader Mitch McConnell** has yet to endorse other Republican efforts to repeal and replace some or all of the PPACA. However,

the Senate Minority Whip, Jon Kyl, and **National Republican Senatorial Committee Chairman, John Cornyn**, have indicated their support for these efforts as has the House Republican leadership.

House Republicans will continue efforts to gain signatures for discharge petitions to force a House votes on repeal measures.

PPACA Fallout on Medicare Advantage Plans Requested

House Energy and Commerce Republicans **Joe Barton and Michael Burgess** have asked CMS to provide them current data on enrollment in private Medicare Advantage plans, saying that “We are particularly concerned by this lack

of transparency since the health reform law, according to the CMS Office of the Actuary, will ultimately reduce enrollment in Medicare Advantage by 50 percent....”

President Appoints New CMS Administrator Amid Controversy

Last week, President Obama presented nominee **Donald Berwick** with a “recess appointment” as the new Administrator of the Centers for Medicare & Medicaid Services. Such an appointment means, however, that his tenure will extend only to the end of 2011 when his nomination would have to be considered anew in the Senate. The President said “It’s unfortunate that at a time when our nation is facing enormous challenges, many in Congress have decided to delay critical nominations for political purposes....” Republicans were quick to voice their opposition to this move, and to point out that no

hearings were ever scheduled for the confirmation, making it impossible for them to block or even delay the nomination. The Senate Finance Committee ranking member, **Chuck Grassley**, stated that “the American people have a right to know about Berwick’s background, his thoughts on rationing and government-run health care, and any potential conflicts of interest....” Former **CMS Administrator Gail Wilensky** said that the recess appointment was terribly unfortunate, given that **Berwick** was only nominated in April, and that his appointment may add to the burdens of implementing the PPACA.

New HIPPA Privacy Rules

HHS has issued a new proposed rule under the HIPAA which would extend requirements for protecting the privacy and security of patient protected health information to business associates of health care entities already covered by HIPAA. It would also subject them to the same enforcement actions as covered entities. The rule also defines

subcontractors of business associates as obligated to comply with the HIPAA privacy rules. The Health Information Technology for Economic and Clinical Health (HITECH) Act required that HIPAA rules be extended to business associates in much the same way they apply to covered entities.

Medicare Payments to Outpatient Hospitals to Increase

CMS has announced that Medicare payments to more than 4,000 outpatient hospital facilities will increase 2.2% in 2011, \$3.9 billion, from 2010. The PPACA mandated CMS to reduce the inflation increase due outpatient hospitals in 2011 by 0.25 percentage points. CMS also

reported that Medicare payments to ambulatory surgical centers (ASCs) would not increase in 2011. The update factor for ASCs is projected to be 1.6% for 2011, but the PPACA mandated the update be reduced by the same amount, producing a zero percent update. CMS also said that Medicare

beneficiaries will see a slight decline in their out-of-pocket costs for hospital outpatient services in 2011 because the PPACA waives beneficiary cost-sharing for most Medicare-covered preventive services, including the Welcome to Medicare Visit.

Grants to Improve Emergency/Hospital Readiness

HHS has announced that states, territories, and large metropolitan areas will receive grants totaling \$390.5 million in July to improve hospital preparedness and emergency

readiness to respond to the public health and medical impacts of emergencies such as natural disasters or acts of terrorism.

HHS Website to Contain New Hospital Data

CMS has announced the addition of information about the quality of care, particularly as to heart attacks and surgical infections, available in outpatient and emergency departments to the recently created

CMS Hospital Compare website. The updated information will also include data on the rates of outpatient magnetic resonance imaging (MRI) procedures for low back pain, outpatient retests after a screening mammogram as

well as two ratios that explain how frequently outpatient departments gave patients “double” computed tomography (CT) scans when a single scan may be all that is needed.

Nursing Home Compliance Rule

CMS has issued a proposed rule Link that would allow HHS to reduce nursing home civil monetary penalties (CMP) by as much as 50% in situations where the nursing home self-

reported a compliance violation and quickly corrected it.

H.R. 5664 (COBRA), to amend title I of the Patient Protection and Affordable Care Act to permit certain individuals losing their COBRA continuation coverage to have access to the high-risk health insurance pool program established under such title; ELLSWORTH; to the Committee on Energy and Commerce, July 1.

H.R. 5678 (SUBSTANCE ABUSE), to amend the Public Health Service Act to provide grants for treatment of methamphetamine abuse, and for other purposes; CARNAHAN; to the Committee on Energy and Commerce, July 1.

H.R. 5687 (NURSES), to extend changes to requirements for admission of nonimmigrant nurses in health professional shortage areas made by the Nursing Relief for Disadvantaged Areas Act of 1999; CUELLAR; to the Committee on the Judiciary, July 1.

H.R. 5690 (ACCESS), to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system, and for other purposes; GINGREY of Georgia; jointly, to the committees on

the Judiciary and Energy and Commerce, July 1.

H. RES. 1507 (DISEASE AWARENESS), expressing support for designation of July as “National Choroideremia Awareness Month;” ROE of Tennessee; to the Committee on Oversight and Government Reform, July 1.