



## House Adjourns Without Aiding State Medicaid Programs

### *FY 2011 Appropriations Matters*

Last week the House voted 411-6 to approve the \$77.3 billion FY 2011 Military Construction/Veterans Affairs Appropriations bill, the first of the 12 appropriations bills taken up in the House before the lower body adjourned until Tuesday, September 14. For the VA, the bill provides \$56.8 billion in discretionary funding and \$64 billion for mandatory VA programs. The Senate counterpart appropriates a nearly identical sum. Last week the Senate Appropriations Committee reported the \$732 billion Labor/HHS/Education appropriations bill which provides \$74.6 billion for HHS. The NIH would receive \$32 billion for biomedical research which is \$1 billion more than for FY 2010. The bill also includes \$50 million to create a new “Cures Acceleration Network” within NIH to help speed the transition of laboratory discoveries to private sector use. **Senator Harkin** said the 3.5% increase is equal to the rate of biomedical inflation and that he had to contend with limited funds and does not envision finding “loose change rolling around in our pockets anywhere.” The House Appropriations Committee delayed action on the Labor/HHS and Agriculture/FDA appropriations measures until after the August recess. The Senate is expected to adjourn this week after considering several measures, including H.R. 1586, an aviation reauthorization bill, to which **Senate Majority Leader Harry Reid** has offered a substitute amendment to provide an additional \$16.1 billion in state Medicaid

assistance. The additional federal Medicaid funding is offset by other spending rescissions and a cloture vote on the amended bill is scheduled for this Monday.

### *War Supplemental Appropriations Enacted*

Last week the President signed into law H.R. 4899, after the House approved the \$59 billion Senate version of supplemental appropriations for the Iraq/Afghanistan war efforts which was amended to remove domestic funding previously added by the House. Among the provisions is \$13.38 billion in mandatory spending for Vietnam veterans with illnesses linked to Agent Orange.

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**House Energy and  
 Commerce Committee  
 Approves Health Legislation**

Last week the full House E&C Committee approved the health bills reported earlier by the committee's health subcommittee. Included is the Family Health Accessibility Act of 2010, H.R. 1745, that extends the protections under the Federal Tort Claims Act to licensed health providers who volunteer for Medicaid services at community health centers as well as all other services covered under Section 330 of the Public Health Service Act. Other reported bills include: the Emergency Medic Transition Act (H.R. 3199); H.R. 903, the Dental Emergency Responder Act of 2010; H.R. 2923, the Combat

Methamphetamine Enhancement Act; H.R. 3470, the Nationally Enhancing the Wellbeing of Babies Through Research Now Act of 2010; H.R. 5710, the National All Schedules Prescription Electronic Reporting Reauthorization Act of 2010; H.R. 5756, the Training and Research for Autism Improvements Nationwide Act of 2010; and H.R. 5809, the Safe Drug Disposal Act of 2010.

**House HITECH Hearing**

At last week's House Energy and Commerce Committee hearing on the implementation of the Health Information Technology for Economic and Clinical Health (HITECH) Act enacted under the ARRA, **Rep. Joe Barton** quizzed the spokesmen for CMS and the Office of the National

Coordinator for Health Information Technology as to whether federal stimulus funding has created IT jobs in the private sector, but without an immediate response. However, other witnesses said IT employment has increased. Also **Rep. John Dingell** raised questions about the ability of physicians to adopt health IT given what he said is the lack of available certified electronic health record technology and an insufficient temporary certification program. The National Coordinator responded that the temporary certification program should ensure "high-quality" technology, but that the program will not test all of the functions that the future permanent certification program will test.

**PPACA High-Risk Pool Regulations**

Last week HHS issued interim final rules for the \$5 billion PCIP, Pre-Existing Condition Insurance Plan Program, which will provide health coverage until 2014 for those uninsured for at least six months because of the denial of health coverage due to pre-existing conditions. In the nine states with "guaranteed issue" and "community rating" the rules would allow for alternative rules since individuals would not be able to demonstrate coverage denial. The rule lists benefits under the program (including hospitalization, outpatient care, maternity care, hospice and home health care) and describes the options for determining who has a pre-existing condition, how to verify citizenship,

how to appeal PCIP decisions, how federal funding will be allocated, ways to prevent "dumping" people who have insurance into the program and strategies for preventing fraud. Under the rule, out-of-pocket expenses for people covered under policies in the high-risk pools cannot exceed \$5,950 in 2010, the same limit as high-deductible policies. HHS also announced that grants of up to \$1 million per state will be available to help establish the insurance exchanges which will begin operation in 2014. HHS also has asked for comments by October 4 on how the department should develop the rules and standards for the exchanges.

**Revision to Rules on Pre-Existing Condition Policies for Children**

Last week HHS provided additional guidance on policies covering children with pre-existing conditions in light of some health insurer moves to discontinue children's health coverage. The guidance, Questions and Answers on Enrollment of Children Under 19 Under the New Policy That Prohibits Pre-Existing Condition Exclusions, clarifies that "to address concerns over adverse selection,"

issuers in the individual health insurance market may use open enrollment periods if allowed under state law, whether the coverage is for family plans or for individual policies. Unless state laws require otherwise, issuers in the individual market may determine the number and length of open enrollment periods for children, families, and adults.

## CRS Report on New Entities Created under the PPACA

A recent CRS report, *New Entities Created Pursuant to the Patient Protection and Affordable Care Act*, finds that it is not possible to determine the precise number of new organizations and advisory bodies that will ultimately be created under the PPACA because some entities could satisfy more than

one requirement in the legislation, some requirements may be satisfied by existing organizations and some new entities may be created even though they are not specifically mentioned in the law. CRS concluded that congressional and executive branch control over some of the dozens of new entities created by the new law is uncertain,

and it is not clear how the GAO will be able to independently audit entities whose members are appointed by the head of GAO (such as the 19-member Patient-Centered Outcomes Research Institute and the 15-member Consumer Operated and Oriented Plan Advisory Board).

## Republican Repeal Efforts

Last week **Senators John Cornyn, Orrin Hatch, Jon Kyl, Pat Roberts and Tom Coburn** introduced S. 3653 (The Health Care Bureaucrats Elimination Act), legislation

designed to repeal the Independent Payment Advisory Board (IPAB) which is to begin operation in 2014 under the PPACA. Senator Cornyn said “America’s seniors deserve the ability to hold elected officials

accountable for the decisions that affect their Medicare, but IPAB would take that away from seniors and put power in the hands of politically-appointed Washington bureaucrats....”

## Small Business Objections to the PPACA

Last week small business owners speaking at a U.S. Chamber of Commerce forum said they will pay fines imposed under the PPACA rather than purchase health care coverage for their

employees. In addition, a Senior Vice President said that the Chamber is looking at legal options for challenging the law.

## Final Rule on New Payment System for ESRD Providers

Last week CMS issued a final rule establishing a new Medicare bundled prospective payment system (PPS) for renal dialysis facilities beginning in 2011. The final rule sets a base payment rate of

\$229.63 for each dialysis treatment compared with \$198.64 in the proposed rule issued in September 2009. CMS also released a proposed rule establishing a new quality incentive program (QIP) by 2012 to promote high quality

services in dialysis facilities by linking payments to performance standards. Both rules were required under the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA).

## Final Rule for Inpatient Hospital Payments

Last week CMS issued a final rule providing for FY 2011 payments to about 3,500 acute care hospitals paid under the Inpatient Prospective Payment System (IPPS) and about 420 long-term care hospitals

(LTCHs) paid under the LTCH Prospective Payment System (PPS) for discharges occurring on or after October 1, 2010. CMS said that taking into account all factors that would affect spending, payments to general acute care hospitals for

operating expenses in FY 2011 will decline by 0.4%, or \$440 million, over last year and that payments to long-term care hospitals are expected to increase by 0.5%, or about \$22 million.

**S. 3647 (PUBLIC HEALTH EMERGENCIES)**, to amend the Public Health Service Act to provide for the participation of particular specialists determined by the secretary of health and human services to be directly related to the health needs stemming from environmental health hazards that have led to its declaration as a public health emergency to be eligible under the National Health Service Corps in the National Health Service Corps Loan Repayment Program, and for other purposes; TESTER; to the Committee on Health, Education, Labor, and Pensions, July 26.

**H.R. 5853 (CLASS PROGRAM)**, to amend Title XXXII of the Public Health Service Act to require review and approval by law prior to collection of premiums under the CLASS program, to require notice to individuals prior to enrollment, and to require termination of the program in the event of actuarial unsoundness, and for other purposes; BOUSTANY; jointly, to the committees on Energy and Commerce and Rules, July 26.

**H.R. 5861 (MEDICARE)**, to amend Title XVIII of the Social Security Act to establish a cancer center construction loan program; KILROY; jointly, to the committees on Energy and Commerce and Ways and Means, July 26.

**S. 3653 (INDEPENDENT PAYMENT ADVISORY BOARD)**, to remove unelected, unaccountable bureaucrats from

seniors' personal health decisions by repealing the Independent Payment Advisory Board; CORYN; to the Committee on Finance, July 27.

**H.R. 5882 (REFORM PROPOSALS)**, to deauthorize appropriation of funds to carry out the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010; GRAVES of Georgia; jointly, to the committees on Energy and Commerce, Ways and Means, Education and Labor, the Judiciary, Natural Resources, and House Administration, July 27.

**H.R. 5888 (PRESCRIPTION DRUG PRICING)**, to establish an America Rx program to establish fairer pricing for prescription drugs for individuals without access to prescription drugs at discounted prices; MICHAUD; to the Committee on Energy and Commerce, July 27.

**H.R. 5889 (PHYSICIANS)**, to amend the Public Health Service Act and Title XVIII of the Social Security Act to increase the number of primary care physicians and medical residents serving health professional shortage areas, and for other purposes; YOUNG of Alaska; jointly, to the committee on Energy and Commerce and Ways and Means, July 27.

**H. CON. RES. 305 (WOMEN'S HEALTH)**, expressing the sense of the Congress concerning contraceptives for women; LOWEY; to the Committee on

Energy and Commerce, July 27.

**H. RES. 1561 (CENTERS FOR MEDICARE & MEDICAID SERVICES)** directing the secretary of health and human services to transmit to the House of Representatives copies of each portion of any document, record, or communication in her possession consisting of or relating to documents prepared by or for the Centers for Medicare & Medicaid Services regarding the Patient Protection and Affordable Care Act, and for other purposes; BURGESS; to the Committee on Energy and Commerce, July 27.

**H.R. 5890 (TAX POLICY)**, to amend the Internal Revenue Code of 1986 and Title XIX of the Social Security Act to reform the provision of long-term care insurance; DOGGETT; jointly, to the committees on Energy and Commerce and Ways and Means, July 28.

**S. 3668 (HEALTH DEMONSTRATION PROGRAMS)**, to require the secretary of health and human services to establish a demonstration program to award grants to, and enter into contracts with, medical—legal partnerships to assist patients and their families to navigate health—related programs and activities; HARKIN; to the Committee on Health, Education, Labor, and Pensions, July 29.

**S. 3673 (REFORM PROPOSALS)**, to amend the Patient Protection and Affordable

Care Act to repeal certain limitations on tax health care benefits; HUTCHISON; to the Committee on Finance, July 29.

**S. 3674 (MEDICARE)**, to amend

Title XVIII of the Social Security Act to provide for Medicare coverage of comprehensive Alzheimer's disease and other dementia diagnosis and services in order to improve care and

outcomes for Americans living with Alzheimer's disease by increasing detection, diagnosis, care, and planning; STABENOW; to the Committee on Finance, July 29.