

# Federal Health Update

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*Welcome to Federal Health Update. This newsletter is a compilation of the latest news in the federal health care sector.*

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## EXECUTIVE AND CONGRESSIONAL NEWS

- **Editor's note: The House did not pass H.R. 3230, the Veterans Access to Care through Choice, Accountability, and Transparency Act of 2014, as previously reported.**
- **On July 22, 2014, two federal appeals courts released contradicting rulings contradicted on a key provision of Affordable Care Act.**

The first decision came in the morning from a three-judge panel of the U.S. Court of Appeals for the District of Columbia. The panel, in a major blow to the law, ruled 2-1 that the IRS went too far in extending subsidies to those who buy insurance through the federally run exchange, known as HealthCare.gov.

A separate federal appeals court -- the Fourth Circuit Court of Appeals -- hours later issued its own ruling on a similar case that upheld the subsidies in their entirety.

The conflicting rulings would typically fast-track the matter to the Supreme Court. However, it is likely that the administration will ask the D.C. appeals court to first convene all 11 judges to re-hear that case. The D.C. court ruling strikes at the foundation of the law by challenging subsidies that millions of people obtained through the federally run exchange known as HealthCare.gov. The suit maintained that the language in ObamaCare actually restricts subsidies to state-run exchanges -- of which there are only 14 -- and does not authorize them to be given in the 36 states that use the federally run system.

The decision, if it withstands appeals, may deprive more than half the people who signed up for Obamacare the tax credits they need to buy a health plan.

The way the Patient Protection and Affordable Care Act is written makes clear that the subsidy is available only to people who bought plans on state-run exchanges, a three-judge panel ruled.

Only 14 states have opted to set up their own marketplaces, making delivery of tax credits via the federal exchange crucial to meeting Obamacare's goal of broadening health-care coverage in the U.S.

A total of \$1 trillion in subsidies is projected to be doled out over the next decade.

## MILITARY HEALTH CARE NEWS

- **The Defense Health Agency announced that TRICARE beneficiaries can now choose between two qualified mental health counselor types: independently practicing TRICARE Certified Mental Health Counselors (TCMHC) and Supervised Mental Health Counselors (SMHC).**

TRICARE will authorize TCMHCs as independent providers who meet specific qualification criteria. They must have a master's degree from a mental health counseling program accredited by the Council for Accreditation of Counseling and Related Education Programs (CACREP) and pass the National Clinical Mental Health Counseling Examination (NCMHCE) by Jan. 1, 2017. TCMHCs can independently treat TRICARE beneficiaries but SMHCs will continue to practice under the referral and supervision of TRICARE-authorized physicians.

The Defense Health Agency is tasked with making military medicine stronger, better and more relevant for the future. This change moves us one step closer to that goal, ensuring the availability of well-qualified, independent providers for our beneficiaries. For more information about TRICARE mental health coverage, visit [www.tricare.mil/mentalhealth](http://www.tricare.mil/mentalhealth).

- **The Department of Defense has awarded WPS Health Insurance a \$484 million contract renewal to continue to administer TRICARE for Life, a Medicare supplement program that serves about 2 million military retirees over the age of 65.**

The program accounts for about 11 percent of WPS' overall revenue, according to a WPS official.

WPS originally was awarded the TRICARE contract in 2004 and has held it since. The new contract will go into effect in June 2015 and run for six years.

- **The Defense Health Agency announced that TRICARE has extended the coverage for the TRICARE Applied Behavior Analysis (ABA) Pilot until Dec. 31, 2014 when beneficiaries will transition to the new TRICARE Autism Care Demo (ACD).**

The law creating the TRICARE Applied Behavior Analysis (ABA) Pilot expires on July 24, 2014, and ACD technically kicks off on July 25, but it won't go into effect until the end of the year. TRICARE will use the time to flesh out all the details of the program and fully educate affected beneficiaries about the new benefit. The delay also allows beneficiaries in each of the three current ABA programs to transition to this single unified benefit.

Beneficiaries covered under the ABA Pilot, the ABA Demo and TRICARE Basic coverage of ABA don't need to do anything to continue their coverage. They, as well as any new enrollees, will transition seamlessly to the ACD, and TRICARE will work with their ABA providers to get new referrals and authorization once it is needed.

To learn more about the TRICARE ABA coverage, and to sign up for updates on the ACD, visit [www.tricare.mil/ACD](http://www.tricare.mil/ACD).

## VETERANS AFFAIRS NEWS

- **The Senate Veterans Affairs committee unanimously voted to confirm former Procter & Gamble executive Robert McDonald to be the next VA Secretary.**
- **On July 24, 2014, acting Secretary of Veterans Affairs Sloan D. Gibson told members of the House Veterans' Affairs Committee that the Department of Veterans Affairs (VA) has taken action on the four recommendations made in the Interim Report of the Office of Inspector General for the Phoenix VA Health Care System.**

The final report of the IG has not been published.

Below is the text of Office of the Inspector General's (OIG) four interim recommendations, along with the actions VA has taken:

**First, OIG "recommend the VA Secretary take immediate action to review and provide appropriate health care to the 1,700 veterans we identified as not being on any existing wait list." In response:**

- VA announced on June 4 that the Department had reached out to all Phoenix, Arizona-based veterans identified by the IG as not being on any wait list to immediately begin scheduling appointments for all Veterans requesting care.
- Of those veterans identified by the IG, 1,035 Veterans requested and were scheduled for medical appointments.
- As of July 18, 2014, 844 of the 1,035 veterans have completed those appointments or have an active future appointment; with the initial appointment being offered within 30 days. Any appointment scheduled more than 30 days in the future is the result of the provider's clinical judgment or the Veterans preference to get an appointment at a later date.
- As of July 18, 2014, 191 of the 1,035 veterans did not show up for or canceled their appointment prior to the scheduled time. The Phoenix VA Health Care System will reach out to these veterans again to ensure their health care needs have been addressed.
- Of the remaining 665 veterans, all have been contacted, and either indicated they didn't want an appointment or did not respond to multiple phone calls and a certified letter offering an opportunity to schedule an appointment.

**Second, OIG "recommend the VA Secretary review all existing wait lists at the Phoenix Health Care System to identify veterans who may be at greatest risk because of a delay in the delivery of health care (for example, those veterans who would be new patients to a specialty clinic) and provide the appropriate medical care." In response:**

- Acting Secretary Gibson initiated a review of all wait lists at the Phoenix VA Health Care System.
- As part of the review, VA reached out to more than 5,000 veterans in Phoenix to coordinate the acceleration of their care. The 1,700 Veterans identified by the OIG are a subset of those 5,000 Veterans.
- Those veterans included all individuals on the Phoenix VA Health Care System's New Enrollees Appointment Request List (NEAR), Electronic Wait List (EWL) and patients who were waiting greater than 90 days to receive a scheduled appointment.

- Once contact had been made, Phoenix staff scheduled Veterans for appointments based on the veterans' preference for the timing of their appointments as well as appropriate clinical need.
- Clinical staff attempted to accommodate all needed appointments at the Phoenix VA Health Care System. Where capacity did not exist to provide timely appointments, staff referred patients to non-VA community care in order to provide all veterans timely access to care.
- Since May 15, VA has scheduled 2,300 appointments at the Phoenix VA Health Care System and made 2,713 referrals for appointments to community providers through non-VA care.

**Third, OIG “recommend the VA Secretary initiate a nationwide review of veterans on wait lists to ensure that veterans are seen in an appropriate time, given their clinical condition.” In addition, on May 21, 2014, former Secretary Shinseki directed the Veterans Health Administration leadership to personally review their processes to ensure VA is doing everything possible to schedule veteran patients for timely appointments. In response:**

- VA health care facilities nationwide continuously monitor clinic capacity in an effort to maximize VA's ability to provide veterans timely appointments given their clinical conditions.
- Where VA cannot increase capacity, VA is increasing the use of care in the community through non-VA medical care.
- Approximately 200,000 new VA appointments nationwide were scheduled for veterans between May 15 and June 15, 2014.
- Additionally, nearly 40,000 individual veterans have received referrals for their care to private providers in the community in order for veterans to receive needed care as quickly as possible.
- Each of VA's facilities continuously reaches out to veterans waiting greater than 90 days for care to coordinate the acceleration of their care.
- Facility clinical staff continuously evaluate veterans currently waiting for care to determine if the timing of their appointment is medically appropriate given their individual clinical conditions.

**Fourth, OIG “recommend the VA Secretary direct the Health Eligibility Center to run a nationwide New Enrollee Appointment Request report by facility of all newly enrolled veterans and direct facility leadership to ensure all veterans have received appropriate care or are shown on the facility's electronic waiting list.” In response:**

- The Health Eligibility Center, in connection with the Veterans Health Administration Support Services Center, developed a report to identify those individuals currently waiting on the New Enrollee Appointment Request (NEAR) List.
- As of May 15, 2014, approximately 64,000 veterans were currently pending on the NEAR list.
- As of July 15, 2014, approximately 2,100 individuals remained on the NEAR list.
- A preliminary analysis of the 61,900 veterans removed from the NEAR list shows:
  - 20 percent cancelled their request for an appointment
  - 11 percent scheduled an appointment
  - 2 percent were placed on the Electronic Wait List
  - 7 percent requested and were referred to other VA services
  - 7 percent were in the early stages of eligibility and verification
  - 52 percent are still in process
- Of the 52 percent in process, VA has made several attempts to contact those veterans by phone. After verifying mailing addresses, VA sent certified letters to every veteran who could not be reached by phone.

## GENERAL HEALTH CARE NEWS

- **Health and Human Services Secretary Sylvia M. Burwell has named Leslie Dach to a newly-created Senior Counselor position.**

As a senior counselor, Dach will work closely with the Department's senior staff on key policy challenges, strategic initiatives, and engagement with external partners. Dach will also work with the team on the successful execution of the second Open Enrollment period for the Health Insurance Marketplace.

Dach joins HHS with more than 25 years of business, policy, communications and executive management experience. He has delivered impact in complex organizations, created highly innovative public-private partnerships, and successfully worked with a wide spectrum of political and community voices to make a difference on complex issues.

From 2006 to 2013, Dach served as executive vice president of corporate affairs for Walmart Stores Inc. Dach's efforts at Walmart have been credited with developing a new model of public, private and civil society partnerships that deliver meaningful impact. Under his leadership, Walmart partnered with First Lady Michelle Obama's *Let's Move!* campaign on a series of initiatives to make food healthier and more affordable, and launched a \$2 billion program to help end hunger.

He will report directly to the Secretary.

- **The Department of Health and Human Services announced that an estimated 10.3 million uninsured adults gained health care coverage following the first open enrollment period in the Health Insurance Marketplace.**

The new [report](#), published in the New England Journal of Medicine, examines trends in insurance before and after the open enrollment period and finds greater gains among those states that expanded their Medicaid programs under the Affordable Care Act.

According to the findings, the uninsured rate for adults ages 18 to 64 fell from 21 percent in September 2013 to 16.3 percent in April 2014. After taking into account economic factors and pre-existing trends, this corresponded to a 5.2 percentage-point change, or 10.3 million adults gaining coverage. The decline in the uninsured was significant for all age, race/ethnicity, and gender groups, with the largest changes occurring among Latinos, blacks, and adults ages 18-34 – groups the Administration targeted for outreach during open enrollment.

Coverage gains were concentrated among low-income adults in states expanding Medicaid and among individuals in the income range eligible for Marketplace subsidies. The study finds a 5.1 percentage point reduction in the uninsured rate associated with Medicaid expansion, while in states that have not expanded their Medicaid programs, the change in the uninsured rate among low-income adult populations was not statistically significant.

The study also looks at access to care, and finds that within the first six months of gaining coverage, more adults (approximately 4.4 million) reported having a personal doctor and fewer (approximately 5.3 million) experienced difficulties paying for medical care. It does not include data from before 2012, as coverage was changing rapidly during this period. This means the results do not include the more than 3 million young adults who gained health insurance coverage through their parents' plans.

- **More than half of youth in the United States have access to parks or playground areas, recreation centers, boys' and girls' clubs, and walking paths or sidewalks in their**

**neighborhoods, according to a new report, State Indicator Report on Physical Activity, 2014.**

The report also finds that 27 states have adopted policies that formalize their intent to plan, design and maintain streets so they are safe for all users including pedestrians, bicyclists, motorists, transit riders, and those in wheelchairs.

The report includes physical activity behavior, environment and policy information for each state and is available at [www.cdc.gov/physicalactivity/downloads/pa\\_state\\_indicator\\_report\\_2014.pdf](http://www.cdc.gov/physicalactivity/downloads/pa_state_indicator_report_2014.pdf)

- **The Centers for Disease Control and Prevention announced that the head of the lab that potentially exposed scores of employees in Atlanta to anthrax resigned.**

Michael Farrell had been the team leader for the CDC's Bioterrorism Rapid Response and Advanced Technology laboratory since 2009. But he was reassigned last month after workers inadvertently sent live anthrax samples to researchers in other CDC labs.

- **The U.S. Food and Drug Administration approved Zydelig (idelalisib) to treat patients with three types of blood cancers.**

Zydelig is being granted traditional approval to treat patients whose chronic lymphocytic leukemia (CLL) has returned (relapsed). Used in combination with Rituxan (rituximab), Zydelig is to be used in patients for whom Rituxan alone would be considered appropriate therapy due to other existing medical conditions (co-morbidities). Zydelig is the fifth new drug with breakthrough therapy designation to be approved by the FDA and the third drug with this designation approved to treat CLL.

The FDA is also granting Zydelig accelerated approval to treat patients with relapsed follicular B-cell non-Hodgkin lymphoma (FL) and relapsed small lymphocytic lymphoma (SLL), another type of non-Hodgkin lymphoma. Zydelig is intended to be used in patients who have received at least two prior systemic therapies.

The FDA approved Gazyva (obinutuzumab) in November 2013, Imbruvica (ibrutinib) in February 2014 and a new use for Arzerra (ofatumumab) in April 2014 to treat CLL. Both Gazyva and Arzerra also received breakthrough therapy designation for this indication. Like the other two drugs, Zydelig was also granted orphan product designation because it is intended to treat a rare disease.

## REPORTS/POLICIES

- **The GAO published “Patient Protection and Affordable Care Act: Preliminary Results of Undercover Testing of Enrollment Controls for Health Care Coverage and Consumer Subsidies Provided Under the Act,” (GAO-14-705T) on July 23, 2014.** This study examines issues related to controls for application and enrollment for coverage through the federal marketplace. <http://www.gao.gov/assets/670/664946.pdf>

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## HILL HEARINGS

- The House Veterans Affairs Committee will hold a markup hearing on **July 30, 2014**, to address pending legislation.



## LEGISLATION

- **H.R.5177** (introduced July 23, 2014): To amend the Patient Protection and Affordable Care Act to eliminate benefits under the Federal Employees Health Benefits Program for Members of Congress so they are treated the same way as other taxpayers was referred to the Committee on House Administration, and in addition to the Committee on Ways and Means.  
Sponsor: Representative Daniel B. Maffei [NY-24]
- **H.R.5183** (introduced July 23, 2014): To establish a demonstration program requiring the utilization of Value-Based Insurance Design to demonstrate that reducing the copayments or coinsurance charged to Medicare beneficiaries for selected high-value prescription medications and clinical services can increase their utilization and ultimately improve clinical outcomes and lower health care expenditures was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce.  
Sponsor: Representative Diane Black [TN-6]
- **S.2645** (introduced July 23, 2014): A bill to provide access to medication-assisted therapy was referred to the Committee on Health, Education, Labor, and Pensions.  
Sponsor: Senator Edward J. Markey [MA]

## MEETINGS

- The Department of Defense (DoD) will host its annual Military Health System Research Symposium (MHSRS) **Aug. 18-21, 2014**, in Fort Lauderdale, Fla. <http://mhsrs.amedd.army.mil>.
- The National Center for Disaster Medicine and Public Health will host the 2014 Learning in Disaster Health Workshop on **Sept. 9-10, 2014**, in the Washington DC area. <http://ncdmph.usuhs.edu/>
- The AUSA 2014 Annual Meeting & Exposition will be held **Oct. 13-15, 2014**, in Washington DC. <http://www.ausa.org/meetings/2014/Pages/AnnualMeeting.aspx>
- The 30th Annual Meeting of the International Society for Traumatic Stress Studies (ISTSS) will be held **Nov.6-8, 2014**, in Miami, Fla. <http://www.istss.org/MeetingsEvents.htm>
- The AMIA 2014 Annual Symposium will be held on **Nov. 15-19, 2014**, in Washington DC. <http://www.amia.org/amia2014>
- AMSUS Annual Continuing Education Meeting will be held **Dec. 2-5, 2014**, in Washington, DC <http://amsusmeetings.org>
- The 100<sup>th</sup> Annual Meeting of Radiological Society of North America (RSNA) 2014: **Dec. 5-9, 2014**, in Chicago, Ill. [http://www.rsna.org/Annual\\_Meeting.aspx](http://www.rsna.org/Annual_Meeting.aspx)
- The 2014 Special Operations Medical Association (SOMA) Science Assembly will be held on **Dec. 8-11, 2014**, in Tampa, Fla. <http://www.specialoperationsmedicine.org/Pages/scientificassembly.aspx>
- The AAMA 2015: The National Summit of Medical Administrators will be held on **Jan. 19-21, 2015**, in Clearwater, Fla. <http://aameda.org/p/cm/ld/fid=159>

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