

**Tom Koutsoumpas**

**Jeremy Rabinovitz**

**Kevin Kappel**

[TKoutsoumpas@mlstrategies.com](mailto:TKoutsoumpas@mlstrategies.com)

[JRabinovitz@mlstrategies.com](mailto:JRabinovitz@mlstrategies.com)

[KMKappel@mlstrategies.com](mailto:KMKappel@mlstrategies.com)

## HEALTH CARE REFORM UPDATE

January 12, 2011

---

### Implementation of Health Care Reform Law

On January 1<sup>st</sup>, just days before the new Congress convened, numerous provisions of the Affordable Care Act (ACA) went into effect, including numerous consumer-friendly provisions that ACA supporters hope will boost the law's popularity, especially with seniors. In all, over 20 provisions will go into effect during the course of 2011. Those that went into effect on January 1<sup>st</sup> include new medical-loss ratio regulations that require insurers to provide rebates to consumer if they do not meet the requirements, closure of the Medicare drug coverage gap, bonus payments to doctors for primary care services under Medicare, elimination of cost-sharing for Medicare-covered preventative services recommended by the U.S. Preventative Services Task Force, establishment of the Center for Medicare and Medicaid Innovation, freezing the income threshold for higher income Medicare beneficiaries, and a new long-term care insurance program in addition to others.

On January 3<sup>rd</sup>, newly elected Wisconsin Governor Scott Walker (R) released a letter to the state attorney general authorizing him to file suit against the ACA. Gov. Walker campaigned on that promise and insisted the law is unconstitutional. A copy of that letter can be found [here](#). Florida's recently elected Attorney General Pam Bondi (R) will also be taking over the multi-state lawsuit led by former Florida Attorney General Bill McCollum who stepped down to run for governor. Shortly after being sworn in, Bondi indicated that she expected additional states to join her state's lead in filing suit, but on January 7<sup>th</sup>, newly elected Oklahoma Attorney General Scott Pruitt (R) announced that his state will file its own lawsuit.

On January 5<sup>th</sup> HHS Secretary Kathleen Sebelius announced in letters addressed to House Appropriations Committee Chairman Harold Rogers (R-KY) that HHS is moving the new Office of Consumer Information and Insurance Oversight (OCIIO) under the Centers for Medicare and Medicaid Services (CMS) and is placing the Administration on Aging in charge of implementing the CLASS Act from the ACA. The move is reportedly part of an effort to save money and glean inter-Department efficiencies as the Secretary expects efforts by House Republicans to defund the ACA.

On January 5<sup>th</sup>, the first day of the 112<sup>th</sup> Congress, the House Rules Committee prepared to consider a bill that would fully repeal the ACA and sent it to the House floor where it has yet to be considered. Since, according to the CBO, the repeal would add to the federal deficit by \$230 billion by 2021, the Republicans included in the rules package a provision exempting the legislation from the new pay-go rules put into place by the new Republican majority. The CBO score can be found [here](#). The package also did not allow for any amendments. In response, Senate Democrats took numerous actions over the course of the week to send a strong message to House Speaker John Boehner (R-OH) that a repeal of the ACA would not pass that body. Undeterred, other House Republicans filed numerous other bills to repeal or replace the legislation including Rep. Dan Burton (R-IN) whose bill would replace the ACA with a system of private insurance and Rep. John

Fleming (R-LA) whose bill would rescind \$1 billion from the Health Insurance Reform Implementation Fund designed to cover administrative expenses.

On January 7<sup>th</sup>, CMS announced its value-based purchasing proposal that would boost Medicare payments for higher-quality care. The proposal, which would reward facilities for certain performance measures, was ill-received by hospitals during its inception during the health care reform debate. A press release on the announcement can be found [here](#).

On January 7<sup>th</sup> a bipartisan group of Senators sent a letter to FDA Commissioner Margaret Hamburg clarifying their intent on a controversial ACA provision that the FDA is currently trying to implement. In their letter, which included Sens. Orrin Hatch (R-UT), Mike Enzi (R-WY), Kay Hagan (D-NC), and John Kerry (D-MA), the Senators argued that the ACA's follow-on biologics provision was designed to provide 12 years of data exclusivity rather than market exclusivity for innovator products.

On January 8<sup>th</sup>, in a horrific attack, a gunman opened fire on Rep. Gabby Giffords (D-AZ) and numerous constituents at a *Congress on Your Corner* event in Tucson, AZ killing 6 and wounding 14. The Congresswoman was critically wounded and remains in the ICU at the University of Arizona medical center. In response to this national tragedy and the outpouring of support from all of Rep. Giffords' colleagues and the nation, the House postponed all legislative business for the week of January 10<sup>th</sup>, including the scheduled vote on the repeal of the ACA. Known as a moderate and part of the Blue Dog Coalition, Congresswoman Giffords supported health care reform efforts, and her attempted assassination has refocused many policy makers on mental health services in the U.S., an issue that she herself championed in Congress. The House is expected to take up its vote to repeal the ACA next week.

#### Other HHS and Federal Regulatory Initiatives

On January 3<sup>rd</sup>, HHS officially opened the long-awaited registration for the Medicare and Medicaid incentive program established under the American Recovery and Reinvestment Act (ARRA). Under the program, hospitals, physicians and other providers are eligible for incentive payments for adopting electronic health records (EHRs). More information can be found [here](#). The Office of the National Coordinator for health IT also released on January 3<sup>rd</sup> a final rule to establish a permanent certification program health IT. More information can be found [here](#).

On January 5<sup>th</sup>, Maryland Governor Martin O'Malley (D) announced the appointment of current FDA Deputy Commissioner Joshua Sharfstein as Maryland Secretary of Health. In his 21 months at his position at the FDA, Deputy Commissioner Sharfstein lobbied hard for stricter regulations for product approval that was often met with stiff resistance from industry representatives. Later in the week, as one of his last moves before John Taylor assumes his role, Sharfstein announced a series of steps aimed at improving transparency. More information on those transparency initiatives can be found [here](#).

On January 5<sup>th</sup>, the Obama administration announced it was dropping an advanced care planning Medicare regulation that would have reimbursed physicians for voluntary advanced care planning discussions as part of annual physicals. A similar provision included in previous versions of health care reform is what led to charges of promoting "death panels" being hurled at Democrats.

On January 5<sup>th</sup> CMS released national health spending data that indicated that 2009 health care spending in the U.S. exceeded \$2.5 trillion, or about \$8,086 per person. The 4% growth was slower than expected, largely due to the recession, but the spending still grew to 17.6 percent of U.S. gross domestic product.

On January 6<sup>th</sup> the Department of Housing and Urban Development (HUD) and HHS announced a partnership to assist approximately 1,000 non-elderly citizens with disabilities live independently through rental assistance and other services. The HHS press release can be found [here](#).

On January 7<sup>th</sup>, 33 Republican governors and governors-elect sent a letter to President Obama and HHS Secretary Sebelius asking the administration to let their states out from provisions in ARRA and the ACA that prohibits states to scale back Medicaid enrollment or benefits packages. Many states, both Democrat and Republican suffering from deep budget deficits, have targeted the Medicaid program as an area to save money and increase efficiency.

#### Other Legislative Initiatives

On January 2<sup>nd</sup> President Obama signed the \$4.3 billion health care bill to provide health care benefits to the first responders of the September 11<sup>th</sup>, 2001 terrorist attack. The President's statement following the signing of the bill can be found [here](#).

On January 4<sup>th</sup> President Obama signed a \$1.4 billion food-safety bill that overhauls the process by which the FDA oversees domestic and international producers. The bill, which requires additional appropriations, is being met with stiff resistance by some in the new House Republican majority that indicate they will not provide the funds to implement it. That same day, the President also signed an Alzheimer's strategy bill that directs HHS an annual assessment of the Department's progress in combating the disease.