

Tom Koutsoumpas

Jeremy Rabinovitz

Kevin Kappel

TKoutsoumpas@mlstrategies.com

JRabinovitz@mlstrategies.com

KMKappel@mlstrategies.com

HEALTH CARE REFORM UPDATE

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Implementation of Health Care Reform Law

On January 21st Senate Democratic leadership continued to praise early benefits of the Affordable Care Act (ACA) and sent a letter to national tax preparation companies encouraging them to “take all necessary steps” to ensure that small businesses can claim the tax credit for health insurance they provide to employees. Despite the administration’s efforts to educate businesses, a non-profit that oversees the small business market, the Small Business Majority, released a study showing that only 43 percent of eligible businesses were “familiar” with the new provision in the ACA.

While opponents of the ACA have been gearing up in court, supporters have also been mobilizing. On January 21st numerous ACA supporters including hospital associations, health care advocacy groups, health care economists, attorneys general from certain states, and Democratic lawmakers filed numerous briefs in support of the Obama administration’s position that the ACA’s individual mandate is constitutional. The conservative Thomas More Law Center has appealed an earlier ruling upholding the mandate to the U.S. Court of Appeals for the Sixth Circuit.

On January 21st the Patient-Centered Outcomes Research Institute (PCORI), the new non-profit entity tasked by the ACA to fund comparative effectiveness research, announced the new members of the Methodology Committee that determine the way studies will be conducted. A copy of the GAO announcement can be found [here](#).

The Office of Insurance Programs at the CMS Center for Consumer Information and Insurance Oversight released new figures on January 24th showing the HHS has approved subsidies for 5,500 organizations that offer medical coverage to early retirees. Under the ACA, the subsidies will pick up 80 percent of the cost of medical claims between \$15,000 and \$90,000.

On January 24th a federal judge in Pennsylvania turned down a Justice Department request to throw out a lawsuit challenge against the ACA filed by two individuals. In their lawsuit, Barbara Goudy-Bachman and Gregory Bachman claimed that the law’s mandate to purchase health insurance is unconstitutional.

On January 25th Reps. Fred Upton (R-MI), Chairman of the Energy & Commerce Committee, and Cliff Stearns (R-FL), Chairman of the Energy & Commerce Subcommittee on Oversight, sent a letter to Secretary Sebelius requesting detailed information on the Pre-existing Condition Insurance Plan (PCIP). The Chairmen cited an unexpectedly low number of enrollees as reasoning for requesting the information on how the PCIP is being operated.

Senate Minority Leader Mitch McConnell invoked Rule 14 on January 25th to try to bring the health care repeal bill that has already passed the House to the Senate floor. Rule 14 normally allows leaders to bypass Committee consideration and bring bills straight to the floor. However, the Majority Leader sets the schedule, and although Sen. McConnell may ultimately be successful in forcing a vote eventually, the measure is not likely to pass.

On January 25th a new bipartisan group of Senators – including Sens. John McCain (R-AZ), Sherrod Brown (D-OH), Chuck Schumer (D-NY), and Tom Harkin (D-IA) – sent a letter to the FDA as the agency continues to craft rules for follow-on biologics. In contrast to a January 7th letter by Sens. Kay Hagan (D-NC), Orrin Hatch (R-UT), Mike Enzi (R-WY), and John Kerry (D-MA), this most recent letter adopts the stance taken by manufacturers of generic biologic drug manufacturers and argued for the need for increased access to generic by the American public.

After much talk among governors, the State of Arizona on January 25th was the first state to formally ask the Obama administration for permission to enact cuts to the Medicaid program because of large state budget deficits despite the Medicaid expansion slated to be enacted under the ACA. In her request, Arizona Governor Jan Brewer (R) detailed her plans which included dropping 280,000 people by reducing eligibility, a move that would save the cash-strapped state approximately \$541.5 million.

Rep. Phil Roe (R-TN) introduced on January 26th a bill to repeal the section of the ACA establishing the Independent Payment Advisory Board (IPAB), a 15-member panel that will make recommendations to Congress on curbing costs in Medicare that Congress will be forced to act on under certain circumstances. The Congressman has broad support for his bill among industry groups and among some Democrats, including Rep. Pete Stark (D-CA), a strong proponent of health care reform who called this particular provision “dangerous.” Sen. John Cornyn (R-TX) is expected to introduce a companion bill in the Senate.

On January 26th a flurry of state-level action focused on the ACA occurred across the country. In Minnesota, legislation crafted by Republican Senate Health and Human Services Committee Chairman David Hann that would repeal Medicaid health expansion and block the individual mandate cleared the Senate health care panel. Newly elected Democratic Governor Mark Dayton has said he would veto any bill blocking the Medicaid expansion. In Virginia, a federal appeals court announced that it would expedite its consideration of a lower court ruling against the individual mandate in the ACA and that it would hear oral arguments between May 10 and May 13. In South Dakota, a bill declaring the ACA unconstitutional failed to clear a House Committee despite a Republican majority with GOP members of the House State Affairs Committee noting that they prefer opposition to the ACA to come through the form of lawsuits against the federal government. In Montana, a bill to force the state attorney general to sign on the multi-state lawsuit against the ACA passed the Senate by a vote of 28-22. The state House of Representatives will take up the bill on the February 24th.

House Republicans on January 26th launched a multi-pronged attack on the ACA in two separate hearings held in the House Budget and Ways & Means Committees. During the hearings, the House Budget Committee took on the spending argument against the new law, and witnesses in the Ways & Means Committee pegged the law as anti-business. Members of the Ways & Means Committee also announced that they would soon be moving on a repeal of the new 1099 tax filing requirement in the ACA, a move supported by both Democrats and Republicans. Bills to repeal the provision have been introduced in both the House and Senate, and a repeal bill introduced by Sen. Mike Johanns (R-NE) has a filibuster-proof 60 co-sponsors in the Senate. More on the Ways & Means hearing can be found [here](#), and more on the Budget Committee hearing can be found [here](#).

On January 26th the Ranking Member on the Ways & Means Committee, Rep. Sandy Levin (D-MI), sent a letter to Douglas Holtz-Eakin, the former CBO director who is a frequent critic of the ACA and president of the American Action Forum, requesting that he disclose the sources of funding for the organization. Holtz-

Eakin testified the day before in the Ways & Means Committee that the ACA was an impediment to job growth.

On January 27th the Senate Health, Education, Labor and Pensions (HELP) Committee held a hearing on the ACA featuring HHS Secretary Kathleen Sebelius as a witness. During the hearing, which was the first Committee hearing in the 112th Congress, Secretary Sebelius framed the law as a key component of the economic recovery. More information on the hearing can be found [here](#).

HHS released a new report on January 28th highlighting how much families and business would save under the ACA on health insurance costs when the law is fully implemented in 2014. A copy of the press release can be found [here](#).

Other HHS and Federal Regulatory Initiatives

On January 24th the USDA announced funding for educational and health care projects for rural America and also discussed rural health care access. A transcript of the briefing can be found [here](#).

HHS and the Department of Justice announced on January 24th that joint fraud fighting and prevention efforts had recovered a record \$4 billion in FY2010. The federal Departments also used the opportunity to praise the ACA for its new fraud fighting provisions. A copy of the HHS press release can be found [here](#).

The National Governors Association sent a letter to Congressional leaders on January 24th outlining its request as governors work with federal lawmakers to reduce deficits. Among their requests was that Congress should not impose maintenance of efforts (MOE) provisions on states as a condition of receiving federal funding, something the ACA did. A copy of the letter can be found [here](#).

The Obama administration announced on January 25th that it was re-nominating Dr. Don Berwick to be the head of the Centers for Medicare and Medicaid Services (CMS). Dr. Berwick was installed as the CMS Administrator after President Obama pursued a recess appointment last July, a move that angered many Republicans on top of their claims that Dr. Berwick supports rationing. Dr. Berwick will face a hearing in the Senate Finance Committee and a confirmation vote by the full Senate.

On January 25th President Obama delivered his annual State of the Union address. During his speech, the President left open the possibility to changes in the ACA, but he also firmly defended the new law. Many pundits cited his comments on the topic as predictable and safe given the volatile political environment still hanging over the law. More on the address from the President can be found [here](#).

The Obama administration announced on January 26th 13 appointees to the President's Advisory Group on Prevention, Health Promotion, and Integrative and Public Health. The Group reports to Surgeon General Regina Benjamin who also serves as the Chair of the National Prevention, Health Promotion and Public Health Council. The Presidential executive order establishing the Council can be found [here](#).

On January 27th the Agency for Healthcare Research and Quality (AHRQ) published a notice in the *Federal Register* asking for ideas for experts from outside the health care industry to help improve the design and increase consumer use of personal health records. AHRQ is seeking public comment until March 28th. A copy of the announcement can be found [here](#).

Dr. David Blumenthal, the National Coordinator for health IT, released a letter on January 27th detailing additional funding being made available to the the Regional Extension Centers, State Health Information Exchange, and Community College Consortia programs. A copy of the letter with more details can be found [here](#).

Other Legislative Initiatives

A bipartisan group of House members, including Reps. Lamar Smith (R-TX), Phil Gingrey (R-GA), and David Scott (D-GA) urged President Obama on January 24th to publicly state support for overhauling the nation's medical liability system in his State of the Union address. The group also introduced their HEALTH Act, legislation capping non-economic damages and reducing the number of claims filed against doctors.

Appearing before a House Judiciary Subcommittee on January 25th, the head of the U.S. Patent and Trademark Office (USPTO), Director David Kappos, told the panel that restraining USPTO funding to 2008 levels would be a "disaster." The USPTO is already struggling to meet the needs of reviewing patent applications as well as revamping the USPTO's information technology capabilities. Kappos testified shortly after the House adopted a resolution aimed at reducing non-security discretionary spending FY 2008 levels.

On January 27th the Senate formally announced the new Committee assignments for the 112th Congress. New additions to the Committees overseeing health care were as follows:

- Committee on HELP– Sens. Richard Blumenthal (D-CT), Sheldon Whitehouse (D-RI), Rand Paul (R-KY), and Mark Kirk (R-IL)
- Committee on Finance– Sens. John Thune (R-SD), Tom Coburn (R-OK), and Ben Cardin (D-MD)
- Special Committee on Aging – Sens. Richard Blumenthal (D-CT), Joe Manchin (D-WV), Mark Kirk (R-IL), Jerry Moran (R-KS), Ron Johnson (R-WI), and Kelly Ayotte (R-NH)