



Tom Koutsoumpas, TKoutsoumpas@mlstrategies.com
Jeremy Rabinovitz, JRabinovitz@mlstrategies.com
Alexander Hecht, AHecht@mlstrategies.com
Gary Bacher, GEBacher@mintz.com
Joseph P. Hammang, PhD, JPHammang@mlstrategies.com
Kevin M. Kappel, KMKappel@mlstrategies.com
Robert C. Skinner, RCSkinner@mlstrategies.com
Joshua Booth, JBooth@mintz.com

ML Strategies, LLC
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 USA
202 434 7300
202 434 7400 fax
www.mlstrategies.com

HEALTH CARE REFORM UPDATE October 31, 2012

Implementation of the Affordable Care Act

On October 25th HHS Secretary Sebelius announced that Medicare beneficiaries have saved \$4.8 billion on prescription drugs as a result of the ACA. Over two million people on Medicare have saved an average of \$657 from closure of the donut hole, and 20.7 million people on original Medicare have received at least one preventative service at no cost. A release from HHS can be read [here](#).

On October 25th the Centers for Medicare and Medicaid Services (CMS) announced an approved partnership with Washington State that will test a managed-fee-for-service model and provide persons who are dual eligible for Medicare and Medicaid with a more coordinated, person-centered care experience. The demonstration is scheduled to launch on April 1, 2013 and is part of an effort within the ACA to better integrate care for the duals. The full agreement between CMS and Washington is available [here](#).

On October 26th the Government Accountability Office (GAO) released a report on the impact of the Medicare Part D Discount Program established by the ACA. The report found similar increases in brand-name drug prices for those beneficiaries within the coverage gap between the initial and catastrophic coverage periods and those beneficiaries not within the gap. The increases were similar both before and after the discount program began. The full report is available [here](#).

On October 27th 11 members of a 13-member panel in Idaho approved of a plan to establish a state-based health insurance exchange. The recommendation will go to Governor Butch Otter (R), who must make a decision by November 16th on whether Idaho will pursue a state-run or federal exchange under the ACA. An article on the panel's recommendation can be read [here](#).

Other HHS and Federal Regulatory Initiatives

On October 24th the Food and Drug Administration (FDA) posted an updated list of customers of the New England Compounding Center (NECC). The updated customer list is available [here](#). On October 26th the FDA released results from its investigation of the NECC. Some vials were uncontaminated, but investigators also found vials that were contaminated and are believed to have been part of a batch that contributed to a nationwide meningitis outbreak. The investigation results are available [here](#). On October 31st the Centers for Disease Control (CDC) announced that deaths from the fungal meningitis outbreak reached 28. The total number of persons sickened from the contaminated steroidal injections has now reached over 350. Updated numbers from the CDC can be found [here](#).

On October 25th Health and Human Services (HHS) Inspector General Daniel Levinson said increased focus will be placed on Medicare overbilling by doctors and hospitals using electronic health records (EHR). According to Levinson, EHRs offer the potential for improved care quality and efficiency, but EHRs can also lead to illegal and intentional overbilling. An article on efforts by the inspector general's office is available [here](#).

Other Congressional and State Initiatives

On October 23rd the 7th U.S. Circuit Court of Appeals ruled that Indiana could not cut off Medicaid funding for Planned Parenthood for general health services that include cancer screenings. The ruling stipulated that patients have a right to obtain care from any qualified provider of their choice. The Court said Indiana was attempting to cut off Planned Parenthood for reasons unrelated to the quality of care it provides. An article on the case is available [here](#).

On October 23rd House Majority Leader Eric Cantor (R-VA) released a report on "The Imperial Presidency" of Barack Obama. Cantor said the Obama administration has placed burdens on religious employers through the contraception mandate, has cut Medicare Advantage funding, and requires insurance companies to lower operating costs even while the Affordable Care Act (ACA) increases operating costs on insurers. The full report from Cantor is available [here](#).

On October 24th Senator Tom Harkin (D-IA), Chairman of the Senate HELP Committee, posted a draft of legislation that will track the prescription drug supply chain. Bipartisan members of the House Energy & Commerce Committee and the Senate HELP Committee are requesting comments on the legislation. Written comments can be submitted until November 7th. More information and the draft legislation are available [here](#).

On October 24th House Ways & Means Chairman Dave Camp (R-MI) and Oversight Subcommittee Chairman Charles Boustany (R-LA) sent a letter to HHS Secretary Sebelius demanding that HHS release information on public relations spending by the Obama administration to promote the ACA. The two Congressmen say they may be forced to issue a subpoena due to prior requests for expenditure information being ignored. The letter to HHS is available [here](#).

On October 24th Senator Tom Coburn (R-OK) wrote a letter to Oklahoma Governor Mary Fallin (R) urging the state not to proceed with Medicaid expansion offered by the ACA. Senator Coburn said the state should focus on maintaining the current system rather than expanding it, and he said the federal

government will likely be unable to keep its funding commitment. An article on the issue can be read [here](#).

On October 24th Representatives Harry Waxman (D-CA), Ranking Member of the House Energy & Commerce Committee, and Diana DeGette (D-CO), Ranking Member of the Oversight & Investigations Committee, wrote letters to eight companies that make rice products. The representatives are worried about the level of arsenic in rice, and they requested information by November 8th on how the companies monitor this substance. The letters to the eight producers are available [here](#).

On October 25th members of the Senate HELP Committee sent letters to the FDA, the New England Compounding Center, and the Massachusetts Board of Registration in Pharmacy to aid in the Committee's investigation of the nationwide meningitis outbreak that has sickened over 300 Americans. The letters are available [here](#).

On October 25th the National Governors Association (NGA) released a brief indicating that states are finding new ways to provide the most cost efficient health insurance options for state employees. The NGA says states are using increased wellness programs to prevent chronic diseases and reduce the costs of treatment. Additional ideas include high-deductible and consumer driven health plans. The brief from the NGA can be seen [here](#).

On October 25th New York Attorney General Eric Schneiderman (D) announced that Boehringer-Ingelheim Pharmaceuticals, Inc. (BIPI) agreed to pay \$95 million to settle a nationwide case involving the illegal marketing of drugs Aggrenox, Atrovent, Combivent, and Micardis. The release from Schneiderman is available [here](#).

On October 29th Representative Ed Markey (D-MA), in response to the recent meningitis outbreak, released a report on the dangers of compounding pharmacies. Rep. Markey said more FDA oversight is required to ensure the safety of Americans. The report from Rep. Markey can be read [here](#). FDA Commissioner Margaret Hamburg agreed with Rep. Markey and said the agency would work with Congress to gain additional authority over compounding pharmacies. An article on Hamburg's comments is available [here](#).

On October 29th Vermont Gov. Peter Shumlin (D) encouraged state employees to drop their kids from parental health care plans and instead enroll children in Dr. Dinosaur, the state's version of the state-federal health insurance program for low-income children. Gov. Shumlin said this option could lead to decreased costs for employees and for Vermont. An article on the encouraged change can be read [here](#).

Other Health Care News

On October 23rd the Liberty Institute, on behalf of the Family Research Council (FRC), sent a legal request to Health and Human Services (HHS) Secretary Sebelius asking if FRC would be forced to comply with the Affordable Care Act's (ACA) contraception mandate. The letter indicated that a lawsuit could be avoided if HHS ruled that FRC would not need to comply with the mandate. The letter from the Liberty Institute is available [here](#).

On October 23rd the Kaiser Family Foundation (KFF) released a report indicating that a Medicaid block grant program proposed by House Republicans would cut \$1.7 trillion from the program and cover 30 million fewer people by 2022. The report said a repeal of the ACA and lower block grants would both contribute to a decrease in coverage. The full report can be read [here](#).

On October 23rd the Georgetown University Center for Children and Families found that the number of uninsured children in America decreased from 6.4 million in 2009 to 5.5 million in 2011. The decrease in uninsured children occurred despite no decrease in the number of children living in poverty. The report can be viewed [here](#).

On October 23th the Association of American Medical Colleges (AAMC) said that enrollment at U.S. medical schools has reached an all-time high. Enrollment increased by 1.5% in 2012, to 19,517 students. The AAMC report indicated Congress should life a 15-year cap on residency training. The release from AAMC is available [here](#).

On October 23rd the Nuclear Regulatory Commission (NRC) said it will study the cancer risk for Americans who live near nuclear power plants. The study, which will be carried out by the National Academy of Sciences, will focus on six reactor sites throughout the country. The release from NRC can be read [here](#).

On October 24th the Urban Institute released a report on the economic impact of the Massachusetts health care plan implemented by Governor Romney. The report finds that economic growth was stronger in Massachusetts compared to the rest of the country following reform and that employer-sponsored insurance coverage expanded. The report also concludes the ACA will have little impact on jobs and the economy. The full report is available [here](#).

On October 24th Public Citizen, a public advocacy group, wrote a letter to HHS Secretary Sebelius saying that the situation involving the New England Compounding Center (NECC) and contaminated vaccines was completely avoidable. Public Citizen said the FDA failed to use its existing authority to stop the meningitis outbreak. The letter is available [here](#).

On October 25th Health Affairs released a study indicating that the number of Americans under 65 spending more than 10% of their income on health care remained steady between 2006 and 2009. Spending remained steady largely because of a shift from brand-name to generic drugs. The study is available [here](#).

On October 25th the National Association of Public Hospitals (NAPH) released a report indicating hospitals will experience \$53.3 billion more in uncompensated care costs by 2019. The NAPH asks that disproportionate share hospital (DSH) payments not be cut, especially after the Supreme Court ruling on the ACA made Medicaid expansion voluntary for states. The report can be read [here](#).

On October 25th the Kaiser Commission on Medicaid and the Uninsured reported that spending growth on Medicaid reached a near-record low in fiscal year 2012. A slowly improving economy and the expiration of stimulus funds contributed to the growth rate. Medicaid enrollment increased by 3.2% in 2012. The full report is available [here](#).

On October 25th a report released by Research!America indicated that biomedical and health research spending in the United States decreased by \$4 billion in fiscal year 2011. The drop is the first since Research!America began compiling data in 2002. A lack of funding and deep cuts from potential sequestration would have devastating effects on research. The report can be read [here](#).

On October 25th Health Affairs and the Robert Wood Johnson Foundation released a report on how nurse practitioners are attempting to fill in the gap left by primary care physicians. The report notes that some physician groups are against increasing roles for nurse practitioners, citing patient safety, while others see a need for more practitioners as the population grows and millions of people become newly insured in 2014. The report can be read [here](#).

On October 29th the American Action Forum (AAF) released a report finding that health insurance subsidies under the ACA will likely keep increasing. The report notes that the Congressional Budget Office projects the subsidies will cost \$574 billion, up \$112 billion from an earlier projection. The report from the AAF is available [here](#).

On October 30th Dartmouth Atlas released a report noting that the location where doctors receive an education has a significant impact on the kind of care a doctor will provide. The report finds that the location where a doctor is trained influences end-of-life care, the choice to perform surgery, and the quality of care a patient receives. The report from Dartmouth Atlas can be read [here](#).

On October 30th the Employee Benefit Research Institute (EBRI) released a report showing that just 17.7% of workers were employed at establishments offering health coverage to early retirees. The current number is down from 28.9% who were covered with health retirement benefits in 1997. The percentage of employers offering retirement health benefits is expected to keep decreasing. The EBRI report is available [here](#).

On October 30th the KFF released a report stating that significant Medicare savings will be hard to achieve from efforts to integrate the care for Americans who are enrolled in Medicare and Medicaid. According to KFF, better-targeted models for specific groups may achieve greater savings. The full report can be read [here](#).

On October 31st the National Committee for Quality Assurance (NCQA) released its annual report on the state of health care quality. The report notes that Adult Body Mass Index (BMI) Assessment increased by an average of 17 percentage points across all health plans. The increased attention to obesity indicates an important focus on helping adults manage weight. A news release from NCQA is available [here](#). The full report can be read [here](#).

On October 31st Accenture released a report highlighting the steep decline in private practice doctors. Just 39% of doctors were independent physicians in 2012, compared with 57% who were independent in 2000. Doctors who remain independent are beginning to test alternative models of business. The full report can be read [here](#).

Hearings and Mark-Ups Scheduled

Both the Senate and the House of Representatives are in recess.