



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

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 December 10, 2012

Implementation of the Affordable Care Act

On December 3rd the Obama administration challenged Oklahoma's lawsuit against the Affordable Care Act (ACA). The Department of Justice (DOJ) said Oklahoma has little standing to challenge the ACA because the state is not a citizen that is subject to the individual mandate and is not eligible for tax subsidies. The DOJ's request for dismissal of the case is available [here](#).

On December 3rd Oklahoma Governor Mary Fallin (R) continued the state's battle with the federal government over the ACA. Gov. Fallin wrote in her monthly column why refusing to establish an insurance exchange and expand Medicaid is the best option for Oklahoma taxpayers and families. The column can be read [here](#).

On December 5th America's Health Insurance Plans (AHIP) issued a state-by-state analysis of the ACA health insurance sales tax that the Joint Committee on Taxation estimates will cost \$100 billion over the next ten years. A news release from AHIP is available [here](#). An infographic with additional effects of the tax can be viewed [here](#).

On December 5th U.S. District Court Judge Brian Cogan determined that Catholic Charities and the Roman Catholic Diocese of Rockville Centre in New York lacked standing for their suit against the contraceptive mandate of the ACA. However, Judge Cogan allowed suits from three other Catholic organizations to proceed. Details on the decision are available [here](#).

On December 5th the Internal Revenue Service (IRS) issued a final rule on funding for the \$4.2 billion Patient-Centered Outcomes Research Institute (PCORI) Trust Fund. The PCORI helps patients, clinicians, policymakers, and others make informed health decisions through the use of evidence-based medicine and comparative effectiveness. The final rule is available [here](#).

On December 6th the PCORI announced Robin Newhouse will serve as the new vice-chair of the institute's Methodology Committee. A release from PCORI can be read [here](#).

On December 6th New Jersey Governor Chris Christie (R) vetoed legislation that would have set up a state-based exchange. Gov. Christie said he wanted to choose the most cost-effective option for the state and that the Obama administration failed to provide adequate information on the implementation of each exchange option. The press release from Gov. Christie's office is available [here](#).

On December 6th the House Small Business Committee released a spreadsheet of the changes small businesses will face in 2013 and 2014 as part of the ACA. The spreadsheet can be viewed [here](#).

On December 7th President Obama issued an Executive Order that reestablishes the 22-member panel known as the Advisory Group on Prevention, Health Promotion, and Integrative and Public Health. The panel, formed as part of the ACA, is extended until September 30, 2013. The Executive Order can be read [here](#).

On December 10th Tennessee Governor Bill Haslam (R) said his state will not operate a state-based exchange under the ACA. Gov. Haslam said he believes the law harms small businesses and is too costly for state governments. A statement from Gov. Haslam's office is available [here](#).

Other HHS and Federal Regulatory Initiatives

On December 3rd the Food and Drug Administration (FDA) announced the creation of a public-private partnership that will focus on speeding the development, assessment, and review of new medical devices. The Medical Device Innovation Consortium will fund projects and simplify the medical device design process. Full details of the new partnership are available [here](#).

On December 4th the Supreme Court heard oral arguments in the case *Sebelius v. Auburn Regional Medical Center*. The challenge, brought by 18 hospitals, suggests that HHS should reopen Medicare claims from 25 years ago that they were underpaid because of faulty calculations. Deputy Solicitor General argued that the deadline had long passed for any reimbursements. Oral arguments are available [here](#). An article on the story can be viewed [here](#).

On December 5th the IRS issued a final rule on the excise tax imposed on the sale of certain medical devices. Manufacturers, importers, and producers of taxable medical devices are affected by the final rule starting January 1, 2013. The IRS rule can be read [here](#).

On December 6th the Social Security Administration (SSA) added 35 new conditions to its list on the Compassionate Allowances Program (CAP). CAP offers expedited disability benefits to people suffering from rare conditions. The full list of covered conditions can be viewed [here](#).

On December 6th the Department of Justice (DOJ) indicated that Healthpoint and DFB Pharmaceuticals will settle allegations that false claims were submitted to Medicare and Medicaid for an uncovered drug, Xenaderm. Under the settlement, Healthpoint could pay up to \$48 million under the terms of the settlement. The release from DOJ is available [here](#).

On December 6th HHS released an interim final rule that provided revisions to the technical specifications for electronic health record (EHR) programs. The rule also includes an alternative measure for the Stage 2 meaningful use (MU) objective for hospitals to provide structured electronic laboratory results to ambulatory providers. The interim final rule can be read [here](#).

On December 7th the HHS Office of the National Coordinator for Health Information Technology (ONC) posted a series of interactive maps, allowing users to track progress on health IT adoption. An article about the maps is available [here](#). The maps can be viewed [here](#).

On December 7th a report from the Centers for Disease Control and Prevention (CDC) found that 72% of office-based physicians used EHR programs in 2012. In 2009, just 48% of office-based physicians were using EHRs. The full report and additional findings from the CDC are available [here](#).

Other Congressional and State Initiatives

On December 3rd the Republican leadership of the House sent President Obama a counteroffer to avoid the fiscal cliff. The \$2.2 trillion plan includes \$800 billion in tax loophole and deduction reform and \$600 billion in savings by changing benefit levels in government programs. A full article on the proposal is available [here](#). The actual letter to the President can be viewed [here](#).

On December 3rd Florida's Senate Select Committee on the ACA met to begin considering options for insurance exchanges and the expansion of Medicaid in the state. A report on the views of various legislators in Florida is can be viewed [here](#).

On December 3rd a spokeswoman for Rep. Kevin Brady (R-TX) said the Congressman will become the chairman of the Ways and Means Health Subcommittee in the 113th Congress. Rep. Brady replaces retiring Rep. Wally Herger (R-CA). Additional details are available [here](#).

On December 5th South Dakota Governor Dennis Daugaard (R) released his budget for FY 2014 and rejected Medicaid expansion in the state. Expansion would have covered an additional 48,000 South Dakota residents. Gov. Daugaard said he is open expansion of Medicaid in the future. The governor's budget is available [here](#). An article on the decision to not expand Medicaid can be read [here](#). A press release from the Gov. Daugaard's office can be seen [here](#).

On December 5th Rep. Rosa DeLauro (D-CT) and Rep. Nita Lowey (D-NY) introduced legislation that would provide greater FDA oversight over compounding pharmacies. The legislation is in response to a national meningitis outbreak that occurred because of contaminated injections from the New England Compounding Center. A press release from Rep. DeLauro's office is available [here](#).

On December 5th the Government Accountability Office (GAO) released a report finding that consumer protections for Medicare and Medicaid vary largely across programs, payment systems, and states. The report suggests consumers have fewer protections under Medicaid plans. The full GAO report is available [here](#).

Other Health Care News

On November 29th the Insured Retirement Institute (IRI) released a report finding that most consumers lack confidence about meeting their own long-term care needs. Just 28 percent of “Generation Xers” are confident in meeting long-term care costs, and that number declines to 24% among Baby Boomers. The full report can be read [here](#).

On December 3rd the Robert Wood Johnson Foundation released a report that notes the number of uninsured children who are eligible for public insurance fell from 4.9 to 4.4 million in the past two years. The decrease is partially because over 80% of the eligible population is already enrolled in Children’s Health Insurance Program (CHIP). The full report is available [here](#).

On December 4th the American Lung Association released its Tobacco Cessation Coverage report for 2012. The report urges HHS to include a well-defined tobacco cessation benefit within its essential health benefits (EHB) for insurance plans. The report can be read [here](#).

On December 4th the Center for American Progress (CAP) released a plan to address the current fiscal crisis. The CAP plan encourages a reform in Medicare and Medicaid payment plans and increases premiums for higher-income Medicare beneficiaries. The full plan can be read [here](#).

On December 4th the Pew Research Center released a poll indicating that the public is largely split on if there will be deal to avert the fiscal cliff. Nearly half (49 percent) of respondents said a deal would not be reached, while 40 percent said there would be a deal. 53 percent of respondents said that Republicans in Congress would be at fault if a deal is not reached. Poll results can be viewed [here](#).

On December 4th the U.S. Court of Appeals in New York ruled that an employee of Orphan Medical who touted an unapproved use of the narcolepsy drug Xyrem could not be prosecuted. The appeals court ruled that employee Alfred Caronia was simply exercising his freedom of speech rights. The ruling could have major implications on the marketing of drugs. An article on the decision is available [here](#).

On December 4th the National Association of Public Hospitals and Health Systems (NAPH) launched a campaign to urge policymakers to protect Medicaid from fiscal cliff cuts. The campaign includes short videos and a website with research and additional resources. The release from NAPH is available [here](#).

On December 5th the Commonwealth Fund released a report highlighting decreased administrative costs from the medical-loss ratio (MLR) of the ACA. The MLR contributed to a decrease of \$785 million in administrative costs in the large-group market and about \$200 each in the small-group and individual markets. The issue brief can be read [here](#).

On December 5th the American Hospital Association (AHA) released a poll that indicated nearly seven out of ten Americans oppose cuts to the Medicare and Medicaid funding provided to hospitals. The AHA also notes that two-thirds of voters hold a favorable view of hospitals. The poll is available [here](#).

On December 5th the UnitedHealth Group released a report that estimated the elimination of fee-for-service payments could save \$200 to \$600 billion over 10 years without a decrease in health care quality. The report is available [here](#).

On December 5th Robert Greenstein of the Center on Budget and Policy Priorities called the GOP offer to reduce the deficit an unfair solution that does not achieve middle ground. Greenstein says more money must come from revenue and less must be taken from entitlement programs like Medicare and Medicaid. The letter from Greenstein can be read [here](#).

On December 5th the U.S. Court of Appeals in Washington, D.C., rejected a request from the federal government to rehear a decision that blocked the requirement for tobacco companies to place large graphic warnings on cigarette packages to highlight tobacco risks. The court did not provide any reason for denying the request. The government has 90 days to appeal the decision to the Supreme Court. An article on the case is available [here](#).

On December 5th over 100 physician groups urged Congress to avoid cutting Medicaid payment increases set to go into effect on January 1st. The letter argues the regular doc fix supports physicians providing care to the uninsured and the underinsured. Signees of the letter include the American College of Physicians (ACP) and the American Medical Association (AMA). The letter can be read [here](#).

Hearings and Mark-Ups Scheduled

Senate

On December 13th the Senate Finance Committee will hold a hearing entitled, "Improving Care for Dually-Eligible Beneficiaries: A Progress Update." More information can be found [here](#).

On December 13th the Senate Judiciary Committee will hold a mark-up of S. 1560, which enhances access to controlled substances for residents of institutional long-term care facilities. More information can be found [here](#).

House of Representatives

On December 13th the House Energy and Commerce Committee will hold a hearing entitled, "State of Uncertainty: Implementation of PPACA's Exchanges and Medicaid Expansion." More information can be found [here](#).