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HEALTH CARE REFORM UPDATE December 12, 2011

Implementation of the Affordable Care Act (ACA)

On December 5th the Centers for Medicare and Medicaid Services (CMS) issued a final rule required by the ACA that gives certain entities, such as employers, insurance plans, and consumer advocates, access to Medicare data on the quality of health care providers. The final rule can be found [here](#). A CMS press release can be found [here](#).

On December 5th the Department of Labor issued proposed regulations regarding “Multiple Employer Welfare Arrangements” (MEWAs) as required by the ACA. MEWAs are established to offer health insurance coverage to groups of small employers, but some organizations have exploited gaps in regulation for fraudulent purposes in the past. The proposed rules require MEWAs to register with the Department and give the Department the authority to shut down fraudulent organizations. A DOL fact sheet can be found [here](#).

On December 8th the Supreme Court released its briefing schedule for the ACA case. The order can be found [here](#).

On December 8th the Office of Management and Budget (OMB) confirmed that it was reviewing an unreleased document from HHS about Essential Health Benefits (EHB), but clarified that the document is not a rule. Press reports suggest that this indicates that HHS is planning to release guidance, rather than an actual rule, on the EHB issue. This would indicate greater flexibility for the states in establishing the essential health benefits required in the Exchanges. A Politico article can be found [here](#). OMB’s website, which has not yet publicly acknowledged receipt of the “rule,” can be found [here](#).

On December 8th HHS released a final rule implementing the Consumer Operated and Oriented Plan (CO-OP) program, which provides loans for the creation of consumer-governed health plans within the Exchanges. The rule can be found [here](#).

On December 8th HHS announced that it was providing more than \$14 million to school-based health centers across the country. HHS estimates that this will allow such centers to treat an additional 53,000 children. A news release can be found [here](#).

On December 9th HHS announced that it would stop paying claims under the Early Retiree Reinsurance Program established by the ACA by the end of 2011. The announcement can be found [here](#).

Other HHS and Federal Regulatory Initiatives

On December 7th the GAO published a report analyzing the progress that CMS has made in implementing its Integrated Data Repository system, which is designed to provide a single repository of claims data and enhanced capabilities to detect fraud. The report found that, although CMS has made progress, it was not clear that the program has shown any measurable benefits. The report can be found [here](#).

On December 7th CMS released a study describing per capita health care spending by the state of residence. The study found wide disparities in the amount of spending by state—with Utah spending only 74% of the national average per capita, while Massachusetts spends 136% of the national average. The study can be found [here](#).

On December 7th HHS announced that it was overruling an FDA recommendation that the contraceptive Plan B be sold over-the-counter to all women. Plan B can currently be sold over the counter to women age 17 and older, but girls age 16 and younger need a prescription. The HHS decision continues this framework. The decision drew a negative reaction from several women's health groups. On December 8th Planned Parenthood sent a letter to HHS criticizing the decision and asking for a meeting to discuss the issue. An HHS press release can be found [here](#). An NPR story on the reaction of various women's health advocates can be found [here](#). The Planned Parenthood letter can be found [here](#).

Other Congressional and State Initiatives

On December 6th the Senate Judiciary Committee held a hearing on the proposed merger between Express Scripts and Medco. The proposed merger between the two Pharmacy Benefit Managers (PBMs) is being reviewed for antitrust issues by the Federal Trade Commission. While the companies have argued that the merger will bring down prescription drug prices, some members of the Committee expressed serious concerns about the merger and about the general industry practices of PBMs. A webcast and submitted testimony from the hearing can be found [here](#).

On December 7th Republicans from the House Energy & Commerce Committee sent a letter to the National Association of Insurance Commissioners (NAIC) asking it whether HHS officials made any efforts to influence the model MLR regulations that NAIC approved last month. The letter can be found [here](#).

On December 7th Representative Phil Roe's (R-TN) bill to repeal the ACA's Independent Payment Advisory Board (IPAB) got its 218th cosponsor, over half of the Chamber's members. Congressman Roe's press release can be found [here](#).

On December 9th House Republicans released a significant year-end bill that includes a "doc fix" addressing looming cuts to physicians in Medicare. The bill would delay the Sustainable Growth Rate (SGR) formula for physician payments until 2014. The measure is part of a larger bill that also extends payroll tax cuts and unemployment benefits. If the SGR is not delayed, then physicians will see an almost 30% cut in their Medicare reimbursement rates at the beginning of 2012. The bill contains a number of other provisions affecting the ACA and health care programs. It requires that Medicare premiums for Parts B and D be means-tested, it increases the ability of the IRS to recoup overpayments to individuals for health insurance tax credits, and it decreases bad debt payments and disproportionate share payments to hospitals. The bill can be found [here](#). An analysis of the politics of the issue from the *New York Times* can be found [here](#). A CBO analysis of the bill can be found [here](#).

Other Health Care News

On December 5th *Health Affairs* released a study showing that the number of registered nurses in the U.S. grew more than expected between 2002 and 2009. If this trend continues, the authors suggest that the nursing

shortage could become a surplus by 2030. However, it is uncertain whether the trend will continue. The study can be found [here](#).

On December 5th several groups, including the AFL-CIO and Consumers Union, sent a letter to Congress urging it to reject proposed legislation that would repeal or weaken the medical loss ratio (MLR) requirements of the ACA. The letter can be found [here](#).

On December 5th *Health Affairs* published a study by Georgetown University analyzing the effect the ACA is likely to have on the number of uninsured children and parents in the U.S. The study finds that the ACA could reduce the number of uninsured children by up to 40% and the number of uninsured parents by 50%. On the other hand, if the provision requiring states to maintain current Medicaid levels is rescinded, the number of uninsured children could double. The study can be found [here](#).

On December 5th the *Wall Street Journal* reported that Mary Brown, the lead plaintiff in the ACA case currently before the Supreme Court, declared bankruptcy and closed her auto-repair shop. This creates a potential hurdle for the plaintiffs, because Ms Brown's argument that she had standing to sue was based largely on the effect of the law on her now-closed business. An analysis by The New Republic can be found [here](#).

On December 7th the National Association of Chain Drug Stores (NACDS) announced its support for Senator Patrick Leahy's (D-VT) bill to prevent drug counterfeiting. The NACDS press release can be found [here](#).

On December 7th the University of New Hampshire released a study of trends in the rates of children's health insurance since 2008. The study found that private insurance for children decreased by 2%, while public insurance increased by 3%, during this period. The study can be found [here](#).

On December 7th the American Health Care Association released a study finding that skilled nursing facilities are currently operating at "razor-thin margins" and that any cuts to Medicare beyond the 2% sequestration would likely drive nursing homes into the red and likely resulting in closures. The study and a press release can be found [here](#).

On December 8th the National Institute for Health Care Reform released a study finding that one third of adults released from the hospital do not receive follow-up care, resulting in higher readmission rates. The study can be found [here](#).

On December 8th the London-based Legatum Institute released its annual Prosperity Index. The report found that the United States ranks first among the nations studied in terms of overall health. The index measured variables such as health expenditures, life expectancy, incidence of particular diseases, and individual satisfaction with personal health. The Index can be found [here](#).

Hearings & Mark-ups Scheduled

Senate

On December 14th the Senate Special Aging Committee will hold a hearing entitled "Aging in America: Future Challenges, Promise and Potential."

On December 14th the House Oversight & Government Reform Committee will hold the second portion of a hearing entitled "HHS and the Catholic Church: Examining the Politicization of Grants." More information can be found [here](#).

On December 15th the Senate Health, Education, Labor and Pensions Committee will hold a hearing on prescription drug shortages. More information can be found [here](#).

On December 15th the Senate Special Aging Committee will hold a hearing entitled "Parting the Clouds: Implementing the Physician Payments Sunshine Act."

House of Representatives

On December 15th the House Small Business Subcommittee on Investigations, Oversight and Regulations will hold a hearing entitled "New Medical Loss Ratios: Increasing Health Care Value or Just Eliminating Jobs?" More information can be found [here](#).