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## HEALTH CARE REFORM UPDATE February 13, 2012

### Leading the News

Today, President Obama and top officials unveiled the administration's FY 2013 federal budget totaling \$3.8 trillion. Among other things, the budget outlines broad changes at HHS that are projected to save a total of \$357 billion over ten years - \$302 billion from Medicare and \$55 billion from Medicaid. Some agencies within HHS received more requested funding than in FY 2012 while some received less. CMS received the biggest bump in requested funding followed by the Administration on Aging, while the CDC received the biggest decrease in funding followed by the Administration on Children & Families. More complete budget documents can be found [here](#). Information specific to the HHS budget can be found [here](#). A chart of the projected savings to Medicare and Medicaid through proposed policy changes can be found below:

### Medicare

Change	Amount saved (\$ billions)
Extend Medicaid drug reimbursement system to Medicare	155.6
Adjustments to post-acute care reimbursement	56.7
Reduce bad debt payments to 25% of debt	35.9
Reduce additional payments to teaching hospitals	9.7
Increasing standards for Inpatient Rehab Facility designation	2.3
Reducing payments for certain services to IRFs	2
Reducing payments to SNFs with high readmission rates	2
Reduce Critical Access Hospital Payments to cost	1.4
Increasing premiums for Parts B&D based on income	27.6
Adjustments based on advanced imaging	0.8
Higher standards for CAH designation	0.6
Penalties for failure to use EHR	0.6
Premium surcharge for those with Medigap	2.5

Increase in Part B deductible	2
Copayments for Home Health	0.3
Prohibit pay-for-delay agreements	8.6
Shorten exclusivity period for brand-name biologics	3.7

## Medicaid

Change	Amount saved
Starting in 2017, apply a single blended matching rate	17.9
Prohibit states from taxing providers to pay for Medicaid	21.8
Reduce Disproportionate Share Hospital payments	8.3
Limits reimbursement for DME to Medicare rate	3
Extend transitional medical assistance (cost)	-0.8
Extend Qualified Individual program (cost)	-1.7
Program integrity proposals	3.2

## Implementation of the Affordable Care Act (ACA)

On February 9<sup>th</sup> the Department of Health and Human Services (HHS) and the Department of Labor issued final rules for the plain-language summary of benefits that health plans must offer to consumers. A news release and the rule can be found [here](#). A response from Consumers' Union applauding the rule can be found [here](#). America's Health Insurance Plans (AHIP) issued a response stating that, while the final rule makes positive changes from the proposed rule, it does not give insurers sufficient time to comply. AHIP's statement can be found [here](#).

On February 9<sup>th</sup> the Food and Drug Administration (FDA) issued three draft guidance documents on biosimilar product development. The ACA requires the FDA to create an expedited approval pathway for biological products that are "highly similar" to an already-approved product. The guidance documents describe the FDA's "current thinking" on how similarity can be demonstrated and on how the law will be applied. The draft documents will be open for public comment. A news release can be found [here](#).

On February 10<sup>th</sup>, after heavy criticism from the Catholic Church and other organizations following the administration's original announcement, the White House announced that it would modify requirements and not require religious employers to pay for contraception. Employees' insurers, however, must continue to offer contraception coverage separately, at no cost to either the employer or the employee. A fact sheet describing the proposed change can be found [here](#), and the final rule can be found [here](#). The statement from the Conference of Catholic Bishops following the change can be found [here](#).

## Other HHS and Federal Regulatory Initiatives

On February 7<sup>th</sup> HHS announced that the [Hospital Compare](#) website, which contains information about the quality of care in over 4,700 hospitals, would now include information about central-line infection rates at hospitals. A press release can be found [here](#).

On February 7<sup>th</sup> HHS announced that it was immediately making an additional \$50 million available for Alzheimer's research. The administration also announced that its 2013 budget would include an additional \$80 million for Alzheimer's research. A news release can be found [here](#).

On February 8<sup>th</sup> HHS announced that it was providing \$40 million in grants to health care providers and coalitions to improve prenatal care to women covered by Medicaid in order to reduce the number of preterm births. A news release can be found [here](#).

#### Other Congressional and State Initiatives

On February 6<sup>th</sup> seven House Democrats sent a letter to HHS Secretary Kathleen Sebelius expressing "serious concerns" about HHS's decision to delegate to the states the authority to define the essential health benefits (EHB) that insurers must provide. The letter states that the EHB package was intended to be a federal decision and urges HHS to take measures to ensure that the process is transparent. The letter can be found [here](#).

On February 6<sup>th</sup> Senator Tom Coburn (R-OK) and Representative Charles Boustany (R-LA) sent a letter to HHS Secretary Kathleen Sebelius demanding a response to several questions raised by a recent financial audit of the department. The audit, released last December, found weak accounting standards, outdated processes, and violations of federal law. The letter can be found [here](#).

On February 6<sup>th</sup> the Centers for Medicare and Medicaid Services (CMS) rejected a bid by California's Medicaid program to charge copayments for Medicaid services. The proposed charges ranged from \$3 for prescription drugs to \$200 for hospital visits. A local news story can be found [here](#). A letter from CMS explaining the denial can be found [here](#).

On February 7<sup>th</sup> and February 8<sup>th</sup> the House Judiciary Committee held a mark-up on the Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination Bill. The bill would prohibit abortions that are sought on the basis of the sex or race of the fetus or a parent. More information on the mark-up can be found [here](#).

On February 9<sup>th</sup> Senators Herb Kohl (D-WI), Chuck Grassley (R-IA), and Richard Blumenthal (D-CT) sent a letter to the Office of Management and Budget (OMB) demanding an update on the status of the Unique Device Identifier rule. The FDA sent the rule, which creates a tracking system for medical devices, to OMB in July, 2011. The OMB is required to review and report on the rule in 90 days, but has not done so. The letter can be found [here](#).

#### Other Health Care News

On February 6<sup>th</sup> several important briefs were filed in the Supreme Court in the health reform case. The twenty-six state plaintiffs and the private plaintiffs filed briefs arguing that the minimum coverage provision of the ACA is unconstitutional and that the lawsuit is not barred by the Anti-Injunction Act. The United States filed a brief also arguing that the lawsuit is not barred by the Anti-Injunction Act.

- The states' brief on the Anti-Injunction Act is [here](#).
- The states' brief on the minimum coverage provision is [here](#).
- The private plaintiffs' brief on the Anti-Injunction Act is [here](#).
- The private plaintiffs' brief on the minimum coverage provision is [here](#).
- The U.S. brief on the Anti-Injunction Act is [here](#).

On February 7<sup>th</sup> the Commonwealth Fund released the results of a survey finding that low and moderate-income families are significantly more likely to be uninsured and to lack access to health care than high-income families. The authors opine that the ACA will narrow or eliminate this gap. A press release can be found [here](#).

On February 8<sup>th</sup> the Brookings Institution released a report on state-level health information exchanges (HIEs). The report looks at how state-level HIEs are implemented and what barriers HIEs face moving forward. The report can be found [here](#).

On February 8<sup>th</sup> the RAND Corporation released a study finding that the financial burden Americans face paying for prescription drugs has declined, even while medication use has increased overall. The authors credit the increased use of generics for much of the lessened burden. A news release on the study can be found [here](#).

On February 8<sup>th</sup> the Kaiser Family Foundation released a brief analyzing how much proposals to implement means-testing in Medicare would raise costs for seniors. The brief can be found [here](#).

On February 9<sup>th</sup> the New England Journal of Medicine issued a report analyzing the reasons for regional variations in Medicare Part D spending. The report concludes that cost-per-prescription, rather than the total volume of prescriptions, is the primary driver of higher costs in some regions. The authors recommend measures to increase the use of generic drugs. The report can be found [here](#).

### Hearings & Mark-ups Scheduled

#### *Senate*

On February 14<sup>th</sup> the Senate Health, Education, Labor, and Pensions (HELP) Committee will hold a hearing entitled "Pain in America: Exploring Challenges to Relief." The hearing listing can be found [here](#).

On February 15<sup>th</sup> HHS Secretary Kathleen Sebelius will testify at the Senate Commerce and Finance Committee hearing on President Obama's proposed 2013 budget. The hearing listing can be found [here](#).

#### *House of Representatives*

On February 15<sup>th</sup> the House Energy and Commerce Subcommittee on Health will hold a hearing on the reauthorization of the Medical Device User Fee Act (MDUFA). The hearing listing can be found [here](#).

On February 16<sup>th</sup> the House Oversight and Government Reform Committee is scheduled to hold a hearing entitled "Lines Crossed: Separation of Church and State. Has the Obama Administration Trampled on Freedom of Religion and Freedom of Conscience?"