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HEALTH CARE REFORM UPDATE

February 27, 2012

Implementation of the Affordable Care Act (ACA)

On February 17th the Department of Health and Human Services (HHS) issued a guidance document answering several frequently asked questions about its plans for implementing essential health benefits (EHB) rules. The document can be found [here](#).

On February 21st the Centers for Medicare and Medicaid Services (CMS) announced awards of \$639 million in grants under the Consumer Operated and Oriented Plan (CO-OP) provisions of the ACA. These provisions provide low-interest loans to support the creation of new, consumer-directed health plans. Republicans have pointed out that one of the recipients may be ineligible under the law and have accused the administration of using the grants to support political allies. An HHS press release can be found [here](#). A response from the Republicans on the House Ways & Means committee can be found [here](#).

On February 22nd CMS issued a final rule describing how states can apply for innovation waivers. A state can receive these waivers from specific requirements of the ACA if it implements alternative policies that it can show will provide health care coverage that is at least as comprehensive as that provided by the ACA. The final rule can be found [here](#). The same day CMS also issued a final rule providing details on the transparency requirements for Medicaid demonstration review and approval process. That rule can be found [here](#).

On February 22nd HHS announced that it was awarding \$229 million to ten states in a new round of grants to help states set up health insurance exchanges. HHS also announced that it would be providing new funding opportunities for the grants. A CMS press release can be found [here](#).

On February 23rd HHS released a report describing enrollment trends in the Pre-Existing Condition Insurance Plan (PCIP), a temporary high-risk health insurance program to make insurance immediately

available to individuals with pre-existing conditions. The report states that the PCIP is providing insurance to 50,000 individuals. An HHS press release can be found [here](#).

On February 24th CMS released a bulletin describing how it intends to calculate the actuarial value of health plans in the individual and small group markets. The ACA uses actuarial value, or the percentage of beneficiaries' health care costs a plan is expected to cover, to rank plans as platinum, gold, silver, or bronze. The ACA also requires plans to reduce cost-sharing for low-income individuals to a target actuarial value. The bulletin can be found [here](#).

Other HHS and Federal Regulatory Initiatives

On February 22nd HHS released a draft "National Plan to Address Alzheimer's Disease." The plan seeks to have effective treatments for the disease by 2025. The plan can be found [here](#).

On February 23rd CMS and the Office of the National Coordinator for Health Information Technology (ONC) issued proposed rules describing the Stage 2 Meaningful Use criteria. Under the HITECH Act of 2009, Medicare and Medicaid providers that comply with the standards for meaningful use of health IT receive incentive payments. The CMS rule, which describes the basic objectives providers must meet to comply, can be found [here](#). The ONC rule, which describes certification standards for EHR, can be found [here](#). A fact sheet from CMS summarizing the new standards can be found [here](#).

On February 24th CMS released a "Notice of Final Payment Error Calculation Methodology for Part C Medicare Advantage Risk Adjustment Data Validation (RADV) Contract-Level Audits." The notice can be found [here](#).

Other Congressional and State Initiatives

On February 22nd Virginia Governor Bob McDonnell (R) stated that a Virginia bill requiring women to undergo a transvaginal ultrasound before getting an abortion needed to be amended before being enacted into law. The bill, which had previously been supported by McDonnell, now seems unlikely to move forward in its current form. A statement from Governor McDonnell can be found [here](#). The Virginia legislature is expected to pass a modified bill requiring a less invasive procedure that Governor McDonnell is expected to support.

On February 22nd a federal court struck down a Washington law requiring all pharmacists in the state to dispense emergency contraception, even if the pharmacists had religious objections to the contraceptives. News coverage of the decision can be found [here](#).

On February 22nd the United States Supreme Court sent a major California case regarding Medicaid back to the lower courts. The key question in the case was whether Medicaid beneficiaries have standing under the Supremacy Clause to sue states over cuts to the program. The Ninth Circuit had ruled that beneficiaries have standing to sue. Instead of considering the case, the Supreme Court ruled that recent decisions by CMS fundamentally changed the arguments and required the case to be further argued in lower courts. The Court's opinion can be found [here](#).

On February 23rd the Attorneys General of seven states joined in a lawsuit against the federal government arguing that the ACA's mandate that employers provide contraception coverage is unconstitutional. The complaint can be found [here](#).

On February 23rd Sen. Mike Lee (R-UT), the top Republican on the Senate Judiciary Subcommittee on Antitrust & Competition, sent a letter to the Federal Trade Commission expressing support for the proposed merger between the two pharmacy benefit manager companies Express Scripts and Medco Health Systems. The proposed merger has been met with skepticism by many on Capitol Hill. The letter and Senator's press release can be found [here](#).

Other Health Care News

On February 23rd the Quinnipiac University Polling Institute released a poll describing Americans' attitudes toward certain aspects of the ACA. The poll found that 50 percent of Americans want the Supreme Court to strike down the law, while 39 percent want it upheld. The poll also found that 54 percent of Americans approve of the White House's compromise on requiring religious institutions to cover contraception. The poll results can be found [here](#).

Hearings & Mark-ups Scheduled

Senate

On February 29th the Senate Budget Committee will hold a hearing entitled "Putting Health Care Spending on a Sustainable Path." More information can be found [here](#).

On February 29th the Senate Health, Education, Labor and Pensions Subcommittee on Primary Health and Aging will hold a hearing entitled "Dental Crisis in America: The Need to Expand Access." More information can be found [here](#).

House

On February 28th the House Ways & Means Committee will hold a hearing with HHS Secretary Kathleen Sebelius on the proposed FY2013 budget. More information can be found [here](#).

On February 28th the House Committee Judiciary will hold a hearing entitled "Executive Overreach: The HHS Mandate Versus Religious Liberty." More information can be found [here](#).

On February 28th the House Budget Committee will hold a hearing entitled "Strengthening Health and Retirement Security." More information can be found [here](#).

On February 29th the House Energy & Commerce Subcommittee on Health will hold a markup on H.R. 452, which would repeal the Independent Payment Advisory Board. More information can be found [here](#).

On March 1st the House Energy & Commerce Subcommittee on Health will hold a hearing with HHS Secretary Kathleen Sebelius on the HHS budget for FY2013. More information can be found [here](#).

On March 1st the House Energy & Commerce Subcommittee on Commerce, Manufacturing, and Trade will hold a hearing entitled “Prescription Drug Diversion: Combating the Scourge.” More information can be found [here](#).