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HEALTH CARE REFORM UPDATE

March 5, 2012

Implementation of the Affordable Care Act (ACA)

On February 24th the Congressional Research Service released a memorandum describing how the ACA's requirement that health plans provide preventive services could be enforced. The report finds that the type of enforcement depends on the type of plan. The requirement could be enforced via private lawsuits by beneficiaries who are denied coverage, by monetary penalties of up to \$100 per day per violation, or by actions by individual states. The memo can be found [here](#).

On February 27th Senator John Cornyn (R-TX) introduced a bill to repeal the ACA's Independent Payment Advisory Board (IPAB). The bill, unlike a similar bill currently in the House, offsets the cost of the repeal by increasing the amount the IRS can recover for overpayment of health insurance tax credits. The text of the bill can be found [here](#).

On February 29th the House Energy & Commerce Subcommittee on Health voted 17-5 for a bill that would repeal IPAB. The full committee is scheduled to mark up the bill on March 6th. Two Democrats, including Subcommittee Ranking Member Frank Pallone (D-NJ), joined Republicans in voting to repeal the board. More information about the markup of the bill can be found [here](#).

On March 2nd the Centers for Medicare and Medicaid Services (CMS) announced that New Hampshire would receive the first grant in the State Balancing Incentives Program. The program, created by the ACA, will provide up to \$3 billion in increased Medicaid matching funds to states for home or community-based long-term supports. A news release can be found [here](#).

On March 2nd Representative David Camp (R-MI), Chairman of the House Ways and Means Committee, sent a letter to Treasury Secretary Timothy Geithner demanding an explanation of why the FY2013 budget predicts that health insurance tax subsidies under the ACA cost \$111 billion more than the FY2012 budget predicted. A spokesperson for the Treasury Department told reporters that much of the increase is due to a Medicaid "glitch fix" passed by Congress last year that would remove a large

number of middle-class families from Medicaid. Many of these families will now be eligible for subsidies. The letter can be found [here](#). Coverage of the Treasury Department's response can be found [here](#).

Other HHS and Federal Regulatory Initiatives

On February 28th the Government Accountability Office (GAO) released its annual report describing duplicative government services. The report, entitled "Opportunities to Reduce Duplication, Overlap and Fragmentation, Achieve Savings, and Enhance Revenue," describes 32 areas where the GAO found duplication of services and 19 other areas where federal government could achieve greater efficiency. The report cited duplicative health research between the Department of Veterans' Affairs, the National Institutes of Health (NIH), and the Department of Defense, and encouraged greater sharing of information between these agencies. The GAO also found that savings could be achieved by improving Medicare and Medicaid fraud detection and by implementing better payment policies for Medicare Advantage plans. The report can be found [here](#).

On February 28th HHS, in coordination with other federal departments, released its 2012 Environmental Justice Strategy and Implementation Plan to address communities with high health and environmental risks. The HHS press release, along with the Plan, can be found [here](#).

On February 28th HHS announced the arrest of a Dallas, TX doctor and other health care professionals for allegedly participating in a fraudulent scheme involving false claims for home health services valued at around \$375 million. The indictments were the result of the Health Care Fraud Prevention & Enforcement Action Team (HEAT), a joint initiative of HHS and the Department of Justice to fight fraud in government health care programs. The HHS press release can be found [here](#).

On February 29th a Federal District Court Judge ruled that new Food and Drug Administration (FDA) rules requiring graphic warnings on cigarette packages was an unconstitutional violation of the manufacturers' first amendment rights. Unlike previous warning labels, the court found that the new labels were not designed to increase consumer awareness of risk, but rather to evoke a strong emotional response. The decision can be found [here](#). An HHS response can be found [here](#).

On March 2nd the GAO released a report recommending that CMS develop methods to better monitor states' implementation of the Quality Indicator Survey, a system developed to assist states in monitoring nursing home quality. The report can be found [here](#).

Other Congressional and State Initiatives

On February 28th the Virginia Senate, and on March 1st the Virginia House of Delegates, voted to approve a bill that would require women to receive an ultrasound before getting an abortion. Although a previous version of the bill would have required a transvaginal ultrasound, the current bill requires a less invasive abdominal ultrasound. Governor Bob McDonnell has pledged to sign the amended version of the bill. A local news story can be found [here](#).

On March 1st House Budget Committee Chairman Paul Ryan (R-WI) and Senate Budget Committee Ranking Member Jeff Sessions (R-AL) sent a letter to President Obama accusing the White House of

ignoring laws requiring the President to address Medicare funding shortfalls. A press release and the letter can be found [here](#).

On March 1st the Senate voted 51-48 to table the “Blunt Amendment,” a measure introduced by Senator Roy Blunt (R-MO) that would exempt employers and insurers from being required to provide preventative benefits to which they have “religious or moral objections.” The text of the amendment can be found [here](#). A statement from Secretary of Health and Human Services (HHS) Kathleen Sebelius opposing the amendment can be found [here](#). A statement from Senator Blunt on the vote can be found [here](#).

Other Health Care News

On February 27th the American Benefits Council sent a letter to HHS, the Department of Labor, and the Treasury Department requesting the rule created by the ACA requiring health plan issuers to provide a clear summary of benefits and coverage to applicants be delayed one year. The letter argues that current applicability date of March 23, 2012 does not give plans sufficient time to implement the requirements. The letter can be found [here](#).

On February 28th the American Journal of Managed Care published a study finding that patients in Medicare Advantage plans had lower hospital readmission rates than patients in fee-for-service Medicare. The study can be found [here](#).

On February 29th the Health Care Incentive Improvements Institute released a study analyzing cost variations in knee replacement surgeries. The study found that the majority of the cost-increase for high-cost procedures resulted from avoidable complications. The authors suggest that bundled payment programs could reduce costs over fee-for-service programs. The study can be found [here](#).

On February 29th the Institute of Medicine (IOM) released a report finding that policies designed to increase pediatric testing of drugs under the 1997 Best Pharmaceuticals for Children Act and Pediatric Research Equity Act have helped provide clinicians with better information about the efficacy, safety, and appropriateness of prescribing drugs for children. An overview of the report can be found [here](#).

On March 1st the Kaiser Family Foundation released the results of a poll on Americans’ attitudes on Medicare, on which political party can better deal with health care, and on various health care topics. The poll finds that 70 percent of Americans prefer to keep Medicare in its current form; that 42 percent of Americans have a favorable view of the ACA, while 43 percent have an unfavorable view; and that 63 percent favor the Administration’s rule on contraception coverage. The full results can be found [here](#).

On March 1st the Bipartisan Policy Center Governors’ Council released a white paper recommending that CMS institute more flexible state Medicaid waiver policies to allow for greater innovation by individual states. The paper can be found [here](#).

On March 1st the GAO released a report summarizing the findings of several studies on the cost savings from the use of generic drugs. One of the studies cited found that the use of generic drugs saved \$1 trillion between 1999 and 2010. The report can be found [here](#).

On March 1st the National Quality Forum introduced a “Community Tool to Align Measurement,” a set of online resources designed to help policy makers and researchers to better align measurements of health care quality across regions. The tool can be found [here](#).

On March 2nd the Aspen Institute released a report entitled “Reinventing Health Care: The Barriers to Innovation.” The report can be found [here](#).

On March 2nd the American Medical Association (AMA) sent a letter to Center for Medicare Director Jonathan Blum expressing concern about a proposed CMS policy to allow plan sponsors to deny coverage of prescription drugs if the prescription is not shown to be medically necessary to the plan’s satisfaction. The AMA argues that such a rule would undermine the physician-patient relationship and the proper treatment of pain. The letter can be found [here](#).

Hearings & Mark-ups Scheduled

Senate

On March 7th the Senate Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies will hold a hearing with HHS Secretary Kathleen Sebelius on the proposed FY2013 HHS budget. More information can be found [here](#).

House

On March 5th and 6th the House Energy & Commerce Committee will hold a markup on the “Medicare Decisions Accountability Act,” a bill that would repeal IPAB. More information can be found [here](#).

On March 6th the House Ways & Means Subcommittee on Health will hold a hearing on IPAB. More information can be found [here](#).

On March 6th the House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies will hold a hearing with HHS Secretary Kathleen Sebelius on the proposed FY2013 HHS budget. More information can be found [here](#).

On March 7th the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security will hold a hearing entitled “The Prescription Drug Epidemic in America.” More information can be found [here](#).

On March 7th the House Education & Workforce Subcommittee on Workforce Protections will hold a hearing entitled “Ensuring Regulations Protect Access to Affordable and Quality Companion Care.” More information can be found [here](#).

On March 8th the House Judiciary Subcommittee on the Constitution will hold a hearing on the Child Interstate Abortion Notification Act. More information can be found [here](#).

On March 8th the House Energy & Commerce Subcommittee on Health will hold a hearing on FDA user fees, focusing on Issues related to accelerated approval, medical gas, antibiotic development and downstream pharmaceutical supply chain. More information can be found [here](#).

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On March 8th the House Appropriations Subcommittee on Defense will hold a hearing on the defense health program. More information can be found [here](#).