

Tom Koutsoumpas

Jeremy Rabinovitz

Kevin Kappel

TKoutsoumpas@mlstrategies.com

JRabinovitz@mlstrategies.com

KMKappel@mlstrategies.com

HEALTH CARE REFORM UPDATE

March 6, 2011

Implementation of the Affordable Care Act (ACA)

On February 28th at the winter meeting of the National Governor's Association (NGA) in Washington, DC, during his remarks, President Obama unexpectedly endorsed a bipartisan bill sponsored by Sens. Ron Wyden (D-OR), Mary Landrieu (D-LA), and Scott Brown (R-MA). The legislation, the "Empowering States to Innovate Act," would allow states to receive waivers from the ACA before 2017. A White House blog on the President's announcement can be found [here](#).

The Department of Justice filed its brief on February 28th in its appeal of a decision by a federal judge's ruling in Virginia that the individual mandate is unconstitutional. The lawsuit against the ACA was originally filed by Virginia Attorney General Ken Cuccinelli (R).

On March 2nd the White House announced that it was disbanding its Office of Health Reform and shifting health policy work to the Domestic Policy Council led by Melody Barnes. The White House originally established the Office in April 2009. Jeanne Lambrew, deputy director of the White House Office of Health Reform, will be joining the Domestic Policy Council.

HHS released a report on March 2nd showcasing the Early Retiree Reinsurance Program (ERRP) created by the ACA that has now reached 5,000 employers. In the report, HHS reviews the impetus behind the creation of the ERRP, lists the eligibility requirements, and claims that the program is reducing health care costs for early retirees. The report can be found [here](#).

On March 2nd the Senate Finance Committee held a hearing about the new health care fraud fighting tools in the ACA. During the hearing, Committee Chairman Max Baucus (D-MT) asked federal investigators for quarterly reports detailing their progress in fighting health care fraud and asked the Inspector General of HHS and Deputy Administrator of CMS to submit reports with specific deadlines and goals to help quantify the amount of taxpayer dollars that have been saved as a result of anti-fraud efforts. More information on the hearing can be found [here](#), and a press release can be found [here](#).

The House of Representatives voted on March 3rd to pass a bill repealing the new 1099 tax reporting provision of the ACA by a vote of 314-112. A measure to repeal the provision was passed in the Senate in February as an amendment to the FAA Reauthorization, but a path to full repeal remains uncertain as supporters on both sides of the aisle continue to disagree over offsets.

On March 3rd the Energy & Commerce Subcommittee on Health held a hearing on the President's FY 2012 budget and the implementation of the ACA within that budget. The hearing, which featured Secretary Kathleen Sebelius before a GOP-led panel, included many questions related to the mandatory and

discretionary funding required to implement the law as well as the budgetary processes the administration used to justify claims of cost savings. More information on the hearing can be found [here](#), and a GOP press release following the hearing can be found [here](#).

Federal judge Robert Vinson in Florida gave the U.S. government a brief reprieve on March 3rd when he stayed his order overturning the national health care reform law as unconstitutional. The recent ruling gives the federal government seven days to file an appeal. Following the ruling, numerous stakeholders in the lawsuit weighed in with their opinion on the ruling's meaning. Alaska Governor Sean Parnell (R), one of the most vocal critics of the ACA who has ordered his state to stop all implementation, issued a statement insisting that Vinson's earlier ruling constituted an injunction but that his administration will continue with implementation in light of the ruling. A copy of the Governor's statement can be found [here](#).

Other HHS and Federal Regulatory Initiatives

On March 2nd the GAO released a highlighting how the military could save millions of dollars using health IT. The report is the first among what are likely to be annual reports on potential government savings and efficiencies. A copy of the report can be found [here](#).

Other Congressional Initiatives

On March 1st the Senate Finance Chairman Max Baucus (D-MT) along with Sens. Tom Carper (D-DE) and Claire McCaskill (D-MO) wrote to the U.S. Department of Health and Human Services Inspector General to express their concern with potential conflicts of interest among the private-sector contractors that perform most of the payment, administration and oversight functions of Medicare. A copy of the press release can be found [here](#).

On March 1st the Committee on Energy and Commerce held a hearing entitled "The Consequences of Obamacare: Impact on Medicaid and State Health Care Reform." The hearing, which included testimony from Governors Gary Herbert (R-UT), Deval Patrick (D-MA), and Haley Barbour (R-MS), focused on the national discussion centering on expanding costs due to expanding coverage for states under the ACA and whether states could sustain the expansion of coverage. More information can be found [here](#).

The Energy & Commerce Subcommittee on Oversight also held a hearing on March 2nd entitled "Waste, Fraud, and Abuse: A Continuing Threat to Medicare and Medicaid," part of a recent Congressional focus on waste and fraud in government programs. More information, including testimony, statements, and an archived hearing can be found [here](#).

On March 3rd 42 Senate Republicans wrote to President Obama on Thursday asking him to withdraw the nomination of Don Berwick as head of CMS. Claiming that Dr. Berwick is an overly contentious choice, Sens. Orrin Hatch (R-UT) and Mike Enzi (R-WY), who were the lead Senators on the letter, asked President Obama to replace Dr. Berwick with someone "who has the support and confidence of the American people." A copy of the press release and letter can be found [here](#).

Senate Democratic leaders released their version of a continuing resolution (CR) on March 4th to fund the government through the rest of FY2011. The release is the latest turn in the Congressional debate over funding the government after Senate and House leaders came to a bipartisan compromise to continue funding the government for 2 additional weeks while a deal is struck. The Senate version cuts \$51 billion from the government while avoiding the more controversial cuts to defund the ACA and Planned Parenthood including in an earlier House version that included more significant cuts. A copy of the Senate Appropriations press release can be found [here](#).

Senate Majority Leader Harry Reid (D-NV) filed cloture on March 3rd on a bill to overhaul the nation's patent

laws. The bill was the topic of debate all week as Senators offered and debated a wide variety of amendments. A final vote is expected on March 7th.

On March 3rd the National Association of Insurance Commissioners (NAIC) circulated draft legislation that the group's Professional Health Insurance Advisors Task Force has been working on for weeks. The legislation, similar to one being developed by Rep. Mike Rogers (R-AL), would pull brokers' fees out of the MLR calculation.