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HEALTH CARE REFORM UPDATE

November 7, 2011

Implementation of the Affordable Care Act (ACA)

On October 31st Minnesota Governor Mark Dayton (D) issued executive order 11-30 to create a task force to look at whether the state can set up its own health insurance exchange in accordance with the ACA. The Governor's press release can be found [here](#).

On October 31st HHS published final standards for collecting data on the race, ethnicity, sex, primary language and disability status in conducting federal programs. The data collection is required by the ACA and is designed to "detect and monitor trends in health disparities." A fact sheet from HHS about the standards, with links to the new standards, can be found [here](#).

On October 31st the GAO issued a report on the status of the Early Retiree Reinsurance Program created by the ACA. According to the report, \$2.7 billion of the \$5 billion appropriated for the program has already been dispersed, with 46% of that going to government entity employers. Sen. Mike Enzi (R-WY), the Ranking Republican on the Senate HELP Committee, criticized HHS for using the fund to reward "politically connected constituencies." The report can be found [here](#). A story on Senator Enzi's response can be found [here](#).

On November 2nd Senate Republicans made their first formal attempt to repeal the CLASS Act when Sen. John Thune (R-SD) requested unanimous consent to bring a bill to the Senate floor that would repeal the CLASS program. The request was opposed by Sen. Jay Rockefeller (D-WV). On the same day, AARP and several groups sent a letter to Congress urging that CLASS not be repealed. A news story on Senator Thune's motion can be found [here](#). The AARP letter can be found [here](#).

On November 2nd CMS issued interim final rule regarding waivers of the Stark Self-referral Law, the anti-kickback statute, and other fraud provisions for ACOs. Comments on the rule are due by January 3, 2012. The rule can be found [here](#).

On November 2nd the National Governors Association (NGA) sent a letter to HHS Secretary Kathleen Sebelius providing recommendations on the federal-state health insurance exchange partnership model. The letter can be found [here](#).

Other HHS and Federal Regulatory Initiatives

On October 31st and November 1st CMS announced several changes to its Medicare payment policies for FY 2012. These include changes to payment polices for [home health](#), [physicians](#), [hospital outpatient care](#), and [end-stage renal disease](#).

On November 1st Secretary Sebelius issued a statement calling on Congress to permanently fix the Sustainable Growth Rate formula. Without such a fix, physician reimbursement rates will be reduced by 27.4% in 2012. The statement can be found [here](#).

On November 1st the HHS Office of the Inspector General issued a report stating that CMS and states should conduct stronger review of adverse incident reports at hospitals. The report can be found [here](#).

On November 3rd the FDA issued a report showing that it had approved 35 innovative drugs in FY 2011—a record high number. The report cited the FDA’s use of expedited approval pathways and the importance of the Prescription Drug User Fee Act (PDUFA), which must be reauthorized next year, in bringing out innovation. On the same day, PhRMA issued a statement also emphasizing the importance of a “clean” PDUFA without controversial policy riders. The FDA report can be found [here](#). That PhRMA statement can be found [here](#).

Other Congressional and State Initiatives

On November 1st the “Supercommittee” heard opinions on deficit reduction from former Senator Alan Simpson (R-WY), former White House chief of staff Erskine Bowles, former White House budget director Alice Rivlin, and former Senate Budget Committee Chairman Pete Domenici (R-NM). The panelists and committee members generally agreed that health care was a primary driver of the deficit. A webcast and submitted statements can be found [here](#).

On November 1st the Vermont Legislative Joint Fiscal Office and the Department of Banking, Insurance, Securities and Health Care Administration issued a report on the costs of Vermont’s proposed health care reform that closely resembles a single-payer system. The report found that moving to a single-payer system could save \$1.8 billion in health care costs by 2020. The report can be found [here](#).

On November 1st the California Hospital Association (CHA) filed a complaint against the State Department of Health Services and CMS, asking a federal court to overturn heavy cuts in California’s Medicaid reimbursement rates. The cuts, which were announced last week, could reduce reimbursements by as much as 20%. The Association argues that the cuts will threaten the ability of hospitals to offer skilled nursing and create significant gaps in access to care. The CHA press release can be found [here](#).

On November 2nd Rep. Elijah Cummings (D-MD), Ranking Member of the House Oversight Committee, sent a letter to Superior Medical Supply, a “gray market” pharmaceutical vendor, accusing the vendor of failing to cooperate with a Congressional investigation into gray market companies that buy and sell drugs in critically short supply. A press release can be found [here](#).

On November 2nd the Coalition for Affordable Health Coverage sent a letter to Supercommittee members urging the committee to steer clear of proposals that would apply Medicaid’s drug rebate program to Medicare Part D dual eligibles. The letter warns that such a proposal would reduce access and increase out-of-pocket costs for dual eligibles. The letter can be found [here](#).

On November 2nd Reps. Mike Simpson (R-ID) and Heath Shuler (D-NC) sent a letter to the Supercommittee signed by 100 Members of the House of Representatives asking the Supercommittee to “go big” and aim for a goal of \$4 trillion in deficit reduction over ten years rather than the mandated \$1.2 trillion. A copy of the letter can be found [here](#).

On November 4th Reps. Joe Courtney (D-CT) and Tom Cole (R-OK) sent a letter, signed by 160 members of Congress, urging the Supercommittee not to eliminate tax exemption for employer-sponsored health benefits. The letter can be found [here](#).

Other Health Care News

On October 31, America's Health Insurance Plans (AHIP), the industry group for health insurance companies, published a study estimating that the premium tax assessed against insurance companies under the ACA is likely to increase premiums by 2.7% to 3.7%. The study can be found [here](#).

On October 31st New York City agreed to pay Medicaid \$70 million to settle claims against the city for billing Medicaid for home health care services to the disabled without conducting independent medical reviews to assess the patients' needs. On November 3, advocacy groups for the disabled sent a letter to Medicaid officials arguing that the settlement will cause the city to reduce or discontinue important services. A news story on the settlement can be found [here](#). A news story on the letter from advocacy groups can be found [here](#).

On November 3rd the Center for Medicare Advocacy filed a class action lawsuit against HHS on behalf of Medicare beneficiaries who allegedly had to pay a large share of their hospital costs after being improperly classified as "outpatients." CMA's statement on the complaint can be found [here](#).

On November 4th Republican Presidential candidate and former Massachusetts Governor Mitt Romney released his plan to revamp Medicare and Medicaid. The plan includes repealing the ACA, converting Medicaid into a block grant program, and giving Medicare beneficiaries the option of participating in a premium support program instead of traditional Medicare. The campaign's summary of the plan can be found [here](#).

Hearings & Mark-ups Scheduled

Senate

On November 9, the Privacy, Technology and the Law Subcommittee of the Senate Judiciary Committee will hold a hearing titled "Your Health and Your Privacy: Protecting Health Information in a Digital World." More info can be found [here](#).

On November 10, the Veterans' Affairs Committee will hold a hearing titled "VA Mental Health Care: Addressing Wait Times and Access to Care." More info can be found [here](#).

On November 10, the Health, Education, Labor and Pensions Committee will hold a hearing titled "Improving Quality, Lowering Costs: The Role of Health Care Delivery System Reform." More info can be found [here](#).