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## HEALTH CARE REFORM UPDATE December 5, 2011

### Implementation of the Affordable Care Act (ACA)

On November 21<sup>st</sup> HHS used, for the first time, the power granted to it under the ACA to review health insurers' premium increases. HHS announced that Everence Insurance was "charging small businesses unreasonably high premium increases" in Pennsylvania. Although the Department cannot force the insurer to lower its rates, it criticized the increase and stated that it hopes, "by publicizing the excessive premium hikes, we will empower consumers." A news release can be found [here](#).

On November 21<sup>st</sup> President Obama signed into law legislation that fixes a "glitch" in the ACA's Medicaid expansion that would have allowed many middle-income individuals to qualify for Medicaid. The law also repeals an unpopular "withholding tax" whereby the government can withhold 3% of payments to federal contractors against future tax liability. The White House's statement of administration policy on the bill can be found [here](#).

On November 29<sup>th</sup> HHS awarded \$220 million in grants to thirteen states to help them implement health insurance exchanges. This brings the number of states who have accepted such grants to twenty-nine. HHS also announced a six-month extension of the deadline for states to apply for level-one exchange grants—from December 30, 2011 to June 29, 2012. A news release can be found [here](#).

On November 30<sup>th</sup> the House Energy & Commerce Committee voted to repeal the CLASS Act. A Committee press release on the vote can be found [here](#).

On November 30<sup>th</sup> CMS announced operational details for the next stage of the Medicare Competitive Bidding Program for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS), a program expanded by the ACA. In its press release, CMS claimed the the first phase of the program saved Medicare 35 percent compared to the original fee schedule. The CMS press release can be found [here](#).

On December 2<sup>nd</sup> HHS published its final rule regarding the medical loss ratio (MLR) that insurers must maintain. The rule implements the requirement in the ACA that insurers must spend at least 80% of the premiums they receive on medical care rather than administrative expenses and comes just a couple days after the GAO released a new report claiming that at least 64 percent of "credible" insurers would have met the MLR standards this year. While many groups, including the National Association of Insurance Commissioners, had recommended that broker fees be excluded from administrative expenses, the final rule included broker fees.

The rule also requires insurers to publicly disclose how premiums are spent, even if the insurer meets the MLR requirements. The rule can be found [here](#). The GAO report can be found [here](#).

On December 2<sup>nd</sup> Arkansas Insurance Commissioner Jay Bradford announced that the state would definitely not be forming its own health insurance exchange due to legislative opposition. The Commissioner's statement can be found [here](#).

#### Other HHS and Federal Regulatory Initiatives

On November 23<sup>rd</sup> CMS Administrator Don Berwick announced his intention to resign. Berwick's recess appointment by President Obama was set to expire at the end of the year, and he has been unable to secure Senate confirmation. President Obama nominated Marilyn Tavenner, the current Principal Deputy Administrator at CMS, to replace Berwick. A number of stakeholders, including House Majority Leader Eric Cantor (R-VA), have expressed confidence in Tavenner's ability to head CMS. A news article on the resignation can be found [here](#). An AP article on Mr. Cantor's remarks can be found [here](#).

On November 30<sup>th</sup> HHS issued a report finding that the percentage of physicians who had adopted electronic health records doubled from 17 to 34 percent in the last three years. In conjunction with the report, HHS announced that it would relax the timeline for adoption of health information technology under the HITECH Act, giving physicians until 2014 instead of 2013 to comply with certain standards. A fact sheet about the report can be found [here](#). A news release about the report and the new policies can be found [here](#).

On December 1<sup>st</sup> the White House announced \$50 million in new funding to support AIDS Drug Assistance Programs. A press release can be found [here](#).

#### Other Congressional and State Initiatives

On November 21<sup>st</sup> Senator Patty Murray (D-WA) and Representative Jeb Hensarling (R-TX), the co-chairs of the Joint Select Committee on Deficit Reduction (the "Super Committee") announced that the committee would not be able to present a plan by the deadline created by the Budget Control Act of 2011. On November 23<sup>rd</sup> President Obama said that he would veto any attempts by Congress to repeal the automatic spending cuts created by the Budget Control Act unless Congress puts forth an alternative plan that would reduce the deficit by at least \$1.2 trillion. The chairmen's statement can be found [here](#). The President's statement can be found [here](#).

On November 29<sup>th</sup> the Congressional Budget Office issued a report analyzing the budgetary impact of various proposed alternative to the SGR formula. The report can be found [here](#).

On November 30<sup>th</sup> several Democratic Congressmen sent a letter to the Federal Trade Commission encouraging an expeditious review of a proposed merger between Express Scripts and Medco Health Solutions, two of the nation's largest pharmacy benefit managers. The letter states that the merger "has the potential to foster greater competition among businesses" and could lower health care costs. Several pharmacists and other groups have opposed the merger. The letter can be found [here](#).

On December 1<sup>st</sup> Rep. Elijah E. Cummings (D-MD), Ranking Member of the House Committee on Oversight and Government Reform, and Rep. Danny K. Davis (D-IL), Ranking Member of the Subcommittee on Health Care, sent a letter to Rep. Trey Gowdy (R-SC), Chairman of the Subcommittee on Health Care, to request a hearing on drug shortages. A press release can be found [here](#).

#### Other Health Care News

On November 22<sup>nd</sup> the American Association of Medical Colleges released data showing that the number of first-time applicants to medical school has reached an all-time high. A statement can be found [here](#).

On November 21<sup>st</sup> the American Medical Association, in response to the Super Committee's failure, issued a statement urging Congress to permanently replace the SGR formula by which physicians are paid. If the formula is not replaced or if the current rates are not extended by the end of the year, physicians will see a 27% cut in their Medicare reimbursement in 2012. The statement can be found [here](#).

On November 23<sup>rd</sup> the Organization for Economic Co-operation and Development released its annual "Health at a Glance" report comparing cost and performance of the health care systems of several countries. The report finds that the United States spends significantly more per person than any other country. The report can be found [here](#).

On November 29<sup>th</sup> Georgetown University's Center for Children and Families released a study finding that, over the past three years, the number of children in the United States without health insurance declined by 14%. The level of uninsurance among children varies widely from state to state, ranging from 1.5% in Massachusetts to 17.4% in Nevada. The study can be found [here](#).

On November 29<sup>th</sup> the Huffington Post reported that high risk health insurance pool created under the ACA cost three times as much per beneficiary in California as had been initially estimated. The story can be found [here](#).

On November 29<sup>th</sup> the American Hospital Association sent a letter to Congress urging it to extend several programs that will expire by the end of the year, including the "TC Grandfather" for pathology services, several provisions that affect rural hospitals, and certain payments for ambulance services. The letter can be found [here](#).

On December 1<sup>st</sup> the GAO released a report finding that, among Medicaid patients, children in foster care were prescribed psychotropic drugs 2.7 to 4.5 times as often as other children in Medicaid. The report recommended that HHS provide guidance to states for monitoring the prescribing of psychotropic drugs to foster children. The report can be found [here](#).

#### Hearings & Mark-ups Scheduled

##### *Senate*

On December 6<sup>th</sup> the Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights will hold a hearing entitled "The Express Scripts/Medco Merger: Cost Savings for Consumers or More Profits for the Middlemen?" More information can be found [here](#).

On December 7<sup>th</sup> the Senate Finance Committee will hold a hearing entitled "Drug Shortages: Why they happen and what they mean." More information can be found [here](#).

On December 15<sup>th</sup> the Senate Special Committee on Aging will hold a hearing entitled "Parting the Clouds: Implementing the Physician Payments Sunshine Act." More information can be found [here](#).

##### *House of Representatives*

On December 7<sup>th</sup> the House Oversight and Government Reform Subcommittee on Government Organization, Efficiency and Financial Management will hold a hearing entitled "A Medicaid Fraud Victim Speaks Out: What's Going Wrong and Why?" More information can be found [here](#).