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Tom Koutsoumpas, TKoutsoumpas@mlstrategies.com
Jeremy Rabinovitz, JRabinovitz@mlstrategies.com
Alexander Hecht, AHecht@mlstrategies.com
Kevin M. Kappel, KMKappel@mlstrategies.com
Benjamin Schorr, BJSchorr@mlstrategies.com

ML Strategies, LLC
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 USA
202 434 7300
202 434 7400 fax
www.mlstrategies.com

HEALTH CARE REFORM UPDATE

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Implementation of the Affordable Care Act (ACA)

On May 9th Vermont's single-payer health system legislation headed to Governor Peter Shumlin's (D) desk after passing the state legislature. The legislation establishes an exchange for the state for the year 2014 as required by the ACA and then transitions to a single-payer system launch three years later.

On May 10th two court cases were heard in the U.S. 4th Circuit Court of Appeals. The first was a decision in favor of the administration that the ACA is constitutional in a lawsuit brought by the conservative Liberty University. The second involves the administration defending the same law against a lawsuit filed by Virginia Attorney General Ken Cuccinelli (R) where a lower court ruled that the ACA was unconstitutional. One of the main questions before the court was the severability of the individual mandate from the law.

On May 10th numerous industry groups including the American Medical Association and America's Health Insurance Plans co-authored a letter to Senate Majority and Minority Leaders Harry Reid (D-NV) and Mitch McConnell (R-KY) urging them to modify new restrictions on Flexible Spending Accounts (FSAs) under the ACA. Sen. Pat Roberts (R-KS) is currently seeking a Democratic co-sponsor to legislation he intends to introduce to repeal that section of the ACA.

On May 10th the next panel of judges to hear a challenge to the constitutionality of the ACA was announced for the 6th Circuit Court of Appeals. Oral arguments will take place on June 1st in the appeal by the conservative legal group Thomas More Law Center. The three-judge panel is comprised of two Republican appointees and one Democratic appointee.

On May 11th a number of medical groups wrote to CMS Administrator Donald Berwick to make it known that they would not be participating in the Accountable Care Organization (ACO) program without clear changes to the regulation. Issues that the letter highlighted included the risk sharing requirement, static risk adjustment, retrospective attribution, quality measurement requirements, and the minimum savings requirements among other things. On May 13th the American Hospital Association released an analysis showing that the start-up costs to launch a Medicare ACO could run as high as over \$11 million, significantly more than the \$1.8 million that CMS predicted earlier. The AHA report can be found [here](#). Rick Gilfillan, the head of the CMS Center for Medicare and Medicaid Innovation, responded by promising that CMS is fully committed to working with stakeholders to revise the regulation appropriately to ensure concerns are met.

On May 11th 44 Senate Republicans filed an amicus brief in the 11th Circuit Court of Appeals claiming that the ACA is an overreach of Congressional authority. House Speaker John Boehner's (R-OH) office filed a separate brief arguing that the individual mandate distorts the Constitution's "necessary and proper" clause to expand federal power.

On May 11th Washington State Governor Christine Gregoire (D) signed legislation authorizing a health insurance exchange. Washington became the 6th state to authorize such an exchange.

On May 12th the House Energy & Commerce Subcommittee on Health began a two-day markup of H.R. 1683, the State Flexibility Act of 2011, legislation repealing the Maintenance of Effort (MOE) requirements in the ACA. The Subcommittee approved the legislation along strict party lines by a vote of 14-9. More information on the markup can be found [here](#). One day prior, CBO released its analysis of the legislation impact, noting that it would cut the federal deficit by \$2.8 billion over five years but add over 300,000 to the rolls of the uninsured. The analysis can be found [here](#).

On May 12th CMS issued a new report detailing how the ACA will save Medicare \$120 billion over the next five years. The report claims that the majority of savings will stem from reforming provider payments and reducing Medicare Advantage reimbursements. The full report can be found [here](#).

On May 13th HHS announced \$100 million in ACA grants to help create healthier communities. The grants are aimed at helping communities implement projects proven to reduce chronic diseases by promoting healthy lifestyles and communities. The press release can be found [here](#).

On May 13th CBO released an initial analysis of the cost impact of repealing the Independent Payment Advisory Board (IPAB) created under the ACA. According to CBO, the repeal would increase Medicare spending by \$2.4 billion between 2018 and 2021.

On May 13th President Obama appointed Richard Binder, medical director for McKesson / US Oncology, and Judith Palfrey, professor of pediatrics at Harvard University, to the Advisory Group on Prevention, Health Promotion, and Integrative and Public Health. The Advisory Group was authorized by the ACA as part of the National Prevention, Health Promotion and Public Health Council and established by Executive Order in June 2010. A copy of President Obama's Executive Order can be found [here](#).

Other HHS and Federal Regulatory Initiatives

On May 9th the Government Accountability Office released a report that questioned whether or not CMS is doing enough to ensure that nursing home complaint data is reliable and consistent. The report recommends that CMS conduct better oversight of how state surveyors monitor the nursing homes and focus on how they document deficiencies, prioritize complaints and generally assess the quality of investigations. The full report can be found [here](#).

On May 9th HHS Secretary Kathleen Sebelius defended a recently proposed rule dealing with changes to Medicaid provider payments, saying that the rule protects the needed flexibility of states in the program and maintains patient access to care. The proposed rule requires that states have a fair and formal process for setting rates that takes patient access into account. The proposed rule can be found [here](#).

On May 9th Secretary Sebelius, attending an event in San Francisco, stated that HHS recently briefed the President on the issue of drug and medical device approvals in the United States. She insisted that the claim that Europe has more effective and faster regulatory process for drug and device approvals is inaccurate and that oftentimes the European regulatory bodies do not look at safety or efficacy in their approval processes. A recent study released by the California Healthcare Institute brought the debate over the FDA's effectiveness back to the forefront claiming that the approval process in the U.S. is hurting innovation. The full report can be found [here](#).

On May 11th Medicare officials heard from a scientific advisory panel on whether the program should begin to cover cochlear implants. The Medicare Evidence Development and Coverage Advisory Committee will review a technical assessment document of the evidence on the technology and recommend to CMS whether or not it should cover it.

On May 11th HHS Assistant Secretary for Preparedness and Response Nicole Lurie praised the department's work in preparing the necessary health infrastructure to respond to disasters. The report found that more than 76 percent of participating hospitals met more than 90 percent of all measures of preparedness. The full report can be found [here](#).

On May 11th HHS announced two initiatives to improve coordination of care for "dual eligibles." First, Secretary Sebelius announced an "alignment initiative" to be run under the Federal Coordinated Health Care Office to integrate the two programs more effectively. The second initiative was to make data available to states from Medicare and Medicaid to share information about the dually eligible beneficiaries that are receiving benefits from both programs. The request for comment by HHS on priorities and key goals of these initiatives can be found [here](#).

On May 13th CMS released a report that showed the Medicare Trust Fund would run out of money in 2024, five years earlier than previously predicted. CMS cited a sluggish economic recovery with lower tax revenues as the reason for the revised estimate. CMS additionally claimed that the passage of the ACA added eight years to the fund's solvency and that without it the fund would go into the red in 2016. The full report can be found [here](#).

Other Congressional and State Initiatives

On May 9th House Speaker John Boehner (R-OH) told the Economic Club of New York that Medicare reform should still be a part of the negotiations over the raising of the debt limit. Despite appearing to temper his support for the Medicare proposals put forward by House Budget Committee Chairman Paul Ryan (R-WI), the Speaker insisted that nothing is off the table and that he is trying his best to win some concessions on entitlement reform as he and his caucus promised voters in 2010. The remarks of Speaker Boehner can be found [here](#).

On May 9th Sens. Mike Enzi (R-WY) and Orrin Hatch (R-UT), Ranking Members of the Senate HELP and Finance Committees, wrote to CMS asking for cost estimates of the administration's recent "Partnership for Patients" initiatives. The two Senators have publicly doubted the administration's claims of cost savings. The letter can be found [here](#).

On May 10th the Kaiser Family Foundation released a report that showing how federal support to states to fund health care programs would be cut in half by certain proposals championed by House Republicans such as converting Medicaid to a block grant program and repealing the ACA. The report highlights each state and shows how much hospitals would lose in annual Medicaid dollars by 2021. The full report can be found [here](#).

On May 10th a group of organizations including the American Lung Association, American Academy of Pediatrics, and the American Public Health Association sent a letter to Rep. Joe Barton (R-TX), Chair *emeritus* of the House Energy & Commerce Committee, contesting remarks he made at a hearing where he questioned the validity of the EPA prediction that taking mercury and other pollutants out of the air would have positive effects on health. The letter to Representative Barton can be found [here](#).

On May 11th the Energy & Commerce Committee concluded a two-day markup of H.R. 5, the Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act of 2011, legislation to reform medical malpractice. Despite heavy opposition by Democrats, the bill ultimately passed the committee by a vote of 30-20 with two Republicans voting against the bill. More information on the markup can be found [here](#).

On May 11th the House Appropriations Committee announced its fiscal budget target for spending on Labor, Health and Human Services, and Education programs is \$18.2 billion less than the funding they received this year. The spending targets do not specify or break down how much each department will lose. The full announcement by the Committee can be found [here](#).

On May 12th the House Ways & Means Subcommittee on Health held a hearing on reforming the system of reimbursing physicians under Medicare. More information on the hearing can be found [here](#).

On May 12 Reps. Peter Welch (D-VT) and Jo Ann Emerson (R-MO) launched a bipartisan Congressional caucus focused on lowering health care spending and making drugs more affordable called the Affordable Medicines Caucus. The Congressman's press release can be found [here](#).