

Tom Koutsoumpas

Jeremy Rabinovitz

Kevin Kappel

TKoutsoumpas@mlstrategies.com

JRabinovitz@mlstrategies.com

KMKappel@mlstrategies.com

HEALTH CARE REFORM UPDATE

March 13, 2011

Implementation of the Affordable Care Act (ACA)

Late on March 5th North Carolina Governor Bev Perdue (D) vetoed legislation approved by the Republican-held legislature that would block the ACA's individual mandate in the state. The first-term governor, who has seen her approval ratings slip significantly since her election in 2008, had made earlier statements indicating that she would sign the legislation into law, predicting that her veto would be a distraction to her top priorities of working with the GOP on education and the economy. The state's General Assembly will hold a vote to try to override the governor's veto, but it is unclear if they have the votes. Meanwhile, the Tennessee House of Representatives voted on March 7th to pass a health care "freedom act," which would attempt to allow state residents to choose or reject health insurance of their choosing without government penalties. On the federal level, Rep. Mike Rogers (R-MI) announced that he had introduced legislation on March 10th to allow all individuals and businesses to seek waivers from mandates in the ACA.

On March 7th the GOP majority staff on the Energy & Commerce Subcommittee on Health staff released a memorandum on the mandatory spending in health care law they want to eliminate. Among the items mentioned were spending for state-based exchanges, the prevention and public health fund, the construction and capital cost fund for school-based health centers, the personal responsibility education program, and the teaching health centers development grants. The memo was released in advance of a hearing held on March 9th during which the GOP majority took aim at numerous funding streams within the ACA. More information, including the background memo on that hearing can be found [here](#). On March 10th the CBO released an analysis noting that blocking ACA funds in the short-term would produce some deficit reduction – approximately \$1.4 billion for the rest of the fiscal year – but that it would raise the deficit over the long-term.

HHS unveiled on March 7th the proposed format of "consumer disclose notices" that insurance companies would have to post electronically when requesting a rate increased of 10 percent or more as required under the ACA. Among the requirements would be a justification of the increase and a breakdown of how much of the increase would go toward profit and administrative expenses. A copy of the HHS announcement can be found [here](#).

Late on March 7th America's Health Insurance Plans (AHIP), the industry group representing the health insurance industry, filed an amicus brief related to the Virginia Attorney General Ken Cuccinelli's (R) lawsuit against the ACA. In the brief, AHIP navigated politically rough waters and declined to side with either Cuccinelli or the federal government on the constitutionality of the individual mandate. Earlier in the day, Massachusetts Attorney General and former Senate candidate Martha Coakley (D) also filed a brief in the same court. In her brief, Coakley defended the ACA by citing likely 2012 GOP presidential candidate and former Massachusetts Governor Mitt Romney's successful effort to implement an individual mandate to

suggest that Congress had a “rational basis” for implementing a similar national law. Nine other states joined Coakley in support of the ACA including California, Connecticut, Delaware, Hawaii, Iowa, Maryland, New York, Oregon, and Vermont, all states that voted for President Obama in 2008.

On March 7th, Reps. Lois Capps (D-CA) and Jan Schakowsky (D-IL) sent a letter to the Institute of Medicine (IOM) Committee currently drafting recommendations on what should constitute an essential preventative health benefit under the ACA requesting that contraceptives be included. Reps. Capps and Schakowsky were joined by 43 co-signers including some staunch anti-abortion Democrats. A copy of the letter can be found [here](#).

On March 8th Maine became the first state to be granted a waiver by HHS to the new medical-loss ratio (MLR) rules under the ACA. In the HHS notice to the state, Maine’s insurers will be temporarily allowed to spend 65 percent, instead of 80 percent, of its premiums on medical care. Three other states, Nevada, Kentucky, and New Hampshire, have also applied for waivers while numerous states are considering applications.

The Department of Justice filed an appeal on March 8th in the decision made by federal judge Roger Vinson in Florida declaring the ACA unconstitutional and challenged a series of rulings leading up to his determination that the individual mandate was outside the bounds of the Constitution. The Obama administration also asked the 11th Circuit Court of Appeals for expedited treatment.

On March 8th Rep. Darrell Issa (R-CA), Chairman of the House Oversight Committee, sent a letter to Secretary Sebelius asking about the process the administration used in determining which organizations would receive waivers for “mini-med” plans from new ACA requirements. Chairman Issa suggested that the administration might have been playing favorites in determining which groups would be awarded waivers.

On March 10th HHS unveiled a proposed rule on Section 1332 waivers under the ACA, the provision allowing states to pursue waivers to opt out of certain requirements of the new law beginning in 2017. A copy of the HHS press release on the proposed rule can be found [here](#).

The top Republicans on the Energy & Commerce Committee sent another letter on March 10th to the White House requesting full disclosure of conversations that the White House Office of Health Reform held with various industry groups in cutting deals for support for the overhaul health care reform package. The White House had responded to an earlier letter with information deemed to be unsatisfactory by GOP Committee Members.

Other HHS and Federal Regulatory Initiatives

The Office of the National Coordinator for health IT published a study on March 8th in the current edition of *Health Affairs* that showed overwhelmingly positive results for health care providers who leverage current technology. A copy of the HHS press release can be found [here](#).

On March 10th HHS sent an estimate to the Medicare Payment Advisory Commissioner (MedPAC) noting that Medicare physicians could receive a paycut of 29.5 percent in 2012 unless Congress acts on a long-term fix to the SGR formula determining reimbursements.

Other Congressional Initiatives

On March 7th, Sens. Mark Warner (D-VA) and Saxby Chambliss (R-GA) publicly launched a campaign to come up with a bipartisan compromise on deficit reduction. In addition, Sens. Chambliss and Warner will be joined by 4 of their colleagues, Sens. Mike Crapo (R-WY), Tom Coburn (R-OK), Kent Conrad (D-ND), and Dick Durbin (D-IL), in an effort being dubbed as the “Gang of Six.” In their announcement, Sen.

Chambliss noted that “everything is on the table” to achieve deficit reduction including numerous health programs.

On March 8th Sen. Max Baucus (D-MT), Chairman of the Senate Finance Committee with primary jurisdiction over the Medicare and Medicaid programs, confirmed to the public that the Senate will not vote to confirm CMS Administrator Don Berwick. Sen. Baucus’ announcement comes just days after 42 GOP Senators sent a letter to President Obama requesting that he withdraw Berwick’s nomination.

As many states continue to grapple with how to address the burden imposed on their budgets by the Medicaid program, the National Association of Public Hospitals launched a lobbying effort on March 8th to prevent Congress from enacting any cuts. The group also lobbied to keep intact new maintenance of effort (MOE) requirements that prevent states from dropping Medicaid beneficiaries.

On March 8th five industry groups representing family medicine practitioners wrote to the Senate to request that Senators vote against H.R. 1, the bill that House Republicans enacted recently to fund the government for the rest of FY 2011 that contained deep cuts to many health care programs. The five groups were the American Academy of Family Physicians, Society of Teachers of Family Medicine, Association of Family Medicine Residency Directors, North American Primary Care Research Group and Association of Departments of Family Medicine. On March 9th, the Senate rejected the proposal by a vote of 44-56 as well as a competing proposal offered by Senate Democrats 42-58, setting the government up for a possible shutdown. On March 11th House Republicans countered with another temporary continuing resolution to keep the government afloat until a longer-term agreement can be reached. More information on that 3-week extension can be found [here](#).

On March 9th the Senate Homeland Security & Government Affairs Committee held a hearing on curbing Medicaid on curbing Medicare & Medicaid fraud. Among the witnesses was Peter Budetti, deputy administrator and director of CMS’ Center for Program Integrity. More information on the hearing can be found [here](#).

On March 10th the House Education & Labor Committee held a hearing on “The Pressures of Rising Costs on Employer Provided Health Care.” More information on the hearing can be found [here](#).

Sens. Jay Rockefeller (D-WV), Tom Harkin (D-IA), Debbie Stabenow (D-MI), Chuck Schumer (D-NY), and Sherrod Brown (D-OH) sent a letter on March 10th to FDA Commissioner Margaret Hamburg encouraging her to approve a generic version of the cholesterol drug Lipitor.