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HEALTH CARE REFORM UPDATE

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Implementation of the Affordable Care Act (ACA)

On March 14th Florida joined the group of 5 states currently seeking a waiver from the medical-loss ratio (MLR) requirements in the ACA. In the application the state asked that insurers only be required to spend 65 percent of premiums on medical costs in the individual market up through 2014, rather than meet the ACA provision that requires an 80 percent level. Only one state, Maine, has been approved so far.

On March 14th House Energy & Commerce Committee Chairman Fred Upton (R-MI) sent a letter to HHS Secretary Kathleen Sebelius asking her to send an HHS official to Capitol Hill to explain how the decision to not allow a period for public comment on the end-of-life rule in the ACA was made. Secretary Sebelius has said before that it was her decision alone to not include a period for public comment on that particular rule. A copy of that letter can be found [here](#).

On March 15th Senate Commerce Committee Chairman Jay Rockefeller (D-WV) sent a letter to NAIC Commissioner Susan E. Voss saying that he would not support a proposal to change the equation of the MLR to accommodate agent and broker commissions. NAIC recently reopened the issue although agent and broker fees were originally included in the MLR calculations. A copy of Sen. Rockefeller's letter can be found [here](#). On March 17th Reps. Mike Rogers (R-MI) and John Barrow (D-GA) introduced a bipartisan bill in the House that would classify brokers and agents as part of administrative expenses, while Sen. Ben Nelson (D-NE) is reportedly working on similar legislation in the Senate.

On March 15th Senator Mike Johanns (R-NE) introduced his amendment to repeal the 1099 tax filing requirement in the ACA to the short-term spending proposal that the Senate approved to keep the government funded for an additional 3 weeks. The measure failed to pass, but Senator Johanns noted that he would continue to introduce the amendment in every spending measure that comes up before the body.

On March 15th Alaska State Senator Hollis French (D) sent a letter in response to Governor Sean Parnell's (R) March 11th letter concerning the state's proceeding in planning to implement a state health insurance exchange. Sen. French has been a strong supporter of the exchange and welcomed the Governor's willingness to participate. A copy of the letter can be found [here](#).

On March 15th the House Oversight Subcommittee on Health held a hearing on the ACA entitled, "Obamacare: Why the Need for Waivers." The purpose of the hearing, according to Chairman Trey Gowdy (R-SC), was to investigate claims by the administration that consumers will be able to keep their health insurance coverage if they are satisfied with it under the ACA. More information on the hearing can be found [here](#).

On March 16th a CRS report requested by Sen. Orrin Hatch (R-UT), the Ranking Member on the Senate Finance Committee, was circulated that claimed that HHS Secretary Sebelius would have “substantial basis” to conclude that the ACA provides her with the authority to waive the Maintenance of Effort (MOE) requirements in Section 2001 (b) of the legislation. Many cash-strapped states have recently come out in force against the requirements claiming that they provide unsustainable fiscal burdens on state coffers. Sen. Hatch’s press release can be found [here](#).

On March 16th the Senate Finance Committee held a hearing on the ACA one-year after its enactment. More information on the hearing can be found [here](#). HHS released a report prior to the congressional testimony defending the ACA by Secretary Sebelius that said more than 150,000 seniors have taken advantage of Medicare’s free wellness visit and showed other preventative benefits. The report can be found [here](#).

On March 17th the House Energy and Commerce Health Subcommittee held a hearing on the CLASS long-term care program created in the ACA which focused on the sustainability of the program. The same day, Reps. Daniel Lipinski (D-IL), Phil Gingrey (R-GA) and Charles Boustany (R-LA) introduced a bill to repeal the program that has come under fire recently from critics on both sides of the aisle. More information on the hearing can be found [here](#).

Rep. Henry Waxman (D-CA) came out in support of the Independent Payment Advisory Board (IPAB) on March 17th and said that it should be given time to work. The former Energy & Commerce Committee Chairman opposed IPAB during the health care reform debate in 2010 on grounds that it stripped control from Congress. Representative Phil Roe (R-TN) introduced a bill to eliminate the IPAB in January 2011 that has numerous co-sponsors including a couple of Democrats.

On March 17th the Senate HELP Committee held a hearing on health insurance exchanges and the ongoing implementation of the ACA in the states. During her testimony, Kansas Insurance Commissioner Sandy Praeger noted that health insurance exchanges need to find mechanisms to avoid having a overly large presence of high-risk individuals for them to succeed in their mission of keeping costs down. More information on the hearing can be found [here](#).

On March 17th HHS Secretary Sebelius said in an interview that the Accountable Care Organization (ACO) rule will be out soon. The ACO program is supposed to start in January 2012 and the Secretary noted that the delay comes from an influx of comments that are being woven into the rule form providers who want to participate.

The Department of Justice filed a court brief on March 18th arguing against a request by Florida Attorney General Pam Bondi (R) that the entire 11th U.S. Circuit Court of Appeals hear oral arguments in the lawsuit that 26 states, the National Federation of Independent Business (NFIB), and two individuals brought against the ACA. Bondi’s initial request was designed to move the appeals process along quicker. The move comes after the administration also filed a brief on March 14th in the lawsuit brought by Virginia Attorney General Ken Cuccinelli (R) saying that there was “no persuasive reason” to fast-track the Virginia case to the Supreme Court.

Other HHS and Federal Regulatory Initiatives

On March 14th the HHS Office of Inspector General found that it had paid claims worth \$3.1 million for prescriptions to Viagra and other erectile dysfunction drugs in 2007 and 2008; this was due to a system error that did not block Part D funding. It is against the law for the program to pay for these drugs, and the OIG recommended that CMS take steps to recoup payments for them.

The Government Accountability Office (GAO) publicly released a new report on March 14th showing that prices for brand-name drugs rose about 8.3% on average from the first quarter of 2006 through the first quarter of 2010, while those for generic drugs fell by approximately 2.6% over the same time period. A copy of the GAO report can be found [here](#).

On March 17th the Obama administration called on Congress to pass the internet consumer privacy legislation that was considered in the Commerce Committee the day before. In a letter, the general counsel of the Commerce Department noted that the bill would provide a strong framework to protect consumer privacy, including health information.

On March 17th the HHS Office of the Inspector General issued a proposed rule in the *Federal Register* that would allow states to use federal funds to data-mine and help identify instances of Medicaid fraud.

Other Congressional Initiatives

On March 14th Representative Henry Waxman sent a letter to House Energy & Commerce Committee Chairman Fred Upton (R-MI) and Subcommittee on Oversight and Investigations Chairman Cliff Stearns (R-FL) to launch an investigation into rising drug prices as identified in a new GAO report. Waxman urged the Chairmen to convene a hearing to understand the reasons for these rising prices and to explore possible policy options for reducing prices on these drugs for seniors, taxpayers and all Americans.

On March 15th four House Democrats introduced H. Res 169 asking House Republicans to publicly disclose whether they are accepting their federal health care benefits.

On March 15th the House Ways and Means Subcommittee on Health held a hearing on the recommendations proposed in the MedPAC 2011 report to Congress that focused on changing the Medicare reimbursement system from Fee-For-Service to a values-based system. More information on that hearing can be found [here](#).

FDA Commissioner Margaret Hamburg testified on March 17th before the Appropriations Subcommittee responsible for funding the agency. More information on the hearing can be found [here](#).

On March 17th the Senate voted 87-13 to approve a three-week, short-term spending bill that had been approved by the House. 271-158 on March 15th. The legislation carried another \$6 billion in cuts but omitted numerous controversial provisions championed by some Members of the GOP including cuts to Planned Parenthood and defunding the ACA. It is unclear how lawmakers will proceed on a longer-term appropriations process to fund the government for the rest of the fiscal year.

The House Budget Committee held a hearing on Health and Retirement Security on March 17th that largely focused on reforms to entitlement programs such as Medicare. One of the witnesses before the Committee was Alice Rivlin, former official in the Clinton administration who teamed up with Budget Chairman Paul Ryan (R-WI) to develop proposals to overhaul the entitlement system. More information on the hearing can be found [here](#).

64 Senators, 32 Democrats and 32 Republicans, a letter on March 18th circulated by Sen. Michael Bennet (D-CO) and Mike Johanns (R-NE) to encourage President Obama to "engage in a broader discussion about a comprehensive deficit-reduction package." In the letter, the Senators noted that tax and entitlement reform must be included. The two Senators were able to get a supermajority of the Senate to co-sign in less than 24 hours. The letter comes the same day that the CBO updated its score on President Obama's proposed budget noting that it would do less to rein national deficits than originally predicted.