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## HEALTH CARE REFORM UPDATE

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

On March 27<sup>th</sup> the National Association of Insurance Commissioners (NAIC) met to consider endorsing legislation introduced by Reps. Mike Rogers (R-MI) and John Barrow (D-GA) to pull brokers' commissions out of the medical loss ratio (MLR). The NAIC ultimately voted not to hold a vote but to have a committee spend a month studying the impact of the MLR on brokers' commissions before making any decision on the legislation.

On March 28<sup>th</sup> Virginia Attorney General Ken Cuccinelli (R) filed a brief in the 4<sup>th</sup> Circuit Court of Appeals that the Court should uphold Judge Roger Vinson's ruling that the health care law is unconstitutional and specifically supporting the notion that the mandate cannot be severed from the law. The Supreme Court is scheduled to consider Cuccinelli's request to fast-track his lawsuit on April 15<sup>th</sup>. A federal judge initially ruled in favor of Cuccinelli that the mandate is unconstitutional but also allowed the mandate to be severed from the law.

On March 28<sup>th</sup> a group of hospital and medical device associations submitted comments to the IRS on implementation of the new 2.3 percent excise tax on medical device manufacturers. In their comments, the hospital groups encouraged the IRS to take steps to avoid letting companies pass the tax on to consumers.

On March 29<sup>th</sup> Reps. Rosa DeLauro (D-CT) and Henry Waxman (D-CA), co-chairs of the Democratic Steering Committee, held a public review of the ACA and its impact on jobs. The two members argued that the ACA helped create approximately 1.4 million jobs since it was passed.

On March 29<sup>th</sup> Louisiana Insurance Commissioner Jim Donelson submitted a waiver application to HHS asking that insurers in the state be required to spend only 70 percent of premiums on medical costs rather than the 80 percent required by the law. The waiver sets a benchmark increase to 75 percent in 2012 and finally meets the ACA mark of 80 percent in 2013.

On March 30<sup>th</sup> House Republicans Charles Boustany (R-LA), Wally Herger (R-CA), and Dave Reichert (R-WA) released a report arguing that the AARP stands to gain \$1 billion in windfall profits from the implementation of the ACA due to changes in Medicare that increase enrolment in Medigap. The congressmen argued that the group has an inherent conflict of interest and questioned their support for the health care reform effort. The report can be found [here](#).

On March 30<sup>th</sup> the House Energy & Commerce Subcommittee on Health held a hearing on the true costs of the ACA. Among the two witnesses were the Director of the CBO and the Chief Actuary at CMS. More information on the hearing can be found [here](#).

On March 31<sup>st</sup> HHS released its regulation as a notice of proposed rulemaking with a 60 day comment period on Accountable Care Organizations (ACOs). The organizations allow for different arrangements of providers that include physician networks, hospitals and physician hospital joint ventures in health care. HHS estimates that the organizations will save Medicare between \$500 and \$960 million in the first three years. A link to the proposed rule can be found [here](#).

On March 31<sup>st</sup> HHS Secretary Kathleen Sebelius commented at a Bloomberg Government event about the status of Florida's MLR waiver request, saying the market in that state is very different from Maine's which was granted a waiver; as HHS reviews the application it will look at the possibility of the provision to drive insurers out of the market.

On March 31<sup>st</sup> CMS released a memo to Congressional staff that said the Early Retiree Reinsurance Program would no longer be accepting applications after April 30<sup>th</sup> because the money for the program is expected to run out by the end of September 2012. The Administration said that employers in the program will continue to receive funds which have to be used by December 2013 and the program will not technically close until then.

On March 31<sup>st</sup> Senator Tom Coburn (R-OK) announced that he would stall the legislation to repeal the 1099 tax compliance measure in the ACA to force a vote on the repeal of ethanol subsidies.

On March 31<sup>st</sup> the House Energy and Commerce Health Subcommittee approved five bills that would eliminate money in the ACA that was funded by advanced appropriations. The bills cut funding for the Prevention and Public Health Fund, construction of school based health centers, and state grants to set up health exchanges. One of the bills converts graduate medical education funding and personal responsibility education programs from direct aid to authorized appropriations, which would require annual approval. The committee's action on these bills can be found [here](#).

On April 1<sup>st</sup> a new coalition was formed to influence the implementation of state health exchanges required under the Affordable Care Act. The key members include America's Health Insurance Planes, the Chamber of Commerce, PhRMA and the National Association of Health Underwriters. The new group is called the Choice and Competition Coalition. The aim of the group is to promote competition and preserve consumer choice.

On April 1<sup>st</sup> the U.S. 11<sup>th</sup> Circuit Court of Appeals released a ruling that denied the states' request for a full-panel review of U.S. District Judge Roger Vinson's Jan. 31<sup>st</sup> decision that stated that the ACA violated the constitution. The court set a hearing date for June 8<sup>th</sup> for oral argument to begin. The court said that a randomly selected three judge panel would hear the challenge. The same day, the federal government filed its first brief in its appeal of Judge Vinson's ruling.

On April 1<sup>st</sup> Montana Gov. Brian Schweitzer (D) vetoed two Republican bills attacking the ACA. One of the bills would have forced the state's Attorney General to join the multi-state lawsuit against the ACA, and the other bill would forbid the state from enforcing the individual mandate.

#### Other HHS and Federal Regulatory Initiatives

On March 31<sup>st</sup> HHS announced the winners of round two of the HHS *Innovates* program, an initiative launched last year to acknowledge exceptional innovations within all HHS agencies. The Secretary's picks, which focused on health IT, can be found [here](#).

On April 1<sup>st</sup> the Food and Drug Administration released proposed rules requiring chain restaurants and other businesses that serve food to post calorie counts on menus and menu boards. Theater chains were exempted

from the rule, and alcoholic beverages served in restaurants were also exempted. The press release can be found [here](#).

#### Other Relevant Initiatives

On March 28<sup>th</sup> a bipartisan group of Members from the House Energy & Commerce Committee sent a letter to 51 medical associations requesting feedback on how to fix the Medicare physician reimbursement system. Without further legislative action, physicians will see a 29 percent cut in 2012. Copies of the press release, letter, and list of recipients can be found [here](#).

On March 29<sup>th</sup> Senator Susan Collins (R-ME) told a Washington gathering of home-health providers that she and Senator Maria Cantwell (D-WA) plan to introduce legislation seeking a review process for Medicare cuts to be led by the HHS secretary.

On March 29<sup>th</sup> the Kaiser Family Foundation released a report that found that raising the eligibility age to 67 for Medicare, one of the core plans championed by some House Republicans for tackling our nation's entitlement programs, would save the federal government \$7.6 billion in 2014 but increase premiums for patients in traditional fee-for-service Medicare. The report also claimed that the move would also shift costs to the states by an estimated \$8.9 billion. The report can be found [here](#).

On March 29<sup>th</sup> New York Governor Andrew Cuomo reached a deal with his Medicaid Redesign Team that would save almost \$3 billion in next year and cap future growth of Medicaid to no more than a 10-year rolling average of medical inflation. The savings were achieved through concessions by providers who are agreeing to reduced reimbursements or lower profit margins, as well as shifting costs of the most complex patients to Medicaid managed care. The state did not cut beneficiaries and thus did not break the maintenance-of-effort provision of the ACA.

On March 30<sup>th</sup> Rep. Jim McDermott (D-WA) introduced legislation endorsed by the American Academy of Family Physicians and the Society of General Internal Medicine to encourage transparency in how Medicare payments are determined. A copy of the Congressman's press release can be found [here](#).

On March 30<sup>th</sup> Senators Amy Klobuchar (D-MN) and Scott Brown (R-MA) announced that they will be reactivating the Senate Medical Technology Caucus to raise awareness about the issues facing the medical-technology sector.

On March 30<sup>th</sup> the Robert Wood Johnson Foundation and the Wisconsin Health Population Institute released a study that compares areas of each state with one another to determine which county is the healthiest in each state, looking at factors from premature death rates to education and income. Last year's data prompted many counties to work towards improving their ranking and improve health outcomes. The link to the rankings can be found [here](#).

On March 30<sup>th</sup> Representative Jim McDermott introduced legislation that would mostly take away from the American Medical Association the responsibility of recommending payment levels for Medicare reimbursement. The bill requires that HHS use independent analytic contractors to collect and survey doctors and on expense, work and time necessary for services and to make recommendations on reimbursement levels. A copy of the legislation as proposed can be found [here](#).

On March 31<sup>st</sup> Arizona Governor Jan Brewer sent a request to Secretary of Health and Human Services Kathleen Sebelius asking for a five-year waiver to reduce Medicaid rolls and increase member cost-sharing. The plan seeks to freeze Medicaid enrollment for childless adults and parents, eliminating emergency coverage to those that cannot prove citizenship, and installing new co-payments for enrollees. The letter to the Secretary can be found [here](#).