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HEALTH CARE REFORM UPDATE

April 9, 2012

Implementation of the Affordable Care Act (ACA)

On April 2nd the Centers for Medicare and Medicaid Services (CMS) issued both its 2013 Rate Announcement and Final Call Letter and its final 2013 rule for Medicare Parts C and D. Included in the announcement is an estimated annual growth rate of 3.07% and guidance for preventing cost increases for Medicare Advantage (MA) beneficiaries. Highlights of the rule include the steps to implement the Part D Coverage Gap Discount Program of the ACA and new authority to exclude unsatisfactory MA and Part D plans. The announcement can be viewed [here](#) and the final rule is available [here](#).

On April 3rd the Department of Health and Human Services (HHS) announced nearly \$72 million in grant funding for 10 states through the Maternal, Infant, and Early Childhood Home Visiting Program (MIECHV). The program was created under the ACA to increase funding for counselors to conduct voluntary home visits to support families with young children. It is a collaboration of the Health Resources and Services Administration and the Administration for Children and Families, which together provide guidance to states on the implementation of home visiting programs. The press release is available [here](#).

On April 4th HHS Secretary Kathleen Sebelius and Attorney General Eric Holder discussed steps taken through the ACA and the Obama Administration's Health Care Fraud Prevention and Enforcement Action Team (HEAT) to combat health care fraud, at a regional summit in Chicago. The ACA facilitates greater information sharing among government stakeholders, while imposing 20-50 percent longer sentences on those convicted of fraud. HEAT was created in 2009 and now operates in nine locations. Its investigations have lead to charges alleging more than \$1 billion in false claims. The press release can be read [here](#).

On April 4th Senators Chuck Grassley (R-IA) and Herb Kohl (D-WI) sent a letter to CMS asking the agency to implement the final regulations of the Physician Payments Sunshine Act, a portion of the ACA, no later than June 2012. The Senators, the original authors of the Act, argue that the need for an

industry-wide education campaign will be needed to bring stakeholders up to speed on the new regulations. A copy of the letter can be found [here](#).

On April 5th the Maine state Senate voted to officially delay passing legislation to establish a health insurance exchange until the Supreme Court had issued its ruling on the ACA. The vote fell strictly along party lines. A local news story can be found [here](#). Meanwhile, the same day in Maryland, the state legislature voted to approve the final regulations for the Maryland exchange that would require all insurers – with some exceptions for smaller insurers – to participate in the exchange. A press release from the Governor’s office can be found [here](#).

Other HHS and Federal Regulatory Initiatives

On April 2nd the Federal Trade Commission (FTC) granted unconditional approval of the proposed \$29.1 billion merger between pharmacy benefit managers Express Scripts Inc. and Medco Health Solutions Inc, following an 8-month antitrust investigation. Three of four commissioners supported the decision. However, the determination did not deter the National Association of Chain Drug Stores and National Community Pharmacists Association from pressing their lawsuit to block the merger, which was filed last week in a U.S. District Court. They are now seeking a restraining order to prevent the merging of the two firm’s assets until the Court has had an opportunity to decide the case. The FTC’s statement on its decision is available [here](#).

On April 3rd CMS announced that physicians will have an extra month to appeal their eligibility determinations for the 2011 Medicare electronic health-record (EHR) incentive payment program. To be eligible, providers had to engage in 90 consecutive days of meaningful use of an EHR at some point during the whole of 2011. With the extension, appeals will now be accepted through April 30th. The EHR Incentive Program appeals requirements are detailed [here](#).

On April 6th CMS approved a Medicaid section 1115 waiver for the Arizona Health Care Cost Containment (AHCCCS) Demonstration. The demonstration permits Arizona to establish the KidsCare II Program to cover children up to age 19 whose family’s income is above the Medicaid threshold but below 175 percent of the federal poverty level. In addition, it allows for the creation of a Safety Net Care Pool (SNCP) through which the state will be able to make payments to hospitals and providers for uncompensated care costs. More information about the process and pending waivers is available [here](#).

Other Congressional and State Initiatives

On April 2nd Senators Orrin Hatch (R-UT) and Tom Coburn (R-OK) of the Senate Finance Committee and Representatives Wally Herger (R-CA) and Charles Boustany (R-LA) of the House Ways & Means Committee sent a letter urging the Acting Administrator of CMS to strengthen the agency’s screening process for “nominee owners” and “shell companies” – paper-only companies established to defraud CMS. The four Members serve on two of the primary committees of jurisdiction for CMS, and highlighted the March indictment of an individual accused of fraudulently collecting \$20 million from the Medicare program as evidence that the processes are in need of reform. The press release and full text of the letter is available [here](#).

On April 3rd six Republican Representatives sent a letter to Dr. Margaret Hamburg, Commissioner of the FDA, and to Julius Genachowski, Chairman of the FCC, asking them to develop efficient regulations to govern the burgeoning wireless medical device industry. They asked for the agencies to develop a framework that increases access to care, guarantees patient safety, and lowers cost without stifling innovation. Representatives Brian Bilbray (R-CA), Marsha Blackburn (R-TN), Michael Burgess (R-TX), Phil Gingrey (R-GA), Joe Pitts (R-PA), and Greg Walden (R-OR), all Members of the House Energy & Commerce Committee, sent the letter.

Other Health Care News

On April 3rd the Gallup-Healthways Well-Being Index was released, with a key finding that the percentage of uninsured adults aged 18-24 has leveled off at 24%. That percentage had declined from a high of 28% in September 2010, when an ACA provision, which allows those aged 26 and younger to remain on their parents' health plans, took effect. The Index is calculated from a daily survey of at least 1,000 American adults. The full survey results are available [here](#).

On April 5th the Commonwealth Fund released a new report showing that consumers would have received approximately \$2 billion in rebates under the new medical-loss ratio (MLR) requirements of the ACA if the law had been implemented in 2010. A copy of the report can be found [here](#).

On April 6th the White House Council on Women and Girls released a report titled Keeping America's Women Moving Forward: the Key to an Economy Built to Last. Among changes relating to labor rights and access to education, the report highlights those linked to the ACA. In particular, it emphasizes the coverage extended to women for the preventative care services such as mammograms and screenings for breast and cervical cancers at no additional cost. Also, it notes that the Act prohibits insurers from charging higher premiums based on gender, and that women enrolled in Medicare saved a total of \$1.2 billion in 2011 following the closure of the so-called prescription drug donut hole. The report is available [here](#).

Hearings & Mark-ups Scheduled

The Senate and House of Representatives are in recess until April 16th.