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## HEALTH CARE REFORM UPDATE May 13, 2013

### Implementation of the Affordable Care Act

On May 2<sup>nd</sup> the Business Roundtable sent a letter to President Obama with concerns about potential actions by the Administration to weaken the ability of employers to provide incentives for employees who take part in wellness and preventative care. The large-business group says prevention efforts authorized under the Affordable Care Act (ACA) must remain intact. The letter can be read [here](#).

On May 6<sup>th</sup> Cigna announced it will sell insurance within the ACA exchanges in five states. CEO David Cordani said health plans will be offered in about a dozen metropolitan areas in Texas, Florida, Tennessee, Arizona, and Colorado. Details on Cigna's entrance into the exchanges are available [here](#).

On May 6<sup>th</sup> the Federation of American Hospitals (FAH) sent a letter to Acting CMS Administrator Marilyn Tavenner urging the Obama Administration to issue a final rule that allows hospitals to serve as navigators, non-navigators, or Certified Application Counselors (CACs). The letter from the FAH can be read [here](#).

On May 7<sup>th</sup> CMS wrote to Oklahoma that the state cannot continue its 1115 Medicaid waiver program in 2014 unless changes are made to comply with the ACA. Cindy Mann, CMS Medicaid Director, wrote that Oklahoma must eliminate enrollment caps. CMS said it would gladly work to help reform Insure Oklahoma, a program that has covered 30,000 residents since 2005. Details on the necessary reforms are available [here](#).

On May 8<sup>th</sup> House Majority Leader Eric Cantor (R-VA) said on Twitter that he will schedule a vote for the week of May 13<sup>th</sup> on a repeal of the ACA. The vote has largely been seen as an opportunity for freshman Republicans in the House to voice their opposition to the ACA. More information on the expected vote is available [here](#).

On May 9<sup>th</sup> *Kaiser Health News* reported on Medicare's delay of allowing beneficiaries to continue receiving curative care while in hospice. Officials say the move could save money and make patients more likely to choose hospice care. The article on the delay of the program is available [here](#).

On May 9<sup>th</sup> the House Small Business Health and Technology Subcommittee held a hearing on the impact of the ACA insurance tax. Republicans on the Subcommittee said the tax will lead to higher premiums as insurers simply pass on costs to consumers. They also noted that small businesses that purchase insurance for employees would not be eligible for an exemption available to larger employers. Details on the hearing can be found [here](#).

On May 9<sup>th</sup> the Retail Industry Leaders Association (RILA), the National Restaurant Association, the Food Marketing Institute, and other national chains issued a letter urging Congress to repeal the ACA provision that requires companies with more than 200 employees to automatically sign up their workers for insurance if the employees do not choose their own coverage. The letter argues that the automatic enrollment requirement is confusing and redundant. The letter can be read [here](#).

On May 9<sup>th</sup> Kentucky Governor Steve Beshear (D) offered his support for Medicaid expansion under the ACA. Expansion will provide coverage to over 300,000 Kentuckians, and Governor Beshear said expansion will help improve his state's health care system and lead to millions of dollars in savings. The announcement from the governor is available [here](#).

On May 9<sup>th</sup> House Speaker John Boehner (R-OH) and Senate Minority Leader Mitch McConnell (R-KY) wrote in a letter to President Obama informing him they will not offer any recommendations on appointees to the Independent Payment Advisory Board (IPAB). The two Republican leaders said they will continue to push for a repeal of IPAB and the ACA. The letter to President Obama can be read [here](#).

On May 9<sup>th</sup> Republicans on the House Energy and Commerce Committee wrote to HHS Secretary Sebelius regarding the Center for Disease Control's (CDC) Communities Putting Prevention to Work (CPPW) and Community Transformation Grants (CTG) programs. The Republicans suggest that money in the programs may have been spent inappropriately. The letter is available [here](#).

On May 9<sup>th</sup> the Obama Administration announced that \$150 million in ACA funds marked for community health centers will be used to increase the number of workers at centers across the country. The Administration says doubling the number of outreach workers at the centers will help people enroll in the ACA exchanges. The proposal from the White House is available [here](#).

On May 9<sup>th</sup> Oregon posted proposed health insurance rates for the ACA exchanges set to begin in 2014. The companies offering plans can be viewed [here](#), and the proposed rates based on age and geographic area are available [here](#).

On May 10<sup>th</sup> HHS approved a plan to allow Utah to operate its own small-business insurance exchange. The federal government will be responsible for the individual exchange. Governor Gary Herbert (R) said he was grateful that a deal could be reached. An article on the agreement can be read [here](#).

On May 10<sup>th</sup> Gallup released a poll indicating that nearly half of U.S. small businesses owners think the ACA will be bad for their businesses. Additionally, 41% of small-business owners responded they are hesitant to hire new employees because of the ACA. The poll results are available [here](#).

On May 10<sup>th</sup> the *Washington Post* reported that HHS Secretary Sebelius is reaching out to health care executives, community organizations, and other non-profit groups to find funding that will support the enrollment efforts of the ACA. Congress has denied any additional funds for the health care law. Republicans in Congress contend that Secretary Sebelius is inappropriately using her position to solicit funds. The article is available [here](#).

On May 10<sup>th</sup> states reached the deadline to inform CMS whether or not they would accept a new contract to operate a Pre-Existing Condition Insurance Plan (PCIP). The federal government issued a revision that, from June to December 2013, states must operate within a fixed contract amount. States had previously been able to request additional funding for PCIP. Information on the new contract is available [here](#).

On May 10<sup>th</sup> President Obama gave a speech about the ACA in the East Room at the White House. The President highlighted the benefits of the ACA and noted that millions of Americans will be able to keep their insurance and still benefit from other provisions of the ACA. President Obama's comments are available [here](#).

On May 13<sup>th</sup>, HHS released a proposed rule outlining the ACA's reductions to Disproportionate Share Hospital (DSH) payments. The agency warned that DSH payment cuts will not account for state decisions on Medicaid expansion in FY 2014 and FY 2015. The proposed rule can be viewed [here](#).

### **Other HHS and Federal Regulatory Initiatives**

On May 2<sup>nd</sup> the Department of Justice (DOJ) filed a lawsuit against Vitas Hospice Services and Vitas Healthcare Corporation for allegedly filing false Medicare claims for hospice services that were not needed, not provided, or provided to patients who were not Medicare beneficiaries. Vitas Hospice is the largest for-profit hospice operator in the United States. A release from DOJ is available [here](#).

On May 3<sup>rd</sup> the Food and Drug Administration (FDA) announced that is investigating the increased prevalence of caffeine in food products. The FDA says that caffeine in foods could pose a danger to children, and the agency said it will continue to meet with companies and trade associations to discuss its concerns. A notice from the FDA is available [here](#).

On May 3<sup>rd</sup> DOJ reached a settlement agreement with Burke Health and Rehabilitation Center to resolve allegations that the Center refused to provide a sign language interpreter for a deaf resident. As part of the settlement, Burke says it will provide qualified sign language interpreters at no cost. More information on the settlement can be found [here](#).

On May 6<sup>th</sup> the FDA issued warnings about the migraine drugs *Depakote* and *Depacon*. In its warning, the FDA cites a new study that suggests the drugs could lead to lower IQ scores in children if mothers take the drugs while pregnant. An article on the drugs is available [here](#).

On May 7<sup>th</sup> Federal District Judge Edward Korman criticized the Obama Administration and the FDA for only approving the use of the Plan B emergency contraceptive pill for use by girls 15 and older. Later in the week, Korman denied a stay by DOJ to delay enforcement of his ruling that Plan B be available to all ages. An article on the case is available [here](#). Korman's denial can be viewed [here](#).

On May 8<sup>th</sup> the FDA issued a warning to health care providers that The Compounding Shop of St. Petersburg, Florida, started a recall of its products over potential contamination concerns. The notice from the FDA is available [here](#).

On May 8<sup>th</sup> the Equal Employment Opportunity Commission (EEOC) held a meeting on wellness programs in the workplace. Panelists at the meeting indicated to the EEOC that guidance is needed to avoid violations of federal equal employment opportunity laws. A news release on the meeting from EEOC is available [here](#).

On May 9<sup>th</sup> the FDA issued a proposed rule to reclassify tanning beds as a moderate-risk medical device. A reclassification from a low-risk medical device would require manufacturers of tanning beds to file for premarket approval. The proposed rule can be found [here](#).

On May 9<sup>th</sup> HHS released an FAQ on Cycle III of the Rate Review Grant Program. The program provides funding to states to increase transparency in health care pricing. Approximately \$87 million in grant funds will be available in Cycle III. Details on the funding opportunity are available [here](#).

### **Other Congressional and State Initiatives**

On May 2<sup>nd</sup> Massachusetts Attorney General Martha Coakley sent a letter to America's Health Insurance Plans (AHIP) that said insurers in her state have failed to comply with laws requiring coverage of necessary mental health services. Coakley said she intends to continue to pursue insurance providers that fail to comply with Massachusetts laws regarding mental health care. The letter to AHIP can be found [here](#).

On May 6<sup>th</sup> fourteen Senators pushed the FDA to address a severe shortage of drugs used to treat critically ill infants. Hospitals throughout the country have indicated the need to reduce and ration products used to treat babies. The letter to the FDA can be read [here](#).

On May 7<sup>th</sup> the House Ways and Means Health Subcommittee held a hearing on reforming the Medicare sustainable growth rate (SGR) physician payment. Members from both parties emphasized the need to repeal the SGR and move away from the fee-for-service payment model. Details from the hearing are available [here](#).

On May 8<sup>th</sup> the Congressional Budget Office (CBO) announced it will release updated 10-year baselines projections of federal spending, revenues, and budget deficits on May 14<sup>th</sup>. The CBO announcement is available [here](#).

On May 8<sup>th</sup> the House Energy and Commerce Health Subcommittee advanced a bill to reform how the pharmaceutical drug supply chain is regulated. Representatives Henry Waxman (D-CA) and Frank Pallone (D-NJ) said the bill does not go far enough to ensure the safety of individual bottles of drugs. A video replay of the mark up is available [here](#).

On May 8<sup>th</sup> Republicans in the Senate submitted amendments to the immigration bill that would restrict the government health care benefits available to people on a path to permanent residency. Senators Flake, Cruz, and Sessions all submitted amendments to restrict the health care benefits of immigrants. All the proposed amendments are available [here](#).

On May 9<sup>th</sup> the Senate HELP Committee held a hearing on pharmaceutical compounding and the potential for increased FDA oversight to prevent contaminated products from reaching the supply chain. A video replay of the hearing can be viewed [here](#).

On May 9<sup>th</sup> nine Members of Congress wrote to FDA Commissioner Hamburg to urge the agency to reclassify drugs containing hydrocodone as a Schedule II controlled substance. The letter suggests that drugs containing hydrocodone, such as Vicodin, are highly prone to abuse and addiction. The letter is available [here](#).

On May 10<sup>th</sup> *Bloomberg* reported that the confirmation vote of Acting CMS Administrator Marilyn Tavenner is expected to take place the week of May 13<sup>th</sup>. Tavenner's anticipated confirmation was put on hold by Senators Tom Harkin (D-IA) and Tom Coburn (R-OK). More information on the expected vote to confirm the first CMS administrator since 2006 is available [here](#).

On May 10<sup>th</sup> Senate Finance Committee Chairman Max Baucus (D-MT) and Ranking Member Orrin Hatch (R-UT) issued a call for doctors and other health care providers to offer ideas on how to reform the SGR. The Senators note that the current system leaves seniors and doctors worried about physician payment rates. The letter is available [here](#).

### **Other Health Care News**

On May 6<sup>th</sup> the Alliance for Quality Nursing Home Care (AQNHCC) released a report on the care provided by nurses at skilled nursing facilities (SNFs). The report used CMS data and suggests that SNFs improved at short-term and long-term care over the past decade. According to the AQNHCC, improvements were made possible through rigorous programs meant to decrease pain, pressure ulcers, and rehospitalization rates. The report can be viewed [here](#).

On May 6<sup>th</sup> a study published in *Health Affairs* suggests that lower Medicare hospital payment rates lead to lower private payment rates. Chapin White, the author of the study, notes that this trend is contrary to the cost-shifting theory believed by many policy makers. The study can be accessed [here](#).

On May 6<sup>th</sup> a study published in *Health Affairs* notes that 55% of the recent slowdown in health care spending is unexplained. The study suggests that a continuation of the current trend would result in the government spending \$770 billion less than currently anticipated. The study is available [here](#).

On May 6<sup>th</sup> the Heritage Foundation released a study that argues immigration reform could cost the United States \$6.3 trillion. The Foundation writes that new immigrants will receive \$9.4 trillion in government benefits, including health care, but newly legal immigrants would only pay \$3.1 trillion in taxes. Critics, including leading Republicans, note that the study uses a 50-year timeframe and argue that Heritage does not account for the positive economic impact of immigrants. An article with reactions to the study can be read [here](#), and the study is available [here](#).

On May 6<sup>th</sup> the Patient-Centered Outcomes Research Institute (PCORI) announced 51 awards totaling over \$88 million to fund patient-centered comparative clinical effectiveness research (CER) in 21 states. Details on the committed funds are available [here](#).

On May 6<sup>th</sup> a study released by Johns Hopkins University and the Commonwealth Fund indicates that combining Medicare Parts A, B, and D could save \$180 billion over the next 10 years. The report says that a “Medicare Essential” plan would save beneficiaries 17% compared with someone who has traditional Medicare and Part D and Medigap Part F supplemental plans. The study can be found [here](#).

On May 9<sup>th</sup> a study released by the IMS Institute for Healthcare Informatics indicates that in 2012, for the first time in over 50 years, spending on prescription drugs decreased. The study notes that total spending fell by almost \$29 billion, largely due to a decrease in health care service use and the increasing prevalence of generics and biosimilar products. The study can be found [here](#).

### **Hearings and Mark-Ups Scheduled**

#### *Senate*

On May 14<sup>th</sup> the Senate Finance Committee will hold a hearing titled “Advancing Reform: Medicare Physician Payments.” More information can be found [here](#).

On May 15<sup>th</sup> the Senate Appropriations Labor, Health and Human Services, and Education Subcommittee will hold a hearing to examine the proposed budget estimate for fiscal year 2014 for the National Institutes of Health. Additional details are available [here](#).

On May 22<sup>nd</sup> the Senate Special Aging Committee will hold a hearing on the ten-year anniversary of the Medicare prescription drug program. More details can be found [here](#).

#### *House of Representatives*

On May 14<sup>th</sup> and 15<sup>th</sup> the House Energy and Commerce Committee will meet to mark up H.R. 1407, Animal Drug User Fee Amendments of 2013, as amended by the Subcommittee on Health, and H.R. 1919, Safeguarding America’s Pharmaceuticals Act of 2013. More information can be found [here](#).

On May 21<sup>st</sup> the House Veterans Affairs Subcommittee on Health will hold a hearing on draft legislation: ‘The Veterans Integrated Mental Health Care Act of 2013;’ ‘The Demanding Accountability for Veterans Act of 2013;’ H.R. 241; H.R. 288; H.R. 984; and H.R. 1284. More information is available [here](#).