



## ML Strategies Update

Jeremy Rabinovitz, [JRabinovitz@mlstrategies.com](mailto:JRabinovitz@mlstrategies.com)  
Joseph P. Hammang, PhD, [JPHammang@mlstrategies.com](mailto:JPHammang@mlstrategies.com)  
Alexander Hecht, [AHecht@mlstrategies.com](mailto:AHecht@mlstrategies.com)  
Andrew Shin, [AJShin@mlstrategies.com](mailto:AJShin@mlstrategies.com)  
Abby Matousek, [AMatousek@mlstrategies.com](mailto:AMatousek@mlstrategies.com)  
Alyssa Franke, [AFranke@mlstrategies.com](mailto:AFranke@mlstrategies.com)

**ML Strategies, LLC**  
701 Pennsylvania Avenue, N.W.  
Washington, DC 20004 USA  
202 434 7300  
202 434 7400 fax  
[www.mlstrategies.com](http://www.mlstrategies.com)

FOLLOW US ON TWITTER: [@MLStrategies](https://twitter.com/MLStrategies)

MAY 19, 2014

## Health Care Update

**Transparency Latest Weapon against Rising Health Care Costs:** Last Thursday, the American Medical Association (AMA) sent the Centers for Medicare & Medicaid Services (CMS) Administrator, Marilyn Tavenner, a strongly-worded [letter](#) calling the recent release of Medicare physician payment data, “flawed” and failing to “convey useful and accurate data.” The AMA letter set forth a laundry list of complaints with the data and voiced concerns over physician requests to be able to fact-check or change the payment data before its public release. Additionally, they asked CMS to provide more disclaimers with the data to mitigate possible public backlash based on the raw data file. CMS doesn’t seem to be backing down so far as stakeholders, mainly from the physician community, continue to press the agency to make modifications to their transparency efforts.

Health policy experts are viewing the massive data release in addition to other efforts as yet another priority area for the Administration while focusing on the rising costs of health care. Last year, hospital groups were in the same position as physicians are now, when CMS released hospital pricing data, which was also met with high resistance but was heralded by consumer groups. It is likely that CMS will continue to develop initiatives that include pricing transparency through alternative payment models like bundled payments and/or stand-alone initiatives like the physician and hospital data releases. Stakeholders, especially those in the medical technology and biopharmaceutical spaces from laboratories to drug manufacturers, have also been the subject of recent scrutiny. This indicates that future CMS efforts could further apply transparency initiatives as policymakers and commercial payers alike focus on innovative but very expensive therapies, devices, and diagnostics.

### **Implementation of the Affordable Care Act**

**CMS Issues 2015 Exchange Rule:** CMS [issued](#) a final rule for the 2015 health insurance exchanges. The rule raises the ceiling on administrative costs and profits in the risk corridors formula by two percentage points and updates medical loss ratio provisions. The rule also outlines several restrictions on navigators and lists state requirements that can prevent navigators from performing their jobs.

**Medical Loss Ratio Provides Consumer Benefits:** The Commonwealth Fund [released](#) a study which found that the Affordable Care Act's (ACA) medical loss ratio has provided consumers \$3 billion in benefits, either through direct rebates or through reduced health plan spending on overhead.

**Patients with Exchange Coverage Pay More for Prescriptions:** Milliman and PhRMA [released](#) a report which found that Silver plans with deductibles offered through the Health Insurance Exchanges may require patients to pay twice as much out of pocket for prescription medicines than they would under an employer provided plan.

**Senators Question ACA Application Contractor:** Senators Roy Blunt (R-MO) and Lamar Alexander (R-TN) [sent a letter](#) to CMS Administrator Tavenner requesting information on a report that Serco, a contractor hired to process paper applications, has less work than expected and is not successfully completing the applications it has received.

**NC Enrollees Older Than Expected:** Blue Cross and Blue Shield of North Carolina [announced](#) that its enrollees through the ACA exchanges were older than expected. They anticipated those older than 55 would make up 15% of their enrollees, but they actually made up 29% of enrollees.

**Senators Introduce Exchange Refund Bill:** Senators John Barrasso (R-WY) and Orrin Hatch (R-UT) [introduced](#) the State Exchange Accountability Act, which would require states that shut down their own individual exchanges to repay all the federal grant funding they received.

**Senators Question Failing State Exchanges:** Senators Chuck Grassley (R-IA) and Orrin Hatch (R-UT) [sent a letter](#) to CMS Administrator Tavenner requesting detailed information about state healthcare exchanges that have failed and what funding they have received.

**Members Urge Allowing Third-Party Payments:** Representative Bill Cassidy (R-LA) and Senator David Vitter (R-LA) [sent a letter](#) to CMS Administrator Marilyn Tavenner urging her to allow payments from third party non-profit organizations to plans purchased through the exchanges.

**Issa Says HHS Failed to Comply with Subpoena:** House Oversight and Government Reform Committee Chairman Darrell Issa (R-CA) [sent a letter](#) to HHS Secretary Kathleen Sebelius accusing HHS of willfully failing to comply with the Committee's subpoena for documents related to healthcare.gov.

### **Other Federal Regulatory Initiatives**

**VA Health Secretary Resigns:** Dr. Robert Petzel, Under Secretary for Health in the Department of Veterans Affairs, [resigned](#) in the wake of allegations that veterans' hospitals were concealing patient waiting times in order to appear compliant with VA standards.

**FDA Releases Biosimilar Guidance:** The Food and Drug Administration (FDA) [released](#) draft guidance for industry on how to design and use clinical pharmacology studies to support a decision that a drug is biosimilar to its reference product.

**CMS Restructuring Quality Improvement Program:** CMS will be [restructuring](#) the Quality Improvement Organization (QIO) Program. Two QIO contractors will support the programs review and monitoring activities. CMS will also award contracts to work on data-driven quality initiatives.

**90 Charged for Medicare Fraud:** The Department of Health and Human Services (HHS) and the Department of Justice [announced](#) that the Medicare Fraud Strike Force charged 90 individuals for their alleged participation in

Medicare fraud schemes involving approximately \$260 million in false billing.

**FDA Approves Prosthetic Arm:** The FDA [approved](#) marketing for the DEKA Arm System, the first prosthetic arm that can perform multiple, simultaneous powered movements controlled by electromyogram electrodes.

**50% Taking Prescription Drugs:** The Centers for Disease Control and Prevention (CDC) [reports](#) that half of all Americans were taking one or more prescription drugs between 2007 and 2010, and one in ten took five or more. Cardiovascular agents and cholesterol-lowering drugs were two of the most commonly used.

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

**Bill Introduced for Military Children with Developmental Disabilities:** Senators Roy Blunt (R-MO), Patty Murray (D-WA), Kirsten Gillibrand (D-NY), and Marco Rubio (R-FL) [introduced](#) the Caring for Military Children with Developmental Disabilities Act, which requires TRICARE to provide coverage for behavioral health treatments.

**E&C Releases Mental Illness Report:** The Energy and Commerce Committee [released](#) a report into its investigation of federal programs addressing severe mental illness. The report focuses on the scope of the problem, how privacy laws may interfere with patient care and public safety, and how federal resources are being spent.

**Harkin Criticizes FDA E-Cigs Rule:** Senate Health, Education, Labor, and Pensions (HELP) Committee Chairman Tom Harkin (D-IA) [criticized](#) the FDA's proposed rule regulating e-cigarettes, stating that it does not address the most egregious market practices of e-cigarette companies targeting minors.

### **Other Health Care News**

**Telehealth Barriers Must Be Removed Quickly:** The Information Technology and Innovation Foundation [released](#) a report stating that barriers must be removed by the federal government and the states quickly in order to realize the benefits of telehealth.

**Venture Capital Targets 50+ Market:** New research from StartUp Health [shows](#) that more than half of digital health investment since 2010 has targeted nine areas that benefit the 50+ market, including four that are recent focus areas for the market: behavioral and emotional health, social engagement, diet and nutrition, physical fitness.

### **Upcoming Hearings and Markups**

#### **Senate**

On May 21<sup>st</sup>, the Senate Commerce, Science and Transportation Committee will hold a [hearing](#) titled "Delivering Better Health Care Value to Consumers: The First Three Years of the Medical Loss Ratio."

#### **House**

On May 20<sup>th</sup>, the Health Subcommittee of the House Ways and Means Committee will hold a hearing on current hospital issues in the Medicare program, including Centers for Medicare and Medicaid Services' two-midnights policy, short inpatient stays, auditing and appeals.

On May 20<sup>th</sup>, the Health Subcommittee of the House Energy and Commerce Committee will hold a [hearing](#) titled "21st Century Cures: The President's Council of Advisors on Science and Technology (PCAST) Report on Drug Innovation."

On May 21<sup>st</sup>, the Health Subcommittee of the House Energy and Commerce Committee will hold a [hearing](#) titled "Keeping the Promise: Site of Service Medicare Payment Reforms."

\* \* \*

Boston · Washington [www.mlstrategies.com](http://www.mlstrategies.com)