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HEALTH CARE REFORM UPDATE November 4, 2013

- With the release of the bi-partisan & bi-cameral “SGR Repeal” discussion draft, we are anticipating a very busy couple of months from clinical societies and health care trade groups going into full lobbying mode to influence Congressional Committees and Leadership as they hammer out the final details of a bill. What was missing from the discussion draft is how to pay for the \$138 billion price tag, and many health care industry sectors are at risk for potential reimbursement cuts. Full coverage for SGR legislation prospects [here](#).
- HHS made a major headlines in a [letter](#) to Congressman Jim McDermott (D-WA), the top ranking Democrat on the Ways and Means Health Subcommittee, when it clarified that health coverage obtained through the exchanges were not considered “federal health care programs” with respect to the Anti-Kickback Statute. In other words, this could be a big win for branded pharmaceutical companies who could offer co-pay assistance for their own drugs and for hospitals who can enroll or even subsidize premiums for uninsured patients in order to get reimbursed by commercial health plans. At odds with this decision are a host of industry stakeholders such as Pharmacy-benefit managers, generic drug manufacturers and commercial health plans because they believe this will result in a rise in spending and shift utilization away from generic drugs to branded. We anticipate HHS to be pressed on this issue from both sides as stakeholders further digest the ramifications from this decision.
- Tom Scully, former CMS Administrator under George Bush, made headlines inside the beltway in a New York Times piece that was reprinted in the New York Times Magazine this weekend. The article provided a candid look at the opportunity that Scully and others in the private equity sector saw as a result of payment reform, accelerated by the Affordable Care Act. The article rather clearly pointed out that as a prominent Republican health policy maker, Scully’s view, while not shared by all, is that this may be the best opportunity for innovative companies to take advantage of a massive sea change in the health care delivery system.

Leading the News

Administration Officials Testify Before Congress

As the Health Insurance Marketplace neared its one-month anniversary, Department of Health and Human Services (HHS) Secretary Kathleen Sebelius and Centers for Medicare and Medicaid Services (CMS) Administrator both appeared before Congressional committees to testify on the rollout of healthcare.gov. These hearing were frequently overshadowed by contentious arguments between committee members. Administrator Tavenner appeared before the House Ways and Means Committee on October 29, where she [testified](#) that a number of improvements had already been made to healthcare.gov to improve the application process and that regular maintenance would be scheduled in order to have the website fully operational by the end of November. A CMS official later stated that regular repairs would be scheduled to take place occasionally between 1 a.m. and 5 a.m. ET. Administrator Tavenner also stated that several Presidential Innovation Fellows would be part of the team brought in to repair healthcare.gov.

Secretary Sebelius [appeared](#) before the House Energy and Commerce Committee on October 30, where she apologized for healthcare.gov's poor performance and acknowledged that the website had not been adequately tested. She addressed the pair of outages which took down the federal data hub for a total thirty-six hours this week, stating that the outages were a result of failures at a Verizon data center and were not the result of a fault within healthcare.gov. Secretary Sebelius also addressed a number of security concerns raised the committee, acknowledging that someone did theoretically come up with a way to access personal information but that the problem was immediately fixed. She also stated that HHS is working with one of the contractors to change language on healthcare.gov which suggests that individuals using healthcare.gov should not have a total expectation of privacy.

As Administration officials appeared before Congress to defend the health law implementation, President Obama spoke at Faneuil Hall in Boston and has several public appearances planned this week to continue a narrative on implementation. Obama will speak at a Summit on Monday hosted by Organizing for Action and in Dallas on Wednesday to highlight successful sign ups.

Senate Finance, House Ways and Means Release SGR Reform Proposal

On October 31, Members of the Senate Finance Committee and the House Ways and Means Committee [released](#) a bipartisan discussion draft proposal to reform the Medicare Sustainable Growth Rate. The framework would permanently repeal the SGR update mechanism, reform the fee for service payment system, encourage participation in alternative payment models, and provide performance-based incentive payments to physicians and other health care professionals. Members of the House Energy and Commerce Committee swiftly [praised](#) this proposal, stating that it mirrored many of the reforms included in the Medicare Patient Access and Quality Improvement Act, which the committee passed this past July.

Implementation of the Affordable Care Act

On October 28, CMS [released](#) guidance addressing how the Administration will extend the deadline of open enrollment to March 31. Consumers who purchase healthcare between February 15 and March 31 will have to file a hardship exemption on their 2015 income tax return.

On October 28, the National Association of Medicaid Directors [stated](#) CMS will begin testing a function to provide state Medicaid agencies with real-time electronic transfers of accounts from the Federally Facilitated Marketplaces on November 1.

On October 28, Congressman Fred Upton (R-MI) [introduced](#) the Keep Your Health Plan Act, which would treat all plans in effect on January 1, 2013 as grandfathered health plans under the Affordable Care Act (ACA).

On October 28, HHS [released](#) a report which found that 46 percent of single uninsured young adults may be eligible to receive coverage through the Health Insurance Marketplace for \$50 or less a month.

On October 28, Senators March Rubio (R-FL) and Trey Radel (R-FL) [introduced](#) the Delay Until Fully Functional Act, which would delay the enforcement of the individual mandate until six months after the Government Accountability Office (GAO) certifies that healthcare.gov is fully functional.

On October 29, House Oversight and Government Reform Committee Chairman Darrell Issa (R-CA) [subpoenaed](#) Quality Software Services, Inc., stating that the company failed to comply with his original request for documents related to their role with the development of healthcare.gov.

On October 29, Representatives Charles Boustany (R-LA) and Ami Bera (D-CA) [introduced](#) the Small Business and Family Relief Act, which will delay the small business health insurance tax for two years.

On October 29, a bill by Senator Lamar Alexander (R-TN) that would have required weekly reports on healthcare.gov was [blocked](#) in the Senate.

On October 30, Representative Dan Lipinski (D-IL) [introduced](#) the Health Care Access Fairness and Penalty Delay Act, which would require the HHS Inspector General to certify when healthcare.gov is fully operational, and would give consumers 90 days beyond that date to enroll for health insurance.

On October 30, HHS Secretary Sebelius [published](#) a blog post clarifying recent stories about individuals who have lost their health insurance. She described the conditions under which grandfathered plans can continue and why some insurers are discontinuing certain plans.

On October 30, Senator Jeff Sessions (R-AL) [criticized](#) HHS for reissuing a no bid contract to publicize the ACA to incarcerated individuals after apparently cancelling the same program earlier in the week. He also criticized HHS for failing to respond to a letter he sent regarding the program earlier in the year.

On October 31, the House Oversight and Government Reform Committee [published](#) notes taken during a meeting at the Center for Consumer Information and Insurance which stated that only 6 enrollments for health insurance were made on healthcare.gov on the first day of open enrollment.

On October 31, Representative Issa [subpoenaed](#) HHS Secretary Sebelius for documents related to the launch of healthcare.gov, stating that she failed to supply the documents when he originally requested them.

On October 31, Representative Sam Graves (R-MO) [sent a letter](#) to HHS Secretary Sebelius asking for clarification on the enrollment timetable for the Small Business Health Options Program (SHOPs), and expressing concern about the narrow timetable in which businesses can act.

On October 31, Republican members of the House Energy and Commerce Committee [sent letters](#) to HHS Secretary Sebelius and four contractors involved with the Federally Facilitated Marketplace (FFM) to determine whether the failure to conduct a complete Security Control Assessment increases risk to the FFM.

On November 1, Chairman of the House Ways and Means Committee Dave Camp (R-MI) [wrote a letter](#) to CMS Administrator Marilyn Tavenner demanding that the Administration make enrollment figures publicly available at the end of each day, and threatening to subpoena CMS if she did not.

A Center for Consumer Information and Insurance Oversight (CCIIO) [memo](#) released by the House Oversight and Government Reform Committee on November 4 found that the agency knew paper applications would not be faster than healthcare.gov.

On November 4, HHS published a [request for public comment](#) on a proposal to request Title X grantees, family planning care centers, to collect information on the number of consumers they assist in enrolling under the ACA

Other HHS and Federal Regulatory Initiatives

On October 28, CMS [announced](#) that Medicare Part B premiums will not increase in 2014. CMS credited the Affordable Care Act's reforms, such as reforms to close the donut hole in prescription drug coverage, for the slowdown in premium costs.

On October 31, the Treasury Department and the IRS [announced](#) they would be modifying the "use-or-lose" rule for Health Flexible Spending Arrangements (FSA) to allow \$500 of an unused balance to be carried over into the following year.

On October 31, CMS [launched](#) a webpage which identifies new, reinstated, or terminated prescription drug labelers.

Other Congressional and State Initiatives

On October 30, the Senate Health, Education, Labor and Pensions (HELP) Committee [passed](#) six bipartisan bills, including a reauthorization of the Older Americans Act, the Children's Hospital GME Support Reauthorization Act, and the School Access to Emergency Epinephrine Act.

On October 30, Representative Henry Waxman and 55 other members of Congress [sent a letter](#) to President Barack Obama, urging him to strengthen his Administration's tobacco proposal for the Trans-Pacific Partnership (TPP) Agreement.

Other Health Care News

Last week, America's Health Insurance Plans (AHIP) launched a [campaign](#) called "Seniors Are Watching" that warns Congress, should it pursue Medicare Advantage cuts, it will answer to seniors.

Hearings and Mark-Ups Scheduled

On Tuesday, November 5, the Senate HELP Committee will hold a [hearing](#) titled "The Online Federal Health Insurance Marketplace: Enrollment Challenges and the Path Forward." CMS Administrator Marilyn Tavenner will testify at the hearing.

On Wednesday, November 6, the Senate Finance Committee will hold a [hearing](#) titled "Health Insurance Exchanges: An Update from the Administration." HHS Secretary Kathleen Sebelius will testify.