

NEWSSTAND

Healthcare Update - Healthcare News from Capitol Hill and The Department of Health and Human Services

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The past two weeks brought several notable healthcare developments, as the Department of Health and Human Services (HHS) continued preparations for implementation of the new healthcare reform law – Public Law (PL) 111-148.

CRS OUTLINES REGULATORY PROCESS:

On April 13, the Congressional Research Service (CRS) – which serves as Congress’ research arm – issued a report reaffirming the notion that although the legislative battle on healthcare reform is over, there is still a long road ahead as federal agencies work to implement the massive new law.

Specifically, the report indicates that PL 111-148 provides federal agencies with “...substantial responsibility and authority to ‘fill in the details’ of the legislation through subsequent regulations.” In addition, CRS notes that although some regulations are will be written in 2010, “...it seems likely that other regulations will be issued for years, or even decades to come.”

For example, HHS Secretary Kathleen Sebelius must issue regulations this year to extend coverage to dependents up to age 26, though the law does not provide details as to how this must be executed. In contrast, another provision requires HHS to issue regulations establishing criteria for qualified health plans, and specifically spells out what some of those elements need to be.

NEW REPORT INDICATES COSTS MAY INCREASE:

On April 22, independent experts at the Centers for Medicare and Medicaid Services (CMS) released a report indicating that while millions more Americans would be covered under the new healthcare law, the nation’s costs would go up slightly. In addition, the report – put forth by CMS’ chief actuary – warned that those costs also have the potential to increase further because Medicare cuts envisioned in the law may be unsustainable or unrealistic.

This report raises questions about the ability of the Independent Payment Advisory Board – also created by PL 111-148 – to achieve projected savings, noting that limiting Medicare cost growth to a level below medical price inflation would be extremely challenging.

KEY SENATOR SEEKS REVIEW OF FALSE CLAIMS LAWS:

To ensure that state laws on false claims are in compliance with recent changes to the federal statute, Senate Finance Committee Ranking Member Chuck Grassley (R-IA) recently asked that HHS and the Department of Justice (DoJ) conduct a review of the matter.

In an April 28 letter, Senator Grassley stated that HHS and DoJ should review each state's false claims laws to ensure they are in compliance recent federal changes – including changes made in the new healthcare law. In addition, the Senator indicated specific interest in the “first-to-file” bar provisions, which preclude whistleblowers from filing a lawsuit under a state FCA if a suit is already filed in another state, and asked for a review to determine whether “first-to-file” bar provisions in state laws make the state laws less effective than federal law.

In a statement on the issue, Senator Grassley stated, “This kind of effort at the state and federal level is more important than ever as Medicaid programs are expanded and face new burdens and growing fiscal challenges. Every dollar lost to fraud is one less dollar for those who depend on the program and harms the sustainability of the Medicaid program.”

NEXT STEPS:

We will continue to follow the aforementioned items and monitor HHS as implementation of the complex healthcare law moves forward, and will provide timely updates as new developments occur.

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Should you have any questions on the content of this advisory, or wish to discuss any other healthcare related issue, please contact those listed below or call the Edwards Angell Palmer & Dodge LLP attorney responsible for your affairs.

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