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HEALTH CARE REFORM UPDATE

March 26, 2012

Leading the News

This morning, the Supreme Court heard oral arguments in the multi-state challenge to the ACA. The focus of today's arguments revolved around whether the Anti-Injunction Act (AIA) would prevent the Supreme Court from ruling on the case before the individual mandate went into effect. Initial commentary following the arguments seems to indicate that the Justices were likely to continue hearing the merits of the challenge and did not agree that the AIA barred them from doing so. Transcripts of the arguments and questioning from the Justices can be found [here](#). Audio of the arguments can be found [here](#).

Special Report: GOP Proposed Budget for FY2013

On March 20th House Budget Committee Chairman Paul Ryan (R-WI) released a proposed budget for FY2013 that would repeal the ACA and enact significant changes to Medicaid and Medicare. The proposed budget can be found [here](#).

The proposed changes to Medicare are similar to a plan proposed last December by Chairman Ryan and Senator Ron Wyden (D-OR). The proposal would give Medicare beneficiaries a choice between traditional fee-for-service Medicare and a premium support program wherein seniors would receive subsidies to purchase private health plans. The proposed budget, however, caps Medicare spending more severely than did the Ryan-Wyden proposal. In addition, the budget would cut Medicaid by \$810 billion over ten years and transform it into a block grant program wherein states receive block grants from the federal government and have significant flexibility in using those grants in their own programs. A brief summary of the budget's proposals for Medicare and Medicaid can be found [here](#).

On March 20th the Congressional Budget Office (CBO) released an "initial analysis" of Ryan's plan. CBO emphasized that this was not an official analysis of the budget proposal, but rather estimates of the long-term impacts on the budget if the growth rates, GDP, and other scenarios assumed by Rep.

Ryan in his plan held to be true. CBO estimates that the scenarios would result in lower health care coverage overall. The CBO analysis can be found [here](#). A summary of the CBO analysis can be found [here](#).

Democrats have spoken out against the budget. The White House opined in a statement that the budget “fails the basic test of balance, fairness, and shared responsibility.” The statement can be found [here](#). Although the Medicare plan resembles a plan championed by Senator Ron Wyden months ago, he has also said that he “can't imagine a scenario” where he would vote for the proposed budget. Senator Wyden’s statement can be found [here](#).

On March 21st the House Budget Committee voted 19-18 to approve the budget. News coverage of the vote can be found [here](#). The measure is expected to be considered on the House floor this week.

Implementation of the Affordable Care Act (ACA)

On March 20th the Missouri House of Representatives voted to reject legislation that would have allowed the state to accept federal grant to begin implementation of a state-run health insurance exchange. Local news coverage can be found [here](#).

On March 21st the Centers for Medicare and Medicaid Services (CMS) issued a call for applications to the Graduate Nurse Education Demonstration. The demonstration, authorized by the ACA, provides grants to hospitals and nursing schools to train advanced practice registered nurses. A CMS press release can be found [here](#).

On March 22nd the House voted 223-181 for legislation that would repeal the Independent Payment Advisory Board (IPAB), the Medicare cost-cutting board created by the ACA. While the original version of the bill enjoyed significant support from House Democrats, few Democrats joined in the vote to approve the final version of the bill, which included an amendment that would cap noneconomic damages in medical malpractice claims. The text of the bill as passed can be found [here](#). A White House statement opposing the bill can be found [here](#).

On March 22nd Secretary Sebelius invoked rate review powers granted to HHS by the ACA to deem proposed health insurance rate hikes in nine states excessive. An HHS press release can be found [here](#).

On March 23rd, in commemoration of the second anniversary of the passage of the ACA, the White House released a report highlighting the benefits of the law that have already been implemented. A White House press release can be found [here](#). The report can be found [here](#).

In anticipation of the ACA’s second anniversary, the Department of Health and Human Services (HHS) released several reports detailing the benefits of the law:

- On March 19th HHS released a report describing how 5.1 million Medicare beneficiaries have saved over \$3.2 billion through the closing of the prescription drug “doughnut hole.” A news release can be found [here](#).
- On March 20th HHS released a report describing how 45.1 million women have received access to preventative services under the ACA. A news release can be found [here](#).

- On March 21st HHS released a report claiming that 2.5 million young adults able to obtain insurance through their parents' policies because of the ACA. A news release can be found [here](#).
- On March 23rd Secretary Sebelius released a statement marking the law's second anniversary. The press release can be found [here](#).

Meanwhile, many Republican Members penned op-eds and issued their own reports in response to the ACA's second anniversary. On March 19th Senators John Barrasso (R-WY) and Tom Coburn (R-OK) released a report describing the "side effects" of the ACA. The report claims that the ACA will result in "fewer choices, higher taxes, more government, less innovation." The report can be found [here](#).

Other HHS and Federal Regulatory Initiatives

On March 22nd the FDA held an agency forum to consider creating a new category of drug that, under current rules, would require a prescription but could be bought without a prescription under the conditions of safe use. These conditions might include additional guidance for consumers on how to properly administer and restricting sales to pre-defined health care settings, such as pharmacies. More information, including a webcast of the forum, can be found [here](#).

Other Congressional and State Initiatives

On March 20th the Republican Governors Association released its "Seven Principles of Health Reform," designed to be a framework for replacing the ACA. The Governors argue that health care reform should focus on individual incentives, avoid "oppressive" mandates, encourage independence, foster innovation, and address spending. A press release can be found [here](#).

On March 20th two leading Democrats on the House Energy & Commerce Committee, Ranking Member Henry Waxman (D-CA) and Ranking Member on the Subcommittee on Oversight Diana DeGette (D-CO), wrote to FTC Chairman Jon Leibowitz requesting that careful attention be paid to the proposed merger between the two pharmacy benefit manager giants Express Scripts and Medco Health Solutions. A copy of the letter can be found [here](#).

On March 22 Representative Edward Markey (D-MA) released a report describing a "major safety loophole" in the FDA's device approval process. The report argues that the FDA's 501(k) medical device pathway, which allows new medical devices to be approved without review if they are "substantially equivalent" to existing approved devices, has allowed flaws in older devices to be perpetuated in new devices without review. The report can be found [here](#).

Other Health Care News

On March 19th the National Women's Law Center released a report describing the higher premiums that women must pay for health care coverage. The report claims that, even with maternity coverage excluded, women in many plans pay at least 30 percent more than men for the same level of coverage. The authors emphasize that the ACA will prohibit such practices beginning in 2014. The report can be found [here](#).

On March 19th the U.S. Court of Appeals for the 6th Circuit ruled that the FDA may require cigarette companies to print graphic warning labels on cigarette packages. Cigarette makers had argued that requiring them to include the warnings violated free speech rights. In a separate case last month, a district court in D.C. came to the opposite conclusion, holding that the rules were unconstitutional. The court's opinion can be found [here](#).

On March 20th the American Association for Justice, an association of trial lawyers, released a report claiming that medical liability insurers have, on average, higher profitability than many of the most profitable Fortune 500 companies. The association argues that the malpractice reform that has been proposed by House Republicans would further "pad the pockets" of the insurers. A press release can be found [here](#). The report can be found [here](#).

On March 22nd the Commonwealth Fund released a report describing the actions taken by states to implement the ACA. The report finds that while 49 states have at least actively reviewed policies to implement the ACA, only half of the states have taken any "binding" action. The report can be found [here](#).

Hearings & Mark-ups Scheduled

Senate

On March 26th the Senate Judiciary Subcommittee on Crime and Terrorism will hold a hearing entitled "Protecting Medicare and Medicaid: Efforts to Prevent, Investigate, and Prosecute Health Care Fraud." More information can be found [here](#).

On March 28th the Senate Appropriations Subcommittee on Labor, Health and Human Services, and Education and Related Agencies will hold a hearing on the NIH's FY2013 budget request. More information can be found [here](#).

On March 28th the Senate Homeland Security & Government Affairs Subcommittee on Federal Financial Management will hold a hearing entitled "Assessing Efforts to Combat Waste and Fraud in Federal Programs." More information can be found [here](#).

On March 29th the Senate HELP Committee will hold a hearing entitled "FDA User Fee Agreements: Strengthening FDA and the Medical Products Industry for the Benefit of Patients." More information can be found [here](#).

House of Representatives

On March 27th the House Judiciary Committee will hold a mark-up on H.R. 2299, the "Child Interstate Abortion Notification Act." More information can be found [here](#).

On March 28th the House Judiciary Subcommittee on Crime, Terrorism, and Homeland security will hold a hearing on several pieces of drug safety legislation—the "Safe Doses Act," the "Counterfeit Drug Penalty Enhancement Act of 2011," and the "Foreign Counterfeit Prevention Act." More information can be found [here](#).

March 26, 2012
Page 5

On March 29th the House Ways and Means Subcommittee on Health will hold a hearing entitled “The Individual and Employer Mandates in the Democrats’ Health Care Law.” More information can be found [here](#).

On March 29th the House Judiciary Subcommittee on Intellectual Property, Competition and the Internet will hold a hearing on the “Preserving Our Hometown Independent Pharmacies Act of 2011. More information can be found [here](#).