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## HEALTH CARE UPDATE

March 10, 2014

- **President Obama Releases 2015 Budget:** The Department of Health and Human Services (HHS) FY 2015 Budget was [released](#) as part of President Obama's budget proposal. It would fully fund implementation of the Affordable Care Act (ACA), cut \$350 billion in payments to Medicare providers, and decrease payments for Medicare prescription drugs by \$117 billion. It provides \$14.6 billion over 10 years to increase the number of health care providers and \$113 million in credits for small businesses that pay half of health insurance premiums. The President's budget is largely assumed to be more of a "statement," especially this year as Congress has already set spending caps through 2015. However, stakeholders and lawmakers are likely to use various cost-saving provisions from the President's budget in order to offset new health care legislation of their own.
- **SGR Legislation in Neutral?:** Momentum for a permanent replacement to the Medicare physician payment formula known as the Sustainable Growth Rate ("SGR") appears to have slowed quite bit as GOP House leadership scheduled a full vote on pending legislation, but tied it to various ACA cuts as pay-fors, rendering its prospects for passage this week as highly unlikely. Physician professional societies were critical of the move almost immediately, recognizing that even if the bill were to pass the House on a strictly party-line vote, the reception from the Senate and White House would be bring the effort back to square one. With the March 31<sup>st</sup> deadline quickly approaching, most Congressional analysts believe a temporary patch (likely up to 9 months) is all but a certainty, as Congressional negotiators tackle how to pay for the patch, and many industry sectors continue to be at risk.
- **CMS Abandons Part D Changes Following Staunch Opposition to Proposed Rule:** Opposition to the [January 10, 2014 proposed rule](#) that would have significantly restructured some elements of the prescription drug, Medicare Part D plan resulted in CMS dropping the proposed changes. On top of a strongly worded bi-partisan letter to CMS from [almost the entire Senate Finance Committee](#) and a House Energy and Commerce hearing attacking the proposed rule, various coalition letters have also been circulating with signatories ranging from HIV/AIDS groups to insurers. On Monday, Centers for Medicare and Medicaid Services (CMS) Administrator Marilyn Tavenner wrote to lawmakers saying that the agency will not finalize proposed changes related to protected classes of drugs. The agency will seek additional stakeholder input before advancing these of similar changes in the future. For more information on the proposed rule, please see our [Mintz Levin summary of the major issues and webinar](#).

## Implementation of the Affordable Care Act

**ACA Non-Compliant Plan Exemption Extended:** CMS [announced](#) that a transitional policy for health insurance plans that would otherwise be cancelled by the ACA will be extended by two years through 2017.

**Number of New Enrollees May Be Dramatically Lower:** Avalere Health [published](#) an analysis which estimates that between October 2013 and January 2014, Medicaid gained between 2.4 million and 3.5 million new enrollees as a result of the ACA, much lower than projected by CMS.

**More Americans Say They Are Harmed By ACA:** Gallup [released](#) a poll which found that 23% of Americans believe the ACA has hurt them or their families, the highest since Gallup began polling on this issue in 2012.

**House Passes Mandate Delay:** Despite a [veto threat](#) from President Obama, the House passed the SIMPLE Fairness Act (H.R. 4118) in a 250 to 160 vote. The bill would delay the individual mandate penalty for one year.

**CBO Projects Savings, Uninsured Due to Delay:** The Congressional Budget Office (CBO) [released](#) an analysis of the SIMPLE Fairness Act, introduced by Representative Lynn Jenkins (R-KS) which found the delay would reduce federal deficits by roughly \$10 billion between 2014 and 2019, but increased the number of uninsured by 1 million.

**Gary Cohen Leaves CMS:** CMS Administrator Marilyn Tavenner announced in a memo to employees that Gary Cohen, Deputy Administrator and Director of the Center for Consumer Information and Insurance Oversight at CMS, will be leaving CMS at the end of the month. Mandy Cohen, a senior advisor to the Administrator, will be the interim successor.

**Spending Report Shows One-Third of ACA Implementation Fund Spent:** According to a [report](#) on the spending details on exchanges, HHS has spent approximately \$304 million of the \$1 billion Health Insurance Reform Implementation Fund.

**Basic Health Program Final Rule Released:** CMS posted a [final rule](#) and [payment methodology](#) for the Basic Health Program (BHP), a program intended to provide care continuity for low-income individuals fluctuating between Medicaid and exchange coverage.

## Other Federal Regulatory Initiatives

**Democrats Support FDA Drug Warning Labels Change:** 41 House and Senate Democrats sent a [letter](#) to Food and Drug Administration (FDA) Commissioner Margaret Hamburg, praising the FDA's decision to allow generic drug manufacturers to change warning labels without prior FDA approval. Still, the Generic Pharmaceutical Association and twenty other health industry groups sent a [letter](#) to Hamburg, raising concerns that the new rule may have unintended consequences on patient access and national health care costs.

**One-Third of Medicare Patients in SNFs Experience Harm:** A new report from HHS' Inspector General [found](#) that 22% of Medicare beneficiaries experience adverse events during their stays in skilled nursing facilities (SNFs), and an additional 11% experienced temporary harm. Many of these incidents were preventable, and they recommended raising awareness of nursing home safety.

## Other Congressional and State Initiatives

**House to Vote on SGR Repeal:** House Republicans have [scheduled](#) a Friday vote on H.R. 4015, the SGR Repeal and Medicare Provider Payment Modernization Act of 2014. While the question of how to pay for a repeal has impeded the bill's progress, the bill will include a delay of the ACA individual mandate as a pay for.

**GAO to Investigate Cover Oregon:** The Government Accountability Office (GAO) has [agreed](#) to Representative Greg Walden's (R-OR) request to review Cover Oregon as part of a broader study planned to examine states' health exchange websites.

**Congressmen Oppose Medicare Part D Drug Class Changes:** A bipartisan group of nearly 50 members of Congress [sent a letter](#) to CMS Administrator Tavenner and HHS Secretary Kathleen Sebelius to oppose a proposed CMS rule to eliminate protected class status for several drugs under Medicare Part D.

**Ellmers Introduces Part D Legislation:** Representative Renee Ellmers (R-NC) [introduced](#) the Keep the Promise to Seniors Act which would prevent HHS from implementing the proposed changes to Medicare Part D published on January 10<sup>th</sup>, 2014.

**Lawmakers Urge Leveraging Health IT to Decrease Disparity:** Twenty-four Democratic lawmakers [wrote](#) to CMS and the Office of the National Coordinator for Health Information Technology requesting the agencies, as they proceed with the meaningful use electronic health record (EHR) incentive program, to utilize health IT to reduce health disparities, improve health literacy, and enable more access to underserved communities.

### Other Healthcare News

**Mobile Health Records Can Help in Emergencies:** A new study [published](#) in the Journal of Medical Internet Research found that mobile personal health records could minimize medical errors and help provide healthcare in emergency situations.

### Hearings and Mark-Ups Scheduled

#### **Senate**

On March 11, the Primary Health and Aging Subcommittee of Senate Health, Education, Labor and Pensions (HELP) Committee will hold a [hearing](#) titled "Access and Cost: What the U.S. Health Care System Can Learn from Other Countries."

On March 12, the Defense Subcommittee of Senate Appropriations Committee will hold a [hearing](#) on defense health programs.

On March 13, the Senate HELP Committee will hold a [hearing](#) titled "Protecting the Public Health: Examining FDA's Initiatives and Priorities."

#### **House**

On March 12, HHS Secretary Kathleen Sebelius will testify at a House Ways and Means Committee [hearing](#) on the Administration's proposed fiscal 2015 budget.

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On March 13, the Workforce Protections Subcommittee of House Education and the Workforce Committee will hold a [hearing](#) on the Protecting Health Care Providers from Increased Administrative Burdens Act ([H.R. 3633](#)).

On March 13, the Health Subcommittee of House Energy and Commerce Committee will hold a [hearing](#) titled “Keeping the Promise: Allowing Seniors to Keep Their Medicare Advantage Plans If They Like Them.”