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HEALTH CARE UPDATE

January 27, 2014

- **Exchange Security Concerns.** Continuing the effort to highlight potential problems with the Affordable Care Act (ACA) and HealthCare.gov, House Republicans have redoubled their efforts to call attention to security on exchange websites. Citing recent high profile data breaches at Target and others, Majority Leader Eric Cantor (R-VA) [outlined](#) in a January memo similar concerns over security of health care data. House Republicans have made exchange data security a priority for some time, already holding four hearings this Congress on the issue. On January 10, the House passed the Health Exchange Security and Transparency Act of 2014 ([H.R. 3811](#)), requiring the Health and Human Services (HHS) Secretary to notify individuals within two days should they be impacted by a data breach of the health care exchange. Also, Mila Kofman, the D.C. Health Link's Executive Director, recently testified that during its launch, that exchange was subjected to millions of cyber-attacks, many of which were launched from overseas. Efforts increase data security on HealthCare.gov will continue this week with a House Oversight Committee hearing on January 28th titled: "A Roadmap for Hackers? - Documents Detailing HealthCare.gov Security Vulnerabilities."
- **CMS proposes significant changes to Medicare Advantage and Part D Plans:** On January 10, the Centers for Medicare & Medicaid Services (CMS) published proposed [rules](#) labeled as "policy and technical" changes to the Medicare Advantage (Part C) and Medicare Prescription Drug Benefit (Part D) Programs. The proposed changes could significantly impact how Medicare Advantage (MA) organizations and Part D Prescription Drug Plan (PDP) sponsors operate and interact with their contractors, beneficiaries, and the government. The proposed rules will also impact the operations of all health care entities involved in providing drug products under Parts C and D, including pharmacy benefit managers (PBMs), pharmacies, physicians, and pharmaceutical manufacturers. For more details on the proposed rule, please refer to the [Mintz Levin Alert](#) published last week or register for a [complimentary webinar](#) on January 29, 2014 at 1:30 pm EST. Comments to the proposed rules must be submitted by March 7, 2014.

Implementation of the Affordable Care Act

Equal Coverage Enforcement Delayed: The IRS will delay enforcement of an ACA provision requiring employers to provide equal coverage for all of their employees and not discriminate against “highly compensated” employees. The delay is due to problems writing the regulations resulting from difficulties measuring highly compensated and determining what merits discrimination.

Medicaid Releases CHIP/Medicaid Enrollment: On January 22nd, Medicaid [released](#) eligibility and enrollment data for Medicaid and the Children’s Health Insurance Program (CHIP) for the month of December, 2013. Applications for Medicaid and CHIP were up 14.4 percent from the 3 months prior.

Bill Introduced to Stop “Insurer Bailout:” Representative Leonard Lance (R-NJ) [introduced](#) a bill to eliminate the ACA’s reinsurance and risk-corridor programs, which he describes as potentially allowing a “taxpayer-funded bailout” of health insurers. Department of Health and Human Services (HHS) Secretary Kathleen Sebelius called the claims that the programs are a government bailout “ridiculous.”

Republican Senators Question “Free” Benefits: Six Republican Senators [sent a letter](#) to HHS Secretary Sebelius questioning the agency’s description of preventative services provided through Medicare as being “free” in a CMS [press release](#).

Survey Finds EHR Incentive Program Working: In a blog post HHS [highlighted](#) a recent survey, which found that 80 percent of physicians are using some type of Electronic Health Record (EHR) system, as a sign the ACA’s EHR Incentive Program is working.

CMS Awards Exchange Grants: The Centers for Medicare and Medicaid Services (CMS) [awarded](#) nine states a combined total of \$201.2 million in federal grants to support partnership and state-run exchanges.

CMS Releases Presumptive Eligibility Resources: CMS [released](#) resources to assist states in the implementation of hospital Presumptive Eligibility, as authorized by the ACA.

IRS Outlines Exemptions From Individual Mandate: The IRS [released](#) a notice which outlines what government-sponsored limited-benefit health coverage programs, including TRICARE and limited Medicaid coverage, will be exempt from the Affordable Care Act’s (ACA) Individual Mandate.

Other Federal Regulatory Initiatives

US and UK Sign Health IT Agreement: HHS Secretary Sebelius and the United Kingdom Secretary of State for Health Jeremy Hunt [signed](#) a bi-lateral agreement for the use and sharing of health IT information and tools between the US and UK.

CMS Updates Coverage Manual: In the wake of *Jimmo vs. Sebelius* Supreme Court case, CMS [provided](#) an update on portions of the Medicare Benefit Policy Manual to clarify Skilled Nursing Facility, Inpatient Rehabilitation Facility, Home Health, and Outpatient coverage.

Other Congressional and State Initiatives

CBO Scores House, Senate SGR Bills: The Congressional Budget Office (CBO) released new estimated cost scores of proposals to overhaul the SGR. The House Ways and Means Committee [proposal](#) was scored at \$121 billion over 10 years while the House Energy and Commerce Committee plan was \$146 billion over that time, down from previous estimates of \$250 billion or more. The Senate Finance Committee [proposal](#) was scored at \$150.4 billion over ten years. The Senate's score includes \$40 billion in Medicare extenders that were not included in the House plans.

MedPAC Votes to Cut Employer MA Plan Pay: Last week MedPAC voted on draft recommendations to lower the rate at which employer-group-Medicare Advantage (MA) plans paid and to include hospice services as an MA benefit. In addition, MedPAC Commissioners recommended penalizing home health providers with high rates of hospital readmissions.

Representative Levin Releases GAO Report on MA Plans: Ranking Member of the House Ways and Means Committee Sander Levin (D-MI) [released](#) a GAO report showing that Special Needs Medicare Advantage Plans (SNPs) were more profitable than MA plans serving the general population. He stated that Congress needs a better understanding of why this is before considering a long term extension of the plans.

Republicans Question FDA Generic Drug Labels: A group of House and Senate Republicans, led by House Energy and Commerce Committee Chairman Fred Upton (R-MI), [wrote a letter](#) to Food and Drug Administration (FDA) Commissioner Margaret Hamburg questioning the FDA's proposed regulation to allow generic drug companies to change drug labeling information.

Other Health Care News

IOM Seeks Input On Clinical Trial Data: The Institute of Medicine Committee on Strategies for Responsible Sharing of Clinical Trial Data [announced](#) they would be beginning a study on how to best share data from clinical trials between institutions and asked for contributions.

Hearings and Mark-Ups Scheduled

House

On January 28, the House Ways and Means Committee will hold a [hearing](#) on the impact of the ACA's employer mandate definition of a full-time employee on jobs and opportunities.

On January 28, the House Oversight and Government Reform Committee will hold a [hearing](#) titled "A Roadmap for Hackers?—Documents Detailing HealthCare.gov Security Vulnerabilities."