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## **HEALTH CARE REFORM UPDATE**

### **October 24, 2011**

#### Implementation of the Affordable Care Act (ACA)

On October 17<sup>th</sup> the 26 states that are mounting a legal challenge to the ACA filed a petition with the Supreme Court agreeing with an earlier filing by the Obama administration requesting the Court hear the case. A copy of the filing can be found [here](#). The Department of Justice (DOJ) responded asking the court to address the issues of constitutionality and severability but not whether the law's Medicaid expansion and employer requirements were constitutional.

On October 17<sup>th</sup> the Center for Medicare & Medicaid Innovation (CMMI), created under the ACA, announced a new program to engage and train 200 "innovation advisers." These advisers would work on implementing new and innovative care delivery models in their own organizations. More information on the program can be found [here](#).

On October 17<sup>th</sup> the Congressional Budget Office (CBO) sent an email to members of Congress noting that the repeal of the CLASS Act provisions would have "no budgetary impact," a move seen as easing the path for repeal.

On October 20<sup>th</sup> a panel of the Eighth Circuit Court of Appeals heard oral argument in *Kinder v. Geithner*, Missouri's constitutional challenge to the ACA. Missouri Lt. Gov. Peter Kinder's response to the argument can be found [here](#).

On October 20<sup>th</sup> CMS issued the final rule for the Shared Savings Program, which creates Accountable Care Organizations (ACOs). The rule includes several changes from the proposed rule intended to encourage hospitals and other providers to participate in the program. The final rule can be found [here](#). In conjunction with the announcement of the ACO rules, CMMI announced the Advanced Payment Model initiative designed to provide advanced payments to rural hospitals to allow them to make the necessary investments to form ACOs. Information on the initiative can be found [here](#). Finally, the same day, the DOJ and the Federal Trade Commission (FTC) issued a joint policy statement regarding antitrust enforcement of ACOs. While the policy statement states that the agencies will continue to "vigorously the antitrust laws," it does away with an earlier proposal under which attempts to create certain large ACOs would automatically be reviewed by the agencies. A DOJ press release about the policy statement can be found [here](#).

On October 20<sup>th</sup> the Wisconsin state senate passed a Republican bill that would forbid insurance plans sold on the state exchange from covering abortions unless specific criteria are met. A local news story on the vote can be found [here](#).

On October 20<sup>th</sup> Congressional Republicans in both the House and the Senate sent a letter to Secretary Sebelius asking for more information behind the administration's decision to shut down the CLASS program. The letter can be found [here](#).

#### Other HHS and Federal Regulatory Initiatives

On October 17<sup>th</sup> CMS published additional guidance for hospitals preparing to attest that they are meaningful-users of electronic health records under the incentive program established by the American Recovery & Reinvestment Act. The CMS guidance can be found [here](#).

On October 18, HHS and CMS released two new proposed rules and finalized a third, all "designed to improve transparency and help providers operate more efficiently by reducing their regulatory burden." One proposed rule updates the Medicare Conditions of Participation, while the other proposed rule addresses regulatory requirements for hospitals in an effort to identify and begin to eliminate duplicative, overlapping, outdated, and conflicting regulations. The HHS press release along with links to the rules can be found [here](#).

#### Other Congressional and State Initiatives

On October 20<sup>th</sup> the Senate rejected legislation proposed by Sen. David Vitter (R-LA) to allow Americans to import FDA-approved drugs from Canada. Senator Vitter's press release responding to the vote can be found [here](#).

On October 20<sup>th</sup> Senate Democrats blocked a bill introduced by Senate Minority Leader Mitch McConnell (R-KY) earlier in the week that would have repealed the "withholding tax" that allows federal agencies to withhold 3% of payments to federal contractors, including Medicare providers, against the contractor's tax liability. While many Democrats and the White House support the repeal, they objected to offsetting provisions in the bill. A White House press release on the issue can be found [here](#).

#### Other Health Care News

On October 17<sup>th</sup> the American Action Forum released a report arguing that provisions in President Obama's jobs bill requiring pharmaceutical companies to pay rebates to for drugs dispensed to dual eligible recipients could result in a loss of 238,000 jobs in the pharmaceutical industry. The report can be found [here](#).

On October 18<sup>th</sup> HealthGrades published a report finding a wide gap in the quality of hospitals. According to the report, a patient in a top-rated hospital has a 73% lower risk of dying than a patient in a hospital in the lowest tier. The report can be found [here](#).

On October 18<sup>th</sup> the Commonwealth Fund released a report outlining 42 health system performance measures comparing the United States to other countries. More information on the report can be found [here](#).

On October 19<sup>th</sup> AARP sent a letter to members of the "Super Committee" urging it to avoid harmful cuts to Medicare and Medicaid. A press release can be found [here](#).

On October 20<sup>th</sup> protestors demonstrated at a meeting of the Connecticut Insurance Exchange Board. The protestors argue that the insurance industry is overrepresented on the board and have called for the appointment of members who represent consumers and small businesses. A local news story covering the protest can be found [here](#).

On October 20<sup>th</sup> Blue Cross Blue Shield of California announced grants worth almost \$20 million for the development of ACOs as part of its proposal to cap income at 2% of revenue and donate or return to customers anything past that. The company's press release can be found [here](#).

On October 20<sup>th</sup> the AMA, AARP, and several other groups sent a letter several members of Congress urging Congress to implement a "long overdue reform" of the Sustainable Growth Rate formula by which Medicare pays physicians. If Congress does not act, physician payments under Medicare would drop by almost 30% on January 1. The letter can be found [here](#).

### Hearings & Mark-ups Scheduled

#### *House*

On October 25<sup>th</sup> the House Veteran's Affairs Subcommittee on Health will be holding a roundtable titled "Patient Safety and Private-Sector Technologies." More information can be found [here](#)

On October 25<sup>th</sup> the Insurance, Housing and Community Opportunity Subcommittee of the House Financial Services Committee will hold the second part of a series of hearings titled "Insurance Oversight: Policy Implications for U.S. Consumers, Businesses and Jobs". More information can be found [here](#).

On October 26<sup>th</sup> the committee on Oversight and Investigations and the Subcommittee on Health of the House Energy and Commerce Committee have scheduled a joint hearing titled "CLASS Cancelled: An Unsustainable Program and Its Consequences for the Nation's Deficit." More information can be found [here](#).

#### *Senate*

The Senate is on recess this week.

#### *Super Committee*

On October 26<sup>th</sup> the Joint Select Committee on Deficit Reduction will hold a hearing titled "Overview: Discretionary Outlays, Security and Non-Security." More information can be found [here](#).