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Tom Koutsoumpas, TKoutsoumpas@mlstrategies.com
Jeremy Rabinovitz, JRabinovitz@mlstrategies.com
Alexander Hecht, AHecht@mlstrategies.com
Kevin M. Kappel, KMKappel@mlstrategies.com

ML Strategies, LLC
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 USA
202 434 7300
202 434 7400 fax
www.mlstrategies.com

HEALTH CARE REFORM UPDATE

November 14, 2011

Implementation of the Affordable Care Act (ACA)

On November 7th the Treasury Department issued a report on the implementation of the small business tax credit of the ACA. The report found that, despite extensive outreach, fewer taxpayers than expected had taken advantage of the credit. The report can be found [here](#).

On November 7th Wisconsin state senator Frank Lasee (R) called on Governor Scott Walker (R) to return the “Early Innovator” grant the state had received under the ACA to build its health insurance exchange. Wisconsin is the only state with a Republican governor that has accepted the grant. The governor’s office has indicated that it would not return the grant. A news story can be found [here](#).

On November 8th the D.C. Circuit Court issued a 2-1 ruling upholding the individual mandate as constitutional. The majority opinion was written by conservative judge Laurence Silberman. The opinion states that, while the individual mandate is clearly intrusive, that is a “political judgment rather than a recognition of constitutional limitations.” The dissent argued that the court did not have jurisdiction to hear the case. The opinion and dissent can be found [here](#).

On November 8th Ohio voters passed “Issue 3”, a largely symbolic ballot measure rejecting the individual health insurance mandate. The text of the measure can be found [here](#).

On November 8th Georgia became the sixth state to receive approval for a partial waiver of the ACA’s medical loss ratio requirements. HHS approved a standard whereby the requirement would be phased in over three years—with insurers required to meet a 70% MLR ratio in 2011, 75% in 2012, and 80% in 2013 and thereafter. The determination letter can be found [here](#).

On November 10th Senate Republicans Orrin Hatch (R-UT), Mike Enzi (R-WY), and Tom Coburn (R-OK) sent a letter to HHS Secretary Kathleen Sebelius demanding details about the activities of the Center for Medicare and Medicaid Innovation (CMMI) and the funds spent on the center. The letter expressed concerns that “funds are being expended by the Innovation Center with little to no actual value provided.” The letter can be found [here](#).

On November 10th the North Dakota state legislature rejected legislation that would have authorized the state to implement a full health insurance exchange run by state officials under the ACA. A local news story can be found [here](#).

On November 14th CMMI announced a new ACA program called the “Health Care Innovation Challenge” that will award up to \$1 billion in grants to applicants who will implement the most compelling new ideas to deliver better health, improved care and lower costs to people enrolled in Medicare, Medicaid and CHIP, particularly those with the highest health care needs. More information can be found [here](#).

On November 14th the U.S. Supreme Court agreed to review the constitutionality of the ACA and to specifically hear arguments about the constitutionality of the individual mandate and about whether the Act’s Medicaid expansion is unconstitutionally coercive of state governments. The order also specifically brings into issue whether the litigation is barred by the Anti-Injunction Act. The lawsuit was initiated by 26 states and the National Federation of Independent Business, and the Supreme Court is expected to rule by next summer. More information on the order can be found [here](#).

Other HHS and Federal Regulatory Initiatives

On November 8th CMS announced that it was expanding Medicare’s coverage of cardiovascular disease prevention services. A press release can be found [here](#).

On November 9th the Health Resources and Services Administration (HRSA) restored access to the National Practitioner Data Bank, which provides information on disciplinary actions against medical professionals. The data bank had been taken down in September over concerns that it was being misused. The data bank can be found [here](#).

On November 9th former HHS Secretary Tommy Thompson called on President Obama to create a commission to promote research into adult stem cells. Thompson, speaking before an international Vatican conference, took care to distinguish between adult and embryonic stem cells. A news story and Mr. Thompson’s remarks can be found [here](#).

On November 14th HHS Office of the Inspector General released a report on the use of independent contractors to detect fraud in Medicare. The report found that many contractors were using inaccurate and outdated data. A news story can be found [here](#).

Other Congressional and State Initiatives

On November 7th the CBO issued its findings on a Senate bill to restrict “pay for delay” settlements, wherein the patent holders of brand name drugs agree with generic manufacturers to delay production of a drug. The report estimated that the act would reduce the deficit by \$4.8 billion over the 2012-2021 period. On November 9th the Generic Pharmaceutical Association (GPhA) issued a statement blasting the estimate as being based on “faulty assumptions.” On November 10th several Republican Senators sent a letter to the Supercommittee urging it not to include the provision as part of its recommendation to reduce the deficit. The letter argues that the issue is too important and should be decided on its own merits. The CBO findings can be found [here](#). The GPhA statement can be found [here](#). The letter from Senate Republicans can be found [here](#).

On November 8th Senate Judiciary Committee Ranking Member Chuck Grassley (R-IA) and Senate Finance Committee Chairman Max Baucus (D-MT) sent letters to three health insurers and two clinical lab testing companies to investigate allegations that the insurers receive discounted pricing from labs in exchange for referrals. A press release and the text of the letters can be found [here](#).

On November 8th Kansas Governor Sam Brownback (R) announced a proposal to overhaul the state's Medicaid system. The proposal would move more beneficiaries into third-party managed care plans. An official news release can be found [here](#).

On November 8th Mississippi voters voted to reject a controversial amendment to the state's constitution that would have defined "person" as including "every human being from the moment of fertilization..." A news story can be found [here](#).

On November 8th California announced that it was cutting funding to its prescription drug monitoring program. The program was designed to enable doctors to track patients who seek pain killers from multiple physicians. A news story critical of the cuts can be found [here](#).

On November 9th Senator Chuck Grassley (R-IA) called on the HRSA to more effectively audit the Federal Drug Discount Program. Grassley stated that HRSA has not audited the program since its inception. A press release can be found [here](#).

On November 9th the Massachusetts Special Commission on Provider Price Reform issued several recommendations to reduce variability in health care prices, including a recommendation that the state institute short-term price controls against hospitals. The report can be found [here](#). A Massachusetts Hospital Association statement criticizing the recommendation can be found [here](#).

On November 10th the Senate voted 95 – 0 to repeal a three percent withholding tax that applies to government contractors, including some Medicare providers. To compensate for the lost revenue, the bill changes the rules for calculating income when determining eligibility for a health insurance premium credit. A press release from Sen. Scott Brown (R-MA), who originally introduced the measure, can be found [here](#).

On November 10th the Wisconsin State Legislature passed a plan backed by Wisconsin Gov. Scott Walker (R) that would remove 65,000 people from the state's Medicaid rolls. HHS must now approve the plan. A local news story can be found [here](#).

Other Health Care News

On November 7th the Robert Wood Johnson Foundation and the Harvard School of Public Health published a poll finding that 52% of Americans prefer a bigger government providing more health services. The report can be found [here](#).

On November 7th HealthAffairs issued a report finding large variations in Medicare payment rates for surgeries. The authors suggest that switching to bundled payments could yield sizable savings for payers. The report can be found [here](#).

On November 7th Avalere Health released a survey finding that nursing homes could lay off as many as 20,000 workers due to recent cuts to Medicare rates. A press release can be found [here](#).

On November 9th NPR reported that Walmart has plans to enter the primary care market. Walmart had sent a Request for Information to potential vendors stating that "Walmart intends to build a national, integrated, low-cost primary care healthcare platform." On November 10th Walmart issued a clarifying statement that the document was overwritten and that it did not intend to build a national integrated system. Walmart's request for information can be found [here](#). NPR's report on the story can be found [here](#).

On November 9th the Institute of Medicine (IOM) issued a report examining the effects of health IT products on patient safety. IOM found that, while some health IT products can improve safety, poorly designed products

can create new hazards. The report recommended increased reporting and evaluation of patient injuries related to improper technology. The report can be found [here](#).

On November 9th the National Federation of Independent Businesses released a study finding that the annual premium tax levied against health insurers under the ACA is likely to reduce private sector employment by 125,000 to 249,000 jobs by 2021. The report can be found [here](#).

On November 9th Consumers Union and several other organizations sent a letter to White House officials urging them to promptly implement the Summary of Benefits and Coverage provisions of the ACA. The SBC provision calls for health insurers to use a simplified and standardized format in describing policy coverage provisions to consumers. The letter can be found [here](#).

On November 9th the Commonwealth Fund published a study comparing the care received by seriously ill patients in eleven countries. The report ranked the United States at or near the bottom in several key areas, including cost-related access problems, serious problems paying medical bills, and gaps in discharge. The study also reported found that patients who had a medical home reported better coordination of care, fewer medical errors, and greater satisfaction with care than those without one. The report can be found [here](#).

On November 11th Gallup released a poll finding that the number of uninsured American adults is rising. The poll found that 17.3% of adults are without health insurance, the highest number on record. The results can be found [here](#).

Hearings & Mark-ups Scheduled

House of Representatives

On November 15th the House Ways and Means Oversight Subcommittee will hold a hearing on the Small Business Health Insurance Tax Credit of the ACA. The hearing is to focus on whether small business employers are currently benefitting from the Small Business Tax Credit, problems they may be encountering when calculating the credit, and whether the IRS is administering it in a way that ensures tax compliance. More information can be found [here](#).

On November 15th the Health Subcommittee of the House Energy and Commerce Committee will hold a markup on H.R. 1173, the Fiscal Responsibility and Retirement Security Act of 2011, which would repeal the CLASS Act. More information can be found [here](#).

Senate

On November 17th the Senate HELP Committee will hold a hearing entitled “Medical Devices: Protecting Patients and Promoting Innovation.” More information can be found [here](#).