



## ML Strategies Update

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## Health Care Update

### **Ways & Means Leadership Changes – Health Policy Implications Looming**

As Congress pushes forward with a two-year budget deal, and new Speaker Paul Ryan begins his tenure as the top Republican in the House of Representatives, questions remain over who will chair the vacated Ways and Means (W&M) post and what the implications of that decision will be. Those questions should be settled this week by the House Steering Committee, with Reps. Kevin Brady (R-TX) and Pat Tiberi (R-OH) as the only two contenders.

Once the full committee Chairmanship has been decided, expect some significant shuffling among leadership for several key Subcommittees. For example, if Rep. Brady succeeds in W&M Chairman, it will create an opening on the Health Subcommittee he currently chairs. If that were the case, Rep. Charles Boustany (R-LA), a physician, might be interested in becoming Chairman of the Health Subcommittee.

This opening will create a number of opportunities for less senior members as the two members court support. Given Rep. Kevin Brady's interest and support for expanding health-savings accounts, this issue will be on our radar. Additionally, this summer, Rep. Brady introduced legislation reforming how Medicare pays for post-acute care services, such as in hospitals and nursing homes. He also has long championed the extension of the public notice and comment period for payment rates under Medicare Advantage; reforms to payment methods for disproportionate share hospitals (a measure led by Rep. Boustany); and legislation which would make it easier for physician-owned hospitals to expand their facilities.

Rep. Tiberi, on the other hand, may look to capitalize on the unfolding drama around reinsurance programs under the Affordable Care Act, having introduced legislation last spring to repeal the funding mechanism for transitional reinsurance. He has also supported the efforts of his colleagues to clarify the orphan drug exception; and is an original cosponsor of the TELE-MED Act of 2015, a bipartisan measure that would address cross-state licensure and is strongly supported by telemedicine advocates. He's also supportive of a Rep. Boustany measure which would increase access to health reimbursement arrangements. While the race for the W&M top post is close, early indications suggest Brady has the slight advantage.

ML Strategies will continue to monitor this issue over the coming weeks.

## Congress Passes Two-Year Budget Deal

Last week, Congress passed a two-year budget that simultaneously raises the debt limit, averting two major crises in one agreement. Let's take a look at the key issues address relating to health care in the budget deal.

**Budget Deal Repeals Auto-Enrollment Mandate:** The auto-enrollment mandate requires businesses with more than 200 full-time employees (FTEs) that offer employer-based coverage to automatically sign up their workers for coverage. This provision of the law has been rolled out more slowly than others and, prior to its proposed repeal, had been wallowing somewhere between the Department of Labor and Department of Justice, which were supposed to finalize these regulations last year. This would be another small victory for critics of the Affordable Care Act, and would mean that approximately 750,000 fewer workers would enroll in employer-based coverage, according to the Congressional Budget Office.

**Congress Finds Solution To Prevent Medicare Part B Increase:** Absent congressional action, a 52 percent premium hike would have been triggered for certain Part B enrollees in 2016. Instead, White House and Capitol Hill officials struck a deal that would alleviate, rather than eliminate, an increase in premiums. The budget agreement would enable the U.S. Treasury to lend money to the Medicare trust fund, resulting in only a modest increase in beneficiary premiums. As opposed to premiums increasing to nearly \$160 from the current rate of \$104.90 per month, premiums are expected to be around \$120 per month in 2016. In order to repay the loan, Medicare beneficiaries will be charged an extra \$3 beginning next year.

This increase was initiated after it was determined there would be no cost-of-living adjustment in Social Security payments, meaning some beneficiaries would see an increase in order to maintain the actuarial balance of the Medicare program. Roughly 70 percent of beneficiaries would have been unaffected, or "held harmless," as their Part B premiums are already withdrawn from their Social Security checks.

**Medicaid Rebate to Apply to Generic Drugs:** The provision – which would pay a rebate to Medicaid when prices for generic drugs increase at a rate steeper than inflation – has been floating around for some time and, according to CBO, would save \$1 billion over the next decade. Still, generic drug makers were quick to blast the deal, with the Generic Pharmaceutical Association (GPhA) saying the deal would "eviscerate" state Medicaid budgets and reduce access to affordable generic medicines.

There has been considerable movement on the high-cost of prescription drugs on both sides of the aisle over the past year. This includes an investigation spearheaded by the Chairman and Ranking Member of the Senate Finance Committee, as well as a bicameral investigation by Senator Bernie Sanders (I-VT) and Representative Elijah Cummings (MD-7) into the high cost of generic drugs. ML Strategies will closely monitor this issue over the coming weeks.

**Site-Neutral Reforms for Medicare Included As Well:** Another provision designed to fund part of the two-year budget deal is catching some in the industry by surprise, although the final proposal is not as onerous as feared. The provision would establish a site-neutral payment policy for all newly acquired outpatient departments, meaning providers who do not service patients at the main hospital would not be eligible for reimbursements from the Outpatient Prospective Payment System, which is reimbursed at a higher rate. The proposal is supported by MEDPAC.

It's no secret that the White House has been exploring ways to reform this discrepancy, and the industry feared a much bigger fight would be on the horizon when the hammer did finally fall. Proponents of the provision say it has led to higher costs and places a financial burden on community-based care facilities, which could restrict access to lower cost care. The Federation of American Hospitals described the proposal as the "least disruptive" way of addressing the issue, while the American Hospital Association called it a "big mistake."

## News from the Hill

**Senate Finance Chronic Care Initiative Making Progress:** The Senate Finance Committee hopes to unveil legislation addressing chronic care issues before the end of the year, despite the hectic end-of-year schedule. It appears they are still on schedule to have a bill released before the calendar year ends, with committee staff meeting last week to discuss incentives for providers to coordinate care, as well as strengthening Medicare Advantage for those with chronic care.

**Senate Cures Legislation Introduction Looming?:** The Senate version of the House-passed 21<sup>st</sup> Century Cures Act is struggling to clear the last few hurdles, although the hope is to have a draft out in the next month – and there is a possibility it could be introduced as early as this week. Senate Health, Education, Labor, and Pensions (HELP) Committee Ranking Member Patty Murray (D-WA) is insistent on mandatory increases in funding for the National Institutes of Health, although the path to finding those funds is murky in the Senate based on committee spending authorities. Additionally, the two-year budget deal taps into the Strategic Petroleum Reserve, which the House had originally intended to use as pay-for in Cures.

**Battle over Drug Pricing Heating Up:** As covered in the Last Word of our [Health Care Update](#) last week, drug pricing is taking center stage in the health world and the pharmaceutical industry is preparing a bold strategy to counter the growing bipartisan interest. A Kaiser Family Foundation [study](#) found that over half of Americans polled would like to see government action to make drugs more affordable. This should make for an interesting and contentious debate as we head into an election year. We'll be keeping our eyes on this one.

**Controversial Mental Health Bill to be Marked Up:** This week, Representative Tim Murphy (R-PA)'s mental health reform bill titled, [the Helping Families in Mental Health Crisis Act of 2015](#), will be marked up in the Energy and Commerce Committee. The legislation has drawn praise and dissent from Democrats, with those who oppose it expressing concerns with HIPAA-related provisions as well as funding for the Substance Abuse and Mental Health Services Administration (SAMHSA).

## All Things ACA

**Open Enrollment is Under Way:** The third Open Enrollment period under the Affordable Care Act (ACA) has started. The Department of Health and Human Services (HHS) is encouraging consumers to shop for new plans even if they intend to stay with their current arrangement. To review the Centers for Medicare and Medicaid Services Affordability Snapshot, [click here](#).

**Utah, Arizona Co-Ops Bite the Dust:** Last week, co-ops in Utah and Arizona announced they would be closing their doors. This marks the 10<sup>th</sup> and 11<sup>th</sup> co-ops to shutter since the Obama Administration announced a funding shortfall in risk corridor payments at the end of September. Considering Utah is home to Senate Finance Committee Chairman Orrin Hatch, and Arizona is home to senior Senator John McCain, this issue should begin to pick up steam. With two hearings on the co-op failures this week, please stay tuned for further updates on this issue.

**SCOTUS Weighs Considering Birth Control Case:** The Supreme Court is considering yet again whether or not to consider a challenge to the contraceptive coverage mandate for non-profit religious employers. If they agree to take it up, it could set up for another ACA summer showdown.

## Telemedicine Update

**Arkansas to Hold Hearing on Proposed Telemedicine Rules:** On Wednesday, the State of Arkansas will hold a public hearing on a recently released [proposed rule](#) to improve direct-to-consumer telemedicine in the state. Arkansas is slowly catching up to the rest of the nation in enabling doctors to perform services without being physically present. [Idaho](#), [North Dakota](#), and [Wisconsin](#) are also engaged in the rulemaking process with regards to telemedicine.

**Digital Diabetes Monitoring Program Starting in New York:** Mount Sinai in New York [is partnering](#) with Livongo Health, a digital health company, to provide those with diabetes an innovative data analytics management program.

This system will collect glucose readings, electronic health records, and other medication records to deliver timely information and alerts to those with diabetes in real-time.

**CMS Creates Four Additional Telemedicine Codes:** While CMS stopped short of making a patient's home an originating site, a patient with end-stage renal disease can utilize telemedicine for certain services. The [rules](#) also propose to add certified registered nurse anesthetists (CRNAs) to the list of distant site practitioners who can furnish telemedicine services under Medicare. In total, CMS is proposing to include four codes to Medicare telehealth services.

## Opioid Crisis Coverage – Take 2

**Michigan Considers Solutions to Opioid Problem:** The Michigan Prescription Drug and Opioid Abuse Task Force issued its [“Report of Findings and Recommendations for Action”](#) this week.

**23 GOPs Urge Modifications to Proposed Medicaid Reimbursement Rule:** On October 28th, a bicameral group of GOP members sent a letter to the Office of Management and Budget (OMB) regarding a rule that is under their final review. The members, which include Senators Orrin Hatch (R-UT) and Pat Roberts (R-KS), are concerned that the proposed rule, issued in February 2012, could deter manufacturers of medications with abuse-deterrent formulations because of additional rebate obligations under the Medicaid program.

## Regulatory Developments

**CMS Eases Two-Midnight Admissions Policy:** CMS announced last week that it will finalize a policy to allow for Medicare Part A payment on a case-by-case basis for inpatient admissions that do not satisfy the two-midnight requirements. The two-midnight rule requires doctors to designate beneficiaries who stay in a hospital for at least two midnights as inpatient stays, and to designate patients who have shorter stays as outpatient stays, which are reimbursed at a lower rate. Hospitals have long argued that this policy removed the physicians' judgement from the admission decision.

**CMS Announces Payment Changes for Home Health Agencies:** CMS [announced last week](#) that Medicare payments to home health agencies for calendar year (CY) 2016 will be reduced by 1.4 percent, or \$260 million.

**Hospitals Will Also See a Cut in 2016:** CMS projects that hospitals will see a 0.4 percent cut in 2016 compared to 2015 when all of the policies are finalized.

**ICD-10 Implementation Moving Along:** Despite years of delays, the transition to ICD-10 has been relatively smooth, with only ten percent of claims being denied, which is considered normal at this stage of the transition.

**FDA Battle over E-Cigarettes Heating Up:** The Tobacco Vapor Electronic Cigarette Association (TVECA) posted a copy online of the draft guidance from the FDA on e-cigarette approval. The guidance is currently under final review at OMB. TVECA is gearing up for a serious fight.

**FDA Invokes No-Tobacco-Sale Order:** If there's any indication that the FDA is serious about tobacco products and the sales to youth, it would be [in actions it](#) took last week for the first time. The FDA announced last week that it initiated a “No-Tobacco-Sale Order” against retailers in violation of the sale and distribution of tobacco. The authority to issue this order can be found in the Family Smoking Prevention and Tobacco Control Act of 2009. If the process goes through, it would prohibit the sale of tobacco at eight different retailers in five states for up to a month.

## Hearings

### House of Representatives

On Tuesday, November 3, the House Energy and Commerce Subcommittee on Health will hold a hearing titled, “Examining Legislation to Improve Medicare and Medicaid.”

Also on Tuesday, November 3, the House Energy and Commerce Subcommittee on Health will hold a markup of a number of mental health related bills. For a list of those bills, click [here](#).

On Tuesday, November 3, the House Ways and Means Subcommittee on Health will hold a hearing on the status of the CO-OP program. For more information, [click here](#).

On Thursday, November 5, the House Energy and Commerce Subcommittee on Oversight and Investigations will hold a hearing titled, "Examining the Costly Failures of Obamacare's CO-OP Insurance Loans."

### **United States Senate**

No hearings scheduled.

### **The Last Word**

**Improvements to Chronic Care Management Included in Finalized Medicare Payment Rules:** On Friday, CMS released its finalized [Medicare payment rules](#) for physicians, hospitals, and other providers. Tucked in the hundreds of pages of regulations are instructions for rural health centers (RHC) as well as federally qualified health centers (FQHC) when it comes to billing for chronic care management. CMS is proposing to establish payment, beginning January 2016, "for RHCs and FQHCs that furnish a minimum of 20 minutes of qualifying chronic care management (CCM) services during a calendar month to patients with multiple (two or more) chronic conditions that would be expected to last at least 12 months or until death of the patient, and that would place the patient at significant risk of death, acute exacerbation/decompensation, or functional decline." In other words, allowing this separate payment for CCM services enables these providers to offer the resources necessary to coordinate care for the rural and typically low-income populations they serve.

With the Senate weeks away from unveiling its chronic care reform legislation (as noted above), ML Strategies will be closely monitoring how the legislation compares to the new proposals included in the finalized payment rules.