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HEALTH CARE REFORM UPDATE November 21, 2011

Implementation of the Affordable Care Act (ACA)

On November 15th the House Energy & Commerce Subcommittee on Health approved by voice vote H.R. 1173, the Fiscal Responsibility and Retirement Security Act of 2011, which would repeal the CLASS Act. A press release from the Committee can be found [here](#).

On November 15th the American Medical Association (AMA) voted to support the “open marketplace” model for Health Insurance Exchanges wherein any qualified health plan can participate. Some advocates have proposed “active purchaser” models whereby state regulators negotiate prices and terms with insurers who wish to participate. The AMA has said such a model would restrict patient choice. A report from the AMA can be found [here](#).

On November 15th several Democratic Senators sent a letter to CMS Administrator Don Berwick arguing that farmers should be allowed to claim the ACA’s premium tax credit if they purchase insurance through traditional farmer cooperatives. The Senators argue that requiring farmers to purchase through state-based exchanges in order to obtain the credit would hurt the cooperatives. The letter can be found [here](#).

On November 15th C-SPAN sent a letter to the Supreme Court asking the Court to allow oral arguments in the health care reform case to be televised. On November 16th House Minority Leader Nancy Pelosi (D-CA) and Sen. Chuck Grassley (R-IA) issued press releases supporting C-SPAN’s request. The letter from C-SPAN can be found [here](#). Minority Leader Pelosi’s press release can be found [here](#). Senator Grassley’s press release can be found [here](#).

On November 16th CMS announced that it was delaying a decision on whether to grant Florida and Michigan their requests for waivers from the new medical loss ratio (MLR) requirements under the ACA. The letter to Michigan can be found [here](#). The letter to Florida can be found [here](#).

On November 16th the House of Representatives voted 422-0 to pass H.R.674. The bill corrects a “glitch” in the ACA whereby many middle-income individuals could qualify for Medicaid, and it repeals the 3% withholding tax required of federal contractors. The bill will now be sent to the President who has expressed support for the provisions. A press release from Rep. Wally Herger (R-CA), Chairman of the House Ways & Means Subcommittee on Health and original author of the legislation, can be found [here](#).

On November 16th Senators John Barrasso (R-WY) and Orin Hatch (R-UT) introduced a bill that would repeal the annual premium tax imposed on health insurance providers by the ACA. The Senators argue that the tax will raise premiums for employers and result in lost jobs. A press release can be found [here](#).

On November 18th several Republican Senators sent a letter to Attorney General Eric Holder accusing the Justice Department of withholding documents related to Supreme Court Justice Elena Kagan's involvement in health care reform. The Senators claim that evidence suggests that, as Solicitor General, Ms. Kagan was involved in the passage and defense of the ACA, and that she should therefore recuse herself from deciding on challenges to the law. The letter can be found [here](#).

On November 18th the Supreme Court issued orders appointing two outside attorneys to argue specific issues in the health reform case. H. Bartow Farr, III has been appointed to argue that the individual mandate is severable from the rest of the Act. Robert A. Long has been appointed to argue that the Anti-Injunction Act bars the court from hearing the lawsuit. The order can be found [here](#).

Other HHS and Federal Regulatory Initiatives

On November 14th the HHS Office of the Inspector General issued a report finding that Medicare Part D prescription drug plans, which are responsible for ensuring that reimbursement under Part D is limited to medically accepted indications of prescription drugs, do not have sufficient data to fulfill this duty. The report can be found [here](#).

On November 15th the Office of Management and Budget announced that the Obama Administration cut wasteful improper payments by \$17.6 billion dollars in 2011. This includes cuts to wasteful spending in Medicare, Medicaid, and the food stamp program. A press release can be found [here](#).

On November 15th CMS announced that it will launch demonstration programs aimed at curbing improper payments in Medicare and Medicaid. The demonstrations include reviewing claims prior to payment and requiring prior authorization of claims for medical equipment. A press release can be found [here](#).

On November 17th CMS announced that it will delay implementation of its rule requiring providers to use the ASC X12 Version 5010 standards for the electronic transmission of healthcare records. The rule, which was previously scheduled to go into effect on January 1, will not go into effect until March 31. An informational bulletin can be found [here](#).

On November 17th HHS announced that more than 100,000 primary care providers had signed up to participate in the Medicare and Medicaid Electronic Health Record (EHR) Incentive Programs created by the HITECH Act under the American Recovery and Reinvestment Act. The news release can be found [here](#).

On November 18th HHS announced the creation of a website that will help small businesses to find and compare health insurance plans available in their areas. A press release can be found [here](#).

Other Congressional and State Initiatives

On November 14th Congressional Appropriators released a conference "minibus" appropriations package that included a \$50 million increase in FY 2012 funding for the FDA. Despite the small bump,

the funding is still \$234 million under the President's request. More details on the package can be found [here](#).

On November 15th Sens. Al Franken, (D-MN), John Kerry (D-MA), Lamar Alexander (R-TN), and Kay Hagan (D-NC) introduced a bill designed to ease the process by which the FDA can enlist outside experts to help in reviewing medical devices. A press release by Senator Kerry can be found [here](#).

On November 16th Rep. Allyson Schwartz (D-PA) sent the Super Committee a proposal for replacing the Sustainable Growth Rate (SGR) formula used by Medicare to determine physician reimbursement rates. If the SGR is not altered or repealed, physician reimbursement rates will be cut 29.5% in 2012. The AMA, which strongly favors repeal of the SGR, refused to support Rep. Schwartz's proposal, claiming that its outline for future updates and penalties was flawed. The proposal can be found [here](#). An AMA statement can be found [here](#).

On November 17th Rep. Louise Slaughter (D-NY) issued a statement calling on the United States to take action to stop the inappropriate use of antibiotics in farm animals, saying that such use results in contributes to an increase in antibiotic-resistant bacteria. The press release can be found [here](#).

Other Health Care News

On November 14th the group Consumer Watchdog filed a class action lawsuit against Anthem Blue Cross, alleging that Anthem Blue Cross breached its contracts with its policyholders by unilaterally raising annual deductibles in the middle of the year. A news release can be found [here](#).

On November 14th the National Journal and the Regence Foundation released the results of a poll of physicians about their experience with palliative care. The poll found that, while the vast majority of physicians support the use of palliative care, there are serious barriers to its implementation. The results can be found [here](#). A webcast of a forum of industry and academic leaders discussing the results can be found [here](#).

On November 14th CNN released a polled conducted by ORC International finding that 52 percent of Americans backed the idea of a "a provision that will require all Americans who do not have health insurance to get it" while 47 percent opposed it. The poll results can be found [here](#).

On November 15th AARP announced that it had collected more than 6.5 million petitions urging members of Congress not to cut Social Security and Medicare benefits for deficit reduction. A press release can be found [here](#).

On November 15th Highmark, Pennsylvania's largest health insurer, announced plans to create a private health insurance exchange aimed at small businesses. The Exchange will allow employees of participating employers to select one of seven Highmark plans. A local news story can be found [here](#).

An November 15th the Kaiser Family Foundation issued a report finding that nationwide, the number of physician visits dropped as much as 17% between 2009 and 2010. The report cites higher deductibles and economic uncertainty as possible causes for the drop in utilization. The report can be found [here](#).

On November 16th Gallup released a poll finding that 47% of Americans favor repealing the ACA, while 42% want it kept in place. The results can be found [here](#) (report 6).

On November 16th Avalere Health published a report finding that the number of drugs covered by Medicare Part D prescription drug plans varies widely from plan to plan. The results can be found [here](#).

On November 17th the Commonwealth Fund released a report finding that health insurance premiums for family coverage increased 50% between 2003 and 2010. The authors claim that the ACA has the potential to slow this growth. The report can be found [here](#).

On November 17th the *Annals of Emergency Medicine* released a study showing that hospitals that serve large numbers of minority and Medicaid patients have a higher chance of closing their emergency departments. The study can be found [here](#). An NPR story on the subject can be found [here](#).

Hearings & Mark-ups Scheduled

There are no hearings in relevant committees scheduled for next week. The deadline, though, for the Super Committee recommendations for deficit reduction is Wednesday, November 23rd. At this writing, most indications are that the Super Committee will fail to reach an agreement by that deadline.