

Tom Koutsoumpas

Jeremy Rabinovitz

Kevin Kappel

TKoutsoumpas@mlstrategies.com

JRabinovitz@mlstrategies.com

KMKappel@mlstrategies.com

HEALTH CARE REFORM UPDATE

February 13, 2011

Implementation of Health Care Reform Law

On February 7th HHS Secretary Kathleen Sebelius spoke at a Kaiser Family Foundation event where she strongly defended the premise behind long-term care program option established under the Affordable Care Act (ACA) commonly known as the CLASS Act. However, she also outlined several key changes that she viewed are necessary to properly implement the initiative. Despite calls from many, including the President's bipartisan debt commission, to kill the program, Secretary Sebelius insisted that it would remain. More information on the event can be found [here](#).

A group of 21 Republican governors sent a letter to Secretary Sebelius on February 7th requesting more flexibility in the creation and operation of the insurance exchanges. Specifically, the group outlined six changes that would provide state governments with more control. The letter comes the same day that Indiana Governor, and co-signer of the letter, Mitch Daniels (R) penned an editorial in the *Wall Street Journal* that was highly critical of the ACA. A copy of the governors' letter can be found [here](#).

On February 7th the Senate voted unanimously to discharge S. 248, the Empowering States to Innovate Act, a bill to allow an earlier start for State health care coverage innovation waivers under the ACA co-sponsored by Sens. Ron Wyden (D-OR), Scott Brown (R-MA), and Mary Landrieu (D-LA). The bill is now waiting to be considered in the Senate Finance Committee.

On February 8th the Sixth U.S. Circuit Court of Appeals granted an expedited review process to the lawsuit against the ACA brought by the conservative Thomas More Law Center. An earlier ruling went against Thomas More in upholding the individual mandate as constitutional, but oral arguments in the appeal process are now set to begin in early June in Cincinnati, just a couple weeks after the Fourth Circuit is scheduled to hear the case brought by Virginia Attorney General Ken Cuccinelli (R), who formally asked the Supreme Court for an expedited the state's challenge to the ACA. The ruling in Cuccinelli's challenge was one of two instances that the individual mandate was deemed unconstitutional. A copy of Cuccinelli's request can be found [here](#).

On February 9th HHS released a new proposed regulation that would extend certain consumer protections created under the ACA to college students receiving health insurance coverage through their college or university. The HHS press release on the regulation can be found [here](#).

74 House Democrats sent a letter to Supreme Court Justice Clarence Thomas asking him to recuse himself from any cases considering the ACA since his wife, Ginni Thomas, has benefited financially from lobbying against the law. The group of Democrats, led by Rep. Anthony Weiner (D-NY), also claimed that Justice

Thomas did not disclose his wife's revenues of \$686,589 from the conservative think-tank the Heritage Foundation between 2003 and 2006.

On February 9th HHS announced \$750 million initiative to reduce tobacco use, obesity and heart disease, and build healthier communities. The initiative was funded by through the Prevention and Public Health Fund created by the ACA.

The House Ways & Means Committee held a hearing on February 10th on the ACA's impact on the Medicare program. Center for Medicare and Medicaid Services (CMS) Administrator Don Berwick and Chief Actuary Rick Foster both testified before the Committee. The hearing was Berwick's first before a GOP-led Committee. More information on the hearing can be found [here](#).

On February 10th GOP Members in the House and the Senate introduced identical bills to further tweak the ACA. The bills, introduced by Sen. Kay Bailey Hutchinson (R-TX) and Erik Paulsen (R-MN), would remove the limits in the ACA on health savings accounts.

The House Budget Committee held a hearing on February 10th with CBO Director Doug Elmendorf as a witness. During the hearing, Elmendorf testified that the ACA could actually lower employment in the long-run since people will no longer have to work just to obtain health benefits. More information can be found [here](#).

On February 10th Wisconsin became the latest state, along with Florida and New Hampshire, to reject federal funds from the ACA to implement health care programs. New state insurance commissioner, Ted Nickel, announced that the state would be returning \$238,000 in funds from a grant program to create a consumer assistance program to help citizens trouble-shoot problems with insurance.

HHS unveiled its new website on February 11th to get people enrolled in high-risk pools insurance pools that offer coverage to people with pre-existing conditions before the exchanges are up and running in 2014. The website can be found [here](#).

Other HHS and Federal Regulatory Initiatives

On February 7th, HHS and the Office of the National Coordinator for health IT (ONCHIT) awarded an additional \$12 million to existing Regional Extension Centers (RECs) to help with their efforts to assist rural hospitals with implementing effective electronic health record systems. More information on the announcement can be found [here](#).

ONCHIT published a notice in the *Federal Register* on February 8th for businesses and organizations to apply to become the sole authorized accreditor of health IT certification bodies. A link to the notice can be found [here](#).

On February 8th the FDA announced the new "Innovation Pathway" initiative to fast-track approval for innovative breakthrough medical devices. The Administration's press release can be found [here](#).

The CMS announced on February 11th that it was pulling a controversial requirement for doctors to sign lab orders scheduled to take effect April 1. The proposed regulation was heavily criticized by industry, especially among nursing homes, where a doctor might not be immediately available, but where a patient might need immediate tests to determine a problem.

Other Legislative Initiatives

On February 8th the House Judiciary Committee met to consider H.R. 3, the “No Taxpayer Funding for Abortion Act,” a bill that aims to ban all federal support for abortions. A webcast of the hearing can be found [here](#).

The House Energy & Commerce Committee followed the Judiciary Committee’s lead and held a hearing on February 9th on the “Protect Life Act,” a bill to ban taxpayer funding of abortions, sponsored by Health Subcommittee Chairman Joe Pitts (R-PA). An overview of the hearing can be found [here](#). On February 11th the Committee voted to report the legislation out of the Committee to the full House in addition to three other bills, the Veterinary Public Health Workforce and Education Act, the Neglected Infections of Impoverished Americans Act, and the Dental Emergency Responder Act. A press release following the Committee action can be found [here](#).

On February 9th three other House Committees were also considering health care. The Education & Workforce Committee held a hearing on the law’s impact on the economy, while the Judiciary Committee marked up legislation to revamp the nation’s system of medical malpractice. Meanwhile, the Small Business Committee held a meeting to discuss the ACA’s new 1099 tax reporting requirements where there was broad consensus among Committee Members for action.

The Association for Community Affiliated Plans held a briefing on February 9th focused on the problem of “churning” in the Medicaid program and the negative implications for vulnerable patients who experience coverage gaps. The group is currently shopping proposed legislation around to Hill Members to guarantee one-year of continuous coverage. More information on ACAP and the briefing can be found [here](#).

The GOP majority on the House Appropriations Committee released its draft spending proposal on February 9th that would have cut about \$74 billion from current spending proposals including some deep cuts to health care programs and wiping out Title X funding for family planning programs. A detailed overview of the proposal can be found [here](#). On February 11th, however, the Committee’s majority introduced its official proposal, H.R. 1, and included even deeper cuts totaling over \$100 billion after receiving pressure from Tea Party activists. In the proposal were numerous items touching the ACA including a prohibition for money to fund the White House Office of Health Reform and for the enforcement of the 1099 reporting requirement. More information on the final proposal can be found [here](#).

On February 11th Senate Finance Committee Ranking Member Orrin Hatch (R-UT) sent a letter to Secretary Sebelius asking her to brief the Committee on all proposals with an economic impact of \$100 million or more.