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Health Care Update

IRS in the ACA Spotlight: The ACA is in the spotlight as Department of Health and Human Services (HHS) Secretary Sylvia Burwell prepares to appear before two Congressional Committees. Lawmakers will likely seek clarity on how the Administration and the states will react should the Supreme Court rule against ACA subsidies in *King v. Burwell* to be heard on March 4th. The case centers on the constitutionality of IRS regulations that provide federal subsidies to just over 9 million people, totaling \$28.8 billion in tax credits and cost-sharing reductions in 2016, in states that did not establish their own health care exchanges.

In addition, to *King v. Burwell*, lawmakers will also likely focus on the recent revelation that that **approximately** 800,000 consumers using HealthCare.gov were sent incorrect tax information about their premium subsidies. Senate Finance Committee Chairman Orrin Hatch (R-UT) has already written to the Internal Revenue Service (IRS) and Centers for Medicare and Medicaid Services (CMS) requesting the agencies provide additional details on how taxpayers were sent the incorrect tax information and what the agencies plans to do about the problem.

DOJ and FTC Examine Competition: On February 24th and 25th, the Department of Justice (DOJ) and the Federal Trade Commission (FTC) will hold a joint public health care **workshop**. The workshop will review recent developments related to health care provider organization and payment models that may affect competition in the provision of health care services. Discussions will focus on early observations regarding accountable care organizations, alternatives to traditional fee-for-service payment models, trends in provider consolidation, trends in provider network and benefit design strategies, early observations regarding health insurance exchanges, and other timely topics. As part of the workshop, Mintz Levin Member **Dionne Lomax** will be participating in the "Summation Roundtable: Antitrust Perspectives on Evolving Provider and Payment Models."

Implementation of the Affordable Care Act

HHS Announces ACA Enrollment Numbers: Secretary Burwell [announced](#) that at the end of this year's Open Enrollment period, about 11.4 million Americans have signed up or re-enrolled for health insurance. On top of this, about 150,000 were "in line" to sign up for coverage when the deadline passed and will have an additional week to enroll.

CEA Report Finds No Increase in Part-Time Work: The Council of Economic Advisors (CEA) [annual report](#) found that the ACA is not driving an increase in part-time workers. According to the CEA the number of part-time workers remains high, but has decreased since the recessions and the ACA's "employer responsibility provision, which requires large employers to offer coverage to employees working 30 or more hours per week or pay a penalty, is not playing a meaningful role in recent trends in part-time work."

IRS Delays Small Business Penalties: The Internal Revenue Service (IRS) [announced](#) that small businesses will now have until July to end the practice of giving workers tax-free payments to purchase coverage on the individual market—or face penalties. After July, employers who offer Health Reimbursement Accounts without offering ACA options could face fines of \$100 a day per employee or \$36,500 per year.

CMS Announces Special Enrollment Period: CMS will [allow](#) an additional enrollment period for consumers who would have to pay a tax penalty for being uninsured in 2014 so that they may avoid a fine for 2015. The new enrollment period will last from March 15th to April 30th.

Other Federal Regulatory Initiatives

CMS Finalizes Basic Health Program Formula: CMS released [final](#) methodology for calculating Basic Health Program (BHP) funding in 2016. States will receive funding equal to 95 percent of the estimated premium tax credit that would have been paid if a BHP enrollee in that rate cell had instead enrolled in a qualified health plan (QHP) in the federal Marketplace.

CMS Revises Nursing Home Ratings: CMS [released](#) the Nursing Home Compare (NHC) 3.0, an expanded and strengthened NHC 5-Star Quality Rating System for nursing homes. The NHC has additional quality measures, higher performance standards, and provisions addressing antipsychotic medication use.

FDA Reopens Generic Drug Labeling Comments: The Food and Drug Administration (FDA) [announced](#) it would reopen the comment period for those wishing to weigh in on the generic drug labeling proposed rule. Commenters will have until April 27th to comment and the FDA will also be holding a public meeting on March 27th to hear concerns.

FDA Cautions Against Superbugs: Following deaths resulting from hard-to-clean devices that were infected with a drug-resistant bacteria, the FDA released a [notice](#) cautioning that certain devices may spread disease and providing additional best practices.

CDC Updates Measles Numbers: The Centers for Disease Control (CDC) [announced](#) that from January 1st to February 13th 141 people from 17 states and Washington, DC were reported to have measles. Eighty percent of the cases are in California.

HHS Released Dietary Guidelines: The 2015 Dietary Guidelines Advisory Committee gave [recommendations](#) to HHS and U.S. Department of Agriculture (USDA) to inform the 2015 edition of the Dietary Guidelines for Americans.

HHS Announces Home Visiting Funds: HHS Secretary Burwell [announced](#) \$386 million in grant awards to states, territories, and nonprofit organizations to support the Maternal, Infant, and Early Childhood Home Visiting Program (Home Visiting Program).

Congressional Initiatives

Rep. Black Introduces Meaningful Use Bill: Representative Diane Black (R-TN) introduced [H.R. 887](#), which would exempt physician-patient encounters that occur at an ambulatory surgery centers from being counted toward meaningful use requirements.

Other Health Care News

IOM on Meaningful Use Data: Scholars at the Institute of Medicine (IOM) [published](#) findings in the New England Journal of Medicine which ask HHS to require physicians to include the answers to 12 questions in a patient's EHR as part of Stage 3 of the meaningful use program. The questions would involve details about socioeconomic status, behavioral health, personal relationships, and employment.

Ebola PPE At Fashion Week: As part of a U.S. Agency for International Development (USAID) grant, Johns Hopkins University [created](#) an advanced protective suit for health workers treating Ebola patients. Johns Hopkins' team utilized the sewing skills of a wedding dress designer, earning the suit a showcase spot as the New York Fashion Week.

National CHIP Survey: The National Academy for State Health Policy released a [survey](#) of CHIP directors with the goal of better understanding "recent program changes along with state budgeting and planning given the uncertainty of continued federal funding."

Upcoming Congressional Hearings

Senate

On Thursday, February 26th, the Senate Health, Education, Labor, and Pensions Committee will hold a [hearing](#) titled, "Medical and Public Health Preparedness and Response: Are We Ready for Future Threats?"

House

On Wednesday, February 25th, the House Ways and Means Subcommittee on Health will hold a [hearing](#) on the solvency of the Disability Insurance Trust Fund.

On Wednesday, February 25th, the House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies will hold a budget [hearing](#) on HHS. Secretary Burwell will testify.

On Thursday, February 26th, the House Energy and Commerce Committee will hold a [hearing](#) titled, "Examining the FY 2016 HHS Budget." Secretary Burwell will testify.

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