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## **HEALTH CARE REFORM UPDATE**

**May 2, 2011**

### Implementation of the Affordable Care Act (ACA)

On April 18<sup>th</sup>, after considering the request by Virginia Attorney General Ken Cuccinelli (R) to fast-track his legal challenge to the ACA, the Supreme Court released a revised order list of the cases they are considering. Absent from that list was the Virginia legal challenge, inciting speculation regarding the court's reasoning. One week later on April 25<sup>th</sup>, as most observers expected, the Supreme Court officially denied the petition without explanation, confirming that the case will have to pass through the 4<sup>th</sup> Circuit Court of Appeals where oral arguments are scheduled for May 10<sup>th</sup>.

On April 20<sup>th</sup> House Energy & Commerce Chairman Fred Upton (R-MI) and Ways & Means Chairman Dave Camp (R-MI) co-authored a letter to President Obama asking for further clarification as to how the president will achieve the savings in Medicare that he outlined in his speech the previous week. In the letter, the Chairmen specifically asked whether the President supports all providers being subject to the new Independent Payment Advisory Board (IPAB) created by the ACA slated to begin in 2014 and whether more Medicare beneficiaries should be eligible for drug rebates.

On April 20<sup>th</sup> House Republicans formally requested that top advocacy groups disclose their interactions with the Obama Administration which occurred during the health care reform negotiations. House Energy & Commerce Chairman Fred Upton (R-MI) asked that AARP, AFL-CIO, AdvaMed, AFSCME, American Hospital Association, Business Roundtable, Federation of American Hospitals, PHRMA and SEIU turn over their "meetings and discussions" with any Administrations officials relating to the ACA.

On April 20<sup>th</sup> HHS Secretary Kathleen Sebelius and Education Secretary Arne Duncan sent letters to university and student-body presidents to tout the ACA provision allowing young adults to stay on their parents' insurance until age 26. The letters come just before universities across the country begin with their annual commencement ceremonies. Copies of those letters can be found [here](#) and [here](#), respectively.

On April 21<sup>st</sup> a New Jersey District Court threw out a lawsuit challenging the ACA on procedural grounds. The judge ruled that the Plaintiff could not provide enough facts to prove he would face harm under the law.

On April 21<sup>st</sup> the Republican members of the House Energy & Commerce Oversight and Investigations Subcommittee wrote a letter to Steve Larsen, the director of the Center for Consumer Information and

Insurance Oversight, for biweekly statistics on spending in both the high-risk pools and reinsurance program for early retirees and enrollment in the high-risk pools. The full text of the letter can be found [here](#).

On April 25<sup>th</sup> CMS sent a letter to Nevada insurance commissioner Brett Barratt deeming the state's application for a waiver for the new medical-loss ratio (MLR) requirements complete. The news makes Nevada the 9<sup>th</sup> state whose market is currently under review for a MLR waiver. Only one state, Maine, has been approved so far. CMS' letter to Barratt can be found [here](#).

On April 26<sup>th</sup> a federal judge in Missouri tossed out a lawsuit against ACA brought by state Lt. Governor Peter Kinder (R). The lawsuit challenged the health care law on numerous points, but U.S. District Judge Rodney Sippel noted that the Kinder, who was pursuing the lawsuit as a private citizen, and the others joining him lacked the standing for many of their claims among other reasons for the ruling. Kinder has pledged to appeal.

On April 27<sup>th</sup> the CBO released a cost estimate of H.R. 1213, a Republican bill to repeal funds for the insurance exchanges in the ACA. In its report, the CBO noted that the bill would reduce the deficit \$14 billion from 2012-2021. However, the savings largely come from the reduced payments in federal subsidies for people to buy insurance from the exchanges, since they would struggle to get the exchanges operational by 2017 without federal help. A copy of the CBO analysis can be found [here](#). The bill is expected to be considered by the full House the week of May 2<sup>nd</sup>.

On April 28<sup>th</sup> North Dakota Governor Jack Dalrymple (R) announced that he would support the bill passed by the state legislature earlier in the week that begins the process of planning a health exchange. While the legislation authorizes the planning process, it does not commit the state to establishing one. North Dakota is party to the 26-state lawsuit that has been filed against the ACA.

On April 28<sup>th</sup> CMS released a proposed rule that outlines the agency's options for setting 2012 reimbursement rates for skilled nursing facilities – one option with a slight increase and another one with significant cuts. The copy of the rule can be found [here](#). The option with the cuts outlined in the rule was called for in the ACA.

On April 28<sup>th</sup> House Ways & Means Committee Chairman Dave Camp (R-MI) and Oversight Subcommittee Chairman Charles Boutany (R-LA) sent a letter to IRS Commissioner Doug Shulman to ask for details on how the agency is spending its \$1 billion fund to implement necessary changes stemming from the ACA. The letter can be found [here](#).

On April 29<sup>th</sup> CMS released the final rule on value-based purchasing that discusses the quality metrics that must be used when calculating reimbursement from Medicare for services. In FY 2013 CMS will begin paying around \$850 million to hospitals based on whether they treat heart attack patients within 90 minutes and give proper discharge instructions. Almost immediately after the rule's release, numerous industry and patient groups lined up in opposition and in support of the rule. The final rule can be found [here](#). The same day, CMS also released a proposed rule that most Medicare and Medicaid providers would be required to offer influenza vaccination shots during this year's flu season.

#### Other HHS and Federal Regulatory Initiatives

On April 18<sup>th</sup> CMS officially opened its website to allow for eligible providers to notify CMS that they would like to be considered for electronic health record incentive payments.

On April 19<sup>th</sup> CMS released a proposed rule that cuts 2012 payments to hospitals by \$498 million. These cuts amount to a .5% cut from 2011 levels. These cuts come in addition to \$155 billion that the hospital industry will see over the next ten years as part of the ACA. The American Hospital Association released a statement in regards to the rules, saying it is "deeply disappointed" and that the rule would further stress hospitals' ability to care for Medicare patients. CMS Administrator Donald Berwick said "the proposals CMS is making today reflect

an underlying premise that we can improve the quality of and access to care while at the same time slowing the growth in health care spending." The proposed rule can be found [here](#).

On April 19<sup>th</sup> the White House released a strategy document entitled, "Epidemic: Responding to America's Prescription Drug Abuse Crisis." The proposal places heavy emphasis on education about the dangers of prescription drugs, including asking Congress to enact a requirement that doctors undergo a mandatory continuing education program as a prerequisite for registration with the Drug Enforcement Administration. The White House strategy document can be found [here](#). One day later, Rep. Mary Bono Mack (R-CA) wrote a letter to the FDA expressing her disappointment in the initiative. In her letter, she outlined how she believed that the effort did not go far enough in reining in drug companies that aggressively market prescription drugs. The Congresswoman's statement can be found [here](#).

On April 21<sup>st</sup>, at the Facebook town hall, President Obama lambasted the Republican proposals to cut Medicare and Medicaid. Obama also indicated that he expects the two parties will be able to reach an agreement to reduce the deficit without drastically cutting either program. Obama said "nothing is easier than solving problems on the backs of people who are poor, powerless, or people who don't have lobbyists or clout." The President's remarks can be found [here](#).

On April 22<sup>nd</sup> CMS issued a proposed rule that would update Medicare payment policies and rates for inpatient rehabilitation facilities in fiscal year 2012. The rule proposes to increase payment rates under the prospective payment system by a projected 1.5 percent. The full text of the rule can be found [here](#).

On April 26<sup>th</sup> Farzad Moshtari, the new director of the Office of the National Coordinator for Health Information Technology hinted publicly that his office would be issuing rules later this year to govern intermediaries in the exchange of health information.

On April 28<sup>th</sup> CMS released a proposed rule that outlines the agency's options for setting 2012 reimbursement rates for skilled nursing facilities – one option with a slight increase and another one with significant cuts. The copy of the rule can be found [here](#).

On April 29<sup>th</sup> the U.S. District Court of Appeals for the District of Columbia ruled that National Institute of Health's funding could be used for embryonic stem cell research. The court said in its decision that the Dickey-Wicker law that prohibits federal funds from being used in research that would destroy embryos for stem cell research does not prohibit funding for a research project in which an embryonic stem cell would be used. The court's decision can be found [here](#).

#### Other Congressional and State Initiatives

On April 18<sup>th</sup> Senate Commerce Committee Chairman Jay Rockefeller (D-WV) released a report regarding consumers' access to diagnostic heart tests. In the report, the Chairman points out certain cases of inappropriate denials. The report can be read [here](#).

On April 19<sup>th</sup> top Senate Republicans released a letter requesting that Secretary Sebelius release documents concerning to the CLASS Act written prior to the enactment of the ACA. In the letter, Senators Hatch, Thune, Enzi and Sessions claim that Sebelius agreed to release the documents at a March 16 hearing but has failed to do so. The full text of the letter can be found [here](#).

On April 21<sup>st</sup> the Chairs of two influential House Committees sent a letter to President Obama asking for hard details on the White House's plan to cut billions in Medicare and Medicaid savings as a way to help lower the national debt. Chairman Fred Upton (R-MI) of the House Energy and Commerce Committee and Chairman Dave Camp (R-MI) of the House Ways and Means Committee said in their letter to the President that "it is

unclear from where or how those reductions in spending are achieved.” The President’s plan calls for \$340 billion in Medicare and Medicaid savings by 2021 and \$480 billion by 2023.

On April 26<sup>th</sup> Vermont deputy attorney general Bridget Asay defended a 2007 state law before the U.S. Supreme Court that allows doctors to keep their prescribing data from being used for marketing by drug representatives. The drug makers made the case that their speech was being hindered by the law, and Justice Scalia agreed, saying that the law was restricting access to information that would make the companies speech most effective.

On April 26<sup>th</sup>, as many of his colleagues had done throughout the recess, House Budget Committee Chairman Paul Ryan (R-WI) held a town hall meeting to discuss with constituents his budget plan for FY2012 that recently passed the House. At the town hall meetings lawmakers have been met with a myriad of responses from positive to open hostility to the plan.