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HEALTH CARE REFORM UPDATE May 6, 2013

Implementation of the Affordable Care Act

On April 26th the Centers for Medicare and Medicaid Services (CMS) issued a proposed rule to update Medicare payment policies and rates for inpatient stays. The proposed rule reduces payments by 2% for excessive readmissions and reduces payments by 1% for hospitals in the lowest-performing 25% related to hospital-acquired conditions. The proposed rule indicates that someone qualifies for inpatient status for Medicare Part A payment purposes if he or she has received care for at least two midnights. The proposed rule can be accessed [here](#).

On April 26th the Florida House and Senate discussed differing plans to expand Medicaid coverage in the state. The Florida House voted 71-45 to approve an alternative, state-funded plan that would cost \$300 million and provide coverage to about 130,000 people. The state Senate has backed a plan that would use more than \$50 billion in federal funds over 10 years to expand coverage to more than one million Floridians. An article on the legislative battle can be read [here](#).

On April 30th the Obama administration released new, shorter applications for insurance under the exchanges. The Administration released a three-page application for individuals and a seven-page application for families. The shortened applications and a release from HHS are available [here](#).

On April 30th CMS Acting Chief Actuary Paul Spitalnic sent a letter to CMS Acting Administrator Marilyn Tavenner projecting that Medicare spending in 2015 is not expected to exceed spending targets. By successfully avoiding the spending triggers, Medicare spending will not be decreased by the Independent Payment Advisory Board (IPAB). The letter to Administrator Tavenner is available [here](#).

On April 30th the Internal Revenue Service (IRS) issued a proposed rule on the minimum value for employer coverage and on premium tax credits under the ACA. The rule notes that a plan fails to provide minimum value if it does not cover at least 60% of the total allowed costs of benefits. The proposed rule is available [here](#).

On May 1st the Center for Consumer Information and Insurance Oversight (CCIIO) issued guidance on the role of agents and brokers in the ACA insurance exchanges. According to the CCIIO release, brokers and agents will be able to assist consumers through issuer-based or insurance marketplace pathways. The guidance is available [here](#).

On May 1st Kevin Counihan, CEO of the Connecticut Health Insurance Exchange, said shorter insurance applications may present difficulties for his state, which had already prepared its IT systems for the old forms. At a national summit on the ACA insurance exchanges, Deputy Director on Policy of CCIIO Chiquita Brooks-LaSure said states will be able to use either the new or old form. More comments from Deputy Director Brooks-LaSure are available [here](#).

On May 1st CMS Acting Administrator Tavenner said her agency will wait to conduct full outreach and education efforts until closer to the start of exchange enrollment on October 1st. Tavenner suggested that it is too early to begin reaching out to the public regarding the insurance exchanges. Additional information on outreach regarding the ACA is available [here](#).

On May 3rd *Kaiser Health News* reported that the ACA will create about 9,000 jobs in 14 states. The federal government provided the company Vangent with a one-year, \$530 million contract to operate call assistance centers in states that are operating federal or partnership exchanges. More information on the job creation can be found [here](#).

On May 3rd House Majority Leader Eric Cantor (R-VA) wrote to Republicans in the House, saying another vote to fully repeal the ACA would take place in the near future. While the House has voted numerous times to repeal the ACA, the Chamber has yet not voted on the law in the 113th Congress. Details on the proposed repeal vote are available [here](#).

Other HHS and Federal Regulatory Initiatives

On April 26th the Department of Justice (DOJ) announced that it filed a second civil false claims lawsuit against Novartis Pharmaceuticals for violating the Anti-Kickback Statute. DOJ says the company provided monetary incentives for doctors to talk about Novartis drugs at events across the country, although the events did not include slides and amounted to little more than social events, according to the DOJ release. Novartis Pharmaceuticals contended claims made by DOJ that it provided inappropriate payments for doctors to push the company's product. Novartis said that discounts and rebates are a customary and legal practice and that physician speaker programs are meant to inform doctors about appropriate medicine use. The DOJ release is available [here](#). The Novartis release is available [here](#).

On April 29th HHS Secretary Sebelius announced a program to help military veterans with medical training receive a nursing degree and integrate into the health care workforce. The program will provide up to \$350,000 per year to nine cooperative agreements. The goal of the program is to increase veteran enrollment in nursing schools and improve patient access to care. The release from HHS is available [here](#).

On April 29th CMS released a proposed rule to increase payments rates to hospices by 1.1% in FY 2014. The move would amount to a \$180 million increase in payments. The proposed rule can be found [here](#).

On April 29th the Government Accountability Office (GAO) released a report that suggests state and local governments will continue to face fiscal challenges until 2060. The report notes that health care costs and Medicaid expenditures continue to be the primary driver of increased costs. The GAO report is available [here](#).

On April 29th Gilead Sciences Inc. said that the Food and Drug Administration (FDA) rejected plans by the company to market two of its HIV drugs. The FDA told Gilead that it will not approve the drugs *elvitegravir* and *cobicistat* because of problems with documentations and quality testing found at Gilead Sciences' facilities. An article on the denial is available [here](#).

On April 30th the FDA approved the over-the-counter sale of the emergency contraception drug Plan B to women 15 and older. The FDA indicated its decision was independent of a recent ruling made by U.S. District Judge Edward Korman of New York who said the drug should be available to women of all ages. On May 1st, DOJ appealed Korman's ruling, arguing in its appeal that the district court does not have jurisdiction over the actions of the FDA. On May 2nd President Obama indicated that he is "comfortable" with a decision made by the FDA to allow women 15 years and older to purchase emergency contraception over the counter. An article on President Obama's agreement with the FDA decision can be read [here](#). An announcement of the FDA's Plan B decision is available [here](#). The DOJ's appeal can be read [here](#).

On April 30th Director of the FDA Office of Device Evaluation Christy Foreman stated at a *Politico* event on health IT that guidance on mobile health technology should be available by October. Additional comments from the event, including from Farzad Mostashari, the national coordinator for health IT, are available [here](#).

On May 1st GAO issued a report providing recommendations for how CMS can work to reduce improper Medicaid payments. The report notes that improper payments often occur because CMS does not regularly review the eligibility of beneficiaries. The GAO report can be accessed [here](#).

On May 2nd CMS released a proposed rule that would provide an additional \$150 million to inpatient rehabilitation facilities (IRFs) in FY 2014, about a 2% increase. The rule also states that IRFs must indicate that at least 60% of their patients meet the need for intensive rehabilitation services. The proposed rule is available [here](#).

Other Congressional and State Initiatives

On May 1st Senator Orrin Hatch (R-UT), Ranking Member of the Senate Finance Committee, and Representative Fred Upton (R-MI), Chairman of the House Energy and Commerce Committee, issued a report with suggestions to improve Medicaid and provide more control of the program to the states. The plan includes goals to implement innovative, patient-centered reforms and provide block grants to states based on Medicaid enrollment. The full plan can be viewed [here](#).

Other Health Care News

On April 28th the American Hospital Association (AHA) issued figures highlighting the success of efforts to improve patient care and reduce costs. Through the CMS Hospital Engagement Network

(HEN), 1,600 hospitals experienced a 42% reduction in early elective deliveries and a 14% reduction in readmission. The efforts have helped save \$110 million over the last year. The release from AHA can be viewed [here](#).

On April 29th the consumer group SumOfUs.org introduced a campaign to discourage the FDA from allowing the use of aspartame and other artificial sweeteners in dairy products. The group says that aspartame is a dangerous substance that tricks the brain into craving more sweets. The campaign petition is available [here](#).

On April 30th the American Orthotic and Prosthetic Association (AOPA) announced the formation of the Coalition to Walk and Run Again, an effort that will provide assistance uninsured and underinsured victims of the Boston Marathon bombings. AOPA notes that the cost of an initial prosthetic device can add up to more than \$30,000. A release on the new program can be read [here](#).

On April 30th, the STOP Obesity Alliance released recommendations on how non-profit hospitals can address obesity. The recommendations suggest redefining success as a sustained, 5 to 10% reduction in body weight, broadening the research on obesity, and encouraging physical activity for improved health. The recommendations are available [here](#).

On April 30th Consumers Union, the advocacy division of *Consumer Reports*, said the FDA and the U.S. Department of Agriculture (USDA) must take action to address the growing problem of antibiotic resistant bacteria in food. Consumers Union recommends that there be a reduction in the use of antibiotics in livestock to prevent the prevalence of ‘superbugs’ that cannot be treated. A news release on the issue can be found [here](#).

Hearings and Mark-Ups Scheduled

Senate

On May 8th the Senate Veterans’ Affairs Committee will hold a hearing to examine pending health care legislation. More information on the hearing can be found [here](#).

On May 9th the Senate Health, Education, Labor and Pensions Committee will hold a hearing to examine proposed legislative solutions to problems in pharmaceutical compounding. More information can be found [here](#).

House of Representatives

On May 7th the House Ways and Means Health Subcommittee will hold a hearing on developing a viable Medicare physician payment policy. More information on the hearing is available [here](#).

On May 7th and May 8th the House Energy and Commerce Subcommittee on Health will hold a markup of H.R. 1407 and a bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the pharmaceutical distribution supply chain. More information can be found [here](#).

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On May 9th the House Small Business Health and Technology Subcommittee will hold a hearing titled “The Health Insurance Fee: Impact on Small Businesses.” More information on the hearing can be found [here](#).