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HEALTH CARE REFORM UPDATE

August 6, 2012

Implementation of the Affordable Care Act (ACA)

On July 31st HHS announced a demonstration program to train more advanced practical nurses to supplement the primary care workforce. Under the program, five hospitals will receive funds to train advanced practical nurses. The funds stem from the ACA and will be spread out over the course of four years. News coverage of the announcement can be seen [here](#).

On August 1st the Maine Department of Health and Human Services officially submitted a State Medicaid Plan Amendment to HHS, requesting approval of eligibility reductions for Maine's Medicaid program. Although the ACA's "maintenance of effort" provisions prohibit states from reducing eligibility below pre-ACA levels, Maine argues that the recent Supreme Court decision making the law's Medicaid expansion optional for states also makes compliance with the maintenance of effort provisions optional. An official press release can be seen [here](#). A statement from Maine Governor Paul LePage (R) can be seen [here](#).

On August 1st the U.S. Government Accountability Office (GAO) released a report describing state efforts and challenges in implementing the ACA's Medicaid expansion. The report found that states faced a number of challenges in implementing the expansion—including administrative, technological, and budgetary challenges. (The report notes that field work was completed before the June 28 Supreme Court ruling that made the Medicaid expansion optional for states, and therefore the report does not take into account the ruling.) The report can be found [here](#).

On August 1st the ACA's provisions requiring insurers and employers to cover women's preventive services, including contraception, went into effect. A statement from HHS Secretary Kathleen Sebelius can be seen [here](#).

Other HHS and Federal Regulatory Initiatives

On July 31st and August 1st the FDA published notices describing the user fees that will be charged to manufacturers for the review and approval of medical devices, pharmaceuticals, and biosimilar products. The prescription drug user fee notice can be seen [here](#). The medical device user fee notice can be seen [here](#). The biosimilar user fee notice can be seen [here](#).

On August 1st CMS issued a final rule updating Medicare payment rates for inpatient hospitals. Acute care hospitals will see an average 2.3 percent increase, with hospitals participating in CMS's Quality Reporting program getting 2.8 percent increases. Long-term care hospitals will see a 1.8 percent increase. An HHS press release can be seen [here](#). The final rule can be seen [here](#).

On August 2nd CMS issued a final rule updating the payment rates of the prospective payment system for skilled nursing facilities (SNFs) for FY 2013. Under the rule, SNFs will see a 1.8 percent payment increase for 2013. The increase comes after CMS reduced SNF payments by 11 percent in 2012 to adjust for previous overpayments. The update can be found [here](#).

On August 2nd HHS announced \$2.3 million in grants to 12 institutions to help train primary care physician assistants (PAs) and to help veteran PAs transition from military to civilian careers. An HHS press release can be found [here](#).

Other Congressional and State Initiatives

On July 30th Senator Chuck Grassley (R-IA) sent letters to the U.S. Office of Special Counsel and the HHS Inspector General asking them to investigate alleged email monitoring and whistleblower retaliation by FDA leadership. Grassley claims that recently uncovered documents show that the FDA was spying on the confidential email communications of potential whistleblowers. A press release can be found [here](#). The letter to the Office of Special Counsel can be seen [here](#). The letter to the OIG can be seen [here](#).

On July 31st the CBO released a cost analysis estimating the budgetary impact of several Medicare physician payment policies that have been proposed as alternatives to the sustainable growth rate (SGR) formula. The SGR, which would result in significant cuts to physician payments if not addressed by the end of 2012, has been postponed by Congress numerous times. The report can be found [here](#).

On July 31st the Massachusetts legislature passed a comprehensive health care payment reform bill. The bill seeks to limit growth in health care costs to align with the growth of the overall economy. Governor Deval Patrick (D) is slated to sign the bill today. A brief summary and analysis of the bill prepared by Mintz Levin and ML Strategies can be seen [here](#). An official conference report on the bill can be seen [here](#).

On July 31st the Missouri Supreme Court struck down a 2005 law placing a \$350,000 cap on noneconomic damages in medical malpractice lawsuits. The Court stated that the law violates individuals' right to a jury trial under the Missouri Constitution. The ruling can be seen [here](#).

On July 31st the House Energy & Commerce Committee released a report describing the White House's "disappointing transparency track record." The report accuses the White House of falling short of

transparency standards in a number of ways, including in its negotiations with the pharmaceutical industry group PhRMA during the debate over the passage of the ACA. The report can be seen [here](#).

On July 31st Senators Orin Hatch (R-UT) and Tom Coburn (R-OK) sent a letter to CMS asking for a detailed analysis of CMS's Fraud Prevention System. The letter specifically expressed concerns about the performance metrics of the system, the targeting of claims for reviews, and transparency about results of the system. A press release and the text of the letter can be read [here](#).

On August 1st the 9th Circuit Court of Appeals issued a temporary order blocking an Arizona law prohibiting abortions after 20 weeks. The ruling reversed an order, two days earlier, from a federal district court upholding the ban. This is a temporary order that will be in place until the court fully hears the case. The Circuit Court's order can be seen [here](#).

On August 1st the House voted to reject a bill that would have banned abortions in the District of Columbia after 20 weeks. Although a majority of the House voted for the measure (220-154), the measure had been brought to the Floor under suspension of the rules requiring a two-thirds majority to pass. News coverage of the vote can be seen [here](#).

Other Health Care News

On July 31st the Kaiser Family Foundation released a poll describing Americans' attitudes about the ACA's expansion of eligibility for Medicaid. The poll finds that, although two-thirds of Americans support the idea of expansion in general, only 49% think it should be implemented in their own state. The poll also found that one in five Americans believe they will have to pay the penalty for failing to comply with the individual mandate in 2014--although official estimates predict a much smaller number. The results can be found [here](#).

On August 1st the *New England Journal of Medicine* published two papers offering competing views on containing costs in health care. A paper supported by the American Enterprise Institute (AEI) argued that Medicare should be shifted from a defined-benefit system to a defined-contribution system, wherein beneficiaries receive a fixed dollar subsidies to use on health care coverage. A paper supported by the Center for American Progress (CAP) described eleven strategies the government could use to control costs, including decreasing the use of fee-for-service payment, the greater use of competitive bidding in Medicare, greater price transparency, and the active selection of insurance plan by health insurance exchanges. The AEI paper can be found [here](#). The CAP paper can be found [here](#).

On August 2nd the Generic Pharmaceutical Association released a study finding that generic drugs have saved the health care system more than \$1 trillion over the last ten years. The study can be found [here](#).

Hearings & Mark-ups Scheduled

Both the Senate and the House of Representatives are in recess until September 10, 2012.