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HEALTH CARE REFORM UPDATE

August 8, 2011

Leading the news

Despite Congress being on recess, work continues on the implementation of the Budget Control Act of 2011; most notably, leaders in both parties in both chambers are busy figuring out which Members will be appointed to the “Super Committee.” As this process moves forward, here are some key dates to remember:

- August 16, 2011: Deadline for appointments to the Joint Select Committee.
- September 16, 2011: Deadline for the first meeting of the Joint Select Committee.
- October 14, 2011: Committees from the House and Senate may submit recommendations to the Joint Select Committee for their consideration.
- November 23, 2011: The Joint Select Committee will vote on a set of recommendations, report, and legislative language.
- December 2, 2011: The Joint Select Committee must submit its report, recommendations and legislative language to the President, the Vice President, the Speaker, and House and Senate Leaders for their review.
- December 9, 2011: Each House committee of jurisdiction must report its recommendations regarding passage of the legislation.
- December 11, 2011: Each Senate committee of jurisdiction must report its recommendations regarding passage of the legislation.
- December 23, 2011: Both the Senate and the House must vote on the legislation under expedited procedures that send the legislation straight to the floor, and there cannot be amendments to, nor filibusters of, the bill at that point.

Implementation of the Affordable Care Act (ACA)

On August 1st HHS released an interim final rule in coordination with the Departments of Treasury and Labor relating to coverage of preventive services under the ACA. The rule specifies that a group health plan and a health insurance issuer offering group or individual health coverage must provide benefits and prohibit cost-sharing for immunizations, evidence-informed preventive care and screenings. Special consideration in this interim rule was given to HRSA's task to define guidelines for preventive care and screenings for women. There is now a 60 period open for public comment to the rule. More information on the interim final rule can be found [here](#).

On August 1st CMS released final rules revising the Medicare inpatient prospective payment systems for acute care hospitals and long-term care hospitals in accordance with statutory provisions of the ACA. CMS also finalized a rule that implements section 203 of the Medicare and Medicaid Extenders Act of 2010 relating to Medicare graduate medical education affiliated groups to determine possible full-time resident cap reductions. More information on the final rules can be found [here](#).

On August 2nd HHS announced that Joel Ario, the top Department official overseeing the development of the health insurance exchanges, will be leaving his post next month. Steve Larsen, the Director of the Center for Consumer Information and Insurance Oversight (CCIIO), and Steve Hill, a deputy director of the office of health reform, will take over his work. The first round of exchange regulations were released a couple weeks ago and a great deal of work still lies ahead to produce more guidance to states and stakeholders.

On August 2nd the 3rd Circuit Court of Appeals upheld a lower court ruling rejecting the ability of a group of New Jersey physicians and a patient to challenge the constitutionality of the individual mandate and employer requirements in the ACA. The decision by the Circuit Court can be found [here](#).

On August 4th HHS announced that average Medicare prescription drug premiums will not increase in 2012. Other data released by the Department identified 17 million Medicare beneficiaries who have received free preventive services this year. In her announcement, HHS Secretary Kathleen Sebelius also noted that 900,000 beneficiaries who reached the prescription drug donut hole received a 50 percent discount on their prescription drugs thanks to the ACA. More information on the announcement can be found [here](#).

On August 4th Rep. Dave Camp (R-MI), Chairman of the House Committee on Ways & Means, and Rep. Fred Upton (R-MI), Chairman of the House Committee on Energy & Commerce, wrote HHS Secretary Sebelius pushing her to support the MLR waiver application that Michigan submitted to the Department. The full text of the letter can be found [here](#).

On August 5th the CCIIO announced that it would not review Guam's request for a medical-loss ratio (MLR) regulation adjustment since the two insurers in that individual market are already presumed to meet the 80 percent standard. The insurance department also rejected the request for an adjustment in the group market claiming that it lacked the statutory authority to do so. The announcement by the CCIIO can be found [here](#).

Other HHS and Federal Regulatory Initiatives

On August 1st the FDA began to solicit public comment on the user fees it will begin imposing on the food industry to fund the regulators it needs to implement the Food Safety Modernization Act that became law in January. The Agency specifically is looking for input on how burdensome the fees could be for small business. The solicitation for public comment can be found [here](#).

On August 2nd the FDA released two reports with its European and Australian counterparts that detail the results of pilot programs focused on strengthening collaboration and coordination amongst international regulatory agencies for drug quality and safety. More information on the reports can be found [here](#).

On August 5th CMS announced that it was launching a new Quality Care Finder tool to provide consumers with Medicare's Compare information on hospitals, nursing homes and plans. CMS also updated the Hospital Compare website to include data about how well hospitals protect outpatients from surgical infections in addition to introducing an enhanced Quality Improvement Organization program to provide care providers with technical assistance to improve care delivery across settings. As part of these efforts, CMS also released data showing that the national 30-day readmission rates for heart attack patients increased slightly to 19.9 percent, from 19.8 percent in 2009 while readmissions for heart failure and pneumonia declined to 18.2 percent and 24.5 percent respectively. More information on these programs can be found [here](#).

Other Congressional and State Initiatives

On August 3rd Medicaid advocate groups sent a letter to HHS Secretary Sebelius asking her to reject the Medicaid waiver request submitted by the state of Utah. The group says the request would remove important protections that ensure access to important and needed services for low-income children.

On August 3rd a group of public health and medical organizations sent a letter to President Obama urging the Administration to reconsider the 2008 National Ambient Air Quality Standards for ozone air pollution. The letter expressed concern with the passing of the deadline to address the issue and pressed for a health-based ozone standard based on science. The full text of the letter can be found [here](#).

On August 4th Senator Chuck Grassley (R-IA) sent a letter to Secretary Sebelius and OMB Director Jacob Lew over concerns that the OMB may be attempting to weaken conflict of interest rules proposed in May 2010 by HHS. The Senator said in his letter that he believes there should be strong public disclosure rules to better understand the financial relationships between physicians and the drug, device and biologic industries since they are paid for by the taxpayer's dollar. The letter can be found [here](#).

On August 4th Rep. Henry Waxman (D-CA), Ranking Member of the House Committee on Energy & Commerce, and six other House Democrats wrote a letter to President Obama pressing him to not include a 12 year biologics exclusivity provision in negotiations for the Trans-Pacific Partnership (TPP). The full text of the letter can be found [here](#).

On August 5th the National Association of Chain Drug Stores, the National Community Pharmacists Association, the National Alliance of State Pharmacy Associations and the American Pharmacists Association filed an amicus brief to the Supreme Court in a California lawsuit challenging a 2008 cut of 10 percent to Medicaid rates for providers. The case comes to the court just as another round of cuts are being proposed by Governor Jerry Brown (D-CA) and federal regulators must decide whether or not to approve them. The brief argues that providers have the right to sue because federal law requires that Medicaid programs pay enough to enlist providers so that care and services are available under plans that are comparable to those private plans available to the public.

Other Health Reform News

On August 1st Mercer, a subsidiary of Marsh & McLennan Companies, Inc. released findings from a survey they conducted of 894 employers which found that U.S. employer health plan enrollment has increased an average of 2 percent among respondents. Despite concerns over costs, only 2 percent of the survey respondents said they are "very likely" to terminate medical plans after the health insurance exchanges become operational in 2014. More information on the survey can be found [here](#).

On August 1st the Journal of Clinical Oncology published an article by the American Society of Clinical Oncology (ASCO) claiming that the ACA has the potential to reduce cancer care disparities if implemented

correctly. The article suggests a range of options from insurance reform, prevention, research and diversity in the health care workforce to ensure superior implementation. The full text of the article can be found [here](#).

On August 3rd the Robert Wood Johnson Foundation (RWJF) reported that it would begin soliciting public input for the creation of a national strategy to address Alzheimer's disease. RWJF will compile the comments gleaned from the public for a report to Congress and Federal Agencies as a part of the National Action Plan on Alzheimer's mandated by Congress earlier this year. More information on the initiative can be found [here](#).

On August 3rd the National Health Council released a new report in which they argue that federal regulators should adopt strong consumer protections in the health plans that are still being defined by HHS. Among their recommendations, the group calls for benefits for designs that avoid discrimination, cost sharing protections, plan cooperation and coordination; support for patient care and decision-making; and enforcement tools to ensure access to care. The full report can be found [here](#).

Hearings scheduled

The House and Senate are in Recess.