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HEALTH CARE REFORM UPDATE
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Implementation of Health Care Reform Law

On February 22nd HHS announced $45 million in grants as part of the Money Follows the Person (MFP) demonstration program to 13 states to establish and expand community-based alternatives to long-term care programs. The Affordable Care Act (ACA) extended the MFP program, originally set to expire in FY 2011, for five additional years with a total of $621 million to be committed over that time. HHS' announcement can be found here.

Late on February 22nd D.C. District Court Judge Gladys Kessler ruled that the ACA was constitutional, bringing the total tally in the rulings on the constitutionality of the law to 3-2 in favor of the law being constitutional. Judge Kessler was appointed President Bill Clinton, upholding the partisan trend seen in recent rulings.

On February 22nd a proposal in the North Carolina, GOP-controlled state legislature to block the individual mandate and direct the state's Attorney General to fight the law finally passed both the House and Senate. The measure is now sent to Governor Beverly Perdue's (D) desk. Though she has fought efforts to challenge the ACA, some insiders believe the Governor will sign the measure to avoid a standoff with the state GOP. The same day, the West Virginia state Senate killed legislation that would have authorized the state to set up a health insurance exchange and that was drafted by the state's Insurance Commissioner, Jane Cline.

The 26 states and the NFIB who successfully brought a constitutional challenge against the ACA wrote to Judge Roger Vinson on February 23rd asking him not to clarify his ruling as requested by the Department of Justice. In their filing, the groups claimed that the government was simply looking for a de factor "stay" and that the Judge's ruling was clear enough. On February 24th the 11th Circuit intervened, rebuked Vinson, and ordered the judge to explain why he denied an appeal request. In a memo from the higher court, the 11th Circuit noted that "District courts cannot dismiss an appeal based on a perceived defect."

On February 24th HHS announced the availability of a second round of funding to states totaling almost $200 million to help states develop effective insurance premium rate review programs. Part of the ACA, the funding follows awards of $46 million in August 2010 to 45 states and the District of Columbia as well as a December 2010 release of new rules requiring that insurance companies publicly justify "unreasonable" premium increases. The HHS announcement can be found here.

CMS Administrator Don Berwick used his keynote address at the Healthcare Information and Management Systems Society (HIMSS) gathering in Orlando on February 24th to confirm what health policy and political insiders have been speculating all week: a notice for proposed rule-making on Accountable Care Organizations (ACOs) from CMS was "imminent." The announcement comes as numerous federal agencies

have been trying to work potential conflicts that ACOs will undoubtedly face with existing fraud and anti-trust laws. On February 25th the Office of Management and Budget (OMB) was slated to hold a conference call on the new rules, but the call was pushed back. According to some insiders, the rules have been held up at OMB for awhile, but details are scant on the reasoning. Secretary Sebelius and National Coordinator for health IT David Blumenthal spoke the day prior.

On February 25th HHS released a new report highlighting the resources and flexibility provided to states to improve health care benefits and protect consumers. HHS' release can be found here.

Other HHS and Federal Regulatory Initiatives

On February 22nd the Supreme Court ruled in a high-profile case closely watched by the pharmaceutical industry that vaccine companies cannot be sued for design defects. Considered a major victory for the pharmaceutical industry, the case was brought by Russell and Robalee Bruesewitz who alleged that their daughter was disabled by a vaccine she received as an infant.

HHS' Office of Civil Rights (OCR) issued a Notice of Final Determination on February 22nd imposing a $4.3 million fine on Cignet Health for blocking patients' access to medical records and failing to cooperate in the investigation. The fine is significant in that it is the first-ever fine imposed for a violation of the 1996 Health Insurance Portability and Accountability Act (HIPAA). HHS' announcement can be found here.

On February 23rd NIH Director Francis Collins was forced to defend the decision to create a new NIH office, the National Center for Advancing Translational Sciences, aimed at developing new drugs, a typically private-sector initiative. Collins defended the decision and highlighted uncertain funding streams as part of the reason behind his efforts.

National Coordinator for health IT David Blumenthal released a letter on February 23rd highlighting the programs that the Office of the National Coordinator has implemented in order to build support for meaningful use. A copy of the letter can be found here.

On February 25th The Medicaid and CHIP Payment and Access Commission (MACPAC) convened again after its last meeting fell apart over deep disagreements over a set of proposed recommendations to extend the life of Medicaid. More information on MACPAC can be found here.

Other Legislative Initiatives

Both the House and Senate were on recess this week, but leaders in both parties and in both Chambers continued to work quietly on preparing another short-term spending measure to keep the government from shutting down on March 4th since a longer-term spending measure likely won't be agreed upon by then. Senate Democrats vehemently oppose a House spending measure approved February 19th that contains deep cuts to many programs as well as staunchly partisan efforts to strip funding for Democratic priorities like the ACA and Planned Parenthood.

On February 23rd House Energy & Commerce Chairman Fred Upton (R-MI) along with Committee Members Cliff Stearns (R-FL) and Michael Burgess (R-TX) wrote to FDA Commissioner Margaret Hamburg to reopen the investigation of the agency's 2008 response to a crisis involving contaminated heparin imported from China. The contamination in the blood-thinning medicine was linked to several serious adverse reactions and is thought to be a factor in numerous deaths.