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## HEALTH CARE REFORM UPDATE February 6, 2012

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

On January 27<sup>th</sup> Republicans on the House Ways & Means Committee sent a letter to HHS Secretary Kathleen Sebelius demanding a detailed account of the activities of the Center for Medicare & Medicaid Innovation (CMMI). The letter can be found [here](#).

On January 31<sup>st</sup> Representatives Charles Boustany (R-LA) and Phil Gingrey (R-GA) sent a letter to HHS Secretary Kathleen Sebelius asking about HHS's plans regarding the CLASS Act. The letter cites a Congressional Research Service (CRS) report finding that, if the act is not repealed, failing to implement the act could open HHS to a judicial challenge. The text of the letter can be found [here](#).

On February 1<sup>st</sup> the House of Representatives voted to repeal the CLASS Act, the ACA's long-term care insurance program. A statement from House Speaker John Boehner (R-OH) can be found [here](#). A statement from Rep. Boustany, who introduced the repeal legislation, can be found [here](#).

On February 2<sup>nd</sup> HHS announced that Medicare beneficiaries saved \$2.1 billion in 2011 through the closing of the prescription drug "donut hole." The report also estimates that, due to various provisions of the ACA, the average Medicare beneficiary will save approximately \$4,200 between 2011 and 2021—with some saving as much as \$16,000. A news release and the report can be found [here](#).

On February 3<sup>rd</sup> the IRS issued a proposed rule implementing the medical device tax—a 2.3 percent tax on the sales price of certain medical devices—created by the ACA. The proposed rule can be found [here](#).

### Other HHS and Federal Regulatory Initiatives

On January 31<sup>st</sup> GAO released a report finding that the FDA needs to do more to ensure that antibiotic labels contain up-to-date information. The report can be found [here](#).

On February 1<sup>st</sup> HHS announced that, over the past year, Medicare Advantage premiums have dropped 7 percent and enrollment has risen 10 percent. A news release can be found [here](#).

On February 1<sup>st</sup> the FDA announced that it had reached an “agreement in principle” with on medical device user fees. Under the Medical Device User Fee Act (MDUFA), FDA and industry representatives renegotiate the fees charged and the policies used by the FDA for device reviews every five years. After the parties finalize their agreement, they will be open to public comment and then submitted to Congress for approval. A news release from the FDA can be found [here](#).

On February 3<sup>rd</sup> CMS announced that the Prior Authorization of Power Mobility Devices (PMDs) Demonstration and the Recovery Audit Prepayment Review Demonstration will begin on June 1, 2012. The demonstrations, which will take place in seven states, create a process by which Medicare claims for PMDs and certain other services will be reviewed prior to payment. More information can be found [here](#).

#### Other Congressional and State Initiatives

On January 31<sup>st</sup> Representatives John Carney (D-DE) and Larry Bucshon (R-IN) introduced legislation to address drug shortages. The legislation would create a critical drug list of drugs that are vulnerable to shortage and to expedite the review of new drugs or manufacturing changes that might address shortages. A press release can be found [here](#).

On January 31<sup>st</sup> Sen. Chuck Grassley (R-IA), the Ranking Member of the Senate Judiciary Committee, sent a letter to the FDA asking about the agency’s monitoring of whistle blowers and potential retaliation. Sen. Grassley’s press release and letter can be found [here](#).

On January 31<sup>st</sup> a federal court blocked a ten percent cut in California’s Medicaid reimbursement rates. Several provider groups had opposed the cuts, which were approved by CMS in December. The court found that CMS did not consider all required factors before making its decision. The court’s ruling can be found [here](#). A press release from the California Medical Association can be found [here](#).

On January 31<sup>st</sup> the Congressional Budget Office released its annual Budget and Economic Outlook. The Outlook predicts that spending on government health care programs will almost double over the next ten years, stating that “the resulting deficits will increase federal debt to unsupportable levels.” The report can be found [here](#).

On February 2<sup>nd</sup> the GAO issued a report finding that a lack of transparency in the implantable medical device market as well as wide gaps in bargaining power may make it difficult for hospitals to obtain the best possible prices for the devices. The report can be found [here](#).

#### Other Health Care News

On January 31<sup>st</sup> the Susan G. Komen for the Cure cancer foundation announced that it would cut off funding to Planned Parenthood because of new policies that do not permit it to give grants to organizations that are under investigation. On February 3<sup>rd</sup>, after a firestorm of criticism, the foundation reversed course and stated that it would continue to provide grant opportunities to Planned Parenthood. A summary of news coverage on the issue can be found [here](#)

On January 31<sup>st</sup> the Human Resource Policy Association sent a letter to HHS saying that it is “critical” for HHS to issue final rules regarding the operational requirements for Health Insurance Exchanges by July 1, 2012. In its letter, the Association noted that the timeline was important for employers to be able to provide the required information to their employees by the disclosure deadline of March 2013. The letter can be found [here](#).

On February 1<sup>st</sup> Medicaid Health Plans of American released a report analyzing the effects of the ACA’s premium tax on Medicaid MCOs. The report estimates that the tax will cause Medicaid managed care premiums

to increase 1.5 percent, costing state governments and additional \$13 billion over ten years. The report can be found [here](#).

On February 1<sup>st</sup> a federal district court judge in Mississippi agreed to hear a case filed by Mississippi Governor Phil Bryant (R) and other plaintiffs on the constitutionality of the ACA. The plaintiffs argue that the requirement to obtain insurance violates individual privacy, because individuals will be forced to disclose their medical data to insurance companies.

### Hearings & Mark-ups Scheduled

#### *Senate*

No relevant hearings.

#### *House of Representatives*

On February 7<sup>th</sup> the House Ways & Means Subcommittee on Health will hold a hearing on private sector programs that award physicians for quality care. More information can be found [here](#).

On February 9<sup>th</sup> the House Energy & Commerce Subcommittee on Health will hold a hearing on the proposed Generic Drug User Fee and Biosimilar User Fee programs. More information can be found [here](#).