



ML
STRATEGIES

Tom Koutsoumpas, TKoutsoumpas@mlstrategies.com
Jeremy Rabinovitz, JRabinovitz@mlstrategies.com
Alexander Hecht, AHecht@mlstrategies.com
Gary Bacher, GEBacher@mintz.com
Joseph P. Hammang, PhD, JPHammang@mlstrategies.com
Kevin M. Kappel, KMKappel@mlstrategies.com
Robert C. Skinner, RCSkinner@mlstrategies.com

ML Strategies, LLC
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 USA
202 434 7300
202 434 7400 fax
www.mlstrategies.com

HEALTH CARE REFORM UPDATE

February 11, 2013

Leading the News

On February 5th President Obama spoke about alternatives to avoid the looming sequestration that takes effect on March 1, 2013. Obama emphasized the need for temporary measures and said reforms to social programs, such as Medicare and Medicaid, are likely, but he insisted these spending cuts must be met with reforms to the tax code. An article and video of the President's statement is available [here](#).

On February 8th Ranking Member Nita Lowey (D-NY) and other Democrats on the House Appropriations Committee released a report illustrating the impact of \$1.5 trillion in discretionary spending cuts over the last 10 years. The report reveals that funding for the National Institutes of Health (NIH) has been cut by 8% since 2010, reducing the scope of vital research. The report also suggests the Centers for Disease Control and Prevention (CDC) is not fully prepared for a nationwide epidemic because of cuts. Democrats on the Committee suggest the sequester and more cuts will create additional problems. The report is available [here](#).

On February 8th the White House released a fact sheet citing how the sequester would impact middle class families, jobs, and economic security. According to the fact sheet, 373,000 mentally ill patients would go without services, 7,400 patients would go without HIV medications, and 424,000 fewer HIV tests would be performed by CDC grantees. Additional impacts of sequestration can be seen on the fact sheet which is available [here](#).

Implementation of the Affordable Care Act

On February 1st the U.S. Sixth Circuit Court of Appeals dismissed a challenge by the U.S. Citizens Association (USCA) to the individual mandate of the Affordable Care Act (ACA). The Court disagreed with USCA's claim that the individual mandate violates the commerce clause, freedom of association, the right to liberty, and the right to privacy. The opinion can be found [here](#).

On February 4th Department of Health and Human Services (HHS) Secretary Sebelius gave a speech at the Academy Health National Health Policy Conference. The Secretary addressed the ACA in her remarks, noting that the law is already working and it is important to reach out to those who may not know affordable insurance is available. Secretary Sebelius also said that the opportunity for states to expand Medicaid is an incredible financial deal. Remarks from the Secretary can be found [here](#).

On February 5th the Congressional Budget Office (CBO) released its Budget and Economic Outlook for Fiscal Years 2013 to 2023. The Outlook notes more people will likely be on employer-based insurance or uninsured in 2014 and 2015 due to anticipated delays in moving people into exchanges and expanded Medicaid. The CBO predicts 7 million people will be enrolled in exchanges by 2014. The report is available [here](#).

On February 5th Pennsylvania Governor Tom Corbett (R) released his proposed budget for 2013-14, and it did not provide for the expansion of Medicaid in the state. Gov. Corbett believes that expansion would be unsustainable for taxpayers, although he said analysis continues on the matter. The budget proposals for Pennsylvania are available [here](#).

On February 5th Minnesota Governor Mark Dayton (D) met with HHS Secretary Sebelius to discuss the possibility of keeping 100,000 patients on the MinnesotaCare plan rather than transferring these people to federal health insurance exchanges. MinnesotaCare is a publicly subsidized program for Minnesota residents who do not have access to affordable health care coverage. Most enrollees pay a monthly premium, determined by a sliding-fee scale based on family size and income. Gov. Dayton wants MinnesotaCare to be funded through the federal Basic Health Program (BHP). Under a switch, the monthly premiums for low-income Minnesotans could triple. HHS officials say the petition is under review. An article on the discussion can be read [here](#).

On February 6th Representative Phil Gingrey (R-GA) introduced a bill to prevent a rise in health care premiums for younger Americans due to the ACA. The LIBERTY Act would allow states to determine the age discount ratio in their market. A press release and a Dear Colleague letter on the bill from Rep. Gingrey's office can be found [here](#).

On February 6th Utah Governor Gary Herbert (R) offered to run a half exchange in his state. The Governor suggested in a meeting with HHS Secretary Sebelius that Utah would continue to operate its small business exchange, which was developed before the ACA, and the federal government could run the exchange for individuals. Secretary Sebelius said she wants to give states flexibility, though no decision has been made on Gov. Herbert's proposal. An article on the issue from the *Wall Street Journal* is available [here](#).

On February 6th House Republicans released a report that suggests the ACA adds more than 127 million burden hours to individuals and providers. Estimated compliance hours related to regulations of the ACA can be found [here](#).

On February 6th Alabama Governor Robert Bentley (R) issued his budget for Fiscal Year 2013-14 and offered no funds for Medicaid expansion. A spokesperson for the governor said the long-term costs of Medicaid expansion were a big concern. Gov. Bentley's budget proposal can be viewed [here](#).

On February 6th Michigan Governor Rick Snyder (R) called for an expansion of Medicaid services in the state. Saying that expansion makes sense for the physical and fiscal health of Michigan, the governor noted that 320,000 residents would benefit from increased Medicaid. Many members of the Michigan legislature, including House Speaker Jase Bolger, remain skeptical of the plan. An article on Gov. Snyder's proposal is available [here](#).

On February 7th a bipartisan group of Senators introduced a bill to repeal the 2.3% tax increase placed on medical device manufacturers as part of the ACA. Senators Amy Klobuchar (D-MN) and Sen. Orrin Hatch (R-UT) authored the *Medical Device Access and Innovation Protection Act* and Sen. Al Franken (D-MN) cosponsored the legislation. A press release from Sen. Hatch's office can be found [here](#).

On February 7th Mississippi Insurance Commissioner Mike Chaney (R) announced that the Obama administration rejected his plan for a state-run health insurance exchange. Chaney had wanted to provide the state with greater control, even while Governor Phil Bryant (R) opposed applying for a state exchange. HHS rejected Mississippi's application because the ACA states that a governor must sign the declaration letter, and a coordination strategy between state agencies must be provided. Statements from Commissioner Chaney regarding the rejected proposal are available [here](#).

On February 7th the Centers for Medicare and Medicaid Services (CMS) released its second annual report on the benefits of the ACA for Medicare beneficiaries. CMS notes that 6.1 million Americans have saved \$5.7 billion on prescription drugs since enactment of the ACA, and the law provides better access to preventative services for people with Medicare. The CMS report can be read [here](#).

On February 7th eight members of New Jersey's Congressional delegation sent a letter to Governor Chris Christie (R) requesting that the governor expand Medicaid coverage as part of the ACA. The letter thanks Gov. Christie for his help in supporting victims of Hurricane Sandy, and it suggests that expanded Medicaid is another opportunity to support the people of New Jersey. The letter can be read [here](#).

On February 7th Center for Consumer Information and Insurance Oversight (CCIO) Director Gary Cohen said in an interview that federal marketplaces will be ready in time for open enrollment on October of 2013. Director Cohen also noted that while he is unsure how many states will operate within the federal exchange, the program is scaled and will be able to operate in every state that does not implement a state-based exchange. The interview with Director Cohen can be found [here](#).

On February 7th Cardinal Timothy Dolan of New York, president of the U.S. Conference of Catholic Bishops, said the latest guidance from the Obama administration on the contraceptive mandate does not go far enough. Cardinal Dolan said the new rules fail to appropriately exempt church-affiliated universities, hospitals, and charities. An article with recent developments in the ongoing contraceptive mandate is available [here](#).

On February 7th lawmakers on Idaho's Senate Commerce and Human Resources Committee voted, by an 8-1 count, to move the issue of a state-based exchange to consideration by the full Senate. While Republicans expressed discontent with the ACA, they said Idaho will be better off running its own exchange. An article on the legislative process to approve an Idaho exchange is available [here](#).

On February 7th a notice released by CMS indicated that the Basic Health Program (BHP) would be operational in 2015. The BHP provides federal subsidies to help cover low-income people who earn too much to qualify for Medicaid. The notice can be viewed [here](#).

On February 8th the Virginia Senate passed a bill to approve Medicaid expansion in the state, although the bill implements expansion faster than a similar bill approved by the Virginia House. Many members of the Virginia legislature expressed the sentiment that the state would be paying billions of tax dollars, regardless of its choice to expand Medicaid. An article on the various proposals for expansion is available [here](#).

Other HHS and Federal Regulatory Initiatives

On February 4th the Center for Medicare and Medicaid Innovation (CMMI) announced a new initiative to assist beneficiaries with end-stage renal disease (ESRD). CMMI is inviting organizations to participate in the testing of a comprehensive program that would coordinate care for ESRD patients. The notice for proposed initiative is available [here](#).

On February 4th HHS approved one of two Medicaid waivers requested by Florida Governor Rick Scott (R). The approved waiver allows long-term care Medicaid patients in the state to be moved into managed care. The second waiver, still pending approval, would allow other Medicaid beneficiaries to be moved into the managed care program. An article and a press release on the waivers can be read [here](#).

On February 5th the Centers for Disease Control and Prevention (CDC) released a report noting that there is a high prevalence of smoking among people with mental illness. While 21.4% of adults without a mental illness are smokers, among adults with a mental illness, 36.1% smoke. The report can be found [here](#).

On February 7th President Obama renominated Marilyn Tavenner to serve as Administrator at CMS. The White House sent Tavenner's nomination to the Senate for approval. An official announcement from the White House is available [here](#). An article on the nomination can be read [here](#).

On February 7th the Food and Drug Administration (FDA) released new draft guidance on developing drugs for the early treatment of Alzheimer's disease. The recommendations note the difficulty of analyzing the efficacy of an early-stage Alzheimer's drug, but the FDA suggests assessments of cognition and function should be used to measure effectiveness. The guidance document is available [here](#).

On February 7th the CDC released a report noting that the percentage of breastfeeding mothers is rising. The number of mothers' breastfeeding at six months stood at 45% in 2008, compared with just 35% of mothers in 2000. The CDC report can be found [here](#).

Other Congressional and State Initiatives

On February 4th Senate Republicans sent a letter to Jeffrey Zients, Acting Director at the Office of Management and Budget (OMB), with concerns about the Obama administration's failure to offer a legally-mandated legislative solution when the Medicare Trustees indicate funding is low. The

Republicans suggest that Jack Lew, who was OMB director in 2010 and 2011 and has been nominated for Treasury Secretary, failed to appropriately address the situation. The letter can be read [here](#).

On February 5th House Energy and Commerce Committee Chairman Fred Upton (R-MI), Ways and Means Committee Chairman Dave Camp (R-MI), Energy and Commerce Health Subcommittee Chairman Joe Pitts (R-PA), Ways and Means Health Subcommittee Chairman Kevin Brady (R-TX), and Health Subcommittee Vice Chairman Michael C. Burgess, M.D. (R-TX) provided an update on the committees' collaborative efforts to repeal the Sustainable Growth Rate (SGR) formula and advance a permanent solution for the Medicare physician payment system. A press release from the House Ways and Means Committee can be found [here](#). The actual proposal is available [here](#).

On February 6th Senate Majority Leader Harry Reid (D-NV) and House Minority Leader Nancy Pelosi (D-CA) made their appointments to the Long-Term Care Commission. The Commission was created as a part of the fiscal cliff deal at the end of 2012, in lieu of the CLASS Act insurance program. President Obama, House Speaker John Boehner (R-OH), and Senate Minority Leader Mitch McConnell (R-KY) are responsible for selecting the final nine members of the 15-member Commission. The appointments can be viewed [here](#).

On February 7th a bipartisan group of House Energy and Commerce Committee members, led by Chairman Fred Upton (R-MI), sent HHS a letter requesting for information on actions taken by the Department following the Virginia Tech shootings in 2007. The Committee wants to determine what actions were effective, particularly in regards to mental health initiatives. The Energy and Commerce letter can be read [here](#).

On February 7th New York Attorney General Eric Schneiderman (D) announced the arrest of Dr. Jean Elie, a Brooklyn psychiatrist. Dr. Elie is accused of billing Medicaid for more than \$230,000 in services that were never provided. Dr. Elie met with many patients for less than 10 minutes and would then bill these patients for an hour of care. A statement from Attorney General Schneiderman's office is available [here](#).

On February 7th Senator Richard Burr (R-NC) and eight cosponsors introduced the reauthorization of the *Pandemic and All-Hazards Preparedness Act* (PAHPA). The bill would reauthorize and enhance the National Disaster Medical System, the volunteer Medical Reserve Corps, the Emergency System for Advance Registration of Volunteer Health Professionals, and the Strategic National Stockpile. It would require HHS to develop and follow through on plans to modernize national situational awareness and biosurveillance capabilities. A press release from the Senate HELP Committee can be viewed [here](#). Additional information regarding the bill is available [here](#).

Other Health Care News

On February 5th the Bipartisan Policy Center (BPC) released two reports and a set of policy recommendations on the future of the health profession workforce. Former Senate Majority Leader Bill Frist, the BPC's health project co-leader, said the United States faces a problem with meeting future industry demands. The BPC recommends a plan that understands the full demand of workers and recognizes the needs of different geographic areas. The reports can be accessed [here](#).

On February 5th America's Health Insurance Plans (AHIP) released a survey on trends in insurance claims receipt and processing. The survey notes that people are changing the way they file claims, with 94% of claims filed electronically in 2011, versus 82% filed that way in 2009 and just 44% using electronic filing in 2002. Electronically filed claims are more efficient than traditional methods, with 68% of electronic claims received within two weeks of patient service. The survey can be viewed [here](#).

On February 5th the Small Business Majority (SBM) released a survey noting that small businesses overwhelmingly support the *Family Medical Leave Act (FMLA)*. Four out of five businesses support FMLA, with almost half indicating strong support. The report can be viewed [here](#).

On February 8th a report released by the Hudson Institute indicated that fast food restaurants benefit by offering lower-calorie menu options. In same-store sales, chains that raised the number of lower-calorie options saw sales increases of 5.5%. Those chains which decreased lower-calorie option experienced a decrease in same-store sales of 5.5%. The report is available [here](#).

Hearing and Mark-Ups Scheduled

Senate

On February 13th the Senate HELP Committee will conduct an organizational business meeting to adopt Committee rules, make subcommittee assignments, and authorize expenditures by the Committee in the 113th Congress. The Committee will also consider H.R. 307, to reauthorize certain programs under the Public Health Service Act and the Federal Food, Drug, and Cosmetic Act, and an original bill, "*The Prematurity Research Expansion and Education for Mothers who deliver Infants Early (PREEMIE) Act.*" More information can be found [here](#).

On February 14th the Senate Finance Committee will conduct a hearing titled "Health Insurance Exchanges: Progress Report." More information on the hearing can be found [here](#).

House of Representatives

On February 13th the House Veterans' Affairs Committee will hold a hearing entitled, "Honoring the Commitment: Overcoming Barriers to Quality Mental Health Care for Veterans." Additional details are available [here](#).

On February 14th the House Energy and Commerce Committee will hold a full committee hearing called "SGR: Data, Measures and Models; Building a Future Medicare Physician Payment System." Additional information is available [here](#).