

Health Care Reform Advisory: Health Reform Implementation Moves Forward Despite Continued Opposition

8/17/2010

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Over the past couple of weeks, the federal government has continued with its plans to implement the new health care reform law in the face of continued opposition and new developments in the pending lawsuits challenging the new law. On Friday July 30th, despite heavy opposition from Congress, industry groups, and patient advocates, the Centers for Medicare & Medicaid Services (CMS) announced that it would stick to a proposed regulation requiring a 2.9% reduction in Medicare inpatient payment rates to begin correcting what the agency claimed were previous overpayments to hospitals. In the past, CMS has often modified or eliminated contentious plans to reduce rates, so the decision to stick to the proposed regulation was perceived as a powerful message that the Obama administration intends to fully implement the law.

There has also been significant pushback against a new 1099 tax filing mandate for businesses to file the forms when they buy goods exceeding \$600. The proposal was expected to increase revenues by \$17 billion over ten years, but since the National Taxpayer Advocate (NTA) watchdog group warned that the new requirement “may present significant administrative challenges to taxpayers and the IRS,” political pressure to repeal the provision has increased. On August 5th, a bill introduced by Sen. Mike Johanns (R-NE) with 24 Republican co-sponsors to repeal that portion of the new health care reform law finally picked up its first Democratic co-sponsor, Sen. Blanche Lincoln (D-AR), a well-known moderate Democrat who is facing a tough reelection fight this November.

Meanwhile, last week also brought significant developments for the opposition of the health care reform law. On August 2nd, a federal judge in Virginia issued a ruling in favor of the lawsuit challenging the health care reform law led by Virginia Republican Attorney General Ken Cuccinelli. In his ruling, the U.S. judge, who was appointed by President George W. Bush in 2002, refused to dismiss the lawsuit as requested by a motion filed by the Department of Justice and noted that the existence of the state law “is sufficient to trigger the duty of the Attorney General of Virginia to defend the law and the associated sovereign power to enact it.” Similarly, on August 6th the attorneys general from 20 states, led by Florida Attorney General and Republican candidate for governor Bill McCollum and the National Federation of Independent Business (NFIB), filed their most recent motion in their lawsuit against the health care reform law. Calling the law “an unprecedented intrusion on the sovereignty of the states and the freedom of their citizens,” the group presented its response to a motion filed by the Justice Department in June to dismiss the lawsuit altogether. Oral arguments for that lawsuit are scheduled for mid-September 2010 in a federal court in Pensacola, Florida.

Finally, on August 3rd voters in Missouri went to the polls for the state's primary elections for open Senate and House seats, including the race to replace retiring Republican Sen. Kit Bond. Also on the ballot, however, was a proposal to block the implementation of the health care reform law and state that no Missouri resident could be assessed a fine for refusing to comply with the individual mandate in the law. The measure passed with 71% of the vote although it ultimately has no legally binding precedent.

The above update is an abbreviated version of a more comprehensive weekly alert compiled by ML Strategies in Washington, D.C. If you would like more information or would like to receive the complete update, please do not hesitate to contact ML Strategies.

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For further information regarding this or any issue related to Health Care Reform, please contact one of the professionals listed below or the Mintz Levin attorney who ordinarily handles your legal affairs.

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