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Jeremy Rabinovitz, JRabinovitz@mlstrategies.com
Alexander Hecht, AHecht@mlstrategies.com
Joseph P. Hammang, PhD, JPHammang@mlstrategies.com
Andrew Shin, AJShin@mlstrategies.com
Abby Matousek, AMatousek@mlstrategies.com
Alyssa Franke, AFranke@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

Follow us on Twitter @MLStrategies

HEALTH CARE REFORM UPDATE October 28, 2013

Leading the News

Glitches Continue in Week Three of Open Enrollment, Repairs Promised

With the government shutdown over, attention in Congress shifted back to healthcare.gov and the glitches which have continued into week three of open enrollment. Members of the House Energy and Commerce Committee **grilled** contractors who have worked on the website in a marathon four and a half hour long hearing which was frequently acrimonious and contentious. Former Director of the Office of Management and Budget (OMB) Jeff Zients, who was tapped by President Obama to lead the team to repair the website, promised that the website will be operating smoothly by the end of November. HHS Secretary Sebelius **described** in a blog post the steps that are being taken as part of HHS' "tech surge" to fix healthcare.gov. In addition, the Administration consulted with CEOs of several health insurance companies and two insurance industry lobbying groups **to discuss** open enrollment and the ongoing implementation of the ACA.

Given the complications, the Obama Administration announced that they would be extending the open enrollment deadline; however, this is considered a technical fix to an earlier interpretation of the law which said consumers must have purchased insurance by February 15 in order to have it active by March 31. Now consumers can buy health insurance up to March 31 to avoid a tax penalty. Meanwhile, HHS continues to tout the high interest in healthcare.gov. In a blog post, HHS Secretary Kathleen Sebelius **stated** that as of October 25, nearly 700,000 applications for health insurance had been completed and that the IRS had received more than 330,000 requests through the Data Services Hub to calculate eligibility for premium tax credits. As the tweaks to healthcare.gov continue, HHS Secretary Sebelius **announced** in a blog post that HHS will begin offering regular blogs and press briefings on the status of technical fixes to healthcare.gov. This comes as the federal data hub comes back online after an outage on Sunday that HHS said resulted from technical issues with a data center hosted by Verizon Terremark.

Implementation of the Affordable Care Act

On October 21, the Ohio state Controlling Board [approved](#) the appropriation of federal funds to expand Medicaid. This comes after the state legislature rejected the Medicaid expansion. The decision is likely to face legal challenges.

On October 21, Senator Marco Rubio (R-FL) [announced](#) he would introduce legislation to delay the individual mandate until six months after the Government Accountability Office (GAO) certifies that healthcare.gov is fully functional.

On October 21, CMS [opened](#) a new comment period requesting public input on providing an exemption from the individual mandate for individuals who are members of a health care sharing ministry.

On October 21, the Department of Justice filed a [brief](#) with the Supreme Court asking it to deny review of Liberty University's challenge to the ACA's employer mandate and the contraception mandate.

On October 21, Republican members of the House Oversight and Government Reform Committee [sent a letter](#) to the OMB Chief Information Officer and Chief Technology Officer, in which they stated that CGI officials testified for politically motivated reasons when they described that the White House required contractors to change healthcare.gov to force consumers to register for an account before they could look at insurance plans. On October 22, Democratic members of the House Oversight and Government Reform Committee [responded](#) to their Republican colleagues' letter, stating Republicans deliberately mischaracterized statements made to committee members and that CGI officials explicitly stated that there was no politically motivated intervention made by the White House.

On October 22, Senator Lamar Alexander (R-TN) [announced](#) he would introduce legislation requiring the Administration to provide weekly reports to Congress on the implementation of the Affordable Care Act (ACA), including data on enrollment, the status of efforts to repair healthcare.gov, and information about navigators.

On October 22, Senator Ed Markey (D-MA) [sent a letter](#) to Consumer Financial Protection Bureau (CFPB) Director Richard Cordray to ask him to provide information on what the CFPB is doing to investigate the high costs associated with loans and credit cards used to pay for medical services not covered by health insurance.

On October 22, the Center for Medicaid and CHIP [released](#) a technical assistance document to provide guidance to states on how to include Medicaid managed long-term services and supports (MLTSS) as part of the revised External Quality Review protocols for managed care organizations.

On October 22, Senator Jeanne Shaheen (D-NH) [sent a letter](#) to President Obama requesting that the open enrollment period be extended beyond March 31, 2014 to provide more time for Americans who may have encountered technical glitches with healthcare.gov to purchase health insurance.

On October 22, Representative Paul Ryan (R-WI) [sent a letter](#) to HHS Secretary Sebelius in which he outlined his numerous requests for information about the implementation of the ACA which have not

yet been answered. He asked the Secretary to reply to his earlier inquiries and to provide information about the “tech surge.”

On October 22, the Council for Affordable Health Coverage and the National Coalition on Health Care [sent letters](#) to members in the House and Senate urging them to increase transparency to Medicare quality and claims data to provide Medicare recipients better price and quality information.

On October 23, CMS [announced](#) \$146.1 million in new exchange grants to provide for technology improvements and consumer outreach in Arkansas, Connecticut, Idaho, Iowa, Rhode Island, and Washington, D.C.

On October 24, Representative Darrell Issa (R-CA) and Senator Lamar Alexander (R-TN) [sent a letter](#) to HHS Secretary Kathleen Sebelius asking her to provide information on the ACA’s rollout that they requested in a letter on October 10 by 5 p.m. on October 28 or face a subpoena.

On October 24, Representative John Fleming (R-LA) and thirty two other members of Congress [sent a letter](#) to President Obama demanding HHS Secretary Sebelius’ resignation over the problems related to the implementation of the ACA.

On October 24, HHS and the Centers for Medicare and Medicaid Services (CMS) [issued](#) a final rule which outlines financial integrity and oversight standards for the exchanges, qualified health plan issuers in federal exchanges, and state risk adjustment and reinsurance programs.

On October 24, Senators Orrin Hatch (R-UT) and Chuck Grassley (R-IA) [sent letters](#) to the 47 contractors which developed, implemented, and are operating healthcare.gov, requesting a detailed analysis of the work they have done, the cost of that work, and their timelines and deliverables.

On October 24, Republican members of the House Oversight and Government Reform Committee [sent letters](#) to 11 contractors who designed and implemented healthcare.gov, requesting information about their contracts and all communications between them and the federal government related to those contracts.

On October 25, U.S. Immigration and Customs Enforcement [released](#) a memo stating that information collected on individuals or their households in order to determine their eligibility to obtain insurance will not be used to pursue civil immigration enforcement action if it is discovered that someone is not a legal U.S. resident.

Other HHS and Federal Regulatory Initiatives

On October 23, the Centers for Disease Control and Prevention [released](#) a report describing its efforts in the year since the outbreak of fungal meningitis linked to the New England Compounding Center to investigate the outbreak.

On October 24, the Congressional Budget Office (CBO) [revised](#) its estimate of the potential savings of raising the Medicare eligibility age from 65 to 67 down to \$19 billion. Still, CBO did not lower the estimate of how much the proposal to adjust the Medicare age would increase federal spending for Medicare and exchange subsidies.

On October 24, the FDA [announced](#) that it will be recommending reclassifying hydrocodone combination products into Schedule II in order to increase controls on such products and reduce their abuse and misuse.

Other Congressional and State Initiatives

On October 22, Representatives Marsha Blackburn (R-TN), Gene Green (D-TX), Dr. Phil Gingrey (R-GA), Diana DeGette (D-CO), Greg Walden (R-OR), and G. K. Butterfield (D-NC) [introduced](#) the SOFTWARE Act, which is intended to provide regulatory clarity regarding mobile medical applications, clinical decision support, electronic health records, and other health care related software by building on the guidance recently released by the FDA on medical apps.

On October 23, a bipartisan group of six Senators [wrote a letter](#) to Food and Drug Administration (FDA) Commissioner Hamburg asking the FDA not to use a unique name for each FDA approved biosimilar than is given to the biologic drug.

On October 24, Representatives Darrell Issa (R-CA), Mick Mulvaney (R-SC), and Lacy Clay (D-MO) [introduced](#) a bill which would allow all Americans to enroll in the Federal Employees Health Benefit Program.

Other Health Care News

On October 23, the Pharmaceutical Distribution Security Alliance and the Pew Charitable Trusts sent a letter to Senate Majority Leader Harry Reid (D-NV) and Republican Leader Mitch McConnell (R-KY) asking them to pass the Drug Quality Safety Act.

On October 24, Gallup [released](#) a survey which found that 18% of Americans lack health insurance, the highest figured recorded by the survey for the past six years. The survey was conducted in the third quarter of 2013, right before the Health Insurance Marketplace opened on October 1.

Hearings and Mark-Ups Scheduled

Senate

On Tuesday, October 29, the Senate Special Aging Committee will hold a Member's roundtable titled "Tackling Diseases of Aging: Why Research Collaboration Matters."

On Wednesday, October 30, the Senate Health, Education, Labor and Pensions (HELP) Committee will [mark up](#) the Older Americans Act Reauthorization of 2013.

House

On Tuesday, October 29, the House Ways and Means Committee will hold a [hearing](#) on the status of the ACA implementation. Administrator of the Centers for Medicare and Medicaid Services Marilyn Tavenner will testify at the hearing.

On Wednesday, October 30, the House Energy and Commerce Committee will hold a [hearing](#) titled "PPACA Implementation Failures: Answers from HHS." Secretary Sebelius will testify at the hearing.