



ML
STRATEGIES

Tom Koutsoumpas, TKoutsoumpas@mlstrategies.com
Jeremy Rabinovitz, JRabinovitz@mlstrategies.com
Alexander Hecht, AHecht@mlstrategies.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 April 2, 2013

Implementation of the Affordable Care Act (ACA)

On March 22nd Bishop Michael J. Bransfield urged West Virginia Governor Earl Ray Tomblin (D) to expand the state's Medicaid program. In a letter sent to the Governor, the leader of the West Virginia diocese said that state health policy must protect the voiceless and vulnerable. An Associated Press article on the letter can be found [here](#).

On March 22nd Department of Health and Human Services (HHS) Secretary Sebelius sent a letter to Senator Maria Cantwell (D-WA) stating that final rules on the federal Basic Health Plan Option (FBHPO) will be provided in the first quarter of 2014. Secretary Sebelius said the Center for Medicare and Medicaid Services (CMS) is committed to implementing the FBHPO in 2015. The letter to Senator Cantwell can be read [here](#).

On March 25th Virginia Governor Bob McDonnell (R) signed a bill that creates a panel of legislators who must certify that changes to the state's Medicaid program have been made before expansion of the program as part of the ACA can occur. Virginia must also have approval from the federal government for its Medicaid plan. Medicaid expansion in Virginia could bring care to 400,000 uninsured people in the state. An article on Gov. McDonnell's actions and his compromises with Democrats in the state is available [here](#). A press release on the governor's submitted budget amendments can be found [here](#).

On March 25th Representative Charles Boustany (R-LA), Chairman of the House Ways and Means Oversight Subcommittee, sent a letter to HHS asking why the proposed application for health insurance for the federal insurance exchange includes a question about voter registration. In the letter, Rep. Boustany points out that a question on voter registration comes after a series of questions about an applicant's personal information and could lead people to think that voter registration is tied to subsidy eligibility. The full text of the letter can be found [here](#).

On March 25th Idaho Governor Butch Otter (R) received a letter from his Working Group on Medicaid Expansion urging him to expand the state's Medicaid program. The letter argues that, without expanding the program and receiving federal funds, Idaho citizens will subsidize the expansions in other states through federal tax dollars and not see any benefits themselves. According to working group, postponing expansion six months after January 1st, 2014 could cost Idaho taxpayers \$41 million. The letter can be read [here](#).

On March 26th Governor Bob McDonnell (R), speaking with radio station WTOG, said abortions should not be covered under the federal exchange. Gov. McDonnell said the state legislature already ruled that abortions would not be covered under a state exchange, and he wanted to make sure Virginians would not be forced to pay for abortions in a federal exchange. The comments from the governor can be found [here](#).

On March 26th thirteen state attorneys general said that HHS is violating the *Religious Freedom Restoration Act* in its current regulation of the ACA. The state officials argue that requiring some employers to provide contraceptive coverage, even while other nonprofit groups are exempted, is unjustified. The letter to HHS can be read [here](#).

On March 26th, Senator Ron Wyden (D-OR) responded to a letter from CMS on the 'family glitch', a component of the ACA that Sen. Wyden says forces people to choose unaffordable family employer coverage or exchange coverage without a subsidy. CMS suggested the Small Business Health Options Program (SHOP) could address the problem, but Sen. Wyden wrote that the dependents of millions of employees will still be without insurance. A press release from the Senator is available [here](#).

On March 27th the Arkansas Department of Human Services released a report indicating that the state would save \$670 million over 10 years through a plan to provide private insurance to new recipients through the use of Medicaid expansion funds. Arkansas House Speaker Davy Carter (R) said he is eager to produce legislation that would provide specifics of a private plan. An article on the savings can be read [here](#). The report itself can be viewed [here](#).

On March 27th Tennessee Governor Bill Haslam (R) released his "Tennessee Plan" for health care reform and announced that he will not pursue an expansion of Medicaid in the state through the rules of the ACA. The Plan calls for the use of federal dollars to be made available to help people in his state buy private insurance. Gov. Haslam said the plan would provide insurance to an additional 175,000 Tennesseans. A press release from the governor's office is available [here](#). The actual plan can be viewed [here](#).

On March 27th the Louisiana Department of Health and Hospitals released a report on the financial impact of Medicaid expansion in the state. The report indicates that an additional 600,000 residents would be covered under expansion, and the savings would range from \$197 to \$368 million. An article on the report's release can be read [here](#). The full report is available [here](#).

On March 27th CMS and California announced a partnership to improve the care received by people who are eligible for both Medicare and Medicaid. The plan for these "dual eligibles" will provide a managed fee-for-service system that allows California to benefit from plans to improve quality and reduce cost. Health plans will also receive a prospective, blended payment to help dual eligibles receive more coordinated care. The release from CMS can be found [here](#).

On March 27th Senate Judiciary Committee Ranking Member Chuck Grassley (R-IA) and Sen. Orrin Hatch (R-UT) sent a letter to HHS Secretary Sebelius asking how the sequester will impact health insurance exchanges. The Senators asked for specific information on Section 1311(a) of the ACA which allows the Secretary to provide grants to implement exchanges. HHS will cut \$55 billion under sequestration. A press release from Grassley's office can be seen [here](#). The actual letter to Secretary Sebelius is available [here](#).

On March 28th Senator Lamar Alexander (R-TN), Ranking Member of the Senate Health, Education Labor, and Pensions (HELP) Committee, and fellow Tennessee republican Senator Bob Corker sent a letter to Secretary Sebelius urging the Obama administration to provide flexibility and quick approval of a plan from Republican Governor Bill Haslam to expand Medicaid to 175,000 people in Tennessee. The Senators said that Nashville is the health care services capital of the country, and they wrote that Tennessee should continue to have the freedom to pursue innovation. The letter can be found [here](#).

On March 28th Missouri Governor Jay Nixon (D) said he is open to alternatives to Medicaid expansion, after the Republican legislature in the state continues to reject the standard form of expansion provided in the ACA. Gov. Nixon said he is considering plans like the one proposed in Arkansas that would use federal dollars to provide private insurance for new beneficiaries. An article on Missouri's expansion plans is available [here](#).

On March 29th the Centers for Medicare and Medicaid (CMS) released guidance on premium assistance and private alternatives to Medicaid expansion. HHS says that a partial expansion is not acceptable; states which want full federal matching funds must extend Medicaid eligibility to 133% of the Federal Poverty Level. The guidance can be found [here](#).

On March 29th CMS issued a final rule indicating that the federal government will fully cover Medicaid expansion until 2016. The matching rate will then decrease to reach a permanent rate of 90% in 2020. CMS says the final rule will provide simple and accurate ways for states to make eligibility determinations. The final rule, which also provides information on the potential for an increased federal medical assistance percentage (FMAP) to states that expanded Medicaid before the ACA, is available [here](#).

Other HHS and Federal Regulatory Initiatives

On March 25th the Supreme Court heard oral arguments in *Federal Trade Commission v. Actavis*, a case centered around "pay for delay" provisions often found in patent settlement agreements between drug companies. The FTC is arguing that these arrangements, where manufacturers of brand-name drugs pay other drug makers to wait to bring generic versions to market, are anti-competitive and lead consumers to pay higher prices. The FTC hopes that the Supreme Court will abolish these types of settlements. Coverage on the oral arguments can be found [here](#).

On March 26th the HHS Office of Inspector General (OIG) released a Special Fraud Alert that warns physicians who sell implantable medical devices and then perform operations on their own patients to implant these devices. The OIG says physician-owned distributorships (PODs) have a substantial risk of violating the anti-kickback statute and that PODs may lead to unnecessary recommendations from medical professionals who seek a financial benefit. The fraud alert is available [here](#).

On March 28th the U.S. Preventive Services Task Force (USPSTF) released a draft research plan on screening for autism spectrum disorder in young children. The final research plan will be used to guide the USPSTF recommendation statement on best diagnostic and treatment methods for autism spectrum disorder. Comments will be accepted until April 24th. The draft can be found [here](#).

On March 28th the Centers for Disease Control and Prevention (CDC) began an awareness campaign to educate Americans on the dangers of smoking. Secretary Sebelius said the campaign was successful last year and increased the number of calls to hotlines or “quitlines.” About one in five Americans smoke. The release on the campaign can be read [here](#). Ads that are part of the campaign can be viewed [here](#).

Other Congressional and State Initiatives

On March 18th Colorado issued a bulletin explicitly prohibiting insurers from discriminating against consumers based on sexual orientation or transgender status. The bulletin, from Colorado’s Division of Insurance, says that insurers cannot use sexual orientation as basis for denying or limiting coverage, charging different rates, or refusing to provide medically necessary services as determined by a medical provider. Oregon, California, and Washington D.C. have already passed similar bans. Full text of the bulletin can be found [here](#).

On March 22nd Chairman Max Baucus (D-MT) and Ranking Member Orrin Hatch (R-UT) of the Senate Finance Committee sent a letter to the Acting US Trade Representative requesting strong intellectual property protections for biologics in the Trans-Pacific Partnership trade agreement. The letter specifically requests 12 years of data protection for biologic pharmaceuticals and civil and criminal penalties for trade secret theft. The Trans-Pacific Partnership is currently being negotiated. The letter is available [here](#).

On March 26th North Dakota Governor Jack Dalrymple (R) signed legislation to ban abortions once a fetal heartbeat is detected. A heartbeat can be detected about six to seven weeks into a pregnancy, and the ban would be the earliest in the country. Gov. Dalrymple said he is aware of the likely court challenges to the bill, and he encouraged the state legislature to make a litigation fund available to the attorney general. The governor’s statement is available [here](#).

On March 27th Representative Phil Gingrey (R-GA) officially announced his bid for the open Senate seat being vacated by retiring Senator Saxby Chambliss (R-GA). Gingrey, an obstetrician and Chairman of the House GOP Doctors Caucus, made the announcement at Georgia Tech, his alma mater. Representative Paul Broun (R-GA), a general practitioner, has already announced his own candidacy for the Republican nomination. Coverage on the announcement can be found [here](#).

Other Health Care News

On March 25th the American Action Forum released a report on encumbrances that the ACA places on the private sector. The report found that ACA regulations created \$30.8 billion in costs and 111 million paperwork hours for the private sector last year, up from the \$12.4 billion and 50 million hours that the right-leaning organization calculated for 2011. A summary of the report can be found [here](#).

On March 26th the Institute of Medicine (IOM) released a report on the need for greater assistance for military personnel suffering from traumatic brain injuries (TBI) and posttraumatic stress disorder (PTSD). The report says efforts should focus on reducing the stigma associated with receiving mental health care, and the IOM also said an interoperable electronic health records (EHR) network should be developed to help military members and veterans better understand the services available to them. The report can be found [here](#).

On March 26th a report released by the Urban Institute and the Robert Wood Johnson Foundation indicated that 535,000 uninsured veterans and 174,000 uninsured spouses of veterans would qualify for Medicaid if every state expanded coverage to those below 138% of the federal poverty level (FPL). The report notes that many veterans live in states where expansion is not being considered. The report is available [here](#).

On March 26th the Society of Actuaries released a report on the impact of the ACA on insurance rates and premium costs for individuals. The report suggests that while the national uninsured rate will decrease from 16.6% to about 6.7%, the non-group cost per member per month will increase by an average of 32% nationally. The report does not account for subsidies that will be provided to consumers as part of the ACA. The report can be viewed [here](#).

On March 28th the Center for Science in the Public Interest (CSPI) released its report “Kids’ Meals: Obesity on the Menu,” reporting that 97% of kids’ meals at large chain restaurants in the United States do not comply with CSPI standards to meet the needs of young children. Over 90% of meals do not meet the National Restaurant Association’s Kids LiveWell program standards. The CSPI report is available [here](#).

On March 28th the RAND Corporation released a study on the economic impact of Medicaid expansion in Pennsylvania. The study indicates that the state's choice to expand Medicaid would provide coverage to an additional 350,000 people and bring in an extra \$2 billion in federal funding. The state's Medicaid spending would be about \$180 million higher between 2014 and 2020 if it chooses to expand coverage. The Rand study can be found [here](#).

Hearings and Mark-Ups Scheduled

House

On April 3rd at 1:00pm the House Energy and Commerce Subcommittee on Health will hold a hearing entitled “Protecting America’s Sick and Chronically Ill.” More information on the hearing can be found [here](#).