



Health Policy Briefing

August 25, 2014

Federal Courts Force HHS to Give Relief from PPACA Mandated Contraceptive Coverage

PPACA Enrollment Issues

The U.S. Department of Health and Human Services (HHS) indicated that the next Patient Protection and Affordable Care Act (PPACA) open enrollment period is unlikely to be extended and will begin November 15, 2014 and end on February 15, 2015. States operating their own exchanges, including Minnesota, are urging participating health insurers to disclose the premium rates for the plans they intend to offer before the start up date in an effort to assist individuals in the enrollment process. In the meantime, it is estimated by some organizations that up to 7 million adults, about 2.7 million who are uninsured, may be eligible for enrollment before the open enrollment period begins as a result of the “qualifying life event” rules allowing for special enrollment periods during the year. The increase in rates projected by a number of insurers will likely become fodder in the political debates over the PPACA leading up to the November elections. The increase in premiums may invoke a debate over legislative changes that would allow insurers to offer more affordable coverage with an actuarial value of 50% or so (that might be designated “copper” coverage). To assist consumers in the enrollment process, the Centers for Medicare and Medicaid Services (CMS) issued additional guidance on the training of “navigators” and “consumer assistance personnel” in order to become eligible to help in the upcoming enrollment season. Navigators would have to complete about 20 hours of training on such issues as: immigration and eligibility; re-enrollment; determining household income levels for premium assistance; and premium tax eligibility for individuals subject to domestic abuse.

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Senator Orrin Hatch Calls for Repeal of PPACA Medical Device Tax

Citing a report on the questionable results of the PPACA's 2.3% medical device tax, Senator Orrin Hatch (R-UT) – Ranking Republican on the Senate Finance Committee -- issued a statement calling for a repeal of the tax (efforts could begin as early as in the lame-duck session post-election). The report from the Department of Treasury Inspector General for Tax Administration said the Internal Revenue Service (IRS) collected \$913.4 million in revenue in the first half of 2013 which falls short of the \$1.2 billion expected to be generated by the tax. The report said that the taxes collected from firms were frequently over or under the amounts actually due.

HHS Follows Urging of Federal Courts to Accommodate PPACA Mandate

The latest move by federal courts to rule in favor of plaintiffs objecting to the contraceptive coverage mandate under the PPACA came in the form of an injunction ordered by the U.S. District Court for the Eastern District of Pennsylvania which prohibits the enforcement of the provision against the closely held company, Conestoga Wood Specialties, Corp., to the extent such mandates are “objected to on religious grounds.” The ruling follows another by the Supreme Court in Hobby Lobby Stores Inc. wherein the court argued that HHS did not give adequate accommodation to privately held corporations (i.e. “persons” protected under the Religious Freedom Restoration Act) whose owners object to providing such coverage on religious grounds. Last week HHS responded to the problem in issuing an interim final rule effective on August 27th under which non-profit religious organizations will not have to “provide” the contraceptive coverage to which they object on religious grounds, but will instead have to notify HHS/CMS, IRS and the Department of Labor of their objection. The federal agencies will then have the obligation to notify health insurers and third-party administrators of the affected plans that they have the responsibility to provide such coverage without cost sharing to plan participants. The agencies also asked for comments on a similar proposed rule under which privately held corporations, such as Hobby Lobby Stores, might also be extended the same accommodation. Comments on the interim rule are due by October 27th and on the proposed rule by October 21st.

Medicare/Medicaid/PHSA Corner

Resumption of Open Payment System Truncated

CMS followed up its earlier announcement that it will resume requiring pharmaceutical and medical device manufacturers to report payments to health care providers via the agency's Open Payments System with an addendum that about one-third of the records will not be made public on September 30th due to inconsistencies found in connection with the data submissions. CMS said the “flawed” data will be made available in June next year. Senator Chuck Grassley (R-IA) expressed his disappointment in the delay, stating that “Incomplete information won't give the public a full picture of payment data...”

MedPAC Asks CMS to Rebase Proposed 2015 ESRD Facility Payments

In a letter to CMS, the Medicare Payment Advisory Commission (MedPAC) suggested that CMS delay until 2016 and rebase the Medicare end-stage renal disease (ESRD) bundled market basket using the most current and accurate data that are available because it would better reflect the recent declines in dialysis drug use that occurred under the ESRD prospective payment system (PPS). The letter also suggested that CMS use 2012 audited cost report data rather than allow for the inclusion of unaudited data. MedPAC also suggested that CMS delay implementing the use of a dialysis 5-Star Rating System as part of the CMS Hospital Compare, Dialysis Facility Compare and Home Health Compare websites and request comments before the star system begins.

Medicare/Medicaid/PHSA Corner cont.***CMS to Consider Expanding Medicare HIV Screening Coverage***

CMS is taking comments until September 15th on a new proposal which would extend Medicare coverage for HIV screenings to all beneficiaries. An initial decision is expected by next February 4th.

DEA Reclassifies Hydrocodone Combination Products

The Drug Enforcement Administration (DEA) issued a final rule under which hydrocodone combination products (HCPs) will be reclassified as Schedule II drugs from their current Schedule III classification. The DEA cited the large number of deaths and emergency department (ED) visits resulting from the abuse of such drugs as the primary reason for the stricter reclassification.

House Oversight Committee Asks CMS to Recover Improper Medicaid Payments

In a letter to CMS, the Chairman of the House Oversight and Government Reform Committee, Rep. Darrell Issa (R-CA), and Rep. Jim Jordan (R-OH) said that the state of New York may have received upwards of \$15 billion in improper Medicaid funding for developmental centers over two decades. They demanded that CMS continue to recapture what they say are improper payments, adding that “Because of New York’s track record of abusing and mismanaging federal Medicaid dollars and CMS’s failure to identify and halt outrageous payments made by the State for years or decades after they have started, we are concerned the State will misspend the \$8 billion in funds....” which will be reinvested as a result of a CMS waiver under the program.

Upcoming Health Related Hearings and Markups

Weds, Aug. 27 (1:30-3:30 p.m.) -- Congressman Bob Latta (R-OH-05) and Congressman Bill Johnson (R-OH-06) will host a 21st Century Cures roundtable at The Research Institute at Nationwide Children’s Hospital (Columbus, OH) to gain input and seek new ideas as to how Congress can best accelerate the discovery, development and delivery of new cures. The event builds off the House Energy & Commerce Committee’s 21st Century Cures Initiative.

Fri, Aug. 29 (1:30-4:00 p.m.) – House Energy and Commerce Health Subcommittee Chairman Joe Pitts (R-PA) will host a roundtable discussion in Lancaster, Pennsylvania as part of the committee’s 21st Century Cures Initiative. Dr. Francis Collins, Director of the National Institutes of Health, and Dr. Margaret Hamburg, Commissioner for the U.S. Food and Drug Administration will be among the participants. Full committee Chairman Fred Upton (R-MI), Health Subcommittee Vice Chair Dr. Michael Burgess (TX-26) and Health Subcommittee Ranking Member Frank Pallone (NJ-06) will also participate.