



March 4, 2011

**IN THIS REPORT...**

1. House Passes 1099 Repeal Bill
2. Government Spending Extended Another Two Weeks
3. Committees Active on Medicaid, Fraud and Budget
4. Senate Republicans Urge Obama to Withdraw Berwick Nomination
5. FamMedPAC
6. HealthCare and You Website Goes Live
7. AAFP urges inclusion of PCMH in Consumer Operated and Oriented Plan programs
8. Coalition Letter To Congress Urges Medicaid Stability
9. Medicaid National Correct Coding Initiative report issued
10. Regulatory summary
11. State Issues

**NEXT WEEK IN WASHINGTON...**

- \* The Appropriations and Budget Committees continue their hearings on the FY 2012 budget.

**1. HOUSE PASSES 1099 REPEAL BILL**

On Thursday, March 3 the House passed the *Small Business Paper work Mandate Elimination Act*, to repeal the burdensome new IRS Form 1099 reporting called for in the *Affordable Care Act (ACA)*. The vote was 314 to 122. Although there is broad, bipartisan support for the repeal of the 1099 provision, which requires businesses to report to the IRS all purchases of \$600 or more, the budgetary offset in the bill has drawn criticism from the White House. The reason for their concern is that the bill increases premiums within the health insurance exchanges. The Senate passed a repeal of the 1099 provision as an amendment to the FAA reauthorization bill on February 17 by a vote of 87-8. It rescinds \$44 billion in unobligated appropriated funds, effectively leaving the offset to the discretion of the White House Office of Management Budget. It is not clear when or how 1099 repeal will be considered by a House-Senate conference committee.

**2. FEDERAL SPENDING WINS TWO-WEEK REPRIEVE, WORK CONTINUES ON FY 11**

On March 2, President Obama averted a government shutdown by signing into law the short-term spending measure that cleared the Senate (91 to 9) earlier in the day. It had passed the House on March 1 on a vote of 335 to 91. The law cuts \$4 billion, primarily earmarks, from current spending levels, and keeps the federal government running through March 18. Title VII and other AAFP priority programs are unaffected by the short-term continuing resolution cuts.

House Speaker John Boehner (R-OH) is calling on Senate Democrats to agree to even deeper cuts for the remainder of the fiscal year, which ends September 30. Senate Republicans support a House-passed seven-month funding bill (HR 1) to fund the government at a level

\$61.5 billion less than in fiscal 2010 and approximately \$100 billion less than Obama requested in fiscal 2011 — cuts that would roll back Title VII to the FY 2008 funding level. Senate Democrats are expected to resist the draconian cuts in HR 1.

The House passed HR 1 on Saturday, February 19 after considering hundreds of amendments, including several that would eliminate funding for the implementation of the ACA. For example, the House passed an amendment offered by Rep. Denny Rehberg (R-MT) to prohibit the funding of “any new employee, officer, contractor, or grantee of any department” to implement the ACA, by a vote of 239 to 187. Rep. Steve King (R-IA) offered two amendments. One bans the funding of any implementation of the ACA and it passed on a 241-187 vote. Another amendment offered by Rep. King, and passed 237 to 191, prohibits the funding of any salary of any official to implement health reform. Rep. Jo Ann Emerson (R-MO) offered an amendment to prohibit the IRS from enforcing the individual mandate, which passed 246-182. On a vote of 240 to 185, the House also adopted an amendment offered by Rep. Mike Pence (R-IN) to prevent Planned Parenthood from receiving Title X funds. Title X is a \$327 million program that covers family planning and reproductive health but not abortion services.

### **3. COMMITTEES ACTIVE ON MEDICARE, MEDICAID, FRAUD AND BUDGET**

#### **House Energy and Commerce**

The House Energy and Commerce Committee held three subcommittee hearings on Medicaid; fraud and abuse in the Medicare and Medicaid Programs; and the FY 2012 budget request.

During the Medicaid hearing, Governors Gary Herbert (R-UT) and Haley Barbour (R-MS), and Deval Patrick (D-MA), spoke from sharply different perspectives. Herbert and Barbour argued for block grants for the states, greater flexibility and decried the overall cost of the program, while Patrick indicated that his state’s efforts had been a significant success.

The hearing on fraud and abuse in the Medicare and Medicaid programs was quite heated. Key witnesses included representatives from the CMS Medicare program integrity program, the HHS Office of the Inspector General (OIG) and the Government Accountability Office (GAO). In brief, the subcommittee Republicans focused on the lack of a specific dollar amount that could be attributed to fraud, despite the CMS representative’s contention that some so-called fraud was simply unintentional errors. In contrast, Democrats made statements criticizing the Republicans for voting to repeal the ACA, which contains numerous anti-fraud provisions.

HHS Secretary Kathleen Sebelius testified Thursday on the FY 2012 budget. Under tense questioning, she defended the budget and specifically mentioned primary care as an important program that should be preserved.

#### **House Ways and Means**

The House Ways and Means Subcommittee on Oversight also convened a hearing on fraud and abuse activities in public and private programs. The subcommittee heard testimony from the OIG, CMS, America’s Health Insurance Plans (AHIP) and a convicted felon who is cooperating with the government on anti-fraud efforts. The government witnesses touted their nearly 7:1 return on investment and Democrats used this to argue against repeal of the health reform law and to make pleas for continued adequate funding of anti-fraud efforts.

Republicans were successful in getting the witnesses to estimate fraud, waste and abuse at between \$60 and \$100 billion annually in the entire (public and private) health care system. One committee member also complained that the Recovery Audit Contractors (RACs) are for-profit enterprises. Karen Ignani, president and CEO of AHIP urged the government to share their findings and information with the private insurers on an ongoing basis.

## **Senate Finance**

On March 2, the Senate Finance Committee convened the third hearing of the week on Medicare fraud and abuse. As in the other hearings, OIG and CMS officials testified that they were making progress and that the recent news of numerous arrests and pleadings totaling in the billions of dollars was positive evidence. They emphasized that the ACA expanded authorization and methods to prevent fraud as opposed to the old “pay and chase” actions. Committee Democrats embraced this argument and got the witnesses to agree that this was an important reason not to overturn, or to defund the law. Republicans wondered why CMS was asking for more money and was unable to operationalize the Medicaid Recovery Audit Contractor (RAC) program on time since the ACA had provided \$1 billion for fraud prevention and detection.

Senators Tom Coburn (R-OK) and Ron Wyden (D-OR) mentioned their interest in modifying the new ICD-10 coding system for health insurers and providers that will take effect in 2012. Coburn complained that the ICD-10 will add five times as many diagnosis and inpatient codes as the current system; will require a great deal of capital to convert; and only will result in more inaccuracies. The Senators want to find a way to restrict those codes or derail the project altogether. Both criticized the new billing code as focused on the old fee-for-service reimbursement model, which they wish to move away from.

## **4. 42 GOP SENATORS URGE OBAMA TO WITHDRAW BERWICK NOMINATION**

Forty-two Republican Senators sent a letter to the President encouraging that he withdraw the nomination of Dr. Donald Berwick to head the CMS, citing his lack of experience in the areas of health plan operations and insurance regulation. They also wrote that his record of controversial statements and general lack of experience managing an organization as large and complex as CMS should disqualify him from being confirmed. The letter also highlighted the fact that at least the five Republican senators who didn't sign the letter – Olympia Snowe and Susan Collins of Maine, Scott Brown of Massachusetts, Lisa Murkowski of Alaska and Rob Portman of Ohio – might not oppose Berwick's nomination.

## **5. FAMMEDPAC**

FamMedPAC participated in events for the following Members of Congress this week:

- **Rep. Joe Heck (R-NV)**, an osteopathic emergency physician, who was elected for his first term in November in a swing district. He is a member of the Armed Services Committee and the Education and the Workforce Committee.
- **Rep. Dean Heller (R-NV)**, a new member of the House Ways and Means Health Subcommittee. This event was a physician-only event.
- **Rep. John Shimkus (R-IL)**, a member of the House Energy and Commerce Health Subcommittee. This was a physician-only event.
- **Rep. Phil Gingrey (R-GA)**, a member of the House Energy and Commerce Health Subcommittee. Rep. Gingrey is an OB-GYN. This was a physician-only event.

## **6. HEALTHCARE AND YOU WEBSITE GOES LIVE**

On March 1, the website HealthCare and You ([healthcareandyou.org](http://healthcareandyou.org)) went live with a webinar geared specifically to health policy and political reporters. The website is the product of a coalition of “trusted sources,” including the AAFP, AMA, ACP and consumer and pharmacist organizations. The goal of the new resource is to provide state-specific information on the health law at an 8<sup>th</sup> grade reading level. AAFP members not only will be able to direct their patients to the site, but also use it to answer their own questions, e.g., how the health care law affects them as a small business.

## **7. AAFP COMMENTS ON CREATION OF CONSUMER OPERATED & ORIENTED PLANS**

The AAFP sent a formal regulatory comment [letter](#) to the Department of Health & Human Services (HHS) in response to their request for comments on a Consumer Operated and Oriented Plan (CO-OP) program. Section 1322 of the ACA requires HHS to create “qualified nonprofit health insurance issuers” that must operate with a strong consumer focus and use any profits to lower premiums, improve benefits, or improve the quality of healthcare delivered to plan members. In the letter, the AAFP strongly urged HHS to fully incorporate the patient centered medical home concept into the CO-OP program.

#### **8. AAFP SIGNS JOINT LETTER URGING MEDICAID, CHIP STABILITY**

The AAFP has joined several other organizations in a [letter](#) urging Congress to maintain the ACA’s provisions that prevent states from reducing Medicaid and Children’s Health Insurance Program eligibility and adding barriers to enrollment in the programs. However, although Congress could concur with the letter’s position, future HHS regulations might allow states to make changes, such as maintaining physician payments but reducing covered services to beneficiaries.

#### **9. HHS ISSUES REPORT ON MEDICAID NATIONAL CORRECT CODING INITIATIVE**

On March 1, HHS released a [report](#) entitled “Implementation of the National Correct Coding Initiative (NCCI) in the Medicaid Program” as required by the ACA. The NCCI is a CMS program that consists of coding policies and edits and has been part of the Medicare program since 1996. States now are required to incorporate compatible methodologies of the NCCI for Medicaid claims filed on or after October 1, 2010.

#### **10. REGULATORY SUMMARY**

- On February 25th, CMS posted a [draft](#) 10th Statement of Work (SOW) on the Quality Improvement Organizations (QIOs) and announced that the agency will issue a formal Request for Proposal for the 10th SOW contracts for QIOs by mid-March.
- On February 28, HHS [announced](#) that two contracts were awarded to help make flu vaccine available more quickly for seasonal outbreaks and pandemics.
- On March 1, the HHS OIG released a [report](#) entitled, “Nursing Facilities’ Employment of Individuals With Criminal Convictions”.
- On March 2, HHS released a [report](#) on the Early Retiree Reinsurance Program (ERRP) created by the ACA. The ERRP provides financial assistance for health plan sponsors to help early retirees and their families maintain access to quality, affordable health coverage. HHS created a [website](#) showing which employers participate by state.
- On Thursday, March 10 from 1:30 to 3:30pm EST, CMS will conduct a national conference call titled, “Designing A Skilled Nursing Facility Value-Based Purchasing Program”. To participate, dial 1-800-837-1935 and reference conference # 41221059
- CMS recently announced that the next “Physician, Nurses and Allied Health Professionals” conference call will be Tuesday, April 5, 2011 from 2pm-3pm EST. To participate dial 1-800-837-1935 and reference conference # 44695577.

#### **11. STATE ISSUES**

##### **Legislation to Abolish Arizona’s Medicaid Program Advances**

On Wednesday, Arizona became the first state to take official action toward terminating its Medicaid program, the *Arizona Health Care Cost Containment System (AHCCCS)*. On an 8-5 vote, the Senate Appropriations Committee passed a bill ([SB 1519](#)) to repeal all statutes concerning the safety-net program effective October 1, 2011. AHCCCS currently covers more than 1.3 million Arizonans, about half of whom are children. According to the [bill fact sheet](#), eliminating AHCCCS would save the state’s General Fund approximately \$1 billion; however, the state would lose at least \$4.8 billion in federal matching funds. The AHCCCS Director warned that the bill is not a viable option, saying “the economic devastation that would result

from the sudden elimination of \$7 billion in federal participation would be crippling.” Governor Jan Brewer (R) has proposed dropping 250,000 existing beneficiaries from the program.

### **Pennsylvania Lacks Funds to Continue Coverage For Low-Income Adults**

Pennsylvania Governor Tom Corbett (R) recently sent [letters](#) to enrollees in the state’s adultBasic program, announcing that because the program is out of money, coverage for all participants ended February 28. AdultBasic, which receives no federal dollars, is funded by the state’s tobacco settlement and donations from the state’s four BCBS insurance companies. With tobacco money dwindling and the cost of health care increasing – the program cost \$166 million in 2010 – the state has not been able to secure supplemental funding. Created in 2001, the program was one of only a handful of entirely state-funded health plans to provide coverage to low-income adults who do not qualify for Medicaid.

### **New Arkansas Law Allows Physicians to Apply Fluoride**

Arkansas legislators unanimously passed a measure ([SB 43](#)) to expand physicians’ scope of practice. The new law authorizes physicians and, under physician supervision, nurses and other licensed health care professionals, to apply fluoride varnish to a child’s teeth. Prior to providing this service, providers must provide a risk assessment of the child’s oral health and complete training as approved by the state Department of Health. The **Arkansas Academy of Family Physicians**—currently focusing efforts on a variety of scope of practice issues—supported the bill.

### **Oregon Family Physician Sponsors Bill Increasing Primary Care Payment**

Alan Bates, DO, Oregon state Senator and member of the **Oregon Academy of Family Physicians**, introduced legislation ([SB 210](#)) to reimburse primary care providers on a fee-for-service basis at a rate equal to or greater than 150 percent of the Medicare rate—a 66 percent increase from current rates. A five to seven percent cut in reimbursement for specialists would fund this increase, which aims to promote primary preventive care. Although the Oregon AFP will testify citing the need for enhanced reimbursement for primary care, the chapter encourages reimbursement increases associated with changes in delivery rather than building onto a fee-for-service system, as provided in the bill.

Separate legislation was filed at the request of the Oregon AFP to address the shortage of primary care providers, particularly in rural communities, by recruiting more primary care providers and retaining those already in the state. [HB 2400](#) would appropriate \$3.1 million over the next two years to assist rural healthcare providers with loan repayment and [HB 2397](#) creates a loan forgiveness program for primary care practitioners. [HB 2401](#) directs the Area Health Education Center program to create a family medicine residency network, while [HB 2391](#) requires the Oregon Health and Science University to establish a primary care transformation research and training center to facilitate use of the patient-centered primary care home and establishes a continuing medical education center to serve rural physicians. At a recent hearing, testimony was heard from Oregon AFP members, including medical student Sarah Williams, Paige Clark, MD, John Saultz, MD, Glen Rodriguez, MD and Lisa Dodson, MD.