GOVERNMENT AFFAIRS WEEKLY

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IN THIS REPORT…

NEXT WEEK IN WASHINGTON…

* The House of Representatives is out Monday through Wednesday in observance of Yom Kippur.
* The Senate meets Monday to begin consideration of a procedural motion on a bill (HR 36) that would ban most abortions after 20 weeks.
* On Tuesday, September 22, a Senate Judiciary Subcommittee will hold a hearing to examine consolidation in the health insurance industry and its impact on consumers.
* On Wednesday and Thursday, Pope Francis will meeting with the President, addressing a joint session of Congress and holding a number of events around Washington, DC.

1. UNINSURED RATE DECLINES SIGNIFICANTLY ACCORDING TO CENSUS REPORT

The share of Americans without health insurance fell to 10.4 percent during the first full year of the *Affordable Care Act* (ACA)'s coverage expansion in 2014, nearly a 3 percentage point decrease from the previous year, according to a Census report released Wednesday, September 16. The decline represented the biggest year-to-year drop since 2008, when the bureau began tracking such data.

According to the Census study, the number of people without health insurance declined to 33.0 million from 41.8 million over the period.

The figures track with other estimates showing a similar decline in the uninsured rate since the implementation of the health law. A report released last month by the Centers for Disease Control and Prevention (CDC) found the number of Americans without coverage fell by one-third since 2013, after which the most significant coverage expansions under the law took effect. Expansions of private and government health coverage were responsible for the growth of the population with coverage, according to the Census Bureau report. The private coverage rate

rose by 1.8 percentage points between 2013 and 2014, while the government coverage rate went up by 2 percentage points.

The biggest changes came from the growth of Medicaid and insurance individuals buy directly from an insurer or through new insurance exchanges created by the law. The direct purchase of insurance covered 14.6 percent of the population for all or part of 2014 compared to 11.4 percent in 2013. The portion of people covered by Medicaid, the federal and state program for the low-income, for all or part of 2014 rose to 19.5 percent, up from 17.5 percent in 2013.

On September 15, the Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) announced a preliminary estimate of the net budgetary effect of eliminating the requirement that individuals purchase health insurance and associated penalties established by the ACA. CBO and JCT estimate that eliminating that requirement would increase the number of people without coverage in 2025—relative to current-law projections—by about 14 million people, resulting in 41 million uninsured in that year. That increase in the uninsured population would consist of roughly 5 million fewer individuals with coverage under Medicaid or the Children's Health Insurance Program (CHIP), 1 million fewer individuals with employment-based coverage, and 8 million fewer individuals with coverage obtained in the individual market. Most of the reductions in spending would occur because outlays would be $110 billion less for exchange subsidies and $200 billion less for Medicaid and CHIP.

2. TAX PROVISIONS IN HOUSE BILL WOULD AMEND ACA

The House Ways and Means Committee included two ACA modifications on Thursday, September 17, in a diverse package of business tax bills. Given the very low likelihood of comprehensive tax reform in 2015, lawmakers expect to pass a related package of temporary tax "extenders" by end of the year. It is doubtful that the ACA provisions will be a part of the final tax extenders package.

One of the ACA amendments, the *Equitable Access to Care and Health Act* (HR 2061), would expand a religious exemption of the coverage mandate. The other, the *Restoring Access to Medication Act* (HR 1270), would allow over-the-counter medicines to be purchased with flexible spending accounts. The ACA bills both passed the committee by voice vote.

3. HOUSE ACTS TO CURB FRIVOLOUS LAWSUITS

On September 17, the House passed the *Lawsuit Abuse Reduction Act* (HR 758) on a largely party-line vote of 241 to 185. The bill would require the federal trial courts to more aggressively penalize attorneys who do not file claims in good faith. The bill also provides that plaintiffs who file claims in bad faith may be required to compensate the defendant for any reasonable expenses incurred in defending such claims. While not binding on state courts, changes to the Federal Rules of Civil Procedure are frequently adopted later by state court systems.

4. HHS TO REVISE RULES ON MEDICATION-ASSISTED TREATMENT

HHS Secretary Sylvia Burwell announced on Thursday, September 17 that the Department will revise federal regulations to expand access to medication-assisted treatment (MAT) for opioid dependence. In a letter to the Drug Enforcement Administration, the AAFP called on the Administration to amend the patient limit on the treatment of addiction care with Suboxone® (buprenorphine hydrochloride and naloxone hydrochloride).

The secretary also announced grant awards of approximately $1.8 million from the Office of Rural Health Policy in HHS' Health Resources and Services Administration to support rural communities in reducing opioid overdose and death. Recipients, representing 13 states, will use the funding to purchase naloxone, train health care professionals and local emergency

responders in the use of naloxone, and facilitate the referral of people with opioid use disorder to substance abuse treatment.

5. AAFP SUPPORTS FEDERAL DIRECT PRIMARY CARE LEGISLATION

On Wednesday, September 16, the AAFP sent a letter of support to Sen. Bill Cassidy (R-LA), endorsing the *Primary Care Enhancement Act* (S 1989). Introduced on August 5, Sen.Cassidy's bill would remove a number of federal legal impediments to broader uptake of the Direct Primary Care (DPC) practice model, namely:

(1) IRS interpretations of the tax code that prohibit patients with Health Savings Accounts (HSAs) from contracting for DPC services,
(2) another portion of the tax code, which does not clearly establish whether a patient with an HSA may use HSA dollars to pay for DPC services, and
(3) the absence of authority for Medicare to pay physicians under a DPC model.

As for Medicare, the bill would establish a demonstration under which a qualified DPC practice could be paid periodic DPC fees by Medicare, rather than fee-for-service. The demonstration would borrow performance benchmarks and quality measures from the Medicare Shared Savings Program.

6. SENATE HELP CHAIR RECOMMENDS MEANINGFUL USE STAGE 3 DELAY

During a September 16 health information technology hearing, Sen. Lamar Alexander (R-TN), chair of the Senate Health, Education, Labor and Pensions (HELP) Committee, commented on the need to delay Meaningful Use Stage 3 until January 1, 2017. The statement is consistent with AAFP's May 26 regulatory comments and its push to advance a Meaningful Use flexibility bill. The hearing titled, *Achieving the Promise of Health Information Technology: Improving Care Through Patient Access to their Records*, was the fifth in a series of health IT committee panels and was the first time Sen. Alexander affirmatively stated Stage 3 should be delayed.

During the hearing, Senators discussed the need to improve interoperability and usability for both patients and physicians. Sen. Susan Collins (R-ME) commented about the importance of being able to provide patients with access to their records and to provide information that is easy to understand. Sen. Elizabeth Warren's (D-MA) described the importance of promoting interoperability through incentives to share information and suggested that the current Meaningful Use standards and the proposed rule for Stage 3 did not include the appropriate certification standards needed for interoperability.

7. CHILD NUTRITION REAUTHORIZATION DEBATE TO HEAT UP

The *Healthy, Hunger-Free Kids Act* (HHFKA), was enacted in 2010 with broad congressional and public health support. The law increased nutritional standards for child nutrition programs under the U.S. Department of Agriculture and was based on the Institute of Medicine research. According to the CDC, obesity has doubled in children and quadrupled among adolescents over the past 30 years. Research also indicates that many young people consume half of their daily calories at school. The AAFP supported the stronger standards. The new requirements emphasized the need for fruit, vegetables, grains, established age-based calorie limits and decreased foods with salt, sugar, and fat. The new requirements were approved with some pushback from the School Nutrition Association and food industry who indicated that the new regulations were too aggressive and challenging to implement.

The proposed legislation may be introduced soon. Otherwise, the current program may continue if Congress approves its budget this fall.

8. AAFP URGES PUBLIC AND PRIVATE PAYERS TO COVER INSULIN PENS
In a letter sent September 16 to the Centers for Medicare & Medicaid Services, Department of Defense, and private payers, the AAFP urged plan formularies to cover insulin pens at the same tier as vial and syringe insulin injections. The letter argued that patients have difficulty with vial and syringe insulin injections and thus rely on insulin delivery devices such as insulin pens, which have been shown to improve adherence to insulin therapy.

9. AAFP WANTS RECOGNITION OF PRIMARY CARE PHYSICIANS AS SPECIALISTS
In a letter sent September 16 to CMS and private payers, the AAFP urged the review and revision of coverage and payment policies to recognize ambulatory primary care physicians as specialists for the purposes of consulting on their hospitalized patients and to allow for payment when a consultation is requested from the patient's primary care physician by a hospitalist or a specialist attending physician, even if the hospitalist or attending is of the same specialty.

10. JOINT LETTER TO HEAD START ADVISES EDUCATION ON SECONDHAND SMOKE
In a letter sent September 17, the AAFP and 77 other organization urged the HHS Office of Head Start to include in the Head Start Performance Standards a requirement to address parental/guardian smoking and child exposure to secondhand smoke in order to remove a significant barrier to attendance and school readiness.

11. FURTHER CONCERNS NOTED ON MEANINGFUL USE STAGE 3
In letters sent September 17 to the Director of the Office of Management and Budget and the Secretary of the U.S. Department of Health and Human Services, the AAFP and 41 other national medical organizations discussed how interoperable, useable, and clinically relevant Electronic Health Records (EHRs) are the essential foundation for the implementation of Merit-Based Payment System (MIPS) and Alternative Payment Models (APMs). The letter then discussed how the physician community is extremely concerned with the current direction of the Meaningful Use (MU) program since 80 percent of physicians utilize EHRs, but less than 10 percent of physicians have successfully participated in MU Stage 2. Furthermore, due to the inflexible MU regulations and certification requirements, vendors have created software products that are frequently unusable, administratively burdensome, and in many instances do not promote clinically relevant patient care. The letter calls on the administration to pause MU Stage 3 and reevaluate the program.

12. REGULATORY BRIEFS

- On September 11, the FDA issued draft guidance to assistant restaurants and retailers comply with the mandate to post calories on their menus.
- On September 11, CMS released updated ICD-10 end-to-end testing results and now includes participation rates by health care provider type.
- On September 14, the National Park Service announced it will treat e-cigarettes and other electronic smoking devices the same way it deals with traditional tobacco products.
- On September 15, HHS awarded nearly $500 million in ACA funding to health centers to expand primary care services. The awards include approximately $350 million for 1,184 health centers to increase access to services such as medical, oral, behavioral, pharmacy, and vision care. Nearly $150 million will be awarded to 160 health centers for facility renovation, expansion, or construction to increase patient or service capacity.
- CMS will host the following free educational calls, registration is required:
    - Medicare Quality Reporting Programs: 2017 Payment Adjustments, September 24, 1:30pm ET
    - Dialysis Facility Compare: Rollout of Five Star Rating, October 7, 1:30pm ET
    - 2014 supplemental QRUR physician feedback program, October 15, 1:30pm ET
    - Improving Medicare Post-Acute Care Transformation, October 21, 1:30pm ET