



## Health Policy Briefing

September 2, 2014

### NIH Announces Ebola Vaccine Trial

#### *Ebola Update*

The National Institutes of Health (NIH) said the agency will commence Phase I human trials for an experimental Ebola vaccine this week and that several other initiatives are in the planning stages. The ramp up of Ebola activities comes in the wake of an announcement from the World Health Organization (WHO) that governments need to step up their response to the Ebola outbreak which could soon result in over 20,000 infections.

### PPACA Health Reform Update

#### *Congressional Inquiries and Agency Actions Involving the PPACA*

Senators John Barrasso (R-WY) and Lamar Alexander (R-TN) sent a letter to the Administrator of the Centers for Medicare and Medicaid Services (CMS) demanding that Congress and the public be brought up to date before the next Patient Protection and Affordable Care Act (PPACA) Open Season on the number of individuals who have enrolled and who had their coverage cancelled due to immigration, citizenship and income status or non-payment of premiums. They said the last information released on May 1st is out-of-date and insufficient.

Reporting on the costs of the troubled HealthCare.gov site, the U.S. Department of Health and Human Services (HHS) Inspector General reported that CMS paid \$100 million more than originally expected on 20 contracts for the development of the site and in total had paid \$500 million of the \$800 million that was due in February for the development and operation of the website. In an attempt to put in place an experienced manager, HHS Secretary Sylvia Mathews Burwell appointed Kevin Counihan, the former

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CEO of the Connecticut health insurance exchange, to serve as the lead person in the Center for Consumer Information and Insurance Oversight (CCIIO) who will oversee and be responsible for the federal exchange (HealthCare.gov) and for managing relationships with state-run health insurance exchanges. To ramp up 2014/2015 tax return activities involving the PPACA, the IRS made public draft instructions and forms for individuals, exchanges and employers as follows:

- Form 1095-A will be sent to the IRS and enrollees by health insurance exchanges;
- Forms 1094/1095-B, Health Coverage, will be sent to the IRS by health insurers showing information on who provided a taxpayer's health insurance coverage, the type of coverage and who in the household was covered and for which months during the year; and
- Forms 1094/1095-C, Employer-Provided Health Insurance Offer and Coverage, will be sent to the IRS by large employers to report on health-care coverage offered to full-time employees, if any, and the individuals covered in each month.

### ***Medical Home Awards/ACO Study***

**H**HS has reported that over \$35 million in PPACA funding has been awarded to support patient-centered medical homes through new construction and facility renovations at health centers in 44 states. CMS also issued a study which concluded that PPACA-initiated accountable care organization (ACOs) are unlikely to help Medicare achieve large savings, but that ACOs paid through shared savings may be an important first step toward greater efficiency and quality in the Medicare fee-for-service program.

### ***HHS Argues Courts Should Recognize Alternative to PPACA Contraceptive Coverage Mandate***

**T**he issue of whether or not the Administration's new regulation meets the Supreme Court test of offering an adequate "alternative accommodation" for religious organizations to avoid the direct provision of PPACA mandated contraceptive coverage may soon be tested in federal court. Before the Administration issued an interim final rule (under which non-profit religious organizations will not have to "provide" the contraceptive coverage to which they object on religious grounds, but in the alternative will have to notify HHS/CMS, IRS and the Department of Labor of their objection), in *Catholic Conf. v. Burwell* the Sixth Circuit disagreed that the religious organizations should be accorded an injunction against the original mandate. However, the plaintiffs have asked the U.S. Court of Appeals for the Sixth Circuit to give such relief. However, the Administration filed a brief arguing that an appeal is unnecessary in that the new regulations offer an adequate alternative accommodation consistent with the Supreme Court's statement in the *Hobby Lobby* case that "achieves" the aim of seamlessly providing coverage of recommended health services to women "while providing greater respect for religious liberty". On another issue--as to whether or not IRS regulations allowing federal tax premium subsidies for coverage obtained through HealthCare.gov (in states that did not elect to set up their own exchanges) are in violation of the language in the PPACA--the successful plaintiffs in the *Halbig v. Burwell* case argued that the Administration's petition for an en banc hearing in the D.C. Circuit Court would be a "waste of resources" given that there are split decisions in several circuits and that the Supreme Court should intervene to resolve the matter.

## Medicare/Medicaid/PHSA Corner

### *Additional Delays in Open Payment System*

**C**MS announced that it will delay until September 10th the date when providers can review and dispute payment information displayed on the Open Payments system website (created pursuant to the Physician Payments Sunshine Act, which was part of the Affordable Care Act in 2010). The correction period runs from September 11th through September 25th. CMS also reported that the Open Payments system will be inaccessible during a series of scheduled maintenance upgrades on Saturday, September 5th.

### *CMS Final Rules on Meaningful Use Program*

**C**MS issued a final rule under which providers and hospitals may continue to use electronic health record (EHR) systems certified under the 2011 Edition certification program to qualify for meaningful use program incentive payments in 2014. The agency also delayed the start of Stage 3 of the program until 2017.

### *CMS Asked to Explain Nursing Home Self-Reporting*

**T**he ranking member of the House Oversight and Government Reform Committee, Rep. Elijah Cummings (D-MD), sent a letter to CMS asking the agency to provide a briefing by September 16th on its decision to allow nursing homes to self-report on staffing and quality measures in connection with the agency's Five-Star Rating System.

### *Federal Health Care Spending Trends are Mixed*

**T**he Congressional Budget Office's (CBO) latest report on medical spending included projections that are \$9 billion lower for fiscal year (FY) 2014 than over previous projections and \$11 billion lower over ten years. Differing projections for Medicaid show a rise of 15% or about a \$40 billion increase for FY 2014, primarily due to the expansion of Medicaid in states electing such expansion under the PPACA. Another analysis of cost increases for large employer health plans by Towers Watson also showed some slowing of cost increases in 2015 to about 4%, down from 5% this year.