

Health Care Law Update - December 22, 2014

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Hospital-Acquired Infections Hit Hospitals' Bottom Line: CMS announced that 721 hospitals will receive a 1 percent payment reduction as a result of poor performance in reducing hospital-acquired infections (HAIs). The cut will hit approximately one in seven of the nation's hospitals including some of the nation's most well-known facilities. The total cut is estimated to be about \$373 million per year.

CMS announced the penalties shortly after the release of an HHS report studying hospital errors between 2010 and 2013. The Agency for Healthcare Research and Quality (AHRQ) found a 17 percent decline, from 145 to 121 HACs per 1,000 discharges, from 2010 to 2013. However, policymakers are convinced that further reductions are possible, making the imperative for hospitals to prevent avoidable infections even more important, should additional efforts to deny payment/penalize providers for HAIs take effect.

Will a new treatment option for hepatitis C bring down health care costs?: There has been a great deal of excitement over the past 12 months following FDA approval of innovative new treatments for hepatitis C, a serious infection of the liver. These new treatments represent significant advances over older therapies as they are oral medicines rather than injected products and their side-effect profiles are much better than previous treatments. Most important, the majority of hepatitis C sufferers are cured by the new therapies.

Last week, the FDA approved drug maker AbbVie's Viekira Pak. Viekira Pak joins Olysio (Janssen Pharmaceuticals) and Solvaldi and Harvoni (both from Gilead Sciences). Pharmacy benefit manager Express Scripts has now announced a deal with AbbVie, making Viekira Pak the exclusive option for the 25 million patients covered by Express Scripts. AbbVie has set the price of a Viekira Pak 12-week course of treatment at \$83,319, a slight discount from Gilead's Sovaldi (\$84,000). Harvoni commands a price of \$94,500 for a 12 week course. Policymaker concerns about the high cost of these hepatitis treatments is likely to remain high, but health spending savings may be possible with Viekira Pak as some patients may be cleared of the HepC virus after only 8 weeks of treatment.

Implementation of the Affordable Care Act

CMS Releases 2016 Exchange Guidance: CMS is accepting comments through January 12th on its [draft letter](#) to insurers who plan to offer qualified health plans on the federal exchange. The letter addresses how CMS will handle plan rate increases and sets the initial submission period for 2016

from March 16th to April 15th.

HHS Updates Enrollment Numbers: On December 16th, HHS announced that close to 2.5 million consumers selected plans between November 15th and December 12th.

HHS Partnering with Pharmacies: Secretary Burwell announced that HHS is collaborating with some of the largest pharmacies to promote enrollment in the Health Insurance Marketplaces. The pharmacies include Ahold USA Companies, Bi-Lo Holdings, CVS Health, H-E-B, Kroger, Rite Aid, Walgreens and Walmart.

SIM grants Announced: HHS [announced](#) over \$665 million in ACA grants for the State Innovation Models initiative—funding to design and test health care payment and service delivery models that will improve health care quality and lower costs. Thirty-four states, 3 territories, and the District of Columbia will receive money to plan or implement proposals to create statewide health transformation to improve health care.

White House on ACA's Economic Impact: Jason Furman, head of the Council of Economic Advisors, [authored](#) a blog post on the economic progress the country has made under President Obama. Furman highlights the ACA as an economic driver as it has yielded savings for households, businesses, and the government.

HHS Partners with Tech Platforms: HHS [announced](#) that to reach additional consumers during Open Enrollment, the agency partnered with technology companies Monster.com, Peers.org, and high to utilize their technology platforms to encourage consumers to visit the Health Insurance Marketplace.

Other Federal Regulatory Initiatives

GAO Report on Medicaid IT Upgrade: The Government Accountability Office (GAO) released a [report](#) surveying state use of Medicaid 90/10 funds—funds for eligible information technology (IT) system changes. The report found that states and the federal government have spent \$1.8 billion in 90/10 funds and 34 states used funds to implement full system replacements while 17 states used these funds to implement modifications to their existing systems.

FDA Releases Unique Device Identifier Compliance: The FDA [announced](#) two upcoming compliance dates for unique device identifiers (UDI). Non-class III implantable, life supporting and sustaining devices will be phased in September 2015 and class III devices phased in September 2016.

FDA Blog Post About Compounded Drugs: FDA Commissioner Margaret Hamburg published a [blog post](#) on the agency's efforts to protect the public from potential harm that could be caused by unsafe compounding products and practices.

Medicaid and CHIP Enrollees Grow: CMS [announced](#) that enrollment in Medicaid and CHIP grew by 9.7 million people during the ACA's first open enrollment period.

CDC Releases Health Insurance Coverage Survey: The CDC National Health Interview Survey Early Release Program [found](#) that in the second quarter of 2014 the number of Americans without health insurance decreased from 13.1 percent to 11.3 percent. The White House released a [blog post](#) hailing the findings and pointing to the success of the ACA.

Members Press Universities on Tanning: House Democrats [wrote](#) to eighteen universities requesting they consider ending practices that could endanger students' health by allowing use of university debit cards for indoor tanning salon services.

Harkin Statement on End of HELP Committee Tenure: Retiring Chairman of the Senate Health, Education, Labor, and Pensions Committee Tom Harkin (D-IA) released a [statement](#) on his tenure as Chairman.

Congressional Initiatives

GOP Committee Assignments Released: Senate Republicans released their committee assignments for the 114th Congress. The Senate Health, Education, Labor, and Pensions Committee will add two Members, Senators Susan Collins (R-ME) and Bill Cassidy (R-LA), and the Senate Finance Committee will add three Members, Senators Dan Coats (R-IN), Dean Heller (R-NV), and Tim Scott (R-SC).

Surgeon General Confirmed: Before adjourning sine die, the Senate approved the nomination of Vivek Murthy to be Surgeon General. Although Murthy's nomination had been stalled for over a year due to National Rifle Association and Republican opposition, he was [confirmed](#) in a 51 to 43 vote.

House E&C Summarizes Oversight Efforts: The House Energy and Commerce Committee released a [summary](#) of the Committee's oversight efforts from 2014, including: Centers for Disease Control and Prevention related to safety lapses involving anthrax and other dangerous biological materials and the Ebola outbreak; CMS related to Medicare fraud and abuse, Medicare Part D, electronic medical records, and HealthCare.gov; and FDA related to proposed changes to generic drug labeling.

Senate Passes ABLE Act: As part of the tax extenders legislation, the Senate [passed](#) the Achieving a Better Life Experience (ABLE) Act, which allows those with disabilities to create tax-free accounts for savings for disability-related expenses. The House passed the bill earlier in the month and it will go to the President's desk for signature.

House Oversight Restructures Subcommittees: Incoming Chairman of the House Oversight Committee Jason Chaffetz (R-UT) is restructuring the Subcommittees, including adding a new Health Care, Benefits and Administrative Rules Subcommittee which will be chaired by Representative Jim Jordan (R-OH).

Lawmakers Write Burwell on Meaningful Use: Thirty House lawmakers sent a [letter](#) to HHS Secretary Burwell requesting that the agency provide a shortened 90-day Medicare and Medicaid electronic health record (EHR) reporting period in 2015.

Other Health Care News

Court Dismisses AHA Lawsuit: The U.S. District Court for the District of Columbia dismissed a [lawsuit](#) brought by the American Hospital Association regarding a backlog of Medicare appeals at HHS.

ATA Launches Accreditation Program: The American Telemedicine Association (ATA) [launched](#) an accreditation program for online, direct-to-consumer healthcare consultations. The program seeks to "ensure transparency and patient safety as online services for healthcare proliferate."

ATA Releases Primary Care Guidelines: The ATA released a [report](#), Practice Guidelines for Live, On Demand Primary and Urgent Care. The document is intended to establish practice guidelines for “the provision of patient-initiated primary and urgent care services by licensed healthcare providers using real-time, interactive technologies, including mobile devices.”

Physician Foundation’s 2015 Priorities: The Physicians Foundation, a nonprofit organization that seeks to advance the work of practicing physicians, released its 2015 issue [watch list](#), which includes hospital consolidation, the rise of value-based payment models, the impact of ICD-10, the cost of care transparency, and access to physician care.

Avalere Analysis of ACA Enrollees: Soon after the closing of the 2015 Open Enrollment period, Avalere Health [released](#) projected exchange enrollment. Avalere predicts that by late 2015, ACA exchange enrollment will total 10.5 million people—compared to HHS’ 9.1 million target.

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National Law Review, Volume IV, Number 357

Source URL: <https://natlawreview.com/article/health-care-law-update-december-22-2014>