

### Health Reform Update – Week of October 21<sup>st</sup>, 2013

#### CONGRESS

##### ***Marketplace contractors blame CMS for enrollment problems***

The House Energy and Commerce Committee grilled federal contractors this week about the lack of operational readiness for the federal marketplace web portal, in advance of the expected testimony from the Secretary for the Department of Health and Human Services (HHS) next week.

Online enrollment in the 36 states that defaulted fully or partly to the federal marketplace has been beset with problems since it began on October 1<sup>st</sup>. Contractors largely blamed the Centers for Medicare and Medicaid Services (CMS) for allowing only a few weeks to rigorously test the web portal, although they acknowledge that several types of glitches would not have surfaced until the system went live. They also concurred with earlier criticisms that the late decision by CMS' chief information officer to require that consumers create and authenticate online accounts before being able to compare plan options caused much of the logjam in the first week of operation. They pointed out that most e-commerce sites and several state marketplaces allow any visitor to "window shop" without creating verified accounts.

Contractors had emphasized at the hearing that the federal data hub itself was working as planned and processed more than 178,000 transactions just on the first day of open enrollment. The data hub allows marketplaces to access income, citizenship, and insurance records from several federal agencies that are needed to ensure eligibility for marketplace coverage and premium tax credits. However, it crashed over the weekend temporarily shutting down all federal and state marketplaces.

Contractors insist that onsite capacity had been doubled by October 8<sup>th</sup> with error rates "near zero." Consumers should be able to enroll faster as daily improvements continue to be made, and all should be able to enroll by December 15<sup>th</sup> for coverage starting January 1<sup>st</sup>.

Contractor CGI Federal disputed claims by Republican lawmakers that the [www.healthcare.gov](http://www.healthcare.gov) web portal will need to be shut down and overhauled, nor will they have to rewrite "five million lines of code". Rep. Frank Pallone (D-NJ) also refuted claims by Rep. Marsha Blackburn (R-TN) and Rep. Joe Barton (R-TX) that the web portal was comprising patient privacy and is not HIPAA-compliant, pointing out that no medical information is sought or maintained through the application process since pre-existing condition denials are no longer allowed under the Affordable Care Act (ACA).

Rep. Anne Eshoo (D-CA) and other Democrats on the panel dismissed claims by contractors and CMS that the problems with the portal were "volume driven", calling it a "lame excuse". However, Rep. Frank Pallone (D-NJ) and others pointed out that the 15 states (including the District of Columbia) that created their own marketplaces have had far fewer problems (see Update for Week of October 14<sup>th</sup>) and enrolled more than 100,000 consumers.

House Oversight Committee chairman Darrell Issa (R-CA) has threatened to subpoena 11 of the contractors receiving the largest awards if they did not provide his committee by week's end with details of all meetings with the White House regarding the marketplace launch.

##### ***Administration tweaks individual mandate penalties, resists lawmaker calls for delay***

Subsequent to meeting this week with the leaders of 14 major health insurers, the White House announced this week that the Department of Health and Human Services (HHS) will shortly issue guidance exempting Affordable Care Act (ACA) consumers from any penalties under the individual mandate if they purchase coverage by March 31<sup>st</sup>.

HHS had recently indicated that consumers had to purchase coverage by February 15<sup>th</sup> in order to avoid penalties for going three consecutive months without coverage they can afford (see Update for Week of October 7<sup>th</sup>). That was because marketplace coverage purchased after February 15<sup>th</sup> would not be effective until April 1<sup>st</sup>, meaning uninsured consumers would go without coverage for at least one day in January, February, and March. (Open enrollment in the marketplaces closes on March 31<sup>st</sup>).

Although ACA opponents characterized the move as a “delay” in the individual mandate, it is actually an exemption that applies only to marketplace consumers purchasing a policy by March 31<sup>st</sup>. It does not apply to consumer purchasing non-marketplace plans.

However, the enrollment issues with the federal marketplace have only increased calls for an actual delay in either the individual mandate or open enrollment period (see Update for Week of October 7<sup>th</sup>). At least ten Democrats from conservative-leaning states joined the chorus this week. Senator Joe Manchin (D-WV) is crafting legislation to postpone the individual mandate for one year, while others signed-on to a letter from Senator Jeanne Shaheen (D-NH) seeking a delay in the open enrollment period for the marketplaces. One of the signers, Senator Kay Hagan (D-NC) called for two-month delay while the others did not specify a length of time.

### ***Court challenge to federal marketplace subsidies will go forward, through injunction denied***

A judge with the U.S. District Court for the District of Columbia pledged this week to issue an expedited ruling by February 15<sup>th</sup> on whether the text of the Affordable Care Act (ACA) only allows premium tax credits for consumers in state-based marketplaces.

The judge ruled that the four individual plaintiffs in Halbig v. Sebelius have standing to challenge Internal Revenue Service (IRS) regulations authorizing the ACA tax credits in federal marketplace states. However, he refused to grant an immediate injunction to block the tax credits in federal marketplaces, noting that “no irreparable harm” would result to the plaintiffs at this time.

Three businesses are also party to the lawsuit. However, the judge will not rule on their standing until summary judgment.

The challenge is being funded by the Competitive Enterprise Institute. Several conservative groups led by the Cato Institute are promoting analogous legal challenges nationwide, insisting that the IRS and Congressional Research Service (CRS) are wrong to conclude that tax credits are not limited just to state-based marketplaces (see Update for Week of September 17, 2012). A federal judge in Oklahoma recently allowed a related case to proceed (see Update for Week of August 12<sup>th</sup>).

## **FEDERAL AGENCIES**

### ***ACA marketplaces have received nearly 700,000 applications***

Nearly 700,000 completed applications for health insurance coverage were received by state and federal marketplaces as of October 24<sup>th</sup>, according to figures released this week by the Centers for Medicare and Medicaid Services (CMS).

The term “completed application” means that an applicant has received a determination whether he or she is eligible for Medicaid, the Children’s Health Insurance Program, or Affordable Care Act (ACA) tax credits to purchase marketplace coverage. CMS will not release figures showing how many have actually enrolled and paid premiums until November (see Update for Week of October 14<sup>th</sup>).

CMS officials acknowledge that roughly half of the 700,000 applications have come from the 14 states and the District of Columbia that elected to create their own ACA-compliant marketplaces. With the exception of Hawaii (see Update for Week of October 14<sup>th</sup>) and Oregon (see below), the state

marketplaces have been more quickly able to respond to initial glitches and avoided the major backlog associated with the federal web portal (see Update for Week of October 7<sup>th</sup>).

The Internal Revenue Service (IRS) announced this week that it has completed more than 330,000 determinations of eligibility for ACA premium tax credits—a figure that shows how many applicants have moved beyond the initial application stage.

Coverage will begin January 1<sup>st</sup> for applicants that pay their premiums by December 15<sup>th</sup>.

### ***HHS puts single contractor in charge of fixing federal marketplace by November 30<sup>th</sup>***

The Department of Health and Human Services (HHS) announced this week that it has charged a private firm with fixing the flaws in the federal marketplace portal that have greatly impeded enrollment since going online October 1<sup>st</sup>.

Quality Software Services Inc. (QSSI), one of the contractors that helped design the web portal, will take over management of [www.healthcare.gov](http://www.healthcare.gov). In addition, HHS hired former Obama Administration official Jeffrey Zients to oversee the “dozens of issues” that needed to be urgently addressed.

Zients assured the media this week that all consumers will be able to enroll online by November 30<sup>th</sup>. However, consumer advocates remain concerned that any further delays will prevent some consumers from being able to purchase plans by December 15<sup>th</sup> so that they can have coverage when the ACA is fully implemented on January 1<sup>st</sup>.

At the top of the list of needed repairs are the erroneous reports still being sent by the marketplace to insurers. In addition, three of every ten consumers are still unable to complete the enrollment process despite added capacity and reduced waiting times since October 8<sup>th</sup> (see above). However, Zients emphasized that 90 percent of applicants can now create verified online accounts, the step in the process that caused most of the initial glitches (see Update for Week of October 14<sup>th</sup>).

Analysts noted that putting a contractor in charge of fixing the portal is a tacit acknowledgment that Centers for Medicare and Medicaid Services (CMS) officials were not prepared to address the challenge. Several contractors blamed CMS this week for not providing adequate time for testing and making late decisions that contradicted their advice, such as requiring online accounts in order to view plan options (see above).

However, the choice of QSSI is likely to face criticism from Republican lawmakers, many of whom insisted earlier this year that its acquisition by UnitedHealth Group in 2012 creates a conflict of interest. QSSI was awarded \$85 million to build the federal data hub for the marketplace, which until it crashed last weekend had been the only part of the marketplace performing well (see above).

### ***Spanish version of marketplace website delayed again***

The Spanish-language version of the web portal for the federal marketplaces operated by the Centers for Medicare and Medicaid Services (CMS) has been delayed for a second time.

The Spanish version of [www.healthcare.gov](http://www.healthcare.gov) had initially been delayed until October 21<sup>st</sup> (see Update for Week of September 23<sup>rd</sup>). However, CMS official acknowledged this week that the intensive upgrades required to fix enrollment glitches on the main site (see Update for Week of October 14<sup>th</sup>) have postponed work on [www.cuidadodesalud.gov](http://www.cuidadodesalud.gov), which is currently referring visitors to telephone and in-person assistance options available in Spanish.

Enrollment of Latino Americans is considered critical to the success of the marketplaces, given the higher rate of uninsured among that population. However, CMS officials downplayed the delay in the Spanish language portal, insisting that internal market research has shown that 70 percent of Latino Americans will apply on the English site and that most prefer the more personalized service available

through call centers and in-person assisters. So far, more than 41,000 Spanish language calls have been handled by call centers for federal marketplaces.

## STATES

### ***Individual consumers confused by mass cancellations of “junk” health plans***

Prominent insurers in several states sent out notices this week canceling limited-benefit policies for individual subscribers that will not comply with the Affordable Care Act (ACA) standards for “minimum essential coverage”.

A survey by Kaiser Health News found that Florida Blue is terminating 300,000 policies for nearly 80 percent of its individual policies, which in many cases were sold as temporary basic coverage after passage of the ACA. (Consumers were not informed that the policies would not comply with the ACA and be canceled before 2014.) In addition, Kaiser Permanente in California will drop about 50 percent of its policies and Highmark in Pennsylvania will drop nearly 20 percent.

### ***Insurers in 30 states are offering both Medicaid managed care and marketplace coverage***

A new analysis released this week by Avalere Health shows insurers in 30 states will offer coverage in 2014 for both Medicaid managed care and the Affordable Care Act (ACA) marketplace, with multiple plan options offered in at least 22 of these states.

While Medicaid benefits will typically be broader than marketplace coverage (and include help with transportation costs as well as lower cost-sharing), a major benefit for consumers in these 30 states is that they will not have to switch insurer carriers, physician networks, or drug formularies whenever income fluctuations within a given year send them on or off of Medicaid. Avalere emphasizes that limiting such “churning” will likely improve health outcomes by minimizing disruptions in access to care.

#### Alaska

### ***Insurance Division does not support navigator licensure or registration***

The Division of Insurance is defending Affordable Care Act (ACA) navigators from attempts by Republican lawmakers to make it more difficult for them to facilitate enrollment in the new federal health insurance marketplace.

Alaska is one of 36 states that have defaulted to the federal marketplace. Governor Sean Parnell (R) made Alaska one of only two states to refuse federal grants to create a state-based marketplace and has opted-out of the ACA Medicaid expansion (see Update for Week of February 25<sup>th</sup>).

However, the Governor has not supported legislation that would require navigators to be licensed, registered, fingerprinted, or even subject to background checks. Health Care for America Now (HCAN) has identified at 12 other states that are imposing such additional requirements on navigators (see Update for Week of September 23<sup>rd</sup>), which Alaska lawmakers like House Finance budget subcommittee chairman Mark Neumann (R) support. However, Division director Brett Kolb informed lawmakers this week that licensure or registration would not provide any benefit and insisted that navigators in Alaska already have a “good understanding” of how federal regulations limit their role explaining the enrollment process to consumers and not recommending specific plans.

#### California

### ***Covered California will post quality ratings for marketplace plans in 2014***

The five-member board overseeing the Covered California health insurance marketplace voted this week to post quality ratings for health plans starting in January.

The marketplace had originally planned to post quality ratings for 2014, two years ahead of the deadline required by the Affordable Care Act (ACA). However, the Covered California executive director announced last summer that the ratings would be delayed until 2015 because the insurer data currently available was out of date and only included plans that differ significantly from non-marketplace plans. He feared that posting only limited information could confuse consumers.

However, three insurers (Kaiser Permanente, Sharp Health Plan, and Western Health Advantage) objected to the delay, insisting that "there has never been a compelling reason to deny [quality rating] information to consumers." They insisted that they should be able to compete on quality as well as price, and noted that five other states (Colorado, Connecticut, Maryland, Massachusetts, and Oregon) already provide quality ratings.

Some of the state's largest insurers (Blue Shield of California, Health Net and Anthem Blue Cross) favored delaying the ratings until comprehensive information was available, but the board ultimately decided that it would be "unfair" to give consumers information about price but not quality.

Covered California also re-released a provider directory for the web portal that was taken offline due to errors and slow performance (see Update for Week of October 14<sup>th</sup>). A separate function allowing visitors to search for providers by hospital or doctor group has not yet been re-launched.

#### Colorado

##### ***Congressman seeks federal waiver to alleviate high marketplace premiums in resort areas***

Although overall Affordable Care Act (ACA) marketplace premiums are below expectations, a lack of competition in rural regions that include Colorado's mountain resorts are forcing premiums so high that no consumers have enrolled. As a result, Rep. Jared Polis (D-CO) announced this week that he will be seeking a federal waiver exempting Colorado residents in areas like Summit County from the ACA penalties for not buying health insurance they can afford.

Monthly premiums in the Connect for Health Colorado marketplace largely mirror those outside the marketplace (see Update for Week of August 19<sup>th</sup>). However, they are up to three times higher in resort communities from Breckenridge to Vail and Aspen than any other parts of the state. For instance, a 40-year-old buying a mid-level silver plan in Greeley could pay as little as \$232 per month while that same person in the resort communities could pay as much as \$667 per month. For gold plans, monthly premiums can go up to \$1,404 in resort areas (see Update for Week of June 3<sup>rd</sup>).

Because of their large numbers of temporary workers, ski areas in Colorado have some of the highest uninsured rates in the nation (Summit County alone ranks 17<sup>th</sup> worst). In a region where these workers already pay 50 percent of their income for housing, premiums around \$700 per month are out of reach for a good majority of them.

In addition to the waiver, Rep. Polis is urging the Colorado Insurance Commissioner not to leave resort areas as part of a single rating region. For example, he recommends that Summit County be combined with Jefferson and Clear Creek counties in 2015, a rating region with greater insurer competition and lower premiums.

#### Connecticut

##### ***ACA marketplace requires fewest steps to compare plan options***

The AccessHealth CT marketplace created by Connecticut pursuant to the Affordable Care Act (ACA) received the best score this week from the HealthPocket consulting firm.

HealthPocket rated all of the state-based marketplaces on their ability to procedure a plan comparison on their web portal. It found that AccessHealth CT consumers could do so in only four steps, the lowest in the nation. Rhode Island consumers require six steps, while MNSure in Minnesota required 18 steps.

However, even 18 steps was a marked improvement from the 36 states being operated all or partly by the federal marketplace, where consumers were unable to access plan comparisons until last week and still require “nearly four times as many steps to produce a health plan comparison page” as most state marketplaces. The study did note that Hawaii and Oregon (see below) are still struggling to even provide any plan comparisons, while Maryland, Nevada, New York (see below), Washington D.C., and Vermont are not allowing consumers to anonymously compare plans.

According to AccessHealth CT officials, 3,847 consumers have already signed up for some type of coverage through the “one stop shopping” marketplace portal. Nearly half (1,897) enrolled in qualified health plans offered by one of the three marketplace carriers, with 1,125 of this amount qualifying for ACA premium tax credits. Another 1,857 were determined to qualify for Medicaid, while 93 qualified for the Children’s Health Insurance Plan (CHIP).

In the small business marketplace there were 11 applications representing 47 individuals who finished the application process.

About 51 percent of marketplace enrollees chose a medium silver-level plan, while 20 percent selected a lower-level bronze plan, 26 percent selected the highest gold plan (no marketplace carriers are offering platinum coverage), and three percent selected the limited catastrophic plans for young adults under age 30.

#### New York

#### ***New York leads the nation in ACA marketplace enrollment***

According to the Department of Health, nearly 174,000 New Yorkers have applied for health insurance through the New York State of Health marketplace the state created pursuant to the Affordable Care Act (ACA), or 30 percent of all marketplace applications nationwide. Of this amount, over 37,000 have fully enrolled.

State officials had previously declined to disclose how many had actually enrolled (see Update for Week of October 14<sup>th</sup>). Consistent with the experience in other states, the majority of new enrollees (over 23,700) qualified for Medicaid. The rest selected a private marketplace plan.

The New York Health Foundation estimates that New York has roughly one million residents that are currently eligible for Medicaid yet not enrolled.

Only a handful of other states have released enrollment figures. These include Washington, where 35,000 have enrolled, Kentucky with more than 26,000 enrollees, and Connecticut (see above) and Minnesota, which have nearly 4,000 enrolled. All are state-based marketplaces like New York.

As with the federal marketplace, the New York State of Health web portal was overwhelmed with more than 30 million hits in the first week of open enrollment and experienced long wait times and software glitches. However, as with other states, they have been better able to fix the initial problems (see Update for Week of October 7<sup>th</sup>). State officials still expect to enroll more than 1.1 million uninsured residents during the first three years.

#### Ohio

#### ***Controlling Board approves Governor’s request to expand Medicaid***

The state Controlling Board approved the request from Governor John Kasich (R) this week to accept \$2.56 billion in federal funds under the Affordable Care Act (ACA) and expand Medicaid on January 1<sup>st</sup>.

The panel voted 5-2 as Senator Chris Widener (R) and Rep. Ross McGregor (R) joined with the panel’s three Democrats. Even though House Speaker Bill Batchelder (R) had spearheaded the effort

last session to strip the Governor's Medicaid expansion out of the budget (see Update for Week of May 27<sup>th</sup>) and pledged a lawsuit to block the Controlling Board's appropriation (see Update for Week of October 14<sup>th</sup>), he named Rep. McGregor only hours before the vote to replace a "no" vote from a panel member that was challenging his speakership next session.

Barring a successful court challenge, the expansion is expected to add 275,000 Ohioans to the Medicaid rolls next year and bring in \$13 billion in federal aid to Ohio over the next seven years. It would make Ohio only the fourth state under full Republican control (after Arizona, Michigan, and North Dakota) with an approved ACA expansion, although Michigan is pursuing a private-sector alternative (see Update for Week of September 16<sup>th</sup>).

### Oregon

#### ***Online enrollment remains "effectively closed", despite success in adding residents to Medicaid***

Online enrollment in the CoverOregon health insurance marketplace created by the Affordable Care Act (ACA) remains "effectively closed" due to technology glitches and is likely not to begin operating until November 1<sup>st</sup>. However, the CoverOregon director stressed this week that consumers still can enroll in-person or through paper applications, which will be processed by hand starting this week.

CoverOregon had initially announced that both online and paper applications would not begin for the first two weeks after open enrollment for all ACA marketplaces started on October 1<sup>st</sup> (see Update for Week of September 23<sup>rd</sup>). However, the system still has high error rates when trying to determine eligibility for ACA premium tax credits and cost-sharing reductions. Despite the continued delay in online enrollment, consumers can currently view plan options and prices on the web portal.

The delay has been particularly perplexing for analysts, given that Oregon has received more exchange establishment grant funds from the Obama Administration than all but California and New York, and twice as much as neighboring Washington that already has 35,000 marketplace enrollees and another 27,000 new Medicaid enrollees.

Oregon's marketplace struggles are a dramatic contrast to their success in enrolling more than 56,000 uninsured residents in Medicaid, reducing the state's uninsured population by ten percent (see Update for Week of October 14<sup>th</sup>).

### Pennsylvania

#### ***Senate adopts resolution requiring specialty tier drug pricing study***

The Senate adopted a resolution this week that would direct the Legislative Budget and Finance Committee to study the impact of specialty tier prescription drug pricing upon access to care for Pennsylvanians. Since clearing the Public Health and Welfare Committee earlier this month (see Update for Week of September 30<sup>th</sup>), S.R. 70 was amended to require Budget and Finance to submit its report to the Senate by July 15, 2014 instead of January 30, 2014.

### Virginia

#### ***Commission weighs "private option", though Governor's race may decide Medicaid expansion***

Secretary of Health and Human Resources William Hazel, MD outlined a "private option" alternative this week to Virginia expanding Medicaid under the Affordable Care Act (ACA).

Arkansas recently received final federal approval to use ACA expansion funds to instead purchase private marketplace coverage for the newly-eligible Medicaid population (see Update for Week of September 23<sup>rd</sup>). The four states that remain undecided on participating in the expansion are all seeking federal approval for similar alternatives (see Update for Week of October 7<sup>th</sup>).

The “private option” advanced by Dr. Hazel follows a path recently outlined by Senate Finance Chairman Walter Stosch (R). It would use private brokers to enroll uninsured adults in private plans with commercial benefits at per capita rates that shift the risk of managing their care to insurers.

Hazel presented the option to the Medicaid Innovation and Reform Commission, which could vote as early as December on the proposal. Approval would require votes from three of the five members from the Senate, who generally favor it, and the House of Delegates, who do not. However, if Democratic candidate Terry McAuliffe wins the governorship next month as currently expected, he could choose to instead pursue a traditional ACA expansion.

Term-limited Governor Bob McDonnell (R) and the General Assembly created the Commission last year as part of a budget compromise that requires three phases of reforms to be accomplished as a precursor to accepting the \$23 billion in ACA funds slated for Virginia over the next ten years (see Update for Week of March 25<sup>th</sup>). The first phase of reforms that are already underway are expected to save Virginia \$118-127 million over the next two years (and twice that federal matching funds) through Medicaid managed care and Virginia’s approved dual-eligible demonstration under the ACA (see Update for Week of June 24<sup>th</sup>). The second phase of reforms would primarily increase cost-sharing for many Medicaid enrollees.

#### Wisconsin

#### ***No Medicaid expansion, limited rate review blamed for high marketplace premiums***

A consumer advocacy group released a report this week blaming Wisconsin’s rejection of the Affordable Care Act (ACA) Medicaid expansion and lack of rate review for individual marketplace premiums that are 79-99 percent higher than neighboring Minnesota.

Despite having similar geographies, demographics, and underlying medical costs, ACA marketplace rates in Minnesota were the nation’s lowest (see Update for Week of September 30<sup>th</sup>) while Wisconsin’s among the highest. Citizen Action of Wisconsin noted that the two primary differences between the two state’s health insurance marketplaces were that Minnesota is using federal funds to expand Medicaid and reduced premiums by 37 percent by challenging premium hikes that are not reflective of medical cost increases. By contrast, Wisconsin Governor Scott Walker (R) refused federal funds for both ACA initiatives, even though his state has very lax review of health plan premiums.

According to the report, the average Wisconsinite will pay \$1,800 more per year to purchase ACA marketplace coverage, before premium tax credits are factored in. In some areas like LaCrosse, the average cost is 136 percent higher than Minnesota (Milwaukee is 112 percent higher while Madison is 67 percent higher).

The report notes that the rejection of the Medicaid expansion alone added about 92,000 low-income and uninsured Wisconsinites to the ACA marketplace.