



Radiation Oncology

POLICY UPDATE

FEBRUARY 2011

2011 State of the Union Address

President Obama gave the annual [State of the Union Address](#) on January 25. His comments on health care were generally related to the health reform bill and the deficit. While President Obama indicated a willingness to change certain aspects of the health reform bill (e.g. a provision requiring small businesses to file 1099 Forms for purchases over \$600), he also stated that other areas of the bill were non-negotiable (e.g. limits on insurer's ability to deny coverage). In addition, President Obama stated a willingness to work with Republicans on medical malpractice reform. With respect to the deficit, President Obama proposed to "freeze annual domestic spending for the next five years" and to further reducing health care costs in programs like Medicare and Medicaid.

Federal Judge Strikes Down Entire Health Care Law

On January 31, a federal judge in Florida struck down the entire Affordable Care Act, ruling its requirement that Americans obtain health insurance is unconstitutional and cannot be separated from the rest of the statute due to a lack of a severability clause. The decision by U.S. District Court judge Roger Vinson is a more sweeping ruling than the one out of Virginia that also found the insurance mandate invalid.

In a [78-page opinion](#), Vinson compared the law to "a finely crafted watch" in which "one essential piece is defective and must be removed." As a result, he wrote, "It cannot function as originally designed. There are simply too many moving parts in the Act and too many provisions dependent (directly or indirectly) on the individual mandate ... for me to try and dissect out ... the able-to-stand-alone from the unable-to-stand alone."

House Votes to Repeal Health Care Reform Law

On January 19, the U.S. House of Representatives [voted](#) to repeal the health care reform bill passed last March. The final vote tally on H.R. 2 was 245 - 189, with unanimous Republican support and the votes of three Democrats. The legislation is unlikely to pass the Senate.

On January 20, the House passed [instructions](#) to the relevant authorizing committees to "report legislation replacing the job-killing health care law." Among other things, the committees are instructed to focus on issues such as medical liability reform. The House also accepted an [amendment](#) offered by Rep. Jim Matheson (D-UT) to "instruct the Committee of jurisdiction to include a permanent fix to the Medicare physician payment formula."



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Medical Liability Reform Introduced in the House

On January 24, the Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act (H.R. 5) was introduced in the House. The medical liability reform legislation was introduced by Reps. Phil Gingrey, M.D. (R-GA), Lamar Smith (R-TX), and David Scott (D-GA). Among other things, this legislation would allow for unlimited compensation for economic damages, but place a \$250,000 cap on non-economic damages. Under the bill, punitive damages would be allowed “only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.

House Passes Budget Resolution Reducing Non-Security Spending

On January 25, the House passed [H. Res 38](#) by a vote of 256 – 165. This resolution requires Budget Chairman Paul Ryan (R-Wis), to provide a “non-security” fiscal year 2011 spending allocation to the Appropriations Committee at fiscal year 2008 levels or less.

MedPAC Recommends 1 Percent Increase in Medicare Payments for Physicians

On January 13, the Medicare Payment Advisory Commission (MedPAC) voted to recommend to Congress that payment rates under the physician fee schedule should grow by one percent. While the MedPAC [presentation](#) noted mounting frustration from providers over temporary “doc fixes,” MedPAC also noted that most Medicare beneficiaries are able to get timely appointments and find a new physician when they need one. MedPAC’s latest estimate is that payments to doctors next year under Medicare’s physician payment formula will fall 25 percent unless Congress intervenes. MedPAC will formally present the recommendations in a March report to Congress.

IOM Begins Efforts on Defining Essential Health Benefits

At the request of the Secretary of HHS, the Institute of Medicine (IOM) is undertaking a study that will make recommendations on the criteria and methods for determining and updating the “essential health benefits” package qualified health plans must offer under the Affordable Care Act. The IOM held its first meeting on January 12-14 to discuss the issue. Several stakeholder organizations testified before the IOM, including the National Coalition for Cancer Survivorship (NCCS). Among other things, the NCCS [testimony](#) called for essential health benefits to be defined to include cancer care planning and coordination, access to off-label uses of cancer drugs, and coverage of routine patient care costs for patients enrolled in clinical trials.

White House Re-Nominates Berwick to Head CMS

On January 26, the White House [re-nominated](#) Dr. Donald Berwick to head the Center for Medicare and Medicaid Services (CMS). Obama named Berwick CMS administrator in July 2010 through a recess appointment, which only allows him to serve through the end of 2011.



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Dr. Berwick will now face a hearing in the Senate Finance Committee and require confirmation by the full Senate. As CMS administrator, Berwick has oversight of the Medicare and Medicaid programs. He also was recently given authority over the Center for Consumer Information and Insurance Oversight, which will implement provisions of the health reform law relating to Health Insurance Exchanges

Blumenthal Letter on EHR Adoption Rates

In a [January 13, letter](#), Dr. David Blumenthal, the National Coordinator for Health Information Technology, noted that a National Center for Health Statistics survey found that 41 percent of office-based physicians are currently planning to achieve meaningful use of EHRs and apply for incentive payments. He further noted that acting early (in Stage 1) means obtaining maximum funding through the [Medicare and Medicaid EHR Incentive Programs](#). Physicians can qualify for incentive payments totaling as much as \$44,000 through Medicare or \$63,750 through Medicaid.

GAO Announces 15 Panelists for Comparative Effectiveness Institute

On January 21, the U.S. Government Accountability Office (GAO), [announced the appointment of 15 members](#) to the Methodology Committee of the Patient-Centered Outcomes Research Institute (PCORI). PCORI was created in the Affordable Care Act to serve as a centralized source of funding for comparative effectiveness studies.

CMS Holds PQRS and eRx Open Forums

CMS held a series of conference calls on the 2011 Physician Quality Reporting System (PQRS, formally known as PQRI) and eRx Incentive Program last month.

- [The January 25th presentation](#) discussed the basics of the PQRS and eRx incentive program and the criteria of the Maintenance of Certification Program Incentive.
- [The January 27th presentation](#) discussed the eRx payment adjustment, CMS incentive program differences, and EHR submission and incentive programs.

During the calls, CMS also announced that eligible professionals using a registry to submit their 2010 quality report and/or eRx results must use their individual NPI and not the group NPI. CMS further emphasized that all eligible professionals need to use the 2011 measure specifications. The measures can be found [here](#).

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