



# Radiation Oncology

**POLICY UPDATE**

NOVEMBER 2010

## Election Analysis

The U.S. House Republicans gained at least 60 seats on Tuesday giving them a sizeable majority. With the bulk of the new members running on the promise of repealing President Obama's health care law, expect one of the first votes of the next Congress to do just that.

One of the first action items for Republicans will be deciding on party leadership and committee chairmen. In the health care arena, eyes will be on who heads the Energy and Commerce Committee which maintains primary jurisdiction over health care legislation. Potential candidates for Chairman are Fred Upton (R-MI), Cliff Stearns (R-FL), John Shimkus (R-IL) and even Former Chairman Joe Barton (R-TX) who would need a waiver given he has held the committee's top spot for six years.

Whoever ends up wielding the gavel for Energy and Commerce will likely attempt to repeal last year's health care law in its entirety. Given the unlikely scenario of President Obama signing a bill repealing his signature accomplishment, the committee would next focus on repealing certain provisions of the law. One can reasonably anticipate House Republicans seeking changes to medical malpractice laws and language allowing insurers to sell their products across state lines, bypassing state coverage mandates.

It is also believed House Republicans will try to reverse some of the law's cuts in Medicare, particularly cuts in payments to Medicare Advantage plans run by private insurers, though they will have to find offsets for the cost of such changes.

Some areas of the law where we don't anticipate attempted repeal include: insurance laws that took effect on Sept. 23, such as banning insurers from: rescinding patients' coverage after they get sick, placing lifetime limits on the dollar value of coverage; restricting annual limits on the dollar value of coverage; and denying children coverage based on pre-existing medical conditions.

The other House committee with substantive jurisdiction over health care is the Ways and Means Committee. Rep. Dave Camp (R-MI) is currently the ranking Republican on the Committee and should become the next Chairman. Rep. Camp was a vocal opponent of the 2010 health care bill and may work to repeal or defund portions of the law.

Perhaps the area where the GOP House takeover will most affect the health care law is through greater oversight and the appropriations process. There is a large bloc of incoming freshman who will seek to defund portions of the law through the appropriations process which annually doles out money to federal agencies. The frontrunners for heading the Appropriations Committee are Rep. Jerry Lewis (R-CA) and Rep. Hal Rodgers (R-KY).



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The U.S. Senate - Given the Democrats retained control of the Senate, any legislation coming out of the House attempting to dramatically alter the health care law will likely die in the Senate. Republicans have picked up six new seats in the Senate but still lack the majority in the Senate and are well short of the 60 votes needed to overcome a filibuster. This means any health care changes coming out of the Senate will be smaller in scope and still have to be signed into law by the President.

State Level - We anticipate action on the health care law at the state level as well. Nine states will have a Republican Governor taking over a state previously in Democratic control. While state leaders cannot block implementation of the law, we can assume some of these new governors along with gains made at the state legislative level will seek greater discretion over the implementation of the newly created health insurance exchanges.

### **Rep. Towns Introduces Prostate Bill**

Rep. Edolphus Towns (D-NY) introduced a bill aimed at reducing disparities and improving access to cost efficient diagnosis and treatment of prostate cancer. Among other things, [H.R. 6389](#), the PROSTATE Act, seeks to establish a directive on clinically appropriate prostate cancer imaging and accelerate real-time sharing of the latest research. We do not expect the bill to advance this year.

### **Sen. Boxer Legislation Calls for EPA Investigation into cancer and Disease Clusters**

Senator Boxer (D-CA) introduced [legislation](#) (S. 3861, Strengthening Protections for Children and Communities From Disease Clusters Act) calling on the Environmental Protection Agency to investigate and address cancer and disease clusters in communities. The bill would authorize partnerships among federal agencies, states and academic institutes to investigate and address disease clusters, strengthen interagency coordination and accountability, and increase assistance to communities impacted by the clusters.

### **Rep. Markey Urges NRC to Revise Regulations on Discharging Radiation Patients**

Rep. Edward Markey (D-MA) called on the Nuclear Regulatory Commission (NRC) to immediately revise regulations on discharging patients treated with radiation. Markey asked NRC Chairman Greg Jaczko to discuss changing its policy during its October 20 and 21 meetings on the group's medical policy regulations. In 1997, the NRC eased rules requiring that patients treated with radioactive materials for cancers and other diseases be hospitalized for several days, in favor of allowing physicians to assess cases individually.

In an October 20 [letter to Jaczko](#), Markey said the group should immediately revise its regulations to require mandatory hospitalization for patients treated with radioiodine above internationally accepted limits. Markey also asked the NRC to (1) take action against medical workers who fail to provide patients with guidance on places and people to avoid, and (2) enhance its oversight of medical practitioners and states to respond to potential violations.



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### **Berwick Says CMS Innovation Center Can Be ‘Jewel in the Crown’ of Reform Law**

CMS Administrator Berwick spoke at a forum sponsored by the Brookings Institute on October 18th and said the provision in the health reform law establishing a Center for Medicare and Medicaid Innovation (CMI) could be the “jewel in the crown” of the reform law.

In conjunction with the forum, Brookings released a [paper](#) “Accelerating Health Care Innovation to Improve Quality and Lower Costs: The Role of the Center for Medicare and Medicaid Innovation.”

The paper provides a series of recommendations for CMI to incorporate such as:

- CMI should allow projects to emerge “from the ground up,” but the paper also said CMI might consider prioritizing payment and delivery models “to demonstrate proof of concept rather than seeding untested ideas.”
- CMS should establish a core set of metrics in advance for evaluating the projects, rather than develop separate data points for each one.
- Projects should be evaluated using real-time data that would allow them to be altered as the pilot progresses.

### **CMS Posts Transcript to MedCAC Meeting on Radiation Therapy**

On October 20, CMS posted the [transcript](#) for the Medicare Evidence Development and Coverage Committee’s (MEDCAC) April 21 hearing to consider the evidence on the impact of radiotherapy for the treatment of localized prostate cancer on health outcomes. This CMS [link](#) provides a history of the actions taken by MEDCAC on the radiotherapy issue including the minutes, presentations, scoring, and questions asked at the April 21, hearing.

### **CMS Holds Open Door Forum on PQRI and eRx Incentive Programs**

On October 19, CMS hosted a forum on the PQRI and Electronic Prescribing (eRx) Incentive Program updates. The focus of this forum was to discuss the 2009 PQRI and eRx Incentive Program payment distribution and provide instructions for understanding these payments as well as discussing participation in the 2010 eRx Incentive Program.

Distribution of 2009 Incentive payments for PQRI and eRx will be available this fall with eRx payments targeted between late September - late October and PQRI payments between late October - mid-November. The following links are a guide to how the 2009 [eRx](#) and [PQRI](#) incentive payments were calculated.

For any questions on the status of your PQRI or eRx incentive payments contact CMS at 866-288-8912 or [qnetsupport@sdps.org](mailto:qnetsupport@sdps.org).

### **CMS Holds Physician Compare Web Site Town Hall**

On October 27, CMS held a town hall to provide [background](#) on the Physician Compare Web Site and solicit input from stakeholders. The ACA requires CMS to establish by January 1, 2011, a Web Site proposed to be known as “Physician Compare.” This web site is required





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to contain information on physicians enrolled in the Medicare program. The backgrounder includes information on the timeline for the website, reporting measures and other areas where CMS is seeking input.

### **California Tightens Oversight of CT Scans**

In early October, California Governor Schwarzenegger signed a bill requiring hospitals and clinics to record radiation doses for CT scans and to report any overdoses to patients and their doctors. The new state law is in response to the overdosing of hundreds of patients who underwent brain scans for stroke in 2008 and 2009. A [New York Times](#) article provides coverage of the new state [law](#).

### **CMS-OIG-FTC Host Workshop on ACOs and Implications Regarding Antitrust and Fraud & Abuse Laws**

CMS, together with the Federal Trade Commission (FTC) and the HHS Office of the Inspector General (OIG), held a day-long workshop on October 5, 2010 to consider the establishment of Accountable Care Organizations (ACOs) and the potential implications with regard to antitrust, physician self-referral, antikickback and civil monetary penalty (CMP) laws.

The workshop consisted of three panel discussions -- two FTC panels and one HHS panel. Based on the day's discussion it appears the agencies intend to implement a waiver of one or more exceptions or safe harbors in order to allow for the legal operation of ACOs.

### **Authorized Testing and Certification Bodies Announce First Wave of Certified EHRs**

On October 1, the Certification Commission for Health Information Technology (CCHIT) and the Drummond Group, two of the three entities authorized by the Office of the National Coordinator for Health IT (ONC) to test and certify EHRs for use in the HITECH Act's EHR incentive program, announced the certification of EHR products capable of meeting some or all of CMS's Stage 1 meaningful use criteria. The third certifying body, InfoGard Laboratories, has not announced that it has certified any EHR products. A list of products certified by CCHIT and the Drummond Group is available at [ONC's certified products list](#), which is available by clicking [here](#).

### **MedPAC October Meeting**

On October 7-8, the Medicare Payment Advisory Commission (MedPAC) held its October meeting. Below are links to selected presentations from this two-day conference.

#### [Medicare's shared savings program for ACOs.](#)

This presentation discussed some of the challenges faced by ACOs, including the need for improved benchmarking formulas to better reflect levels of use and alternatives to the bonus-only ACO model.

- [Clarifying Medicare's authority to apply least costly alternative policies.](#) This presentation highlights Medicare's continued use of the LCA policy. Options for establishing a clear and transparent process for applying LCA policies are discussed.
- [The sustainable growth rate system: policy considerations.](#) This presentation provides a brief



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background on the SGR and discusses several policy issues that arise when examining adjustments and alternatives to the current payment approach.

- [Validating the physician fee schedule's time estimates](#). This presentation looks at options for CMS's validation of RVUs and implementation issues that accompany those options.
- [Issues related to risk adjusting payments for bundled services](#). This presentation explores variations in Medicare spending and important factors to consider in risk adjustment.

## **AHRQ Holds Effective Health Care Web Conference**

On October 12, the Agency for Healthcare, Research and Quality's (AHRQ) held a web conference focused on Integrating Comparative Effectiveness Research into Everyday Practice. AHRQ's Effective Health Care (EHC) Program conducts comparative effectiveness research and produces reports and plain-language guides to summarize findings for clinicians, patients, and consumers. Slide 21 of the conference [slides](#) lists cancer as one of the 14 priority conditions AHRQ has designated as a focus area for research.

## **Health Affairs Article Explores new Medicare Reimbursement Framework**

The attached article, which was recently published in Health Affairs, proposes a reimbursement framework that incorporates comparative effectiveness research to encourage Medicare to pay equally for services that provide "comparable" patient outcomes. The article examines how its proposed payment plan would have affected Medicare's coverage and reimbursement decisions concerning intensity-modulated radiation therapy in the early 2000s.

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