NOTEWORTHY

Debt Limit Approaches
Congressional leaders are feeling the pressure as the nation gets closer to reaching its debt limit, which the Treasury Department now says is expected to happen on November 5th. As if that were not enough, the recently passed government funding bill also runs out on December 11th.

SCOTUS Allows Pay Rule for Home Care to Take Effect as Scheduled
On October 6, Supreme Court Chief Justice John Roberts denied an emergency request to delay enforcement of a rule that would extend minimum wage and overtime pay protections to home care workers. While the rule is scheduled to take effect October 13, three home care industry trade groups have challenged part of the rule asking the court to delay implementation in order for justices to review whether to consider the groups’ case.

Chief Justice Roberts’ order offered no explanation of the denial. The denial does not reflect whether the court will decide to review the case if a full appeal is filed; however, one of the factors considered when deciding whether to grant emergency requests is whether the high court is likely to hear the case, according to "SCOTUSblog".

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House Leadership Elections Postponed

Outgoing House Speaker John Boehner announced this week that he is delaying the House GOP vote on Majority Leader and Majority Whip until after his replacement is sworn in on October 29.

Conservatives in the House had been pushing for the extra time hoping to find a candidate that better represents their agenda. Representatives Steve Scalise of
Louisiana and Dr. Tom Price of Georgia are the only two seeking the position at this point. The internal election of a new Speaker is expected to go on as planned on October 8. The vote is done by secret ballot during a closed door meeting of the House Republican Conference.

Current Majority Leader, Representative Kevin McCarthy, is still considered the favorite. However, this weekend Utah Representative Jason Chaffetzi, who serves on the House Oversight and Government Reform Committee, announced that he was running for Speaker as well. He told various media outlets that Representative McCarthy does not have the necessary votes to win when the entire House votes for Speaker on October 29. Representative Daniel Webster of Florida is the only other candidate.

**President Signs Small Business Bill - HR 719**

On October 7, President Obama signed into law legislation that would repeal the Affordable Care Act's (ACAs) small group market expansion, while allowing states to continue it if they choose. The Senate passed the legislation by voice vote last week following a similar move by the House. The Protecting Affordable Coverage for Employees, or PACE, Act will be a significant bipartisan change to the ACA enacted this year amid ongoing partisan turmoil over health care.

**The Exchange Inclusion for a Healthy America Act of 2015 - HR 3659**

Representative Luis Gutiérrez (D-IL) on September 30, introduced legislation that would allow undocumented immigrants to purchase health plans through the Affordable Care Act's (ACA's) exchanges. The bill, the Exchange Inclusion for a Healthy America Act of 2015, would repeal provisions of the ACA that require individuals to be "lawfully present" in the U.S. to purchase coverage through the law's insurance exchanges. According to Congressman Gutierrez's press release, undocumented immigrants would bring "younger, healthier workers" to the exchanges; reduce uncompensated care costs; further decrease the number of uninsured; and ultimately make undocumented immigrants "eligible for subsidies if and when they file taxes."

HR 3659 has been referred to both the House Energy and Commerce Committee and the Ways and Means Committee. To date, this bill has one co-sponsor and no companion bill in the Senate.
Improvements Regardless of Incentives

Quality-based payments to hospitals under a Medicare incentive program that ties bonuses and penalties to performance has not driven improvements in care during its first three years, according to a Government Accountability Office (GAO) report released last week. Medicare's Hospital Value-Based Purchasing (HVBP) Program was established under the Affordable Care Act (ACA). This year, the program paid bonuses to 1,700 hospitals, while it reduced payments for 1,360 hospitals. However, the GAO report notes that while hospitals continued to improve quality of care, the improvements did not increase in relation to the program's financial incentives.

While the payments to a majority of the nation's hospitals have been affected each year, the audit found the financial effect has been minimal. Most hospitals saw their Medicare payments increase or drop by less than half a percentage point. In the fiscal year that ended September 30, 74 percent of hospitals fell within that range, with a median bonus of $39,000 and a median penalty of $56,000, according to the analysis.

According to the report, safety-net hospitals, serving more poor patients, fared worse than hospitals overall, but that difference has decreased over the life of the program. Hospitals that are financially more stable tended to do better than other hospitals, the report found. Those with a net income margin more than 5 percent received average bonuses of 0.23 percent, while hospitals basically breaking even financially on average did not earn any extra payments.

Women's Public Health and Safety Act, HR 3495

On September 29, the House of Representatives approved HR 3495, the Women's Public Health and Safety Act, authored by Representative Sean Duffy (R-WI). This bill, which is an anti-abortion bill, would provide states with more flexibility so that a state is able to choose to only include in its Medicaid program health care providers who do not perform, or participate in the performance of elective abortions. HR 3495 was approved by a vote of 236-193.

The unintended consequences of this passage may give states the right to exclude providers of choice from more than just abortions.
Bipartisan House Bill Would Allow 30-Year Scores to Show Savings from Preventive Health Care HR 2663/S 1422

Representatives Michael Burgess (R-TX) and Diana DeGette (D-CO) have introduced legislation, the Preventive Health Savings Act, that would allow the Congressional Budget Office (CBO) to estimate the budget impact of legislation 30 years out, instead of the current 10-year scoring window. Lawmakers commonly complain that policies aimed at keeping patients with chronic conditions out of the hospital often appear to increase spending when most assume they eventually save the government money.

Nearly 80 health care organizations praised the bill. They said the legislation is necessary because "research has demonstrated that certain expenditures for preventive medicine generate savings when considered in the long term, but those cost savings may not be apparent when assessing only the first ten years -- those in the 'scoring' window," according to a letter from the organizations.

HR 2663 has 96 co-signers as of this writing and has been referred to the House Budget Committee. Senate Bill 1422 has 7 co-signers and has been referred to the Senate Budget Committee.

CMS to Pay Only 12.6% of Claims for 2014 Risk Corridors Program

On October 5, the Centers for Medicare & Medicaid Services (CMS) announced the Risk Corridors Program will pay only 12.6% of 2014 claims requested by insurers. The program collected about $362 million in charges for 2014 and received $2.87 billion in payment requests; therefore, the remaining 2014 claims will be paid out of 2015 collections, or if necessary, 2016 collections, the Agency said. The Agency went on to note that if the Program incurs another shortfall in 2016, the Department of Health and Human Services (HHS) will consider "other sources of funding for risk corridors payments, subject to the availability of appropriations." The first year of the three-year program was 2014, which charges Qualified Health Plans (QHP) with healthier enrollees in the Health Insurance Marketplace to help offset costs for QHPs with sicker consumers in that state.

CMS Releases Electronic Health Records Final Rule

The Centers for Medicare and Medicaid Services (CMS) released its final rules on addressing the Electronic Health Record Incentive Program-Stage 3 and

The rulemaking modifies and slows the implementation of the Stage 3 rule as it was proposed in April. The Office of the National Coordinator (ONC) for Health Information Technology (HIT) also released a companion rule that finalizes a new 2015 Edition of Certification Criteria, including standards and implementation specifications for Certified EHR technology. Dr. Patrick Conway, MD, M.Sc., CMS Deputy Administrator for Innovation and Quality and Chief Medical Officer for CMS issued a statement saying that CMS had "simplified and increased flexibility" while eliminating unnecessary requirements for EHR implementation. He added that they will be seeking additional public comments and plan for active engagement of stakeholders to improve these programs in the future. The following are some of the new rules pertinent to providers:

- In 2015, providers need to report on their use of EHRs for any continuous 90 days within Calendar Year 2015 (or within the period October 1, 2014 - December 31, 2015 for hospitals) by February 29, 2016. This may be extended to the end of March if providers need more time.
- For 2016 and 2017 for both Medicare and Medicaid providers (and 2018 for Medicaid providers), providers that are new to the EHR Incentive Programs need to have additional flexibility and can report on any 90 days.
- Health care providers are actively working to improve the way they deliver care by better using technology today, and change takes time, so most of the changes are not required until 2018, allowing time to plan. For providers who are ready to move forward, they can transition to the next phase in 2017.
- For Medicare providers experiencing difficulty, CMS encourages applying for hardship exceptions, which are reviewed on a case-by-case basis. For example, providers switching EHR vendors or who have other technology difficulties may be eligible for a hardship exception.
- The rule eases the Stage 2 requirement that hospitals implement electronic prescribing for hospital discharges (requirement effectively applies in 2017, instead of 2016, as proposed).

To read the CMS Fact Sheet click here. For the complete Rule click here. For the certification rule click here.

ONC Releases Final Nationwide Roadmap to Interoperability

On October 6, the Office of the National Coordinator (ONC) for Health Information Technology (HIT) released its final Interoperability Roadmap at a joint meeting of the Health IT Policy and Standards committees. The document was the result of months of work and input for people throughout the private and public sectors.
Karen DeSalvo, National Coordinator for Health IT explained that the roadmap seeks to use interoperable HIT to enable the healthcare industry's transition from the current fee-for-service model to a value-based model.

"If we're going to change that business and care model, we're going to need an information model for it," DeSalvo said during a press conference. "In order to be able to understand the quality of care delivered for an individual and for populations, we need to have that data available."

The document lays out a phased timeline with corresponding goals for achieving the interoperable exchange of electronic health information:

- 2015-2017: Send, receive, find and use priority data domains to improve health care quality and outcomes.
- 2018-2020: Expand data sources and users in the interoperable health IT ecosystem to improve health and lower cost.
- 2021-2024: Achieve nationwide interoperability to enable a learning health system, with the person at the center of a system that can continuously improve care, public health, and science through real-time data access.

Click [here](#) to read the report.

Health Care Issues on the Docket as Supreme Court Opens 2015 Term

The U.S. Supreme Court opened its 2015 term and announced the Justices will hear several cases that will have effects on the health care industry.

Gobeille v. Liberty Mutual Insurance Company involves patient records. The Court will decide whether or not the state (in this case Vermont) can collect all-payer claims data for the stated purpose of improving patient care and the delivery system. Supporters of all-payer claims databases assert that they allow states and other stakeholders to detect trends in health care, and adjust policies in order to get the best results for patients. Supporters, which include groups like the American Hospital Association, have filed briefs with the Court explaining that the information in the databases will be privacy-protected under HIPAA regulations.

Private health insurers and self-funded employer plans, like the ones offered at Liberty Mutual, believe this data collection to be an infringement on the Employee Retirement Income Security Act (ERISA). Some also believe that all-payer claims data collection poses a threat to health data security.
Cases against several portions of the ACA dealing with contraception could also be heard by Justices. Many faith-affiliated charities, colleges and hospitals that oppose some or all contraception are battling the Obama administration over rules that allow them to opt out of covering the contraceptives for women that are among a range of preventive services required to be in health plans at no extra cost. The religious-oriented nonprofit groups say that recent changes by the administration do not go far enough because they remain complicit in providing government-approved contraceptives to women covered by their plans, though the groups are not financially responsible.

STATE

California

**Governor Signs "Right to Die" Bill**

On October 5, Governor Jerry Brown signed AB X2-15, the End of Life Option Act, into law, which supporters say could carry influence in the country due to the state's sheer size. This legislation allows a "qualified" adult to request and be prescribed an aid-in-dying drug if specified conditions are met. Because AB X2-15 was enacted during a special session of the legislature, the usual rules regarding its effective date do not apply. Instead, it will become effective 90 days after the special session ends; however, legislative leaders have not decided when that will be. It will be sometime between January 2016 and November 2016.

According to the Death with Dignity National Center, which advocates for such laws, 25 state legislatures and the District of Columbia considered "right to die" bills during the 2015 legislative session, but only California's took hold this year. California is now the fifth state to authorize the practice, joining Oregon, Montana, Vermont and Washington.