

## American Nephrology Nurses Association

Weekly Capitol Hill Update - Tuesday, October 25, 2016

### Congressional Schedule

#### House and Senate

- Not in session. The House will return on November 14th; the Senate will return on November 15th.

#### Legislative

- ***Week Ahead: Moment of Truth for Premiums.*** "It's the final countdown. The Obama administration is making its final push this week before the Obamacare marketplaces open for business on November 1. That date will also mark the deadline for the remaining states that have not yet made public their rate hikes for next year. Already, states including Alabama, Delaware, Hawaii, Kansas, Mississippi and Texas have announced increases of 30 percent or more. For some customers, the increases will be more staggering: the market leader in Arizona, Illinois, Montana, Oklahoma, Pennsylvania and Tennessee will all increase rates by 50 percent or more. President Obama sought to calm fears about those increases in his big healthcare speech last Thursday, trying to downplay the "negative the headlines" being seen across the country. He blamed insurers for setting their prices "too low at the outset" as well as GOP leaders who have been "hostile" to enrollment efforts. This week, the speech to watch will be HealthCare.gov CEO Kevin Counihan at Wednesday's webinar on the future of the exchanges. He'll speak alongside insurer representatives like Florida Blue, Horizon Blue Cross Blue Shield of New Jersey and BlueCross BlueShield of Tennessee - which have all seen vastly different results under Obamacare."
  - To read more: <http://thehill.com/policy/healthcare/302212-week-ahead-moment-of-truth-for-premiums>
- ***Payers Push Congress to Expand Medicare Telemedicine.*** "Eleven of the nation's largest commercial plans offer to share their data and experience on cost-savings and improved access to care with the Congressional Budget Office (CBO), as Congress crafts legislation to expand telemedicine within Medicare. Commercial health insurance companies are offering to share their data on the value of telemedicine to federal actuaries who are estimating the cost of expanding remote coverage under Medicare. "We view telemedicine as an important tool in increasing consumer access to high quality, affordable healthcare, improving patient satisfaction and reducing costs" 11 commercial

payers said in a letter this week to Congressional Budget Office Director Keith Hall. "We believe our experience in the commercial market can inform estimates of the impact of policy changes in Medicare." Telemedicine in Medicare is reimbursable only on under a narrow set of circumstances, but Congress is examining ways to expand it. Any legislation to expand Medicare telemedicine that comes with a price tag attached will require scoring by the CBO, which has limited experience in estimating the value and cost of telemedicine because of the federal government's limited exposure. Because of that, the commercial payers say their data could provide a clearer picture of the effects of telemedicine on access to care, health outcomes and budgetary impacts."

- To read more: <http://www.healthleadersmedia.com/health-plans/payers-push-congress-expand-medicare-telemedicine#>
- ***Sanders Presses Drug Company to Explain Price Hike For Leukemia Drug.*** "Sen. Bernie Sanders (I-VT) and Rep. Elijah Cummings (D-MD) are pressing a drug company to explain a sharp price increase to its drug to treat leukemia. The lawmakers sent a letter to Ariad Pharmaceuticals questioning an increase in the price of the leukemia treatment Iclusig from \$115,000 a year to \$199,000 a year. The lawmakers say that the company also cut the number of doses in a package while keeping the price the same, effectively increasing the cost. "These outrageous sales tactics indicate that ARIAD is more concerned with its profit than with its patients," the lawmakers wrote. Sanders made attacking pharmaceutical companies a central part of his presidential campaign this year, and he has been joined by Cummings, the top Democrat on the House Oversight Committee, in previous efforts as well. Last week, a tweet from Sanders about Ariad's pricing sent the company's stock plummeting 15 percent. Drug pricing in general has been growing as an issue, with outrage in both parties over the increase in price for EpiPens, for example. Sanders and Cummings are requesting documents from the company on its revenue and pricing."
  - Read more here: <http://thehill.com/policy/healthcare/302022-sanders-presses-drug-company-for-documents-on-price-hike>
- ***VA to Congress: Save the Veterans Choice Act.*** "Veterans struggling to access healthcare services should continue to have the option of seeking care from private providers, but total privatization would be a mistake, said several panelists at a congressional briefing hosted by the Alliance for Health Reform and sponsored by Ascension Health, a faith-based, nonprofit healthcare organization. The *Veterans Choice Act*, enacted in August 2014, allows veterans living more than 40 miles from a VA facility -- or veterans who have been waiting for more than 30 days -- to visit private doctors. There are additional exceptions in the eligibility requirements for severe weather conditions and other barriers to care, such as mountains and rivers. The law, which is set to expire in August 2017, was put in place at a time of crisis and therefore is not perfect, said Baligh Yehia, MD, MSc, MPP, deputy undersecretary for health for the Veterans Health Administration. However, he sees no reason to scrap it and start fresh: "We have to evolve this program. We've invested a lot of infrastructure. Our partners have invested a lot of infrastructure. We've learned a lot," Yehia said."
  - Read more here: [http://www.medpagetoday.com/PublicHealthPolicy/MilitaryMedicine/60988?xid=nl\\_mpt\\_DHE\\_2016-10-25&eun=g939522d0r&pos=13](http://www.medpagetoday.com/PublicHealthPolicy/MilitaryMedicine/60988?xid=nl_mpt_DHE_2016-10-25&eun=g939522d0r&pos=13)

## Regulatory Updates

- ***National Quality Forum's (NQF) Health and Well-Being Draft Report has been released for NQF Member and public comment.*** KCQA's measure, NQF 0226: *Influenza Immunization in the ESRD Population*, underwent maintenance endorsement review in this project. The NQF Standing Committee recommended the measure for continued endorsement (93% Yes, 7% No).
  - The comment deadline is November 22, 6 pm ET. The report and comment portal can be accessed at: [http://www.qualityforum.org/Health\\_and\\_Well-Being\\_2015-2017.aspx](http://www.qualityforum.org/Health_and_Well-Being_2015-2017.aspx)
  
- ***Centers for Medicare and Medicaid Services (CMS) Announces Additional Opportunities for Clinicians to Join Innovative Care Approaches Under the Quality Payment Program.*** CMS is announcing that it expects to re-open applications for new practices and payers in the Comprehensive Primary Care Plus (CPC+) model and new participants in the Next Generation Accountable Care Organization (ACO) model for the 2018 performance year. In addition, CMS is announcing that the Innovation Center's Oncology Care Model with two-sided risk will now be available in 2017, which will qualify the model as an Advanced APM beginning in the 2017 performance year. In 2017, under the Quality Payment Program, clinicians may earn a 5 percent incentive payment through sufficient participation in the following Advanced APMs:
  - Comprehensive ESRD Care Model (Large Dialysis Organization (LDO) arrangement)
  - Comprehensive ESRD Care Model (non-LDO arrangement)
  - CPC+
  - Medicare Shared Savings Program ACOs - Track 2
  - Medicare Shared Savings Program ACOs - Track 3
  - Next Generation ACO Model
  - Oncology Care Model (two-sided risk arrangement)
  
- In 2018, we anticipate that clinicians may also earn the incentive payment through sufficient participation in the following models:
  - ACO Track 1+
  - New voluntary bundled payment model
  - Comprehensive Care for Joint Replacement Payment Model (Certified Electronic Health Record Technology (CEHRT) track)
  - Advancing Care Coordination through Episode Payment Models Track 1 (CEHRT track)
  
- These lists will continue to change and grow as more models are proposed and developed in partnership with the clinician community and the Physician-Focused Payment Model Technical Advisory Committee. "With these new opportunities, CMS expects that by the 2018 performance period, 25 percent of clinicians in the Quality Payment Program will earn incentive payments by being a part of these advanced models," said Dr. Patrick Conway, Deputy Administrator of CMS. "Thanks to MACRA and the Innovation Center, we're striving to see more Medicare patients benefit from better care when they visit

their doctor for a knee replacement, receive cancer treatment, or have a coordinated care team manage their complex conditions.”

- For more information, please visit: <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2016-Fact-sheets-items/2016-10-25.html>
- **Call for Input:** The Office of Disease Prevention and Health Promotion “proposes new measures and targets for adverse drug events (ADEs) from anticoagulants, diabetes agents, and opioid analgesics for the National Action Plan for Adverse Drug Event Prevention (ADE Action Plan). Based on input from the Federal Interagency Workgroups for Adverse Drug Events, six national measures and targets for the reduction of ADEs are being proposed. Each drug class highlighted in the ADE Action Plan (anticoagulants, diabetes agents, and opioid analgesics) includes a proposed inpatient and outpatient measure to track national progress in reduction of ADEs from these drug classes.”
  - HHS invites written comments on the proposed 2020 ADE targets. See: <https://health.gov/hcq/ade-measures.asp>.
  - For more information: <https://s3.amazonaws.com/public-inspection.federalregister.gov/2016-25424.pdf>
- **FDA Holds Public Meeting on Patient-Focused Drug Development for Patients Who Have Received an Organ Transplant.** “Last month, the FDA hosted its Patient-Focused Drug Development (PFDD) meeting for Patients Who Have Received an Organ Transplant. The FDA held the meeting to obtain patient perspectives on the impact of organ transplantation on daily life, patient views on receiving an organ transplant, and decision factors taken into account when selecting a regimen for organ transplantation management. Members of the KHI Patient and Family Partnership Council (PFPC) attended the meeting to contribute to the patient voice. KHI is very grateful that one of the 20 Patient-Focused Drug Development meetings hosted by the FDA, as required by the fifth authorization of the Prescription Drug User Fee Act, allowed patients who received an organ transplant to share their experience.”
  - A full recording of the meeting can be found on the FDA website here: <http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm495933.htm>
  - The FDA is also seeking input from patients who have experienced organ transplantation and other stakeholders through written comments to their online public docket. The comment period closes on November 27, 2016. More information can be found here: <https://www.regulations.gov/document?D=FDA-2016-N-1134-0001>
- **Nursing Homes Challenge New Rule Giving Residents Right To Sue.** “The nursing home industry is fighting back against new rules from the Obama administration that would give patients at federally funded facilities the right to settle disputes in court. Starting Nov. 28, nursing homes that accept Medicare and/or Medicaid funds will be banned from using pre-dispute arbitration clauses in resident contracts. The policy is being enacted under new rules from CMS. The arbitration language – often slipped into the

fine print – forces residents to settle disputes privately with an arbitrator rather than through the courts. In a lawsuit filed this week, the American Health Care Association (AHCA) and four other state and local health care groups argue CMS and the Department of Health and Human Services overstepped their authority in issuing the rule. “Neither the Medicare Act nor the Medicaid Act says anything at all about arbitration agreements or alternative dispute resolution – let alone authorizes HHS or CMS to prohibit use of those agreements entirely,” the group said in its complaint. AHCA said Congress has repeatedly rejected legislation to amend the Federal Arbitration Act and invalidate arbitration agreements between nursing home facilities and their residents.”

- To read more: <http://thehill.com/regulation/healthcare/302272-nursing-homes-challenge-new-rule-giving-residents-right-to-sue>
- **MACRA Final Rule Eases Pay Changes, Initially.** “In the months leading up to the final rule, clinicians and healthcare organizations spoke out forcefully about their concerns about MACRA. With the release of its 2,398-page final rule on Friday, CMS officials appear to have heard them. The feedback CMS received through scores of written and face-to-face comments can be summed up as a plea to make clinicians' and practices' transition to its new payment system as simple and flexible as possible, Acting Administrator Andy Slavitt said during a press briefing Friday. "Ultimately, we're not looking to transform the Medicare program in 2017," he continued. "We're looking to make a long-term program successful," Slavitt said.”
  - Read more here: <http://www.healthleadersmedia.com/physician-leaders/macra-final-rule-eases-pay-changes-initially#>

#### Articles of Interest

- **Organ Donation And The Opioid Epidemic: ‘An Unexpected Life-Saving Legacy’.** “On the final day of June 2015, Colin LePage rode waves of hope and despair. It started when LePage found his 30-year-old son, Chris, at home after an apparent overdose. Paramedics rushed Chris by helicopter to one of Boston’s flagship medical centers. Doctors revived Chris’s heart, but struggled to stabilize his temperature and blood pressure. At some point, a doctor or nurse mentioned to LePage that his son had agreed to be an organ donor... Chris’s liver is now working in the body of a 62-year-old pastor. His case is one among the more than nine-fold increase so far in donations from drug users across New England since 2010. So far this year, more than one in four, or 27 percent, of donations in New England are from people who died after a drug overdose. Nationally, that rate is 12 percent for the same time period. “It’s remarkable and it’s also tragic,” said Alexandra Glazier, president and CEO of the New England Organ Bank. “We see this tragedy of the opioid epidemic as having an unexpected life-saving legacy.” That legacy is much more dramatic in New England than across the U.S. as a whole, where organ donations from drug users are up from 341 in 2010 to 790 through Aug. 31 of this year.”
  - Read more here: <http://khn.org/news/organ-donation-and-the-opioid-epidemic-an-unexpected-life-saving-legacy/>

- ***DaVita Encouraged Some Low-Income Patients to Enroll in Commercial Plans.*** “The company engaged in a systematic campaign to encourage Medicaid patients to buy private insurance, telling them that their monthly premiums would be covered by the American Kidney Fund, Samantha Liss writes for the St. Louis Post-Dispatch. According to internal company emails, dialysis center employees were given information on target patients and tracked on their performance. The effort has raised concerns among major insurers, which have seen a spike in dialysis-related claims, and CMS, which warns that patients could suffer disruptions in care.”

  - Read more here: [http://www.stltoday.com/business/local/davita-encouraged-some-low-income-patients-to-enroll-in-commercial/article\\_ec5dc34e-ca4d-52e0-bc26-a3e56e1e2c85.html](http://www.stltoday.com/business/local/davita-encouraged-some-low-income-patients-to-enroll-in-commercial/article_ec5dc34e-ca4d-52e0-bc26-a3e56e1e2c85.html)
  
- ***As Medicaid loses stigma, election may cloud its future.*** “Medicaid, often stigmatized among government health care programs, is finally coming into its own. The federal-state program for low-income people has been scarcely debated in the turbulent presidential election, but it faces real consequences depending on who wins the White House in the Nov. 8 vote. Under President Barack Obama, Medicaid has expanded to cover more than 70 million people and shed much of the social disapproval from its earlier years as a welfare program. Two big industries - insurers and hospitals - have a declared stake in the future of the program, which costs more than \$530 billion a year. Insurers are leading a new "Modern Medicaid Alliance" to educate lawmakers about how the program has moved closer to private coverage. Medicaid has become "one of the primary mainstream health care programs," says former Rep. Henry Waxman, D-Calif., who for decades worked to expand benefits and coverage. Democratic presidential nominee Hillary Clinton would keep that going, trying to persuade 19 holdout states to accept the Medicaid expansion in Obama's health law. The expansion has added millions of low-income adults to the program, including many workers whose jobs don't offer health insurance. Clinton would have to address concerns among state lawmakers about growing costs.”

  - Read more here: [http://hosted.ap.org/dynamic/stories/U/US\\_CAMPAIGN\\_2016\\_FUTURE\\_OF\\_MEDICAID?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT&CTIME=2016-10-24-03-26-22](http://hosted.ap.org/dynamic/stories/U/US_CAMPAIGN_2016_FUTURE_OF_MEDICAID?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT&CTIME=2016-10-24-03-26-22)
  
- ***Quality Will Improve if We Pay For Dialysis Based on Time.*** “Why do American dialysis patients, living in the most scientifically advanced and prosperous country in the world, still face a double-digit risk of death? While mortality rates have declined among the prevalent population, 17% of patients still die each year, and half will die in less than four years. One out of five deaths will be from deliberate withdrawals from dialysis, according to U.S. Renal Data System data (2015). An important reason, perhaps the most important reason, lies among the unintended consequences of the basis for payment for dialysis providers determined by Medicare. The 1972 legislation created a dialysis Medicare benefit for ESRD patients of all ages, but also unintentionally created a major for-profit industry - now dominated by two firms providing more than two-thirds of all dialysis treatments in the United States. In turn, this industry has quite understandably responded to the business opportunity – now representing nearly 8% of the Medicare budget. Since Medicare is the dialysis industry’s primary customer, the

basis for payment adopted in 1984 and expanded in 2011 – fixed payment for a ‘bundle’ of services per treatment – inadvertently placed the interests of patients and their dialysis providers in direct conflict. The goal of provider companies under the current payment policy is quite straightforward – maximize number of treatments (and hence revenue) per dollar of invested capital, which requires the shortest and hence most intensive dialysis acceptable to its customer (often called ‘adequate’ dialysis). In contrast, John Agar, an Australian nephrologist, described ‘optimum’ dialysis this way.”

- Read more here: <http://www.nephrologynews.com/quality-will-improve-pay-dialysis-based-time/>
- ***California’s RN Wages Now Highest In The Nation, Federal Data Show.*** “Deborah Burger, co-president of the California Nurses Association, says that when she started her career as an intensive care unit nurse in the 1970s, a grocery clerk made more money than she did. Things have changed quite a bit since then, especially in California. Registered nurses in the Golden State earn \$100,000 a year on average, more than their counterparts anywhere else in the country, according to recently-released data from the Bureau of Labor Statistics. The average hourly wage for registered nurses in California is \$48.68 an hour, the 2015 data shows. California also employs the most registered nurses – 255,010 last year. The Los Angeles-Long Beach-Glendale metropolitan area alone employs 70,810 nurses. The only other region employing more than that is New York-Jersey City.”
  - To read the article: <http://khn.org/news/californias-rn-wages-now-highest-in-the-nation-federal-data-show/>
- ***Obama Confronts ‘Growing Pains’ of Healthcare Law.*** “President Obama recently offered a glowing picture of his healthcare law’s first six years, while blaming most of its flaws on Republicans who are still fighting his signature achievement. Speaking for 51 minutes in Miami, Obama took credit for reaching a record-low uninsured rate and slowing the growth of healthcare spending. “You’re getting better quality, even though you don’t know that Obamacare is doing it,” he said to a crowd of about 650 students at Miami Dade College. “Thanks, Obama,” he added to laughs. The president also acknowledged the “growing pains” of the law, such as double-digit premium hikes and dwindling competition in some states but said such issues could be fixed by the next Congress. Obama’s speech – likely his last to focus squarely on healthcare – comes at a crucial time for the Patient Protection and Affordable Care Act (ACA). There are less than two weeks from the start of open enrollment for 2017, which is being closely watched by health insurance companies as they decide whether to stand by Obamacare. The White House is also working to drive up support for its signature domestic achievement before an election that will decide the law’s survival, playing up its benefits to anyone with health insurance in the U.S. – not just the exchanges.”
  - To read more: <http://thehill.com/policy/healthcare/302073-obama-confronts-growing-pains-of-healthcare-law>