

in the news

## Health Policy Monitor



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## Health Reform and Related Health Policy News

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*An executive summary of political, legal and regulatory issues that may impact your business, prepared by Polsinelli Health Care legal and Public Policy professionals.*

## Top News

## Deal to Raise Debt Ceiling, End Shutdown Yields No Major Changes to Health Care Law

Congress passed legislation on October 16 to end the shutdown that began October 1 and raise the nation's debt ceiling as part of a last-minute deal to avoid a default by the federal government. The measure, which easily passed both the House and Senate, will provide funding for the federal government through January 15 and raise the debt ceiling through February 7.

While the government shutdown was originally designed to defund or delay the Affordable Care Act, the legislation included only one

minor change to the President's signature health care law – the addition of a requirement that the government verify the income of individuals who apply to receive federal subsidies to purchase health insurance. Other ACA-related measures proposed by Republicans, such as a delay of the law's individual mandate and a repeal of the tax on medical device manufacturers, were left out of the bill that ultimately passed both chambers of Congress and was signed into law by the President in the early hours of October 17.

In light of Republicans' lack of success in using the government shutdown and possible government default to derail the ACA, and the political

beating that the party has taken for the tactic, a number of Congressional Republicans have indicated that they will not use the threat of government shutdown or default again to extract changes to the ACA. For example, in a [story](#) published by *The Hill*, Senator Mitch McConnell (R-KY.), the Republican leader of the Senate, indicated that shutting down the government will no longer be used as part of the Republicans' strategy to repeal the ACA.

Another component of the October 16 deal could lead to other health-related changes, however. The legislation requires the creation of a 29-member bipartisan panel to negotiate the FY 2014 budget by December 13. As noted in a recent *Kaiser Health News* [story](#), these budget negotiations are likely to include discussion of a variety of changes to Medicare aimed at saving the government money.

### Problems with HealthCare.gov Website Continue; HHS Working to Fix Issues

Fallout has continued over the much-publicized problems with federal government's rollout of the HealthCare.gov website. The HealthCare.gov website facilitates enrollment in the health insurance exchanges that the federal government operates in the 36 states that opted not to develop a state-based exchange. The widespread technical glitches related to the federally-facilitated health insurance exchange initially left many users unable to even create an account, much less shop for or purchase insurance coverage. The Department of Health and Human Services has largely blamed the website's issues on the volume of visitors to the website, but many reports have surfaced that the technical design of the website is the true cause of the problems. In one [story](#) in *USA Today*, tech experts are cited who suggest that the entire system may need to be overhauled to remedy the site's problems.

Meanwhile, Congressional Republicans are continuing their probe into the technical problems afflicting the federal health insurance marketplace. On October 10, Republicans from both chambers sent letters to HHS Secretary Kathleen Sebelius and two firms involved in the implementation of the website to inquire about the level of testing conducted before

the site went live on October 1. In addition, the House Energy and Commerce Committee has scheduled hearings on October 24 and October 30 to investigate the problems. Contractors involved in creating and rolling out the website are expected to testify at the first hearing, while Secretary Sebelius is scheduled to testify at the October 30 hearing.

HHS attempted to quell some of the negative publicity with an October 20 [blog post](#) which acknowledged the glitches and gave assurances that efforts are continuing around the clock to fix the website's problems. According to the post, HHS has brought in "some of the best and brightest from both inside and outside government" to work on the technical issues. In addition, President Obama acknowledged what he called technical "kinks" at a Rose Garden event touting the Affordable Care Act, but offered few specifics on the cause of the problems or the specific steps being taken to remedy them.

### Kaiser Study Suggests that 5 Million Could Fall into "Coverage Gap" in States that Have Declined Medicaid Expansion

The Kaiser Family Foundation released a study on October 16 which found that five million U.S. adults in states that have elected not to expand Medicaid coverage could fall into the Affordable Care Act (ACA) "coverage gap." This gap occurs when a person makes too much money to qualify for Medicaid coverage, but makes too little to qualify for premium subsidies provided under the ACA.



When the ACA was originally enacted, it required states to expand Medicaid eligibility up to 138% of the federal poverty level (FPL). Low-income individuals making more than 138% of the FPL would then be eligible for subsidies in the form of tax credits to help defray the cost of health insurance. However, when the U.S. Supreme Court invalidated the Medicaid expansion requirement, expanding Medicaid coverage became optional for states, and only 25 states plus the District of Columbia have decided to expand Medicaid thus far.

The Kaiser study can be found [here](#).

### Medical Device Manufacturer Sues OIG over Recent Fraud Alert

A medical device manufacturer in Utah has sued OIG and HHS Inspector General Daniel Levinson asking for the court to invalidate OIG's designation of physician-owned distributorships as "inherently suspect" under the federal anti-kickback statute. The manufacturer, Reliance Medical Systems LLC, alleges in the lawsuit that OIG's designation has had a chilling effect on Reliance's free speech rights under the First Amendment.

OIG's Special Fraud Alert, which it released in March, warned that physician-owned distributorships, or PODs, have a high risk of fraud and abuse, and outlined several of the characteristics of suspect POD arrangements while noting that a POD may be unlawful even it displayed none of those characteristics. Reliance's lawsuit asks the court to declare that the Special Fraud Alert is invalid and cites previous case law which it contends supports the legality of POD arrangements.

## State News

### Ohio Approves Medicaid Expansion

A state board in Ohio tasked with certain budgetary responsibilities voted on October 21 to accept \$2.56 billion in

federal money to cover the costs of Medicaid expansion through July 2015. By a vote of 5 – 2, the Controlling Board voted to expand Medicaid coverage to as many as 275,000 more low-income Ohioans who would otherwise not be eligible for Medicaid coverage, proponents say.

The result, a major victory for Republican Gov. John Kasich, has critics in his own party arguing the maneuver was illegal as it bypassed the General Assembly that previously blocked expansion. Governor Kasich, who initially opposed the Affordable Care Act, believes that the extension of Medicaid to poor adults is justified and that the expansion will improve Ohio's economy by providing companies with healthier employees.

With the approval, Ohio becomes the fourth Republican-controlled state, and the 25<sup>th</sup> state overall, plus the District of Columbia, to expand Medicaid.

### California Governor Signs Bill Allowing Non-Physicians to Perform Abortions

Governor Jerry Brown signed a bill allowing nurse practitioners, midwives, and physician assistants to perform aspiration abortions during the first trimester. The bill, introduced as one of seven bills signed by Governor Brown that involved women's health, was introduced out of



concern that there were not enough physicians, especially in rural areas, to meet the needs of women who desire an abortion. California joins Vermont, New Hampshire, Oregon and Montana as a state that allows for certain types of abortions to be performed by non-physicians.

### Some State Health Insurance Exchanges Struggle to Attract and Keep Insurers

USA Today reports that some large insurers have pulled out of some state insurance marketplaces, leaving few options for patients. Aetna and United Health Care, for example, have both pulled out of several state marketplaces, citing concerns over the uncertainty of how well the marketplaces will operate and whether participation will ultimately be profitable. Some state insurance marketplaces, such as those in New Hampshire and West Virginia have only one insurer while New York has sixteen. While the number of participating insurers may change over time it is too early to determine what effect the uneven distribution of insurers will ultimately have on patient care. The story can be found [here](#).

## Regulatory News

None.

## Additional Reading

- *Los Angeles Times*: [Government shutdown: Obamacare dodges a bullet](#)
- *NPR*: [If a Tech Company Had Built the Federal Health Care Website](#)
- *NPR*: [To Reduce Patient Falls, Hospitals Try Alarms, More Nurses](#)

## Federal Register

The Centers for Medicare & Medicaid Services (CMS) announced an opportunity for the public to comment on CMS' intention to collect information from the public. The Notice can be found [here](#).



## For More Information

For questions regarding any of the issues covered in this Alert, please contact:

- Matthew J. Murer | *Practice Area Chair* | 312.873.3603 | [mmurer@polsinelli.com](mailto:mmurer@polsinelli.com)
- Jane E. Arnold | *Practice Area Vice Chair* | 314.622.6687 | [jarnold@polsinelli.com](mailto:jarnold@polsinelli.com)
- Colleen M. Faddick | *Practice Area Vice Chair and Editor* | 303.583.8201 | [cfaddick@polsinelli.com](mailto:cfaddick@polsinelli.com)
- Cavan K. Doyle | *Author* | 312.873.3685 | [cdoyle@polsinelli.com](mailto:cdoyle@polsinelli.com)
- Cullin B. Hughes | *Author* | 816.360.4121 | [chughes@polsinelli.com](mailto:chughes@polsinelli.com)



Matthew J. Murer  
Practice Area Chair  
*Chicago*  
312.873.3603  
mmurer@polsinelli.com

Jane E. Arnold  
Practice Area Vice-Chair  
*St. Louis*  
314.622.6687  
jarnold@polsinelli.com

Colleen M. Faddick  
Practice Area Vice-Chair  
*Denver*  
303.583.8201  
cfaddick@polsinelli.com

Lisa J. Acevedo  
*Chicago*  
312.463.6322  
lacevedo@polsinelli.com

Janice A. Anderson  
*Chicago*  
312.873.3623  
janderson@polsinelli.com

Douglas K. Anning  
*Kansas City*  
816.360.4188  
danning@polsinelli.com

Joi-Lee K. Beachler  
*Dallas*  
214.661.5532  
jbeachler@polsinelli.com

Jack M. Beal  
*Kansas City*  
816.360.4216  
jbeal@polsinelli.com

Margaret "Peggy" Binzer  
*Washington, D.C.*  
202.626.8362  
pbinzer@polsinelli.com

Mary Beth Blake  
*Kansas City*  
816.360.4284  
mblake@polsinelli.com

Mary Clare Bonaccorsi  
*Chicago*  
312.463.6310  
mbonaccorsi@polsinelli.com

Gerald W. Brenneman  
*Kansas City*  
816.360.4221  
gbrenneman@polsinelli.com

Teresa A. Brooks  
*Washington, D.C.*  
202.626.8304  
tbrooks@polsinelli.com

Jared O. Brooner  
*St. Joseph*  
816.364.2117  
jbrooner@polsinelli.com

Ana I. Christian  
*Los Angeles*  
310.203.5335  
achristian@polsinelli.com

Anika D. Clifton  
*Denver*  
303.583.8275  
aclifton@polsinelli.com

Anne M. Cooper  
*Chicago*  
312.873.3606  
acooper@polsinelli.com

Lauren P. DeSantis-Then  
*Washington, D.C.*  
202.626.8323  
ldesantis@polsinelli.com

S. Jay Dobbs  
*St. Louis*  
314.552.6847  
jdobbs@polsinelli.com

Thomas M. Donohoe  
*Denver*  
303.583.8257  
tdonohoe@polsinelli.com

Cavan K. Doyle  
*Chicago*  
312.873.3685  
cdoyle@polsinelli.com

Meredith A. Duncan  
*Chicago*  
312.873.3602  
mduncan@polsinelli.com

Erin Fleming Dunlap  
*St. Louis*  
314.622.6661  
edunlap@polsinelli.com

Fredric J. Entin  
*Chicago*  
312.873.3601  
fentin@polsinelli.com

Jennifer L. Evans  
*Denver*  
303.583.8211  
jevans@polsinelli.com

T. Jeffrey Fitzgerald  
*Denver*  
303.583.8205  
jfitzgerald@polsinelli.com

Michael T. Flood  
*Washington, D.C.*  
202.626.8633  
mflood@polsinelli.com

Kara M. Friedman  
*Chicago*  
312.873.3639  
kfriedman@polsinelli.com

Rebecca L. Frigy  
*St. Louis*  
314.889.7013  
rfrigy@polsinelli.com

Asher D. Funk  
*Chicago*  
312.873.3635  
afunk@polsinelli.com

Randy S. Gerber  
*St. Louis*  
314.889.7038  
rgerber@polsinelli.com

Mark H. Goran  
*St. Louis*  
314.622.6686  
mgoran@polsinelli.com

Linas J. Griksis  
*Chicago*  
312.873.2946  
lgriksis@polsinelli.com

Lauren Z. Groebe  
*Kansas City*  
816.572.4588  
lgroebe@polsinelli.com

Brett B. Heger  
*Dallas*  
314.622.6664  
bheger@polsinelli.com

Jonathan K. Henderson  
*Dallas*  
214.397.0016  
jhenderson@polsinelli.com

Margaret H. Hillman  
*St. Louis*  
314.622.6663  
mhillman@polsinelli.com



William P. Hoffman  
*St. Louis*  
 314.552.6816  
 whoffman@polsinelli.com

Jay M. Howard  
*Kansas City*  
 816.360.4202  
 jhoward@polsinelli.com

Cullin B. Hughes  
*Kansas City*  
 816.360.4121  
 chughes@polsinelli.com

Sara V. Iams  
*Washington, D.C.*  
 202.626.8361  
 siams@polsinelli.com

George Jackson, III  
*Chicago*  
 312.873.3657  
 gjackson@polsinelli.com

Samuel H. Jeter  
*Kansas City*  
 816.572.4686  
 sjeter@polsinelli.com

Bruce A. Johnson  
*Denver*  
 303.583.8203  
 bjohnson@polsinelli.com

Lindsay R. Kessler  
*Chicago*  
 312.873.2984  
 lkessler@polsinelli.com

Joan B. Killgore  
*St. Louis*  
 314.889.7008  
 jkillgore@polsinelli.com

Anne. L. Kleindienst  
*Phoenix*  
 602.650.2392  
 akleindienst@polsinelli.com

Chad K. Knight  
*Dallas*  
 214.397.0017  
 cknight@polsinelli.com

Sarah R. Kocher  
*St. Louis*  
 314.889.7081  
 skocher@polsinelli.com

Dana M. Lach  
*Chicago*  
 312.873.2993  
 dlach@polsinelli.com

Robert L. Layton  
*Los Angeles*  
 310.203.5332  
 rlayton@polsinelli.com

Gregory S. Lindquist  
*Denver*  
 303.583.8286  
 glindquist@polsinelli.com

Jason T. Lundy  
*Chicago*  
 312.873.3604  
 jlundy@polsinelli.com

Ryan M. McAteer  
*Los Angeles*  
 310.203.5368  
 rmcateer@polsinelli.com

Jane K. McCahill  
*Chicago*  
 312.873.3607  
 jmccahill@polsinelli.com

Ann C. McCullough  
*Denver*  
 303.583.8202  
 amccullough@polsinelli.com

Matthew Melfi  
*Denver*  
 720.931.1186  
 mmelfi@polsinelli.com

Ryan J. Mize  
*Kansas City*  
 816.572.4441  
 rmize@polsinelli.com

Aileen T. Murphy  
*Chicago*  
 303.583.8210  
 amurphy@polsinelli.com

Hannah L. Neshek  
*Chicago*  
 312.873.3671  
 hneshek@polsinelli.com

Gerald A. Niederman  
*Denver*  
 303.583.8204  
 gniederman@polsinelli.com

Edward F. Novak  
*Phoenix*  
 602.650.2020  
 enovak@polsinelli.com

Thomas P. O'Donnell  
*Kansas City*  
 816.360.4173  
 todonnell@polsinelli.com

Aaron E. Perry  
*Chicago*  
 312.873.3683  
 aperry@polsinelli.com

Mitchell D. Raup  
*Washington, D.C.*  
 202.626.8352  
 mraup@polsinelli.com

Daniel S. Reinberg  
*Chicago*  
 312.873.3636  
 dreinberg@polsinelli.com

Kristen B. Rosati  
*Phoenix*  
 602.650.2003  
 krosati@polsinelli.com

Donna J. Ruzicka  
*St. Louis*  
 314.622.6660  
 druzicka@polsinelli.com

Charles P. Sheets  
*Chicago*  
 312.873.3605  
 csheets@polsinelli.com

Kathryn M. Stalmack  
*Chicago*  
 312.873.3608  
 kstalmack@polsinelli.com

Chad C. Stout  
*Kansas City*  
 816.572.4479  
 cstout@polsinelli.com

Steven K. Stranne  
*Washington, D.C.*  
 202.626.8313  
 sstranne@polsinelli.com

William E. Swart  
*Dallas*  
 214.397.0015  
 bswart@polsinelli.com

Tennille A. Syrstad  
*Denver*  
 312.873.3661  
 etremmel@polsinelli.com

Emily C. Tremmel  
*Chicago*  
 303.583.8263  
 tysrstad@polsinelli.com





Andrew B. Turk  
*Phoenix*  
602.650.2097  
abturk@polsinelli.com

Andrew J. Voss  
*St. Louis*  
314.622.6673  
avoss@polsinelli.com

Emily Wey  
*Denver*  
303.583.8255  
ewey@polsinelli.com

Janet E. Zeigler  
*Chicago*  
312.873.3679  
jzeigler@polsinelli.com

Joseph T. Van Leer  
*Chicago*  
312.873.3665  
jvanleer@polsinelli.com

Joshua M. Weaver  
*Dallas*  
214.661.5514  
jweaver@polsinelli.com

Mark R. Woodbury  
*St. Joseph*  
816.364.2117  
mwoodbury@polsinelli.com

### Additional Health Care Public Policy Professionals

---

Julius W. Hobson, Jr.  
*Washington, D.C.*  
202.626.8354  
jhobson@polsinelli.com

Harry Sporidis  
*Washington, D.C.*  
202.626.8349  
hsporidis@polsinelli.com

Julie E. Shroyer  
*Washington, D.C.*  
202.626.8350  
jshroyer@polsinelli.com

Alan D. Wheat  
*Washington, D.C.*  
202.626.8385  
awheat@polsinelli.com



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## About Polsinelli

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## About this Publication

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