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## Friday Updates *April 1, 2011*

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## From the Administration

### Social Security Administration

#### Scheduled Outage for Online Social Security Claims and Medicare Plan Finder

The Medicare Plan Finder is being updated and will be temporarily unavailable for intermittent periods of time starting at 9:00 PM, Friday, April 1, 2011 and extending through 9:00 PM, Sunday, April 3, 2011 (Eastern Time). The following resources will not be accessible:

- Medicare Plan Finder
- Enroll Now
- Formulary Finder
- Check Your Enrollment

Also, due to scheduled systems maintenance, a number of the Social Security Administration's [Online Claims & Services applications will not be available](#) from 11:00 PM, Saturday, April 3rd, 2011, and extending through 5:00 AM on Monday, April 5, 2011 (Eastern Time). Please click the following link to learn more about the SSA planned outage: <http://www.ssa.gov/onlineservices/not-available2.htm>.

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## Department of Health and Human Services

### HHS Proposes Rule on Accountable Care Organizations

March 31, 2011

On March 31, HHS released a much-anticipated proposed rule that would implement Section 3022 of the ACA. This portion of the health reform law adds a new section 1899 to the Social Security Act that requires HHS to establish a Medicare Shared Savings Program by January 1, 2012. This program is intended to encourage providers and suppliers to create a new type of health care entity, Accountable Care Organizations (ACOs), to better coordinate care for Medicare patients. ACOs create incentives for providers to work together to treat an individual patient across care settings, and the Medicare Shared Savings Program will reward ACOs that lower health care costs while meeting quality of care performance standards. Patient and provider participation in an ACO is voluntary.

The proposed rule, which, in part, addresses Medicare payments to providers of services and suppliers participating in ACOs, is available for download [here](#) until April 7, when it will be published in the *Federal Register*, and accessible at [www.gpo.gov](http://www.gpo.gov). There is a 60 day public comment period on the proposed rule, and CMS is encouraging all who are interested, including providers, suppliers, and Medicare beneficiaries, to submit their comments for the agency's consideration in formulating final regulations for the ACA-created Medicare Shared Savings Program.

Additional information from HHS regarding the proposed rule, including a press release with links to other resources is available [here](#). CMS-created fact sheets describing specific aspects of the regulation in greater detail, such as the process for creating ACOs, the quality measures which will be applied, and the applicable performance scoring, are available for download on CMS' website, or by following [this link](#).

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## Centers for Medicare and Medicaid Services

### Early Retiree Reinsurance Program Closing

March 31, 2011

Centers for Medicare and Medicaid Services released a progress report on the Early Retiree Reinsurance Program (ERRP) on Thursday. This report suggests that the popular ERRP will run out of funds before its 2014 closing date. In a memo to Hill staff, CMS wrote that it will stop accepting applications to the program as of April 30, 2011.

Since its implementation, the EERP has provided over 1,300 employers with almost \$1.8 billion of reimbursements to ensure that early retirees could retain access to health benefits. The report, which was compiled for the Energy and Commerce's Oversight Subcommittee, [can be found here](#).

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## Government Accountability Office

### Older Americans Act: More Should Be Done to Measure the Extent of Unmet Need for Services

March 31, 2011

The United States Government Accountability Office (GAO) released the report, [Older Americans Act: More Should Be Done to Measure the Extent of Unmet Need for Services](#). In anticipation of the 2011 reauthorization of the Older Americans Act (OAA), GAO was asked to determine:

- 1) What is known about the need and potential need for home and community based services like those funded by Title III of the OAA;
- 2) How agencies have used their funds, including Recovery Act funds, to meet program objectives, and
- 3) How need and unmet need for home and community based services is measured by government and local agencies.

The GAO Report found that some aspects of need and receipt could not be captured with existing data. Despite the difficulty in establishing the need and potential need for home and community based services, GAO reports that it is likely that many more older adults may need HCBS services than are receiving them. Currently, state agencies lack federal guidance and technical assistance which could help them to better quantify need and unmet need for services in their state. GAO recommends that the Administration on Aging (AoA) provide states with standardized definitions or measurement procedures for need and unmet need.

The report also found that due to the economic recession, state and local agencies have experienced budget reductions. Although the Recovery Act (ARRA) supplemented lost funding for meals, that funding ended in 2010, and states are now struggling to make up for this loss of funding. While the report found that few states have formalized cost-sharing arrangements with clients, “these payments by individuals with higher incomes could help defray the costs of serving others, as the demand for services increases in the future.” GAO recommends that Department of Health and Human Services (HHS) study possible effectiveness of, and identify ways to help interested agencies implement, cost-sharing.

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## Department of Justice

### **U.S. Department of Justice (DOJ) Settles Americans with Disabilities Act (ADA) Lawsuit with Virginia's Inova Health System**

The Department of Justice (DOJ) has reached a settlement with Inova Health System to ensure effective communication with individuals who are deaf or hard of hearing in the provision of medical services. The agreement, under the Americans with Disabilities Act (ADA) and the Rehabilitation Act, resolves a complaint by the DOJ that the Inova Fairfax Hospital denied individuals who are deaf or hard of hearing of: (1) the benefits of effective communication with hospital personnel; (2) the opportunity to participate effectively in their medical treatment, and (3) the full benefit of the health care services provided by the hospital.

The case was originally filed by an expectant mother and father for failure to provide sign language interpreters during, and after, the birth of their son. According to the parents, their son required open heart surgery, but, despite repeated requests, no interpreter was present when they learned of the need for surgery or when doctors attempted to explain the procedure to them. Throughout the baby's hospital stay, Inova only sporadically provided interpreters to help the parents understand his medical condition, they alleged in a June 25, 2010, [complaint](#). The government's [complaint](#) in intervention re-alleged the facts from the original complaint and stated that, due to Inova's failure to provide sign language interpreters, the parents “did not have a clear or meaningful understanding of what was explained to them” over the course of the baby's treatment at the hospital. [The government's complaint in intervention is available here](#). Also, [the original complaint by the parents is available by following this link](#).

The consent decree, which must be approved by the district court, requires Inova Health System to pay \$95,000 to aggrieved individuals and a \$25,000 civil penalty; provide training to hospital staff on the requirements of the ADA and the Rehabilitation Act; and adopt specific policies and procedures to ensure that auxiliary aids and services are promptly provided to patients or companions who are deaf or hard of hearing. Inova Health System has also separately agreed to pay a total of \$25,000 to two other aggrieved individuals. [The consent decree is available by following this link.](#)

## From DC

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### National Alliance for Caregiving & Alzheimer's Association

#### "Briefing on Alzheimer's Caregivers: Who They are and Why They Care"

March 31, 2011

On March 31, 2011 the National Alliance for Caregiving (NAC) and the Alzheimer's Association held a Capitol Hill briefing informing attendees of two recently released reports on Alzheimer's and family caregivers. The Alzheimer's Association's report, "[2011 Alzheimer's Disease Facts and Figures](#)," is a statistical resource of data related to Alzheimer's disease and other dementias in the U.S., and includes information about family caregivers of people with these diseases. The National Alliance for Caregiving's report, "[Caregivers of Individuals with Alzheimer's or Dementia](#)," examined the impacts, both positive and negative, of caring for a family member with Alzheimer's or dementia on unpaid caregivers' lives. Representatives Chris Smith (R-NJ) and Ed Markey (D-MA), Co-Chairs of the Congressional Task Force on Alzheimer's, each spoke of the need for Congress to acknowledge and support the valuable work of family caregivers of people with Alzheimer's and dementia.

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### Kaiser Family Foundation

#### Raising Medicare Eligibility Age Could Yield Federal Savings but Shift Costs to Others

March 29, 2011

On March 29, 2011, the Kaiser Family Foundation published a report, "[Raising the Age of Medicare Eligibility: A Fresh Look Following Implementation of Health Reform](#)," that examined the expected key effects of raising the age of Medicare eligibility to age 67.

The study projects that raising the age of Medicare eligibility to age 67 in 2014 would result in \$31.1 billion in gross Medicare savings in 2014 because Medicare would no longer be covering 65- and 66-year-olds. The gross savings are estimated to be partially offset by increases in federal spending for individuals who would be covered by Medicaid (\$8.9 billion) and for individuals receiving premium tax credits in the exchanges (\$7.5 billion). The gross savings would also be offset by a \$7 billion reduction in Medicare premium receipts from 65- and 66-year-olds who would no longer be enrolled in the program.

Among the estimated five million affected 65- and 66-year-olds, 42 percent would be enrolled in employer-sponsored plans, 38 percent would enroll in an exchange, and 20 percent would be covered under Medicaid. Those individuals that qualify for Medicaid or the exchange subsidies, 25 percent, would pay less out-of-pocket spending on premiums and cost sharing than they would have under Medicare. However the remaining people affected by the change in eligibility, 75 percent, would pay an average of \$2,400 more for their health care in 2014 than they would have paid if covered under Medicare, the study estimates. In addition, premiums for those under the age of 65 enrolled in the

exchange would increase by 3 percent (\$141 per enrollee in 2014) because the addition of older adults into the exchange would make for a less healthy risk pool. However, those adults are relatively young and healthy for the Medicare population, and so their deferred enrollment into Medicare would increase Part B premiums by 3 percent in 2014 because the program would not benefit from their lower costs.

The study assumes both full implementation of the health reform law and the higher eligibility age in 2014 in order to estimate the full effect of both the law and the policy proposal. Please click [here](#) to view the entire report.

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## AARP

### **AARP's Report Finds Sharp Increases in Drug Prices near End of Patent Terms**

AARP has released a report, [Rx Price Watch Report: Retail Prices for Widely Used Brand Name Drugs Increase Considerably Prior to Generic Competition](#) that examines changes in the retail prices for brand name drug products widely used by Medicare beneficiaries. In particular, the report looks at changes in the retail prices of brand name drugs both before and after patent expiration to see how the change in patent status affects retail prices. In an examination of 217 brand name drugs most commonly used by people in Medicare, the AARP Rx Price Watch report revealed prices for drugs facing generic competition in 2010 climbed by an average of 13.7 percent in 2009, compared to 8.3 percent for all drugs studied. The study also found that brand name drug prices continue to increase after patent expiration, indicating that generic competition has little or no impact on costs for consumers who choose to continue taking the brand name product.

The Pharmaceutical Research and Manufacturers of America (PhRMA) disagreed with AARP's findings, saying the report ignores key facts about the prescription drug marketplace. According to PhRMA's Deputy Vice President Karl Uhlenhof, AARP's report fails to take into account patient savings that result from generic drugs. "Any analysis of prices must take into account the mix of brand and generic medicines that patients actually use," Uhlenhof said. To view PhRMA's comments on AARP's report please follow this [link](#).

Also, a full text version of AARP's report is available [here](#).

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## Health Affairs

### **"Of Wheelchairs and Managed Care:" New Disabilities Recording Added to Series**

March 30, 2011

*Health Affairs* is providing a series of free podcasts in a collection called "Narrative Matters". They recently added a recording of "Of Wheelchairs and Managed Care", an account of fighting for an insurance company to pay for replacement wheelchairs written by Andrew Batavia, a law professor who lived with high-level quadriplegia for many years before his death in 2003.

The essay recounts the difficulty Batavia encountered while trying to make a necessary replacement of his motorized wheelchair after five or six years of use. His primary care physician, after years of complying, became afraid to write a prescription for a new chair for fear of being sued for insurance fraud. Batavia fought for the coverage, and won in the end. [His story can be found here](#). [The entire series can be found here, on iTunes](#). All of the podcasts are free of charge.

## From the Courts

### **Fourth Circuit Finds Violation of the Medicaid Act**

March 24, 2011

On March 24, the U.S. Appeals Court for the Fourth Circuit issued its ruling in *Doe v. Kidd*, finding South Carolina to be in violation of the Medicaid Act. The plaintiff-appellant, Sue Doe, is a young woman with developmental disabilities. She initiated the action against the South Carolina Department of Disabilities and Special Needs (DDSN), the South Carolina Department of Health and Human Services (DHHS), and several state administrators, alleging that these Defendants violated various sections of the Medicaid Act related to the provision of services. At issue in this appeal is Doe's claim that the Defendants failed to comply with the statute's reasonable promptness requirement.

In April of 2003, DDSN approved a plan of care for Doe that recommended she "receive residential habilitation from a DDSN approved provider" within three months, a service she originally requested in May of 2003. A month later, in June 2003, DDSN assessed Doe and authorized her to receive residential habilitation services in a Supervised Living Program II (SLP II), an apartment where DDSN service recipients reside together, or in a Community Training Home I (CTH I), a private foster home where a services recipient resides with a family, at least one member of which is a trained caregiver. In August 2003, Doe was eventually placed in a Community Training Home II (CTH II), a more restrictive setting than those originally recommended under her plan of care and subsequently authorized by DDSN.

The district court held that because the Defendants promptly and continuously paid for some residential services for Doe, they did not violate the Medicaid Act's reasonable promptness requirement, as the law does not require the Defendants to provide any specific services, only to pay for unspecified ones. Breaking with this ruling, the appellate court found that the Defendant's did indeed violate Doe's rights under the Medicaid Act by failing to provide her with the residential habilitation services authorized by DDSN and described in her 2003 plan with reasonable promptness. Upon issuing this ruling, the case will return to the district court which will then determine the appropriate remedy.

Significantly, the court's opinion is unpublished, meaning that it has limited or no precedential value. Since the opinion is not binding, courts in the Fourth Circuit are not required to follow the ruling in subsequent decisions. Rather, it may be relied upon for *res judicata*, law of the case, or preclusive effect. Though the publication rules vary among the circuits, there are limited circumstances in which reliance on unpublished decisions may be well received. For more information on the rules pertaining to the Fourth Circuit, please see the court's [Rules and Procedures](#).

## From NASUAD

### **Lindsey Copeland named NASUAD's Director of Policy and Legislative Affairs**

March 31, 2011

Washington, DC - On March 31, 2011, the Executive Director of the National Association of States United for Aging and Disabilities (NASUAD), Martha Roherty, was pleased to announce the promotion of Lindsey Copeland to Director of Policy and Legislative Affairs, effective immediately.

Since joining NASUAD in 2009, Ms. Copeland has excelled in a variety of roles, including the management of an Administration on Aging-funded initiative designed to enhance state and local planning efforts, in part through an online Technical Assistance Support Center, the TASC Planning Zone. In this capacity, Ms. Copeland has developed, in coordination with the Administration on Aging (AoA) and other partner organizations, a series of interactive tools to assist states and area agencies on aging in formulating their Older Americans Act-required state and area plans on aging.

In 2010, Ms. Copeland also assumed leadership of NASUAD's policy formation and analysis of the Affordable Care Act, including the development of the Association's web-based Health Reform Implementation Resource Center, as well as the creation of several health policy document series, including NASUAD's *Long-Term Care in Brief* series and the recently-launched, *The ACA in the 112<sup>th</sup>*. The analysis she has produced, along with her compilation of relevant regulations, grant opportunities, federal guidance, emerging promising practices, and evolving recent developments, have become a premier resource for state long-term care services and supports directors, and these tools are increasingly referenced and utilized by federal, state, and local policymakers.

In announcing Ms. Copeland's new position at NASUAD, Ms. Roherty said, "I am delighted that Lindsey has agreed to serve in this critical leadership role for our organization. Her energy, enthusiasm, and understanding of long-term services and supports programs will guide our members as we work together to navigate through the challenges of the federal budget and appropriations processes, the upcoming reauthorization of the Older Americans Act, and the continuing developments surrounding the Affordable Care Act."

Prior to joining NASUAD, Ms. Copeland gained strong policy and legislative experience at the state government level. She spent several years with the Virginia Department of Labor and Industry's Labor and Employment Law Division, where she represented employees throughout the Commonwealth in their payment of wage, child labor, and minimum wage claims. She was also employed with the Virginia Indigent Defense Commission; in this role, she worked with the Virginia General Assembly to streamline Virginia's court-appointed counsel program, and to ensure attorney representation of indigent persons accused of crimes carrying severe penalties. Most recently, Ms. Copeland was with the Government Relations and Contracts Division of LexisNexis, where she was responsible for cultivating and maintaining productive relationships with state government officials across the country.

Originally from Birmingham, Alabama, Ms. Copeland holds a BA in both English and Political Science from Hollins University, and a JD from the University of Richmond. She is a member of the Virginia State Bar, as well as the Bar's Young Lawyer's Conference and Health Law Divisions. She is also an active member of the American Bar Association's Health Law Section and Young Lawyer's Division, and the Virginia Bar Association's Health and Young Lawyer's Sections.



**National Home and Community Based Services Conference**

September 11-14, 2011  
Washington, DC

 **NASUAD**  
National Association of States  
United For Aging and Disabilities

 **HCBS**  
NATIONAL HOME & COMMUNITY  
BASED SERVICES CONFERENCE

## Upcoming Events from our Partners

[National Association of State Directors of Developmental Disabilities Services 2011 Mid-Year Conference, May 26-27, Philadelphia, PA](#)

The NASMHPD Annual 2011 Commissioners Meeting is being held Sunday, July 17 – Tuesday, July 19, 2011, at the Westin Alexandria, 400 Courthouse Square, Alexandria, Virginia 22314.

[Archived Friday Updates are available on NASUAD's website here.](#)