

September 9, 2011

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## FOURTH CIRCUIT COURT OF APPEALS RULES ON THE AFFORDABLE CARE ACT

On September 8, the Fourth Circuit Court of Appeals in Richmond, Virginia rejected two claims that sought to challenge the constitutionality of the Affordable Care Act's individual mandate.

The first, brought by Virginia Attorney General Ken Cuccinelli, was dismissed by the three-judge panel upon their finding that Cuccinelli did not have the necessary standing to sue because Virginia's case relied on a state law that was passed in an effort to undermine the ACA. The Fourth Circuit vacated the lower court's ruling in the case, and instructed the court to dismiss the suit.

Virginia's argument was based on Cuccinelli's contention that the individual mandate provision conflicted with a state statute, giving the commonwealth standing to challenge the federal law.

The Virginia Health Care Freedom Act, enacted one day after Mr. Obama signed the Affordable Care Act, declares that no Virginia resident "shall be required to obtain or maintain a policy of individual insurance coverage." The unanimous opinion, written by Judge Diana Gribbon Motz, found that states cannot grant themselves standing to challenge federal laws simply by passing legislation that declares those laws invalid. In response to the appellate court's ruling, Cuccinelli said on Thursday that he plans to appeal the decision to the Supreme Court.

The second case, a claim brought by Liberty University in Lynchburg, Virginia, was rejected by the panel 2-1. Again writing for the court, Judge Motz concluded that because the ACA's individual mandate penalties, which would be collected through income tax filings, amount to taxes, the court has no jurisdiction over the case. Citing the Anti-Injunction Act, a long-established federal law which bars taxpayers from

challenging taxes in court prior to actually paying the tax, the court found that Liberty cannot challenge the ACA's individual mandate before it takes effect.

The dismissal of these appeals prevented the panel from fully considering the constitutionality of the individual mandate, unlike the conflicting rulings from the 11th and Sixth Circuits. Therefore, while the Fourth Circuit's rulings are important, they are unlikely to be the vehicle through which the Supreme Court will ultimately decide the constitutionality of the ACA's individual mandate.

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## FROM THE ADMINISTRATION

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### Department of Health and Human Services

#### **HHS announces \$11.9 million to implement health information technology in rural areas**

*September 2, 2011*

Rural health networks across the nation will receive more than \$11.9 million to support their adoption of Health Information Technology (HIT) and certified Electronic Health Records (EHR). The funding announced on Friday, September 2 by HHS Secretary Kathleen Sebelius will also help these rural health networks' participating eligible providers qualify for Medicare and Medicaid EHR incentive payments, administered by the Centers for Medicare & Medicaid Services.

Each of 40 grantee organizations will receive about \$300,000 to purchase equipment, install broadband networks and provide training for staff. The pilot program was developed as a result of the President's Rural Health Initiative, which identifies HIT as a priority area, and the Secretary's Rural HIT Taskforce. Funding is distributed through HHS' Health Resources and Services Administration (HRSA) and comes from existing appropriations and authorization for the Rural Health Care Services Outreach and Rural Health Network Development Program.

The full press release, and list of grant recipients, is available [here](#).

#### **HHS Announces Affordable Care Act Funding Opportunity to Build, Renovate, and Repair Community Health Centers**

*September 9, 2011*

The U.S. Department of Health and Human Services (HHS) announced the availability of approximately \$700 million to help build, expand, and improve community health centers across the U.S. to provide needed care to low-income Americans. The funds, authorized by the Affordable Care Act, will support renovation and construction projects, boosting centers' ability to care for additional patients and creating jobs in those communities. Community health centers are an integral source of local employment and economic growth in many underserved and low-income communities. In 2010, they employed more than 131,000 staff

and new funds made available through this initiative will help create thousands of jobs nationwide.

For more information about this funding opportunity, please visit [www.grants.gov](http://www.grants.gov).

### **HRSA Awards \$231,800 to Provide Training and Technical Assistance to Improve Care for the Elderly Among Safety Net Providers**

The Health Resources and Services Administration (HRSA) recently awarded \$231,800 to North American Management (NAM) for its Health and the Aging project. The project will provide training and technical assistance to increase the capacity and improve the performance of HRSA's primary care health center grantees and other safety net providers eligible to become such grantees in meeting the specialized health care needs of the elderly population.

This award builds on a previous HRSA award to NAM's National Center for Health in Public Housing which has a proven track record in improving the performance of safety net providers in providing care to economically disadvantaged individuals, especially the elderly.

To learn more about HRSA's Community Health Center Program, click [here](#).

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## **Centers for Medicare and Medicaid Services**

### **New Data: Affordable Care Act Delivers Lower Costs to More Seniors with Medicare**

*September 8, 2011*

On Thursday, the Centers for Medicare and Medicaid Services announced that more seniors and people with disabilities on Medicare are seeing reduced costs for important health care – through discounts on brand-name drugs in the Medicare Part D “donut hole” coverage gap and free preventive care.

So far this year, over 18.9 million people enrolled in traditional Medicare have used preventive services with no cost to them. Many of these services will help prevent chronic diseases that can cost Medicare billions to treat. Also, thanks to the Affordable Care Act, more Americans on Medicare are getting help affording prescription drugs –nearly 1.3 million people have received a 50 percent discount on their brand name prescription drugs when they hit the donut hole, saving a total of \$660 million so far this year.

More information on utilization of this discount is available [here](#).

The full CMS press release can be found [here](#).

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## Disability.gov

### Disaster Preparedness Disability Resources

In proclaiming September as National Preparedness Month, President Barack Obama discussed the efforts of disability community leaders to ensure that people with disabilities were fully included in relief efforts. [Disability.gov](#) includes an [Emergency Preparedness section](#) with tools and resources to help people with disabilities and others prepare for, and recover from, emergency situations and disasters.

These resources can be accessed [here](#).

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## Centers for Disease Control and Prevention

### The CDC Healthy Brain Initiative Progress 2006-2011

Cognitive health has only recently been recognized as an important issue for the public health system. Supported by a Congressional appropriation in fiscal year 2005, the Centers for Disease Control and Prevention (CDC) established the Alzheimer's-specific segment of CDC's Healthy Aging Program, referred to as The Healthy Brain Initiative. CDC then formed a partnership with the Alzheimer's Association, National Institute on Aging, Administration on Aging, AARP, and other public and private sector organizations to launch the activities of The Healthy Brain Initiative. Together these organizations embarked on a deliberative 18-month process to examine the current state of knowledge regarding the promotion and protection of cognitive health, to identify important knowledge gaps, and to define the unique role and contributions of public health.

A new progress report documenting CDC's Healthy Brain Initiative's accomplishments during the past five years has been released, focusing on priorities relevant to CDC's public health mission in four areas: conducting surveillance, supporting policy change, advancing communication, and guiding applied prevention research. To learn more, please click [here](#).

Click here for the [Full Report](#) and the [Report Summary](#).

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## FROM THE WHITE HOUSE

On Thursday evening, President Obama addressed a Joint Session of Congress and outlined his \$450 billion jobs package, The American Jobs Act. The White House intends to provide legislative language within the next week, and the President also said he will send Congress specific proposals to offset the cost of the jobs measure, which will likely include spending cuts or tax increases over the longer-term. As part of this strategy, the President called on Congress to increase the amount of deficit reduction that the new Joint Select Committee on Deficit Reduction is tasked with finding. A summary of the President's proposal is available [here](#):

And state-by-state data is available [here](#):

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## FROM CONGRESS

### **Bipartisan Deficit Reduction Committee Holds First Meeting**

*September 8, 2011*

In their first meeting on September 8, the newly-created Joint Select Deficit Reduction Committee approved, by voice vote, rules governing its proceedings that would require a majority vote to close a hearing or meeting to the public. The rules also call for seven-day public notice of any hearing and for the panel's co-chairs to provide an agenda to committee members within 48 hours of any meeting and make the text of matters to be considered within 24 hours; proxy voting would be prohibited. Created as part of the recently-enacted debt limit law (PL 112-25), the "super committee" is scheduled to meet again on September 13 to begin its substantive work of producing legislation that will reduce the deficit by at least \$1.2 trillion over ten years.

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## FROM NASUAD

### **New NASUAD Publication – The Senior Community Service Employment Program: A Primer for State Aging and Disability Directors**

The Senior Community Service Employment Program (SCSEP), or Title V – Community Service Employment for Older Americans (CSEOA) as it is referred to in the Older Americans Act – is the only federally mandated job training program that explicitly serves low-income adults, age 55 years and older. SCSEP has a rich history of serving some of the most disadvantaged older persons in the country, including minorities and those with low-incomes and limited education. And although the name of the Senior Community Service Employment Program has changed throughout its fifty year history, its core mission remains constant: empowering older persons to improve their economic well-being and employability through community service work employment.

This document is designed to enable State Aging and Disability Directors to quickly understand the unique role of the Senior Community Service Employment Program. Inside, readers will find a brief history of the program, and overview and how it works and who it serves, an explanation of the administrative structure, and an overview of funding issues.

[Click here to access the document.](#)

### **National Home and Community Based Services Conference – Walk-In Day Rate Announced**

The National Home and Community Based Services Conference is only two days away! Starting this Sunday, September 11, the conference will feature an exciting blend of federal, state and local energy, promising practices, challenges and opportunities in home and

community based services. This year, we are offering a special walk-in one day rate, for anyone interested in attending only one day of the conference. The charge will be \$175 and can be purchased only on-site.

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## FROM THE STATES

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### Tennessee Commission on Aging and Disability

#### Job Announcement – Executive Director

The Tennessee Commission on Aging and Disability seeks a knowledgeable, experienced executive with strong leadership and management skills to direct the activities of the state government agency responsible for policy, procedures, programs, and services relating to older persons and adults with disabilities. For more information on the agency, please click [here](#).

Applicants must have a bachelors/masters degree from an accredited university and a minimum of eight years of experience in the field of aging or disability, or equivalent senior executive experience with nonprofit, government, education, or business organizations.

To apply, submit a full resume, salary requirement and up to three letters of reference to [lori.bell@tn.gov](mailto:lori.bell@tn.gov) or Lori Bell, Shared Services Solutions, TN Tower 21<sup>st</sup> Floor, 312 Rosa L Parks Ave, Nashville, TN 37243.

The full job announcement is available [here](#).

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## FROM OTHER ORGANIZATIONS

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### Kaiser Family Foundation

#### The Budget Control Act of 2011: Implications for Medicare

A new Kaiser Family Foundation brief examines the potential impact of the Budget Control Act of 2011, the process it creates for reducing the federal deficit over the next decade, and how it could affect the Medicare program, health plans and providers, and the program's beneficiaries.

The Budget Control Act of 2011, signed into law on Aug. 2, establishes a process to reduce federal budget deficits by \$2.1 trillion over the 10 years, including \$917 billion in agreed-upon spending reductions immediately and at least \$1.2 trillion in additional deficit-reduction measures required to be enacted by Jan. 15, 2012. If Congress fails to act on recommendations

of a newly created Joint Select Committee on Deficit Reduction, the Budget Control Act would impose across-the-board cuts across key parts of the federal budget, including but not limited to Medicare. Medicare reductions would be capped at 2 percent of Medicare payments to medical providers and health plans.

The brief looks at the key dates and milestones set out in the law and the range of Medicare changes that could be considered by the committee as part of its package – including proposals recommended in other deficit-reduction and Medicare-reform plans. It also examines the cuts that could be imposed if Congress does not agree to reduce the deficit by the amount required in the Budget Control Act – including how the cuts to Medicare provider and plan payments could be implemented and their potential impact.

The brief is part of the [Foundation's Project on Medicare's Future](#), which focuses on producing timely analysis of leading Medicare reforms affecting people on Medicare.

The brief is available [here](#).

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## National Senior Citizens Law Center

### Medicare Plans Must Offer Flexibility to Ensure Access in Disaster Areas

For areas where there has been a “major disaster”, the Centers for Medicare and Medicaid Services (CMS) offers flexibility to ensure that beneficiaries have access to medical care as necessary. CMS has guidance in place that requires Medicare plans to take specific steps to make it easier for beneficiaries enrolled in Part C (Medicare Advantage) and Part D (prescription drug) plans to obtain medication and treatment when normal access is disrupted.

The CMS guidance discusses requirements for flexibility by plans in the following areas:

- For Part C:
  - Use of non-contracted facilities
  - Waiver of primary care gatekeeper requirements
  - Reduction in cost sharing
- For Part D:
  - Early and longer refills
  - Modification of out-of-network pharmacy policies
  - Waiver of co-pays when a pharmacy determines that individuals cannot pay

Presidential “major disaster” declarations have been issued for: Connecticut, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, Vermont, Virginia, and Puerto Rico.

The CMS guidance can be found [here](#) and [here](#).

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## Family Caregiver Alliance

### Focus on Texas: Caregiver Assessments

The Family Caregiver Alliance is sponsoring a webinar on September 20<sup>th</sup> at 1:00 pm ET focused on the Texas Department of Aging and Disability Services (DADS) and efforts to implement a caregiver status questionnaire in its Medicaid functional eligibility determination process for Home and Community Based Services as well as a caregiver assessment in the Older Americans Act, Title III-E programs. Participants will learn about the legislative history behind the assessment, the department's development and implementation process, how the tool is used and administered, challenges and lessons learned, and future plans for assessing the program.

To register for the webinar, click [here](#).

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## The Gerontological Society of America, the American Society on Aging, and Senior Service America, Inc.

### Older Workers: Multiple Returns on Our Public Investment

In recognition of National Employ Older Workers Week, The Gerontological Society of America, The American Society on Aging, and Senior Service America are sponsoring a Congressional breakfast briefing on Friday, September 16, 2011. This briefing will discuss the challenges older workers face in the current fiscal environment. The speakers include Andrew Sum, Director of the Center for Labor Market Statistics; Dennis Streets, Director of the North Carolina Department of Aging and Adult Services; Altha Newman, Chief Professional Officer of the Boys & Girls Clubs of Hawk-Houston; Laura Spiecker, H&R Block employee and former SCSEP participant; and the moderator, Tony Sarmiento, Executive Director of Senior Service America, Inc.

All attendees will receive a full copy and an executive summary of the recent *Public Policy & Aging Report* titled "Older Workers: Problems and Prospects in the Aging Workforce."

The event will be held on Friday, September 16, 2011 from 8:30-10:00 am ET in the Dirksen Senate Office Building, SD-G11. To RSVP, contact Dani Kaiserman at [dkaiserman@agingsociety.org](mailto:dkaiserman@agingsociety.org) or 202-587-2847.

## I&R/A Training and AIRS Certification, September 12-13, Hyatt Regency Capitol Hill, Washington, DC

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## UPCOMING EVENTS FROM OUR PARTNERS

National Association of State Head Injury Administrators State of the States in Head Injury Meeting, October 3-6, 2011, Kansas City, MO.

The Consumer Voice for Quality Long-Term Care 36<sup>th</sup> Annual Conference and Meeting, October 25-28, 2011, Grand Rapids, Michigan.

National Association of Medicaid Directors Fall Conference, November 7-9, 2011, Washington, DC

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