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Health Care Regulatory and Legislative Update

Chapman Insights
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Despite Challenges, Obamacare Enrollment Predicted to Increase by 9% in 2017 Open Enrollment

Open enrollment, the annual period in which individuals can enroll, switch plans, and get subsidies on health plans offered on Obamacare health insurance marketplaces, will begin on November 1, 2016. Despite many large insurers recently withdrawing or scaling back participation in the Obamacare marketplace due to financial losses, the Department of Health and Human Services ("HHS") predicts that by the end of 2017 Open Enrollment, 13.8 million people will have selected a plan, an increase of 1.1 million people or nearly 9% over the 12.7 million plan selections at the end of 2016 Open Enrollment. Of these 13.8 million people, HHS estimates that individuals may enroll from three primary groups: (1) 9.2 million Marketplace re-enrollees, (2) 3.5 million previously uninsured individuals, and (3) 1 million previously off-Marketplace enrollees. Acknowledging the importance of 2017 Open Enrollment session, earlier this year HHS announced it would be stepping-up its outreach efforts among young-adults, as 45% of taxpayers paying the uninsured penalty are under the age of 35. Drawing healthy uninsured individuals to the exchanges will be critical in creating price competition and consumer choice within the marketplaces. We will continue to monitor and report on the state of the Obamacare marketplaces as the 2017 Open Enrollment session progresses.

Skilled Nursing Facility Provider, Life Care Centers of America Inc., to Pay \$145 Million to Resolve False Claims Act Allegations

Today, the Department of Justice ("*DOJ*") announced that Life Care Centers of America Inc. ("*Life Care*"), which owns and operates more than 220 skilled nursing facilities across the country, has agreed to pay \$145 million to resolve a government lawsuit alleging that Life Care violated the False Claims Act by knowingly causing its skilled nursing facilities ("*SNFs*") to submit false claims to Medicare and TRICARE for rehabilitation therapy services that were not reasonable, necessary or skilled. The DOJ specifically alleged that Life Care instituted corporate-wide policies and practices designed to ensure that as many patients as possible were admitted at the highest level of reimbursement for the longest possible period irrespective of the clinical needs of the patients, resulting in the provision of unreasonable and unnecessary therapy to many beneficiaries. The settlement was filed under the qui tam, or whistleblower, provisions of the False Claims Act by former Life Care employees. The whistleblower reward in this case will be \$29 million.

Dignity Health and Catholic Health Initiatives in Alignment Talks

Today, the not-for-profit health systems Dignity Health and Catholic Health Initiatives ("*CHI*") announced that they have signed a nonbinding agreement to evaluate a "potential alignment" between the systems. The press release comes during a year in which both systems have reported operating losses and the Federal Trade Commission has stepped up its scrutiny of hospital mergers. While the press release does not describe the extent of the potential alignment, a full merger would create one of the nation's largest not-for-profit health care systems, with combined revenue of \$27.6 billion (according to Modern Healthcare). Dignity Health operates in 22 states, while CHI operates in 18 states. The press release indicates that the systems anticipate that discussions will continue through early 2017.