

**Patient Protection and Affordable Care Act – Advisory Boards,
Commissions, Councils and Committees**

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In March 2010, President Obama signed into law the Patient Protection and Affordable Care Act and related amendments (“ACA”) to help achieve significant health reform in the United States. ACA authorized the creation of numerous advisory boards, commissions, councils and committees.

Each of these advisory bodies has its own purpose, membership, and composition, with different policies governing pay and reimbursement, applicable conflict of interest rules, effective dates and term limits. Several will operate consistent with the Federal Advisory Committee Act (5 U.S.C. App.) with the exception of section 14 of that Act (which addresses the termination, renewal and continuation of advisory committees).

These advisory bodies provide significant opportunities for members of the public to continue to shape health reform during the implementation phase. In this way, members of the public can play a formal key role in such areas as insurance reform, Medicare spending, comparative effectiveness research, disease prevention, pain research, healthcare workforce issues, and quality.

The following is a brief summary of many of the key advisory bodies. They are detailed below, by ACA title. Members of the public may want to consider volunteering and/or influencing the selection process for qualified candidates to serve on these advisory boards related to federal health care reform.

TITLE I—QUALITY, AFFORDABLE HEALTH CARE FOR ALL AMERICANS

Subtitle D – Available Coverage for All Americans

Part III—State Flexibility Relating to Exchanges

ADVISORY BOARD FOR STATE COOPERATIVES (Sec. 1322 of ACA)

Purpose

To facilitate the Consumer Operated and Oriented Plan (CO-OP) program, established in this section, created to foster the formation of qualified nonprofit health insurance issuers to offer qualified health plans in the individual and small group markets. Loans and grants are available.

Membership

The advisory board will consist of 15 members, appointed by the Comptroller General from among individuals with qualifications described in section 1805 (c)(2) of the Social Security Act (MEDPAC).

Composition Rules

Membership will include individuals with national recognition for their expertise in health finance and economics, actuarial science, health facility management, health plans and integrated delivery systems, reimbursement of health facilities, allopathic and osteopathic physicians, and other providers of health services, and other related fields, who provide a mix of different professionals, broad geographic representation, and a balance between urban and rural representatives.

Additionally, the advisory board members will include (but not be limited to) physicians and other health professionals, experts in the area of pharmaco-economics or prescription drug benefit programs, employers, third-party payers, individuals skilled in the conduct and interpretation of biomedical, health services, and health economics research and expertise in outcomes and effectiveness research and technology assessment, as well as representatives of consumers and the elderly.

Pay and Reimbursement

There is no payment for serving on this board. There is reimbursement for related expenses.

Effective date

The appointment of board members will be made by June 23, 2010 (*i.e.*, no later than 3 months after the date of enactment of ACA).

Term limits

The advisory board will terminate when either a) it has completed its duties or b) by December 31, 2015.

TITLE III—IMPROVING THE QUALITY AND EFFICIENCY OF HEALTH CARE

Subtitle E – Ensuring Medicare Sustainability

INDEPENDENT PAYMENT ADVISORY BOARD (“IPAB”) (Sec. 3403 of ACA)

Purpose

The IPAB is assigned to develop detailed proposals to reduce the per capita rate of growth in Medicare spending. These proposals are sent to the President who immediately submits them to Congress for Congressional consideration.

Additionally, this section of ACA that created the IPAB also establishes a consumer advisory council to advise the IPAB on the impact of payment policies under this title on consumers.

Membership

The IPAB will be an independent payment advisory board consisting of 15 members, appointed by the President, with advice and consent from the Senate.

A Chairperson will be appointed by the President, with the advice and consent of the Senate, from among the members of the IPAB.

Composition Rules

The Secretary of Health and Human Services, the Centers for Medicare & Medicaid Services (CMS) Administrator and the Health Resources and Services Administration Administrator will serve *ex officio* as nonvoting board members.

Membership will include individuals with national recognition for their expertise in health finance and economics, actuarial science, health facility management, health plans and integrated delivery systems, reimbursement of health facilities, allopathic and osteopathic physicians, and other providers of health services, and other related fields, who provide a mix of different professionals, broad geographic representation, and a balance between urban and rural representatives.

Additionally, the advisory board members will include (but not be limited to) physicians and other health professionals, experts in the area of pharmaco-economics or prescription drug benefit programs, employers, third-party payers, individuals skilled in the conduct and interpretation of biomedical, health services, and health economics research and expertise in outcomes and effectiveness research and technology assessment, as well as representatives of consumers and the elderly. Individuals who

are directly involved in the provision or management of delivery of items and services covered under this title shall not constitute a majority of appointed members.

Finally, when selecting individuals for nominations, the President will consult with:

- the Majority Leader of the Senate concerning the appointment of 3 members;
- the Speaker of the House of Representatives concerning the appointment of 3 members;
- the Minority Leader of the Senate concerning the appointment of 3 members; and
- the Minority Leader of the House of Representatives concerning the appointment of 3 members.

Pay and Reimbursement

There is provision for payment for serving on this board and reimbursement for related expenses.

Effective date

Discretionary, but likely to be established no later than 2012 because Congress has appropriated monies for this function for 2012, but definitively by 2014, when mandatory actions by the IPAB are required.

Term limits

Each appointed member shall hold office for a term of 6 years except that—

- a member may not serve more than 2 full consecutive terms (but may be reappointed to 2 full consecutive terms after being appointed to fill a vacancy on the board);
- a member appointed to fill a vacancy occurring prior to the expiration of the term for which that member's predecessor was appointed shall be appointed for the remainder of such term;
- a member may continue to serve after the expiration of the member's term until a successor has taken office; and
- of the members first appointed under this section, 5 shall be appointed for a term of 1 year, 5 shall be appointed for a term of 3 years, and 5 shall be appointed for a term of 6 years, the term of each to be designated by the President at the time of nomination.

IPAB CONSUMER ADVISORY COUNCIL

Purpose

To advise the IPAB on the impact of payment policies on consumers.

Membership

The council shall be composed of 10 consumer representatives appointed by the Comptroller General of the United States, 1 from among each of the 10 regions established by the Secretary.

Members of the consumer advisory council will elect their own officers.

Composition Rules

The membership of the council shall represent the interests of consumers and particular communities and shall, subject to the call of the board, meet not less frequently than 2 times each year in the District of Columbia.

Effective date

Discretionary, but likely to be established no later than 2012 because Congress has appropriated monies for this function for 2012, but definitively by 2014, when mandatory actions by the IPAB are required.

Term limits

The ACA is silent on term limits.

TITLE IV—PREVENTION OF CHRONIC DISEASE AND IMPROVING PUBLIC HEALTH

Subtitle A – Modernizing Disease Prevention and Public Health Systems

ADVISORY GROUP ON PREVENTION, HEALTH PROMOTION, AND INTEGRATIVE AND PUBLIC HEALTH (Sec. 4001 of ACA)

Purpose

To develop policy and program recommendations and advise the National Prevention, Health Promotion and Public Health Council (created by the ACA and staffed by federal employees) on lifestyle-based chronic disease prevention and management, integrative health care practices, and health promotion. The advisory group will be within the Department of Health and Human Services and report to the Surgeon General.

Membership

The advisory group will be composed of no more than 25 non-Federal members to be appointed by the President.

Composition Rules

The advisory group will include a diverse group of licensed health professionals, including integrative health practitioners, who have expertise in worksite health promotion; community services, including community health centers; preventive medicine; health coaching; public health education; geriatrics; and rehabilitation medicine.

Pay and Reimbursement

The ACA is silent on these topics.

Effective Date

Discretionary, but no later than July 1, 2010, when mandatory actions are required.

Term limits

The ACA is silent on term limits.

Subtitle D – Support for Prevention and Public Health Innovation

INTERAGENCY PAIN RESEARCH COORDINATING COMMITTEE (Sec. 4305 of ACA)

Purpose

To coordinate all efforts within the Department of Health and Human Services (HHS) and other Federal agencies that relate to pain research, as well as develop a summary of advances in pain care research, identify critical gaps in basic and clinical research on the symptoms and causes of pain, make recommendations to ensure that the activities of NIH and other Federal agencies are free of duplication, make recommendations on how best to disseminate information on pain care, and make recommendations on how to expand partnerships between public entities and private entities to expand collaborative, cross-cutting research.

Membership/Composition

The committee shall be composed of:

- No more than 7 voting Federal representatives appointed by the HHS Secretary from agencies that conduct pain care research and treatment
- 6 non-Federal members appointed by the HHS Secretary from among scientists, physicians, and other health professionals
- 6 members appointed by the HHS Secretary from members of the general public who are representatives of leading research, advocacy, and service organizations for individuals with pain-related conditions

The committee will include non-voting members determined by the Secretary of the Department of Health and Human Services.

The voting members of the committee shall select a chairperson from the members. The selection of a chairperson shall be subject to the approval of the Director of the National Institutes of Health.

Pay and Reimbursement

The ACA is silent on these topics.

Effective Date

No later than March 23, 2011 (one year from enactment).

Term Limits

The Secretary of DHHS shall review the necessity of the committee at least once every two years.

TITLE V—HEALTH CARE WORKFORCE

Subtitle B--Innovations in the Health Care Workforce

NATIONAL HEALTH CARE WORKFORCE COMMISSION (Sec. 5101 of ACA)

Purpose

To serve as a national resource on health care workforce issues. To develop and request evaluations of education and training activities to determine whether the demand for health care workers is being met. To review current and projected health care workforce supply and demand and make recommendations to Congress and the Administration concerning national health care workforce priorities, goals, and policies. There are specific topics and high priority areas delineated in the Act. There is a grant program and studies to be performed under the direction of the commission.

Membership

The commission will consist of 15 members, appointed by the Comptroller General, and will include at least one representative of:

- health care workforce and health professionals;
- employers;
- third-party payers;
- individuals skilled in the conduct and interpretation of health care services and health economics research;
- representatives of consumers;
- labor unions;
- State or local workforce investment boards; and
- educational institutions (which may include elementary and secondary institutions, institutions of higher education, including 2- and 4-year institutions, or registered apprenticeship programs).

Composition Rules

The membership of the commission will include individuals with national recognition for their expertise in health care labor market analysis, including health care workforce analysis; health care finance and economics; health care facility management; health care plans and integrated delivery systems; health care workforce education and training; health care philanthropy; providers of health care services; and other related fields. Members should also be able to provide a combination of professional perspectives, broad geographic representation, and a balance between urban, suburban, rural, and frontier representatives.

Pay and Reimbursement

There is payment for serving on this commission and reimbursement for related expenses.

Effective date

The Comptroller General is to make initial appointments no later than September 30, 2010.

Term limits

The term of the commission will be for 3 years, with the exception of having the Comptroller General designate staggered terms for the members first appointed.

Subtitle G--Improving Access to Health Care Services

COMMISSION ON KEY NATIONAL INDICATORS (Sec. 5605 of ACA)

Purpose

To conduct comprehensive oversight of a newly established key national indicators system and make recommendations on how to improve such a system, with a required annual report to Congress. The commission enters into an arrangement with the National Academy of Sciences for the Academy to establish the key national indicators system.

Membership

The commission will be composed of 8 members to be appointed equally by the Majority and Minority Leaders of the Senate and the Speaker and Minority Leader of the House of Representatives.

Members of the commission shall not include Members of Congress or other elected Federal, State, or local government officials.

Additionally, the commission will select 2 Co-Chairpersons from among its members.

Composition Rules

In making these appointments, the Majority and Minority Leaders of the Senate and the Speaker and Minority Leader of the House of Representatives will appoint individuals who have shown a dedication to improving civic dialogue and decision-making through the wide use of scientific evidence and factual information.

Pay and Reimbursement

The ACA is silent on these topics.

Effective date

Members of the commission shall be appointed no later than 30 days after the enactment of the ACA (*i.e.*, April 22, 2010).

Term limits

Each member of the commission will be appointed for a 2-year term, except that one initial appointment shall be for a 3-year term.

TITLE VI—TRANSPARENCY AND PROGRAM INTEGRITY

Subtitle D – Patient-Centered Outcomes Research

PATIENT-CENTERED OUTCOMES RESEARCH INSTITUTE (Sec. 6301 of ACA)

Purpose

This institute, a new D.C. nonprofit corporation, is created to identify national priorities for research, and to establish, update, and carry out, a national comparative outcomes research project agenda. The institute will be governed by a public-private sector board of governors appointed by the Comptroller General. The institute is neither an agency nor establishment of the U.S. government; funding comes from taxes.

Additionally, the institute will have permanent or ad hoc expert advisory panels that will assist in identifying research priorities and contributing to the research project agenda.

Membership

The board of governors shall consist of the following members:

- The Director of Agency for Healthcare Research and Quality (AHRQ) (or the Director's designee).
- The Director of the National Institutes of Health (NIH) (or the Director's designee).
- Seventeen members appointed by the Comptroller General will be delineated as follows:
 - 3 members representing patients and health care consumers;
 - 5 members representing physicians and providers, including at least 1 surgeon, nurse, State-licensed integrative health care practitioner, and representative of a hospital;
 - 3 members representing private payers, of whom at least 1 member shall represent health insurance issuers and at least 1 member shall represent employers who self-insure employee benefits;
 - 3 members representing pharmaceutical, device, and diagnostic manufacturers or developers;
 - 1 member representing quality improvement or independent health service researchers; and,
 - 2 members representing the Federal Government or the States, including at least 1 member representing a Federal health program or agency.

Finally, the Comptroller General will designate a Chairperson and Vice Chairperson from among the members of the board. These members will serve as Chairperson or Vice Chairperson for a period of 3 years.

Composition Rules

The board will be comprised of a broad range of perspectives and collectively have scientific expertise in clinical health sciences research, including epidemiology, decisions sciences, health economics, and statistics.

Pay and Reimbursement

The ACA is silent on these topics.

Effective date

Members will be appointed no later than 6 months after enactment (*i.e.*, September 23, 2010).

Term limits

A member of the board shall be appointed for a term of 6 years, except with respect to the members first appointed, whose terms of appointment shall be staggered evenly over 2-year increments. No individual shall be appointed to the board for more than 2 terms.

Advisory panels and standing committees of the Patient-Centered Outcomes Research Institute are delineated in ACA as well.

CLINICAL TRIALS ADVISORY PANEL

Purpose

To carry out randomized clinical trials under the research project agenda as well as advise the institute and the agency, instrumentality, or entity conducting the research on the research question involved and the research design or protocol, including important patient subgroups and other parameters of the research. The panel will be available as a resource for technical questions that may arise during research.

Membership/Composition Rules

The panels will include representatives of practicing and research clinicians, patients, and experts in scientific and health services research, health services delivery, and evidence-based medicine who have experience in the relevant topic, and as appropriate, experts in integrative health and primary prevention strategies.

RARE DISEASE ADVISORY PANEL

Purpose

To assist in the design of the research study and determining the relative value and feasibility of conducting the research study.

Membership/Composition Rules

The panels will include representatives of practicing and research clinicians, patients, and experts in scientific and health services research, health services delivery, and evidence-based medicine who have experience in the relevant topic, and as appropriate, experts in integrative health and primary prevention strategies.

STANDING METHODOLOGY COMMITTEE FOR THE INSTITUTE

Purpose

A standing methodology committee will be created to assist the institute in aiding patients, clinicians, purchasers, and policy-makers in making informed health decisions by advancing the quality and relevance of evidence concerning the manner in which diseases, disorders, and other health conditions can effectively and appropriately be prevented, diagnosed, treated, monitored, and managed through research and evidence synthesis that considers variations in patient subpopulations, and the dissemination of research findings with respect to the relative health outcomes, clinical effectiveness, and appropriateness of the medical treatments, services, and items described in subsection (a)(2)(B).

Membership

The methodology committee will be composed of 15 members appointed by the Comptroller General.

Composition Rules

Members appointed to the methodology committee will be experts in their scientific field, such as health services research, clinical research, comparative clinical effectiveness research, biostatistics, genomics, and research methodologies. In addition, the Directors of NIH and AHRQ (or their designees) will be included as members of the methodology committee.

Subtitle H – Elder Justice Act

ADVISORY BOARD ON ELDER ABUSE, NEGLECT AND EXPLOITATION (Sec. 6703 of ACA)

Purpose

To create short and long-term multidisciplinary strategic plans for the development of the field of elder justice and to make recommendations to the Elder Justice Coordinating Council established under ACA.

Membership

The advisory board will be comprised of 27 members appointed by the Secretary of DHHS and will elect a Chair and Vice Chair from among its members at the first meeting.

Composition Rules

The advisory board members will be selected from among the general public and will be individuals with experience and expertise in elder abuse, neglect, and exploitation prevention, detection, treatment, intervention, or prosecution.

Pay and Reimbursement

There is no payment for services. There is reimbursement for related expenses.

Effective Date

Discretionary, but no later than September 23, 2011, when mandatory actions are required.

Term Limits

Each member of the advisory board shall be appointed for a term of 3 years, except that, of the members first appointed—

- 9 shall be appointed for a term of 3 years;
- 9 shall be appointed for a term of 2 years; and
- 9 shall be appointed for a term of 1 year.

Title VIII – COMMUNITY LIVING ASSISTANCE SERVICES AND SUPPORTS ACT

This section of ACA establishes a national voluntary insurance program for purchasing community-living assistance services and supports for individuals with functional limitations.

CLASS INDEPENDENCE ADVISORY COUNCIL

Purpose

The CLASS Independence Advisory Council will advise the Secretary on matters of general policy in the administration of the CLASS program with respect to: the development of the CLASS Independence Benefit Plan; the determination of monthly premiums under such plan; and, the financial solvency of the program.

The community living assistance services and supports (“CLASS”) program is a national voluntary insurance program for purchasing community living assistance services and supports in order to: provide individuals with functional limitations with tools that will allow them to maintain their personal and financial independence and live in the community through a new financing strategy for community living assistance services and supports; establish an infrastructure that will help address the nation’s community living assistance services and supports needs; alleviate burdens on family caregivers; and address institutional bias by providing a financing mechanism that supports personal choice and independence to live in the community.

Membership/Composition Rules

The advisory council shall be composed of no more than 15 individuals. These individuals will be appointed by the President without regard to the civil service laws and regulations. The majority will be representatives of individuals who participate or are likely to participate in the CLASS program, and will include representatives of older and younger workers, individuals with disabilities, family caregivers of individuals who require services and supports to maintain their independence at home or in another residential setting of their choice in the community, individuals with expertise in long-term care or disability insurance, actuarial science, economics, and other relevant disciplines, as determined by the Secretary of DHHS.

Pay and Reimbursement

The ACA is silent on these topics.

Effective Date

The ACA is silent on the effective date.

Term Limits

The members of the advisory council shall serve overlapping terms of 3 years. A member will not be eligible to serve for more than 2 consecutive terms.

The President will, from time to time, appoint one of the members of the CLASS Independence Advisory Council to serve as the Chair.

PERSONAL CARE ATTENDANTS WORKFORCE ADVISORY PANEL (Sec. 8002 of ACA)

Purpose

To examine and advise the Secretary of Health and Human Services and Congress on workforce issues related to personal care attendant workers, including the adequacy of the number of workers, the salaries, wages, and benefits of personal care attendant workers, and access to the services provided by these workers.

Membership/Composition Rules

Members will include individuals with disabilities of all ages, senior individuals, representatives of individuals with disabilities, representatives of senior individuals, representatives of workforce and labor organizations, representatives of home and community-based service providers, and representatives of assisted living providers.

Effective Date

No later than 90 days after enactment (*i.e.*, June 23, 2010).

Other terms

ACA is silent as to other terms.

TITLE X— STRENGTHENING QUALITY, AFFORDABLE HEALTH CARE FOR ALL AMERICANS

Subtitle D—Provisions Relating to Title IV of ACA Prevention of Chronic Disease and Improving Public Health

CURES ACCELERATION NETWORK REVIEW BOARD (Sec. 10409 of ACA)

Purpose

To advise the Director of the National Institutes of Health (NIH) on the conduct of the activities of the Cures Acceleration Network (CAN).

The CAN, established by ACA, will conduct and support advances in basic research, translating scientific discoveries from bench to bedside; award grants and contracts to eligible entities to accelerate the development of high need cures; provide the resources necessary for government agencies, independent investigators, research organizations, biotechnology companies, academic research institutions, and other entities to develop high need cures; reduce the barriers between laboratory discoveries and clinical trials for new therapies; and facilitate review in the Food and Drug Administration for the high need cures funded by the CAN.

Membership

The board will be comprised of 24 members who are appointed by the Secretary and who serve at the pleasure of the Secretary.

The Secretary will choose, from among the 24 members appointed, one Chairperson and one Vice Chairperson.

Composition Rules

The Secretary will appoint individuals based solely upon the individual's broad range of disciplinary interests and established record of distinguished service in one of the following areas of expertise: basic research; medicine; biopharmaceuticals; discovery and delivery of medical products; bioinformatics and gene therapy; medical instrumentation; and regulatory review and approval of medical products.

Additionally, at least 4 individuals will be recognized leaders in professional venture capital or private equity organizations and have demonstrated experience in private equity investing, and at least 8 individuals shall represent disease advocacy organizations.

In addition to the 24 board members, the Secretary will appoint as *ex officio* members of the board:

- a representative of the National Institutes of Health, recommended by the Secretary of the Department of Health and Human Services;

- a representative of the Office of the Assistant Secretary of Defense for Health Affairs, recommended by the Secretary of Defense;
- a representative of the Office of the Under Secretary for Health for the Veterans Health Administration, recommended by the Secretary of Veterans Affairs;
- a representative of the National Science Foundation, recommended by the Chair of the National Science Board; and
- a representative of the Food and Drug Administration, recommended by the Commissioner of Food and Drugs.

Pay and Reimbursement

The ACA provides payment for serving on this board and reimbursement for related expenses.

Term Limits

Each member will be appointed to serve a 4-year term and a member may be appointed to serve no more than 3 terms on the board, and may not serve more than 2 such terms consecutively.

Each *ex officio* member will serve a 3-year term on the board; however the Chairperson can adjust the terms of the initial *ex officio* members in order to provide for a staggered term of appointment for all such members.

Other terms

ACA is silent as to other terms.

ADVISORY COMMITTEE FOR YOUNG WOMEN'S BREAST HEALTH AWARENESS EDUCATION CAMPAIGN (Sec. 10413)

Purpose

To assist in creating and conducting education campaigns on breast health, symptoms, and early diagnosis and treatment of breast cancer in young women, including specific risk factors such as family history of cancer and women that may be at high risk for breast cancer. "Young women" are defined as women 15-44 years of age.

Membership/Composition

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, will appoint to the advisory committee, members who are deemed necessary to properly advise the Secretary. This will include organizations and individuals with expertise in breast cancer, disease prevention, early detection, diagnosis, public health, social marketing, genetic screening and counseling, treatment, rehabilitation, palliative care, and survivorship in young women.

Effective Date

No later than 60 days after enactment (*i.e.*, May 23, 2010).

Other terms

ACA is silent as to other terms.

As previously stated, members of the public may want to consider volunteering and/or influencing the selection process for qualified candidates to serve on these advisory bodies related to federal health care reforms.

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This Client Alert was authored by Lynn Shapiro Snyder and Stephanie M. Fox. For additional information about the issues discussed in this Client Alert, please contact one of the authors or the EpsteinBeckerGreen attorney who regularly handles your legal matters.

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EDITOR

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