

# **HHS ADMINISTRATIVE FAILURE**

## ***HHS Failed To Meet A Third of Mandated Deadlines Under New Federal Health Care Law***

**October 4, 2010**

(Washington, DC) -- A new analysis by the nonpartisan Congressional Research Service (CRS)<sup>1</sup> found that the Secretary of the U.S. Department of Health and Human Services (HHS) failed to meet one-third of the deadlines mandated by the new federal health care law, the Patient Protection and Affordable Care Act. The memo, requested by Republican Senators Coburn, Hatch, and Cornyn, revealed that HHS failed to fulfill its requirements in seven of 22 deadlines before September 23, 2010, which was the six-month mark of the law being enacted.

In addition to the seven missed deadlines, the CRS memo also noted four deadlines for which there was insufficient public information available to draw a conclusion. Republican health staff pointed out that HHS may have failed to meet these four deadlines as well.

During the height of the health care debate in Congress last year, Senators Coburn, Hatch, and Cornyn warned the American people about the pitfalls of health care legislation that would empower the Secretary of HHS with unprecedented new authorities. Senate staffers totaled more than 1,700 places in the law where the Secretary is given new abilities to write rules, establish programs, and mandate requirements. Now, nonpartisan analysis shows that HHS has failed to even meet 22 mandatory deadlines required by law during the first six months of the law being enacted.

Future months are unlikely to see HHS improve its record of compliance. The Department failed to meet one-third of 22 deadlines in six months, yet now the Department has less than three months to meet another 29 requirements required by law.

The CRS analysis did not include deadlines imposed upon individuals or organizations other than the Secretary of HHS, nor did it include any provisions that did not require the Secretary to take a specific action by a specific date. CRS' analysis was "based on information from official publicly available sources such as the Federal Register and agency websites." The analysis was finalized on the six-month mark – September 23, 2010– so only actions taken by the Secretary of HHS by that date were analyzed.

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<sup>1</sup> About CRS: CRS works exclusively for the United States Congress, providing policy and legal analysis to committees and Members of both the House and Senate, regardless of party affiliation. As a legislative branch agency within the Library of Congress, CRS has been a valued and respected resource on Capitol Hill for nearly a century. CRS is well known for analysis that is authoritative, confidential, objective and nonpartisan. Its highest priority is to ensure that Congress has 24/7 access to the nation's best thinking.

## MISSED DEADLINES

***For the Secretary of HHS, As Required By the Patient Protection and Affordable Care Act***

<b>Grade</b>	<b>Deadline</b>	<b>PPACA Section(s)</b>	<b>Requirements</b>	<b>Actions Taken, As of September 23, 2010</b>
<b>FAILURE #1</b>	April 1, 2010, May 7, 2010, June 1, 2010, and July 1, 2010	5602	Requires the Secretary to use negotiated rulemaking to establish a methodology and criteria for the designation of medically underserved populations and health shortage areas. By May 1, 2010, the Secretary must publish a notice in the <i>Federal Register</i> announcing the intent to form a negotiated rulemaking committee and to set the target date for the rule as July 1, 2010. A preliminary committee report is required by April 1, 2010, (i.e., before the committee is required to be appointed) with a final report by June 1, 2010.	On May 11, 2010, a notice of intent to form the committee was published. The committee members were appointed on July 9, 2010, and the first meeting was held September 22, 2010. For more details and copies of issuances see <a href="http://www.hrsa.gov/advisorycommittees/shortage/index.html">http://www.hrsa.gov/advisorycommittees/shortage/index.html</a> .
<b>FAILURE #2</b>	May 1, 2010 and July 1, 2010	3301(b)	Requires the Secretary to issue contract agreement language for drug manufacturers to provide access to discounted drugs by May 1, 2010. Requires the Secretary to establish a Medicare coverage gap discount program based upon the agreement by July 1, 2010.	August 2, 2010, final data agreement and final agreement language with manufacturers was released. August 3, 2010, guidance memorandum issued. See <a href="http://www.cms.gov/PrescriptionDrugCovGenIn/05_Pharma.asp#TopOfPage">http://www.cms.gov/PrescriptionDrugCovGenIn/05_Pharma.asp#TopOfPage</a> .
<b>FAILURE #3</b>	May 22, 2010	10501(l)	Requires the Secretary to define by regulation "underserved rural community" for purposes of the section.	On May 26, 2010, Health Resources and Services Administration (HRSA) published a final rule implementing this requirement, which became effective on June 25, 2010. (75 FR 29447)
<b>FAILURE #4</b>	June 21, 2010	1101(a)	Requires the Secretary to establish a temporary high risk pool program. States or the Secretary may operate the program in a state.	Several states did not have their high risk pools operational until August. For more information, see CRS report R41235.
<b>FAILURE #5</b>	July 21, 2010	4205	Requires the Secretary to publish a Federal Register notice with information for retail food establishments seeking to voluntarily provide nutrition information to consumers.	An implementing notice was published in the Federal Register on August 25, 2010 (75 FR 52425).
<b>FAILURE #6</b>	September 19, 2010	6401, as amended by §10603 and §1304 of P.L. 111-152.	Requires the Secretary to establish provider and supplier screening procedures for Medicare, Medicaid, and CHIP. Phased-in with providers and suppliers being subject to additional screening and other enrollment requirements first, then new providers later.	CMS published a proposed rule with guidance on implementing this requirement on September 23, 2010 (75 FR 58203).
<b>FAILURE #7</b>	September 19, 2010	7102(a)	Requires the Secretary to issue regulations on the following Public Health Service Act (PHSA) Section 340B program activities: civil monetary penalties, an administrative process to resolve disputes, and a methodology for calculating ceiling prices.	HRSA issued two Advance Notices of Proposed Rule Making (ANPRM) with requests for public comment (75 FR 57230 and 75 FR 57233) on September 20, 2010.