



Health Policy Briefing

June 29, 2015

SCOTUS Rules in Favor of Administration in *King v. Burwell*

Court Upholds ACA Subsidies

The Supreme Court decided to uphold an essential element of the Affordable Care Act (ACA) in a 6-3 decision to the *King v. Burwell* case last week. The decision means health care subsidies will still be available for enrollees in states that did not set up their own health insurance exchanges. Had the Supreme Court ruled in favor of the plaintiffs, 6.4 million people across 34 states would have likely lost their health insurance, and Republican lawmakers would have been responsible for designing a new system of providing health insurance coverage to these patients. The decision was authored by Chief Justice John Roberts, saying “the argument that the phrase ‘established by the State’ would be superfluous if Congress meant to extend tax credits to both State and Federal Exchanges is unpersuasive.” Chief Justice Roberts was joined in the majority by Justices Anthony M. Kennedy, Ruth Bader Ginsburg, Stephen G. Breyer, Sonia Sotomayor, and Elena Kagan. The decision was praised by Democratic lawmakers and President Obama. Justice Antonin Scalia authored the dissent, arguing that “We should start calling this law SCOTUScare.” Justice Scalia was joined by Justices Samuel Alito and Clarence Thomas in his dissent. Republicans will now likely focus on using the special budgetary process known as reconciliation to vote to repeal the health care law. Although the reconciliation process avoids a filibuster and 60-vote threshold, President Obama will veto any legislation seeking to repeal the ACA. The Congressional Budget Office’s (CBO) most recent estimate scores repeal of the ACA at more than \$300 billion over the next decade. Congressional committees are charged by this year’s budget resolution with putting together a replacement to the health care law before the end of July.

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CBO Scores 21st Century Cures Package

The 21st Century Cures Act will cost \$106.4 billion through 2020, according to an estimate by the Congressional Budget Office (CBO). The legislation seeks to overhaul the medical drug and device research, development, and approval process. House Energy and Commerce Committee members also released a committee report last week on the legislation. Offsets for the bill are still under negotiation. Updated bill language should be available this week, and the package will likely reach the House floor after the Fourth of July holiday. H.R. 6 currently has 230 bipartisan cosponsors, notable because only 218 votes are needed for passage.

Movement on Labor-HHS-Education Appropriations

The House Appropriations Committee voted 30-21 to report out the fiscal year (FY) 2016 Labor-Health and Human Services (HHS)-Education spending bill, totaling \$153.05 billion. The spending bill is a \$3.7 billion reduction from current spending levels and \$14.6 billion below the President's budget request. During the markup, members on both sides of the aisle voiced discontent with the sequestration level spending caps. The bill eliminates funding for the Agency for Healthcare Research and Quality (AHRQ). It would also block any new discretionary funding for further implementation of the 2010 health care law, and rescinds some unspent funds, including \$6.8 billion from the Center for Innovation at the Centers for Medicare and Medicaid Services (CMS). The National Institutes of Health (NIH) would receive an additional \$1.1 billion in funding. The Centers for Disease Control and Prevention (CDC) would receive an additional \$140 million in spending. The spending bill urges CMS to aid in minimizing the burden of ICD-10 implementation on doctors, such as the potential for delayed payments, and to establish a hardship exemption for those that would be harmed by the switch. Appropriators also request that CMS assist providers and hospitals in resolving issues with recovery audit contractors (RACs). They encourage CMS to find a better balance between eliminating fraud and abuse while not jeopardizing patient access to care and the financial stability of health care providers. Lawmakers want to see funds resulting from RAC audits redirected to help hospitals and providers better understand payment rules. Appropriators also suggest that they want to see a reduction in the backlog of claims at the Office of Medicare Hearings and Appeals. In response to U.S. Preventive Services Task Force (USPSTF) recommendations indicating that the benefits of mammography screening may not always outweigh the risks for women in their 40s, appropriators advise HHS to halt any changes to breast cancer screening recommendations until further research is conducted on new screening technologies. An amendment was included from Rep. Marcy Kaptur (D-Ohio) requesting that within 120 days HHS and the Department of Veterans Affairs (VA) study the rising costs of prescription drugs and examine how much the government is spending on the highest-cost and most frequently prescribed drugs in government health care programs. The Senate Labor-HHS-Education Appropriations Committee voted 16-14 to advance their own version of the FY 2016 spending bill, totaling \$153.2 billion. The spending bill is a \$3.6 billion reduction from current spending levels and \$14.5 billion below the President's budget request. Funding for the Independent Payment Advisory Board (IPAB), created by the Affordable Care Act (ACA), would be eliminated. The bill also limits and monitors spending on the implementation of the ACA, blocking funding for the federal risk corridor program and discretionary funding for state-based insurance exchanges. The bill would require the administration to make public the number of employees, contractors, and activities involved in the implementation of the health care law. Total funding for HHS would be cut by \$646 million for a total of \$70.4 billion. NIH would receive \$32 billion, a \$2 billion increase over current spending levels, while CDC would receive a \$251 million cut. CMS would receive a \$1.15 billion cut, and committee members expressed concerns that this budget will be insufficient to allow CMS' building space, staff, and information technology to accommodate the growing enrollment in the Medicare program. An amendment from Sen. Tom Udall (D-N.M.) was agreed to that would allocate some of the bill's public health funds to a preventive medicine residency program. The manager's amendment included provisions from Democratic members recognizing the therapeutic benefits of marijuana and urging the NIH to conduct more research on the drug. Language was also included commending a demonstration project for frontier clinics and encouraging the Integrative Health Council to further address mental health issues. The White House has expressed particularly strong opposition to the Labor-HHS-Education spending bills, citing their belief that spending levels deeply underfund important programs. The deadline for passing appropriations legislation is October 1, the beginning of the next fiscal year.

Report Finds Lack of Quality Measures for Serious Diseases

There aren't enough quality measures for serious conditions like lung cancer, prostate cancer, and endometrial cancer according to a new [study](#) from Avalere Health. While there are more than 20 quality measures for less serious diseases like diabetes and renal disease, there is a dearth of measures for more high-impact conditions. As payments shift toward value based reimbursement, the National Quality Forum (NQF) is attempting to prioritize quality measures for these conditions, but Avalere finds that the development and adoption of metrics is still considerably imbalanced.

Affordable Care Act Update

IPAB Repeal Passes the House

The House voted last week to repeal the Affordable Care Act's (ACA) Independent Payment Advisory Board (IPAB). The 2010 health care law charges IPAB with reducing Medicare spending should costs exceed a target growth rate. H.R. 1190, the Protecting Seniors' Access to Medicare Act of 2015, passed by a vote of 244-154, with 11 Democrats joining House Republicans who unanimously supported the measure. The \$7.1 billion legislation is paid for with money from the Public Health and Prevention Fund, also established by the ACA. This offset was opposed by many Democrats who may have otherwise supported the legislation, including Rep. Linda T. Sánchez (D-Calif.), who introduced the repeal bill with Rep. Phil Roe (R-Tenn.) earlier this year. The cuts to the prevention fund were added to the original bill through an amendment offered by House Energy and Commerce Health Subcommittee Chairman Joe Pitts (R-Pa.). The President has already threatened to veto the legislation should it reach his desk.

Study Finds Narrowing of Physician Networks

The number of providers available in many health care plans is shrinking, according to a new [report](#) from the Robert Wood Johnson Foundation. The study finds that four in 10 plans sold through an Affordable Care Act (ACA) exchange have networks characterized as "small" or "extra small." A small network is defined as covering fewer than 25 percent of doctors in the region, while extra small encompasses those plans with fewer than 10 percent of doctors in the region. The report concludes that reducing the size of a network is one of the only remaining cost containment tools for insurers.

Health Legislation Recently Introduced

S. 1641 (VA), to improve the use by the Department of Veterans Affairs of opioids in treating veterans, to improve patient advocacy by the Department, and to expand availability of complementary and integrative health, and for other purposes; BALDWIN; to the Committee on Veterans' Affairs; June 22

H.R. 2846 (CANCER CARE PLANNING), to amend title XVIII of the Social Security Act to provide for coverage of cancer care planning and coordination under the Medicare program; CAPPS; jointly, to the committees on Energy and Commerce and Ways and Means; June 23

H.R. 2850 (OVERDOSES), to prevent deaths occurring from drug overdoses; EDWARDS; to the Committee on Energy and Commerce; June 23

H.R. 2866 (PREGNANCY), to amend title XXVII of the Public Health Service Act to provide for a special enrollment period for pregnant women, and for other purposes; COLEMAN; jointly, to the committees on Energy and Commerce, Ways and Means, and Oversight and Government Reform; June 23

S. 1648 (RURAL HEALTH), to amend title XVIII of the Social Security Act to create a sustainable future for rural healthcare; GRASSLEY; to the Committee on Finance; June 23

S. 1650 (HOME HEALTH), to amend title XVIII of the Social Security Act to make changes to the Medicare home health face-to-face encounter requirements; MENENDEZ; to the Committee on Finance; June 23

S. 1653 (PPACA), to amend the Patient Protection and Affordable Care Act to enhance access for independent agents and brokers to information regarding marketplace enrollment; CASSIDY; to the Committee on Health, Education, Labor, and Pensions; June 23

S. 1654 (OVERDOSES): A bill to prevent deaths occurring from drug overdoses; REED; to the Committee on Health, Education, Labor, and Pensions; June 23

H.R. 2868 (SMALL BUSINESSES), to amend title I of the Employee Retirement Income Security Act of 1974 to improve access and choice for entrepreneurs with small businesses with respect to medical care for their employees; JOHNSON; to the Committee on Education and the Workforce; June 24

H.R. 2869 (PHSA), to amend title XXVII of the Public Health Service Act to permit cooperative governing of public entity health benefits through local governments in secondary States; MARCHANT; to the Committee on Energy and Commerce; June 24

H.R. 2872 (OPIOIDS), to amend the Controlled Substances Act to modernize the treatment of opioid addiction, and for other purposes; BUCSHON; jointly, to the committees on Energy and Commerce and the Judiciary; June 24

H.R. 2881 (PPACA), to amend the Internal Revenue Code of 1986 to modify the definition of applicable large employer for purposes of the employer mandate in the Patient Protection and Affordable Care Act; MESSER; to the Committee on Ways and Means; June 24

S. 1661 (PHSA), to amend title XXVII of the Public Health Service Act to preserve consumer and employer access to licensed independent insurance producers; ISAKSON; to the Committee on Health, Education, Labor, and Pensions; June 24

S. 1667 (HEALTH PLANS), to amend the Internal Revenue Code of 1986 to clarify the special rules for accident and health plans of certain governmental entities, and for other purposes; CANTWELL; to the Committee on Finance; June 24

S. 1676 (GME), to increase the number of graduate medical education positions treating veterans, to improve the compensation of health care providers, medical directors, and directors of Veterans Integrated Service Networks of the Department of Veterans Affairs, and for other purposes; TESTER; to the Committee on Veterans' Affairs; June 24

Health Legislation Recently Introduced cont.

H.R. 2894 (FAMILY CAREGIVERS), to expand eligibility for the program of comprehensive assistance for family caregivers of the Department of Veterans Affairs; ESTY; to the House Committee on Veterans' Affairs; June 25

H.R. 2895 (AMBULATORY CANCER CARE), to amend title XVIII of the Social Security Act to establish payment parity under the Medicare program for ambulatory cancer care services furnished in the hospital outpatient department and the physician office setting; POMPEO; jointly, to the committees on Energy and Commerce and Ways and Means; June 25

H.R. 2897 (PARASITIC DISEASE), to require the submission of a report to the Congress on parasitic disease among poor Americans; JOHNSON; jointly, to the committees on Energy and Commerce and the Judiciary; June 25

H.R. 2905 (PPACA), to amend title I of the Patient Protection and Affordable Care Act to provide that only health plans made available by the Federal Government to Supreme Court Justices and staff are Exchange health plans; BABIN; jointly, to the committees on the Judiciary and Energy and Commerce; June 25

H.R. 2911 (HEALTH PLANS), to provide an exception from certain group health plan requirements to allow small businesses to use pre-tax dollars to assist employees in the purchase of policies in the individual health insurance market, and for other purposes; BOUSTANY; jointly, to the committees on Ways and Means, Energy and Commerce, and Education and the Workforce; June 25

H.R.2915 (VA), to amend title 38, United States Code, to direct the Secretary of Veterans Affairs to identify mental health care and suicide prevention programs and metrics that are effective in treating women veterans as part of the evaluation of such programs by the Secretary; BROWNLEY; to the House Committee on Veterans' Affairs; June 25

H.R.2921 (STEM CELL RESEARCH), to intensify stem cell research showing evidence of substantial clinical benefit to patients, and for other purposes; FORBES; to the House Committee on Energy and Commerce; June 25

H.R.2935 (VA), to provide for a five-year extension of the authority of the Secretary of Veterans Affairs to provide for the conduct of medical disability examinations by contract physicians; MALONEY; to the House Committee on Veterans' Affairs; June 25

H.R.2943 (ROSE ROSETTE DISEASE), to prohibit the Department of Agriculture from obligating or expending any funds for grants awarded for research on the prevention of rose rosette disease, and for other purposes; SALMON; jointly, to the committees on Agriculture and Appropriations; June 25

H.RES.345 (PTSD), expressing support for designation of the month of June 2015 as "National Post-Traumatic Stress Awareness Month" and June 27, 2015, as "National Post-Traumatic Stress Awareness Day"; PETERS; jointly, to the committees on Armed Services and Veterans' Affairs; June 25

S. 1693 (VA), to amend title 38, United States Code, to expand eligibility for reimbursement for emergency medical treatment to certain veterans that were unable to receive care from the Department of Veterans Affairs in the 24-month period preceding the furnishing of such emergency treatment, and for other purposes; HIRONO; to the Committee on Veterans' Affairs; June 25

S. 1685 (APPROPRIATIONS), making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2016, and for other purposes; BLUNT; from the Committee on Appropriations; placed on the calendar; June 25

S. 1697 (HEALTH PLANS), to provide an exception from certain group health plan requirements to allow small businesses to use pre-tax dollars to assist employees in the purchase of policies in the individual health insurance market, and for other purposes; GRASSLEY; to the Committee on Finance; June 25