



Health Policy Briefing

June 12, 2023

Appeals Court Weighs Fate of ACA's Preventive Services Mandate

The 5th U.S. Circuit Court of Appeals in New Orleans heard arguments last week regarding a lower court's March decision on the Affordable Care Act's (ACA) preventive services coverage mandate. The plaintiffs argued in support of the nationwide suspension of the law's requirements for no-cost coverage of certain preventive services, while the Biden administration characterized the March decision as a "legal error." The Department of Justice argued that while no harm would be done to the plaintiffs by putting the nationwide injunction on hold, great harm would be done to the millions of individuals with employer-sponsored insurance or coverage through the individual market should the court fail to do so. The attorney for the parties challenging the law asserted that because members of the U.S. Preventive Services Task Force are not Senate confirmed or overseen by Senate confirmed federal employees, their recommendations for what services must be covered by insurers at no cost to the beneficiary cannot be enforced, stating that "agency actions must be set aside if they are unlawful." While the appeals court panel agreed that the individual Texas businesses involved in the litigation should be shielded from the requirements while the case is being decided, they appeared split on whether the current coverage rules should be kept intact for the rest of the country. The panel of judges seemed unconvinced by the plaintiff's assertion that a nationwide injunction would not cause harm because insurers would be unlikely to end coverage of preventive services while the case is still ongoing.

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Ways and Means Advances Telehealth Legislation

The House Ways and Means Committee advanced legislation ([H.R. 1843](#)) last week that would permit high-deductible health plans to cover telehealth services before enrollees meet their deductible. The *Telehealth Expansion Act* was agreed to in a 30-12 vote, with five Democrats joining panel Republicans in support of the measure. Current statute allows these plans to cover telehealth pre-deductible through the end of 2024. Lawmakers argued that making this COVID-era flexibility permanent will save money and improve and expand access to care, especially for individuals in rural areas of the country.

Judiciary Republicans Probe FTC Review of Illumina-GRAIL Merger

House Judiciary Committee Chairman Jim Jordan (R-Ohio) has sent a [letter](#) to the Federal Trade Commission (FTC) regarding the agency's review of the biotechnology company Illumina's acquisition of GRAIL, a cancer startup. Jordan and other GOP lawmakers assert that the Commission's approach to the merger "departs from the FTC's normal processes and raises questions about the Commission's reliance on foreign jurisdictions to enforce U.S. laws." The letter was co-signed by Reps. Darrell Issa (R-Calif.) and Thomas Massie (R-Ky.). They request materials related to the FTC's review of the Illumina-GRAIL merger.

House Lawmakers Expected to Markup FDA Funding Bill This Week

Appropriators in the House of Representatives are expected to hold a full committee markup of the fiscal year (FY) 2024 Agriculture-Rural Development-Food and Drug Administration spending bill on Wednesday. The panel delayed a previously scheduled markup of the legislation amidst negotiations on the debt limit. The recently enacted debt ceiling agreement set caps on discretionary spending for FY 2024.

COVID Czar to Depart Administration

COVID-19 Czar Ashish Jha plans to leave his post at the White House on June 15 and return to his prior position as dean of the Brown University School of Public Health. Jha's departure has been expected given the Biden administration's decision to not renew the public health emergency (PHE) declaration which ended on May 11. Jha took over as the White House's COVID-19 Response Coordinator in April 2022, succeeding Jeff Zients and making him the second official to lead the nation's coronavirus response. The White House does not plan to replace Jha as it continues to unwind the coronavirus PHE and search for a director of the new Office of Pandemic Preparedness and Response Policy. This person will advise the President and work to coordinate federal responses to biological and pandemic threats.

Experts Consider Benefits of Telehealth at Politico Event

Experts agreed that the benefits of telehealth will outweigh the costs during a summit on health care convened by Politico last week. The panel, which included Colorado Lt. Gov. Dianne Primavera and Stanford Health Clinic President Luis Garcia, discussed digital health care and the increased use of telemedicine following the adoption of certain flexibilities in response to the COVID-19 pandemic. The speakers agreed that telehealth saves money for both patients and health systems by shortening hospital stays, eliminating travel expenses, and reducing stigmas around mental health. They also explored how telehealth has supported health systems in reaching underserved and rural populations of patients and addressing gaps in prenatal and maternal health care. U.S. Department of Health and Human Services Deputy National Coordinator for Health Information Technology Steven Posnack suggested that increased telehealth adoption could lead to the creation of new payment models for providers. A recording of the session can be found [here](#).

Upcoming Congressional Hearings and Markups

House Appropriations Committee markup of Fiscal Year 2024 Military Construction, Veterans Affairs, and Related Agencies Bill; 10:00 a.m.; June 13

House Education and the Workforce Committee markup of H.R. 824, ***Telehealth Benefit Expansion for Workers Act*** and H.R. 3941, ***Schools Not Shelters Act***; 10:15 a.m.; June 13

House Education and Workforce hearing “Examining the Policies and Priorities of the Department of Health and Human Services;” 10:15 a.m.; June 13

House Energy and Commerce Subcommittee on Health legislative hearing “Legislative Solutions to Bolster Preparedness and Response for All Hazards and Public Health Security Threats;” 10:30 a.m.; June 13

House Oversight and Accountability Select Subcommittee on the Coronavirus Pandemic hearing “Oversight of CDC Policies and Decisions During the COVID-19 Pandemic;” 10:30 a.m.; June 13

House Veterans’ Affairs Subcommittee on Health “Care Coordination: Assessing Veteran Needs and Improving Outcomes;” 1:00 p.m.; June 13

House Oversight and Accountability Committee hearing “Death by a Thousand Regulations: The Biden Administration’s Campaign to Bury America in Red Tape;” 10:00 a.m.; June 14

House Energy and Commerce Subcommittee on Health legislative hearing “Examining Proposals that Provide Access to Care for Patients and Support Research for Rare Diseases;” 10:30 a.m.; June 14

Senate Committee on Veterans’ Affairs hearing “Connections to Care: Improving Substance Use Disorder Care for Veterans in Rural America and Beyond;” 3:00 p.m.; June 14

Senate Special Committee on Aging hearing “Before Disaster Strikes: Planning for Older Americans and People with Disabilities in All Phases of Emergencies;” the witness list can be found here; 9:30 a.m.; June 15

Senate Health, Education, Labor, and Pensions Committee executive session to consider S. 133, ***NAPA Reauthorization Act***; S. 134, ***Alzheimer’s Accountability and Investment Act***; S. 265, ***SIREN Reauthorization Act***; S. 1844, ***Animal Drug and Animal Generic Drug User Fee Amendments of 2023***; S. 1852, ***Sickle Cell Disease and Other Heritable Blood Disorders Research, Surveillance, Prevention, and Treatment Act of 2023***; and S. 1855, ***Special Diabetes Program Reauthorization Act of 2023***; 10:00 a.m.; June 15

House Veterans’ Affairs Subcommittee on Health hearing on H.R. 3520, ***Veterans Care Improvement Act***; H.R. 1182, ***Veterans Serving Veterans Act***; H.R. 1774, ***VA Emergency Transportation Act***; H.R. 2683, ***VA Flood Preparedness Act***; H.R. 2768, ***PFC Joseph P. Dwyer Peer Support Program Act***; H.R. 2818, ***Autonomy for Disabled Veterans Act***; H.R. 3581, ***Caregiver Outreach and Program Enhancement (COPE) Act***; H.R. 1278, ***DRIVE Act***; H.R. 1639, ***VA Zero Suicide Demonstration Project Act***; and H.R. 1815, ***Expanding Veterans’ Options for Long Term Care Act***; 10:30 a.m.; June 21

- H.R.3793 — To amend the Federal Food, Drug, and Cosmetic Act to require manufacturers of life-saving drugs to submit data and information to assess the stability of the drugs and determine their longest supported expiration date, and for other purposes; Sponsor: Slotkin, Elissa [Rep.-D-MI-7]; Committees: House - Energy and Commerce
- H.R.3794 — To amend the Public Health Service Act to authorize the Biomedical Advanced Research and Development Authority to award follow-on production contracts or transactions, procure supplies for experimental or test purposes, and acquire innovative commercial products and commercial services, and for other purposes; Sponsor: Garcia, Robert [Rep.-D-CA-42]; Committees: House - Energy and Commerce
- H.R.3795 — To amend the Public Health Service Act to require the development of a diagnostic testing preparedness plan to be used during public health emergencies, and for other purposes; Sponsor: Pence, Greg [Rep.-R-IN-6]; Committees: House - Energy and Commerce
- H.R.3798 — To amend the Internal Revenue Code of 1986 to inform employers of flexible health insurance benefits; Sponsor: Tenney, Claudia [Rep.-R-NY-24]; Committees: House - Ways and Means
- H.R.3799 — To amend the Internal Revenue Code of 1986 to provide for health reimbursement arrangements integrated with individual health insurance coverage; Sponsor: Hern, Kevin [Rep.-R-OK-1]; Committees: House - Ways and Means
- H.R.3800 — To codify Internal Revenue Service guidance relating to treatment of certain services and items for chronic conditions as meeting the preventive care deductible safe harbor for purposes of high deductible health plans in connection with health savings accounts; Sponsor: Wenstrup, Brad R. [Rep.-R-OH-2]; Committees: House - Ways and Means
- H.R.3805 — To amend title XIX of the Social Security Act to establish a demonstration project testing Whole Child Health Models, and for other purposes; Sponsor: Blunt Rochester, Lisa [Rep.-D-DE-At Large]; Committees: House - Energy and Commerce
- H.R.3807 — To amend the Federal Food, Drug, and Cosmetic Act with respect to device shortage notifications; Sponsor: Castor, Kathy [Rep.-D-FL-14]; Committees: House - Energy and Commerce
- H.R.3810 — To amend the Federal Food, Drug, and Cosmetic Act to enhance drug manufacturing amount information reporting, and for other purposes; Sponsor: Eshoo, Anna G. [Rep.-D-CA-16]; Committees: House - Energy and Commerce
- H.R.3811 — To require the Secretary of Veterans Affairs to conduct a study on the quality of care difference between behavioral and mental health care provided by health care providers of the Department of Veterans Affairs compared to non-Department providers; Sponsor: Fallon, Pat [Rep.-R-TX-4]; Committees: House - Veterans' Affairs
- H.R.3813 — To accelerate the applicability of the requirement that the Director of the Centers for Disease Control and Prevention be appointed by the President, by and with the consent of the Senate; Sponsor: Guthrie, Brett [Rep.-R-KY-2]; Committees: House - Energy and Commerce
- H.R.3817 — To increase language access to behavioral health services at eligible health centers, and for other purposes; Sponsor: Meng, Grace [Rep.-D-NY-6]; Committees: House - Energy and Commerce
- H.R.3820 — To amend the Public Health Service Act to strike the requirement that the Director of the Centers for Disease Control and Prevention be appointed by and with the advice and consent of the Senate; Sponsor: Pallone, Frank, Jr. [Rep.-D-NJ-6]; Committees: House - Energy and Commerce
- H.R.3821 — To reauthorize the Firefighter Cancer Registry Act of 2018; Sponsor: Pascrell, Bill, Jr. [Rep.-D-NJ-9]; Committees: House - Energy and Commerce

H.R.3829 — To streamline the process for institutions of higher education to research marijuana; Sponsor: Titus, Dina [Rep.-D-NV-1]; Committees: House - Energy and Commerce; Judiciary; Agriculture; Education and the Workforce

H.R.3832 — To establish a program at BARDA for developing medical countermeasures for viral threats with pandemic potential; Sponsor: Trahan, Lori [Rep.-D-MA-3]; Committees: House - Energy and Commerce

S.1810 — A bill to establish a grant program for family community organizations that provide support for individuals struggling with substance use disorder and their families; Sponsor: Gillibrand, Kirsten E. [Sen.-D-NY]; Committees: Senate - Health, Education, Labor, and Pensions

S.1820 — A bill to amend titles XIX and XXI of the Social Security Act to provide a consistent standard of health care to incarcerated individuals, and for other purposes; Sponsor: Booker, Cory A. [Sen.-D-NJ]; Committees: Senate - Finance

S.1828 — A bill to amend title 38, United States Code, to direct the Secretary of Veterans Affairs to recognize nurse registries for purposes of the Veterans Community Care Program, and for other purposes; Sponsor: Rubio, Marco [Sen.-R-FL]; Committees: Senate - Veterans' Affairs

S.1832 — A bill to amend title XVIII of the Social Security Act to improve access to diabetes outpatient self-management training services, to require the Center for Medicare and Medicaid Innovation to test the provision of virtual diabetes outpatient self-management training services, and for other purposes; Sponsor: Shaheen, Jeanne [Sen.-D-NH]; Committees: Senate - Finance

H.Res.475 — Expressing support for the designation of the first Tuesday in June as “National Cancer Survivor Beauty and Support Day”; Sponsor: Schneider, Bradley Scott [Rep.-D-IL-10]; Committees: House - Oversight and Accountability

H.Res.476 — Supporting the designation of June 6, 2023, as National Naloxone Awareness Day; Sponsor: Trone, David J. [Rep.-D-MD-6]; Committees: House - Energy and Commerce

H.R.3836 — To facilitate direct primary care arrangements under Medicaid; Sponsor: Crenshaw, Dan [Rep.-R-TX-2]; Committees: House - Energy and Commerce

H.R.3837 — To amend the Public Health Service Act to require the Secretary of Health and Human Services to delegate primary responsibility for maintaining the Strategic National Stockpile to the Assistant Secretary for Preparedness and Response, and for other purposes; Sponsor: Miller-Meeks, Mariannette [Rep.-R-IA-1]; Committees: House - Energy and Commerce

H.R.3838 — To amend title III of the Public Health Service Act to reauthorize Federal support of States in their work to save and sustain the health of mothers during pregnancy, childbirth, and the postpartum period, to eliminate disparities in maternal health outcomes for pregnancy-related and pregnancy-associated deaths, to identify solutions to improve health care quality and health outcomes for mothers, and for other purposes; Sponsor: Burgess, Michael C. [Rep.-R-TX-26]; Committees: House - Energy and Commerce

H.R.3839 — To amend the Federal Food, Drug, and Cosmetic Act to increase transparency in generic drug applications; Sponsor: Dunn, Neal P. [Rep.-R-FL-2]; Committees: House - Energy and Commerce

H.R.3840 — To amend the Public Health Service Act to authorize certain contracts and cooperative agreements with clinical laboratories for purposes of delivery of medical products to the Strategic National Stockpile; Sponsor: Dunn, Neal P. [Rep.-R-FL-2]; Committees: House - Energy and Commerce

H.R.3841 — To amend title III of the Public Health Service Act to reauthorize the program of payments to children's hospitals that operate graduate medical education programs; Sponsor: Schrier, Kim [Rep.-D-WA-8]; Committees: House - Energy and Commerce

H.R.3842 — To amend title XVIII of the Social Security Act to improve access to diabetes outpatient self-management training services, to require the Center for Medicare and Medicaid Innovation to test the provision of virtual diabetes outpatient self-management training services, and for other purposes; Sponsor: Schrier, Kim [Rep.-D-WA-8]; Committees: House - Energy and Commerce; Ways and Means

H.R.3843 — To amend title III of the Public Health Service Act to reauthorize grants to address dental workforce needs; Sponsor: Kelly, Robin L. [Rep.-D-IL-2]; Committees: House - Energy and Commerce

H.R.3851 — To amend title XXVII of the Public Health Service Act to prohibit group health plans and health insurance issuers offering group or individual health insurance coverage from imposing cost-sharing requirements with respect to diagnostic and supplemental breast examinations; Sponsor: Dingell, Debbie [Rep.-D-MI-6]; Committees: House - Energy and Commerce; Ways and Means

H.R.3860 — To amend titles XIX and XXI of the Social Security Act to provide a consistent standard of health care to incarcerated individuals, and for other purposes; Sponsor: Kuster, Ann M. [Rep.-D-NH-2]; Committees: House - Energy and Commerce; Judiciary

H.R.3875 — To amend title XVIII of the Social Security Act to expand the scope of practitioners eligible for payment for telehealth services under the Medicare program, and for other purposes; Sponsor: Sherrill, Mikie [Rep.-D-NJ-11]; Committees: House - Energy and Commerce; Ways and Means

H.R.3876 — To amend title XVIII of the Social Security Act to provide for expanded coverage of services furnished by genetic counselors under part B of the Medicare program, and for other purposes; Sponsor: Smith, Adrian [Rep.-R-NE-3]; Committees: House - Energy and Commerce; Ways and Means

H.R.3879 — To establish a grant program for family community organizations that provide support for individuals struggling with substance use disorder and their families; Sponsor: Trone, David J. [Rep.-D-MD-6]; Committees: House - Energy and Commerce

S.Res.239 — A resolution designating May 2023 as "ALS Awareness Month"; Sponsor: Whitehouse, Sheldon [Sen.-D-RI]; Submitted in the Senate, considered, and agreed to without amendment and with a preamble by Voice Vote.

S.1840 — A bill to amend the Public Health Service Act to reauthorize and improve the National Breast and Cervical Cancer Early Detection Program for fiscal years 2024 through 2028, and for other purposes; Sponsor: Baldwin, Tammy [Sen.-D-WI]; Committees: Senate - Health, Education, Labor, and Pensions

S.1844 — A bill to amend the Federal Food, Drug, and Cosmetic Act to reauthorize user fee programs relating to new animal drugs and generic new animal drugs; Sponsor: Baldwin, Tammy [Sen.-D-WI]; Committees: Senate - Health, Education, Labor, and Pensions

S.1845 — A bill to amend title XI of the Social Security Act to provide for the testing of a community-based palliative care model; Sponsor: Rosen, Jacky [Sen.-D-NV]; Committees: Senate - Finance

S.1849 — A bill to amend title XVIII of the Social Security Act to allow payments under the Medicare program for certain items and services furnished by off-campus outpatient departments of a provider to be determined under the prospective payment system for hospital outpatient department services, and for other purposes; Sponsor: Hoeven, John [Sen.-R-ND]; Committees: Senate - Finance

S.1851 — A bill to address maternity care shortages and promote optimal maternity outcomes by expanding educational opportunities for midwives, and for other purposes; Sponsor: Lujan, Ben Ray [Sen.-D-NM]; Committees: Senate - Health, Education, Labor, and Pensions

S.1852 — A bill to amend the Public Health Service Act to reauthorize a sickle cell disease prevention and treatment demonstration program; Sponsor: Scott, Tim [Sen.-R-SC]; Committees: Senate - Health, Education, Labor, and Pensions

S.1855 — A bill to reauthorize the Special Diabetes Program for Type 1 Diabetes and the Special Diabetes Program for Indians; Sponsor: Collins, Susan M. [Sen.-R-ME]; Committees: Senate - Health, Education, Labor, and Pensions

S.1869 — A bill to amend title XVIII of the Social Security Act and title XXVII of the Public Health Service Act to ensure fair billing practice for items and services furnished by off-campus hospital locations, to amend such title XVIII to provide for payments for graduate nursing education costs, and for other purposes; Sponsor: Braun, Mike [Sen.-R-IN]; Committees: Senate - Finance

H.R.3884 — To amend title XI of the Public Health Service Act to reauthorize the program providing for sickle cell disease and other heritable blood disorders research, surveillance, prevention, and treatment; Sponsor: Burgess, Michael C. [Rep.-R-TX-26]; Committees: House - Energy and Commerce

H.R.3887 — To amend title III of the Public Health Service Act to reauthorize the program of payments to children's hospitals that operate graduate medical education programs, and for other purposes; Sponsor: Crenshaw, Dan [Rep.-R-TX-2]; Committees: House - Energy and Commerce

H.R.3888 — To amend title 38, United States Code, to strengthen benefits for children of Vietnam veterans born with spina bifida, and for other purposes; Sponsor: Baird, James R. [Rep.-R-IN-4]; Committees: House - Veterans' Affairs

H.R.3892 — To amend title XIX of the Social Security Act to make permanent the State plan amendment option to provide medical assistance for certain individuals who are patients in certain institutions for mental diseases, and for other purposes; Sponsor: Burgess, Michael C. [Rep.-R-TX-26]; Committees: House - Energy and Commerce

H.R.3910 — To amend the Public Health Service Act to give a preference, with respect to project grants for preventive health services, for States that allow all trained individuals to carry and administer epinephrine, and for other purposes; Sponsor: Grothman, Glenn [Rep.-R-WI-6]; Committees: House - Energy and Commerce

H.R.3912 — To amend the Internal Revenue Code of 1986 to make the health coverage tax credit permanent; Sponsor: Kildee, Daniel T. [Rep.-D-MI-8]; Committees: House - Ways and Means

H.R.3916 — To amend the Public Health Service Act to reauthorize and improve the National Breast and Cervical Cancer Early Detection Program for fiscal years 2024 through 2028, and for other purposes; Sponsor: Morelle, Joseph D. [Rep.-D-NY-25]; Committees: House - Energy and Commerce

S.1884 — A bill to amend the Public Health Service Act to revise and extend projects relating to children and to provide access to school-based comprehensive mental health programs; Sponsor: Smith, Tina [Sen.-D-MN]; Committees: Senate - Health, Education, Labor, and Pensions

S.1894 — A bill to amend title XVIII of the Social Security Act to eliminate the coinsurance requirement for certain colorectal cancer screening tests furnished under the Medicare program; Sponsor: Booker, Cory A. [Sen.-D-NJ]; Committees: Senate - Finance

S.1906 — A bill to amend the Federal Food, Drug, and Cosmetic Act to establish a time-limited provisional approval pathway, subject to specific obligations, for certain drugs and biological products, and for other purposes; Sponsor: Braun, Mike [Sen.-R-IN]; Committees: Senate - Health, Education, Labor, and Pensions

S.1913 — A bill to expand access to health care for veterans in the Freely Associated States, and for other purposes; Sponsor: Schatz, Brian [Sen.-D-HI]; Committees: Senate - Veterans' Affairs