



Policy Brief

April 5, 2019



The Trump Administration Moves to Invalidate the ACA

In 2018 Judge Reed C. O'Connor of Texas ruled to invalidate the Affordable Care Act (ACA) on [three key causes](#). At that time, many legal experts expected the ruling to be struck down. Last week, the Department of Justice (DOJ) filed a [letter](#) with the U.S. Court of Appeals for the Fifth Circuit in New Orleans affirming the O'Connor's ruling. DOJ's announcement signals a change in stance for the Trump Administration; previously, the Administration supported invalidating only part of the ACA. Read below to learn the reactions to this case and the actions that will follow.

Congressional Response

Democrats are unsurprisingly vehemently opposed to invalidation of the ACA. By contrast, Republicans seem to be divided in their support. Moderate Republicans like Senator Susan Collins have [called for](#) the DOJ to reverse its position. While more staunch conservatives like Senator Rick Scott are supportive of the administration and even [claim](#) maternity care would be covered under a Republican led health care plan if the ACA is struck down.

Next Steps

The action taken by the Trump Administration will not lead to any immediate changes as the case has to weave its way through the federal court system. The ACA is still the law of the land and the millions of Americans that participate in the Federal Health Exchanges can continue to do so. If this case makes it to the Supreme Court, it will be the third time the Supreme Court decides on the constitutionality of the

ACA. The Court upheld the law in [2012](#) in a 5-4 ruling and again in [2015](#), in a 6-3 ruling in favor of the law.



Highlights: MedPAC's 2019 Congressional Report

The Medicare Payment Advisory Commission (MedPAC), an influential policy advisory board, has released its [March 2019 report](#) to Congress. MedPAC's review of Medicare payment policies is required by law and focuses on improvements to the Medicare program. This year's report covers three main topics: payment recommendations, the redesign of hospital quality programs and opioid use in the hospital setting. Below are highlights from MedPAC's report.

Payment Recommendations

Key recommendations for the 2020 payment year are listed below. [Click here](#) for a full summary.

- Implement a 2% payment update for hospitals' inpatient and outpatient payments.
- Eliminate the update to the Medicare conversion factor for Ambulatory Surgical Centers and require them to report cost data.
- Update the CY 2019 end-stage renal disease base rate for outpatient dialyses services by the amount determined in current law. MedPAC believes outpatient dialyses payments are adequate.
- Revise Skilled Nursing Facilities' prospective payment system in FY 2020, annually recalibrate relative weights of case mix groups and eliminate the update to Medicare base payment rates.
- Implement a 2% reduction to FY 2019 hospice base payment rates.

Replacing Current Hospital Quality Programs

MedPAC recommends replacing the [four major quality programs](#) in Medicare with a single hospital value-based incentive program. This new program, called the [Hospital Value Incentive Program](#) (HVIP), would streamline performance measurements and account for differences in patient populations by using peer grouping.

Opioids/SUPPORT Act Findings

In response to a mandate in the [SUPPORT Act](#), MedPAC found no indication that hospital payment systems incentivize the use of opioids over other pain-management drugs. The Commission also recommends that CMS expand the monitoring of opioid use beyond Medicare Part D and presents [a variety of ways](#) that this could be done.



Private Insurers Embrace Value-Based Care

While the Affordable Care Act did not invent the concept of value-based care, it cemented it into today's health care industry. Along with providers, private insurers had to embrace Accountable Care Organizations and other payment models to improve care coordination and lower costs. This push to value-based care built momentum for private insurers to test their own pilots on bundled payments. Expected innovations within Medicare Advantage (MA) will also likely continue the trajectory towards value-based care. Below is more about the types of pilots and innovations taking place among private insurers.

Private Insurers Pilot Bundled Payments

The [savings realized](#) from government-initiated payment models has prompted insurers to partner with providers and employers on pilots to improve care. For example, Anthem Blue Cross of California was one of the first to partner with an oncology medical group for [bundled payments on breast cancer](#) treatments. In 2018, Humana [partnered with five physician practices](#) for bundled payments on maternity care. This year, Anthem, Cleveland Clinic and Kroger, a grocery chain, all partnered on a [bundled payment for heart surgery](#) for all Kroger employees.

Insurers Addressing Behavioral Health and Social Determinants of Health

The growing amount of evidence linking behavioral health and social determinants of health to patient outcomes has prompted insurers to find ways to comprehensively treat behavioral health and offer services [beyond clinical care](#). This year, [Anthem and Intermountain](#) began the "Addiction Recovery Medical Home" model, which establishes a continuum of care for patients diagnosed with a Substance Use Disorder (SUD). Also, the [Blue Cross and Blue Shield Institute](#) is exploring how to improve access to resources, such as food and transportation, for its members.

More Innovation in Medicare Advantage

The Centers for Medicare and Medicaid Services (CMS) is seeking to accelerate innovation and value-based care within MA. CMS [broadened the services](#) that could be counted in an MA plan's supplemental benefits to now include everything from simple modifications to the home to healthy

groceries. Additionally, the agency [recently announced](#) the Value Based Insurance Design model, which will allow insurers to pilot innovations from customizing plans based on beneficiaries' chronic conditions to increasing access to telehealth. This model will take effect in 2020.



340B Update

In addition to federal efforts, states have started to introduce their own legislation to make changes to the 340B program. For example, the governor of West Virginia [joins other states](#) in making reforms to the program. Recently, the governor approved [legislation](#) that prohibits Pharmacy Benefit Managers (PBMs) from paying 340B entities less than non-340B hospitals. Furthermore, several bills that propose changes to the 340B program have been recently introduced in Congress. Below are the proposals:

Bills that propose scaling back 340B

- The [Fair Act of 2019](#) proposes several changes, including imposing additional [340B reporting requirements](#) that would not accurately reflect what hospitals save or how the savings are used.
- The [340B Protections and Accountability Act of 2019](#) proposes to limit the types of drugs that qualify for 340B discounts and [limit those discounts](#) to patients who do not have public health coverage.

Bills that support the 340B program

- The [Rural Hospital Frontier Fairness Act](#) is a bipartisan legislation that [expands access](#) to the 340B program for Sole Community Hospitals.



A Look at the Federal Register

State-Level Paid Family Leave Policy Project. The Department of Health and Human Services is seeking comments on a [proposed project](#) that will explore the relationship between women's health and state-level Paid Family Leave (PFL) programs. The project will provide partial wage replacement to eligible employees to bond with a new child. The project aims to increase awareness of women's health effects in relation to state-level PFL programs. **Comments are due June 3, 2019.**

IN OTHER NEWS

[Court Invalidates Rule on Association Health Plans](#) – Health Affairs

[GAO: Medicare Made \\$23 Billion in Payment Errors in 2017](#) – Modern Healthcare

[Gov. Polis Signs Colorado Hospital Transparency Bill into Law](#) – The State

[House Committee Takes Aim at Surprise Billing](#) – Modern Healthcare

[Johnson & Johnson Plans Virtual Clinical Trial, Builds on Apple Heart Study Results](#) – Forbes

[Amazon Takes Another Step into the Medical Space by Accepting Health Spending Accounts](#) – CNBC