



Policy Brief

September 20, 2019



U.S. District Court Rules Against CMS in Site-Neutral Payment Dispute

On Tuesday, the U.S. District Court of Columbia [ruled](#) that CMS exceeded its statutory authority last year when it applied a site-neutral payment reduction for outpatient clinic visits. Under the OPPS/ASC CY 2019 final rule, CMS reduced payments by 60% for clinic visits provided in off-campus Provider Based Departments (PBDs), which were originally exempted from site-neutral payments. These cuts were to take effect over the course of 2019 and 2020. CMS will likely seek an appeal, which would affect whether the second phase of the cuts will take place in 2020.

In the OPPS/ASC CY 2020 proposed rule, CMS proposed to implement the second phase of the payment reductions. CMS believes this policy will [reduce overutilization](#) of hospitals and reduce health care costs. However, hospitals and other advocacy groups contend that the policy does not account for the disparities in complexity and income between patients who seek clinic visits in PBDs and those who go to physician offices.

The Court's ruling called for status reports by October 1st, allowing all parties the chance to devise a remedy. It is unclear how this may affect the OPPS/ASC CY 2020 proposed rule and completion of the phased reductions. If CMS keeps with its litigation strategy for 340B reductions—currently before the U.S. Court of Appeals—the Agency will likely seek an appeal. Comments on the OPPS/ASC CY 2020 rule are due on September 27th.



Tennessee Unveils New Medicaid Block Grant Proposal

On Tuesday, Tennessee [published a plan](#) to convert its Medicaid program to a block-grant model. Under a block grant, the federal government gives states a set amount of Medicaid funding each year. If a state can manage its population for less than the amount allotted, it can keep the savings. If the state exceeds the grant, no additional funding is provided. Many patient advocates [find block grants concerning](#), as they threaten access to care by incentivizing states to cut enrollment or covered services to keep costs low. If approved by CMS, the TennCare Medicaid program would become the first in the nation to impose block grants. Read more on Tennessee's block-grant proposal and what could happen next.

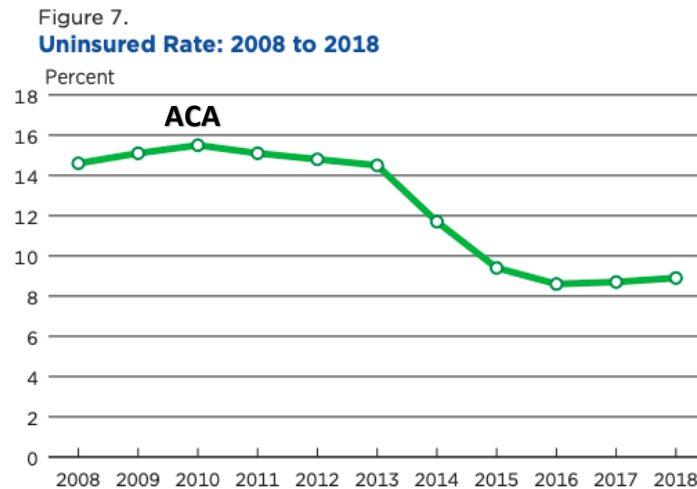
What's in the TN proposal?

The new TennCare proposal has [three main components](#). First, the \$7.9 billion lump sum would be set based on three years of data and trended forward to account for inflation. Unlike a typical block grant, Tennessee's plan asks that the federal government commit to a per capita increase in the event of an enrollment spike. Finally, Tennessee agrees to split any TennCare savings with the federal government—normally, this would be fully retained by the state.

What could it mean for other Medicaid programs?

Block grants in Medicaid have long been a popular [conservative solution](#), serving as a [cornerstone](#) of the attempted repeal of the Affordable Care Act (ACA) in 2017. If approved, Tennessee's request could inspire other Republican-led states to follow suit. While conservatives believe the move would bring greater state accountability and reduce federal spending, many health policy analysts fear it would increase funding gaps and result in [decreased access](#) to care. Tennessee's proposal will begin the federal approval process in November, after a public comment period.

Fiscal Cliff, Waivers and Immigration Policies Signal Shift in America's Uninsured Rate



The U.S. Census Bureau [released a report](#) last week showing a 0.5 percentage point increase in the number of uninsured Americans in 2018. This represents the first increase in the uninsured since the implementation of the ACA. This increase unexpectedly comes against the backdrop of [historically low unemployment](#) (3.9%), stable incomes and 1.4 million fewer Americans living in poverty than in 2017. Read more to learn about what national trends may be reversing this decade-long decline in the uninsured despite the strong economy.

National Trends Impacting the Uninsured Rate

Immigrant-Targeted Policies. In 2017, the Trump Administration developed and enforced several policies that aimed to stifle immigration. The fear of penalization and discrimination driven by national rhetoric around immigrant status, as well as the first introduction of the “[Public Charge Rule](#)” in 2018, has [deterred even documented legal immigrants](#) from enrolling in Medicare, Medicaid and CHIP.

Persistent Medicaid Barriers. Low-income individuals continue to struggle to gain or maintain coverage under Medicaid. For example, individuals may meet the Modified Adjusted Gross Income (MAGI) income requirements for Medicaid coverage, but not meet an additional classification requirement (e.g., age, disability, pregnancy), precluding them from the benefit. [Medicaid waivers](#), particularly those with [work requirements and coverage lock-outs](#), may add additional barriers and bolster this trend through 2019 and 2020.

The Fiscal Cliff. While a strong economy precipitates a decrease in Medicaid enrollment as individuals fall out of poverty, this may have unintended consequences. In a healthy economy, individuals may

experience a rise in wages, pushing some families off the “fiscal cliff.” [Sharp declines in insurance coverage](#) occurred among families whose income increased and were no longer eligible for premium tax credits under the ACA. Unable to afford premiums, these families had to drop their coverage—a stance which CMS Administrator Seema Verma took in a blog titled “[Thank Obamacare for the Rise of the Uninsured.](#)” If [premiums continue rising](#), Verma’s position may hold up in the coming years.

What About the Individual Mandate Penalty Repeal?

The elimination of the ACA’s Individual Mandate penalty is a popular red herring among initial inquiries into the cause of this year’s increase in the uninsured. The Census Bureau noted that “[p]eople were considered uninsured if, for the *entire year*, they were not covered by any type of health insurance” (emphasis added). When Congress passed the Tax Cuts and Jobs Act at the end of 2017, the law ended the mandate penalty, but not until 2019. That makes it unlikely that the Census metric captured this effect. However, the penalty’s elimination will bear out in 2019.



HHS’ Push for Patient Access to Health Information

Last week, the Office for Civil Right (OCR) made its [first settlement](#) with a hospital in Florida that failed to provide a patient’s records promptly and at a reasonable cost. Interoperability has been a [huge priority](#) for the Department of Health and Human Services (HHS) and improving patient access to medical records is a key component. HIPAA rules [generally require](#) providers to give patients access to their medical records, but providers have not historically been held accountable. HHS believes that increasing a [patient's ability to engage](#) with their health care will lead to lower costs and improve health outcomes. The following initiatives under HHS seek to improve patient access to their health data.

Right of Access Initiative

The OCR announced [this initiative](#) in response to rising patient complaints over not being able to obtain their medical records. The initiative seeks to enforce the access provision of the HIPAA rules. As HHS’ push to empower consumers continues, we anticipate increased oversight from OCR in this area.

Blue Button 2.0

This [initiative](#) seeks to allow Medicare beneficiaries to download or share their medical records with authorized applications. CMS also recently announced that the Blue Button data will inform the [Data at the Point of Care pilot program](#), which will provide clinicians access to claims data and give them a more complete patient history.

Interoperability Rules

In February, the ONC and CMS proposed [interoperability rules](#) that seek to improve both provider and patient access to medical information. For example, the CMS rule includes an Application Programming Interface (API) proposal that would ensure “consistent access to information for Medicaid beneficiaries and CHIP enrollees.” It also proposes publicizing the names of facilities that make it difficult for patients to access their health data or that engage in “information-blocking.”



A Look at the Federal Register

Medicare, Medicaid, CHIP: Program Integrity Enhancements to the Provider Enrollment Process

CMS released a final rule ([84 FR 47794](#)) with comment period that implements a provision of the ACA that mandates providers and suppliers disclose affiliations with other providers or suppliers who have uncollected debt. It also allows the Secretary to deny Medicare/Medicaid and CHIP enrollment when these affiliations pose undue risk of fraud and abuse. Comments close November 4th.

Opioid Crisis Awareness Week

By Proclamation ([Proc-9923](#)) of President Donald Trump, September 8th-14th was declared Opioid Awareness Week 2019.

Guidance Under section 6033 Regarding the Reporting Requirements of Exempt Organizations

The Internal Revenue Service issued a proposed rule ([84 FR 47447](#)) that formalizes the Secretary of the Treasury's authority to define certain reporting requirements for tax-exempt organizations under section 6033 of the Internal Revenue Code. Comments close December 9th.

Extension of Prior Authorization for Repetitive Scheduled Non-Emergent Ambulance Transports

Medicare issued a notice ([84 FR 48620](#)) extending testing for a payment model for repetitive scheduled non-emergent ambulance transports under section 1115A of MACRA. The extension adds an additional year of piloting in select states prior to a national rollout.

IN OTHER NEWS

[Pelosi's New Drug Plan Pressures Trump on Campaign Pledge](#) – Politico

[Trump Administration Plans Ban of Most Flavored E-Cigarettes](#) – Axios

[Five Big Questions About the Outbreak of Vaping Illnesses](#) – STAT

[Separating Hype from Reality in Health Tech](#) – Axios

[OxyContin Maker Purdue Pharma Files for Bankruptcy Protection](#) – Reuters

[Call Mounts for CMS to Address Patient Overlap Across Payment Models](#) – Modern Healthcare

[Pelosi Introduced Ambitious Plan to Take On Drug Prices](#) – Vox

[How AARP Became Washington's Biggest Bulwark Against Pharma](#) – STAT