



Policy Brief

October 30, 2020



What's New with Medicaid Expansion?

As of this month, 38 states and the District of Columbia have adopted Medicaid expansion, leaving only [12 non-adopters](#). Section 1115 waivers, which allow states to customize their Medicaid programs, are becoming increasingly popular; nearly a quarter of expansion states have submitted one. One potential customization is the addition of work requirements—when an enrollee's status depends on them working, looking for work or participating in approved activities. Oklahoma, the [latest state](#) to fully expand, is using a waiver to add work requirements to their Medicaid program: an idea popular with those concerned about state budgets but one that often results in sharp [coverage declines](#). Georgia was also recently approved to add work requirements, although the state [stopped short](#) of full expansion. Here's more on what's new with Medicaid.

The Good News: More states are expanding Medicaid.

Expanding Medicaid is, overall, [very good](#) for population health. Medicaid expansion has been found to improve access to health care, increase financial security and reduce uncompensated care costs across diverse communities. As States grapple with the COVID-19 pandemic, Medicaid has provided invaluable health insurance coverage for roughly [5 million](#) essential or front-line service employees. Although initially a theoretical concern, Medicaid expansion has been found to be [beneficial](#) for state budgets, actually reducing overall program spending.

The Not-So-Good News: Much of this is accompanied by work requirements.

Although the goal of those in favor of work requirements in Medicaid is to [promote self-sufficiency](#), work requirements have [not been found](#) to meaningfully increase employment.

Because the circumstances contributing to person's unemployment are diverse and unique to the individual, work requirements alone are not enough to restore them to financial health. Instead, [data](#) from earlier states' adoption attempts have found work requirements are associated with worsening health disparities and significant coverage losses. These coverage losses have been the [central argument](#) in court rulings blocking some states' previous attempts.



Justice Amy Coney Barrett—Where Does She Stand?

On Monday, the Senate [confirmed](#) Justice Amy Coney Barrett to the Supreme Court, solidifying a 6-3 conservative tilt and causing some to fear how this may change outcomes of the Court's rulings. While Justice Barrett remained [tight-lipped](#) on how she would vote on upcoming cases like the constitutionality of the Affordable Care Act (ACA) and abortion restrictions, her past work may give us insight into how she may lean. Barrett has [served](#) on the U.S. Court of Appeals since 2017; from 2002 until then, she was a constitutional law professor at Notre Dame. Justice Barrett has historically authored more conservative opinions, including arguing against the constitutionality of the ACA. Learn more about her stances in other policy areas.

Justice Barrett on the Affordable Care Act

Justice Barrett has made a name for herself as a [constitutional originalist](#). Her originalist views presented themselves in a law review [article](#) criticizing the Supreme Court's interpretation of the individual mandate as a tax, maintaining that the law was not written that way. She also [penned](#) her disagreement with the Supreme Court's decision to maintain the constitutionality of the subsidies, agreeing with Scalia's dissent that it should be up to Congress to clarify unclear language in laws.

What This Means: Currently on the Supreme Court's docket is [Texas v. California](#), which is the case to determine the [severability](#) of the ACA. Legal analysts [believe](#) Justice Barrett may rule against the constitutionality of the ACA, given her stance on the Court's interpretation.

Justice Barrett on Abortion Restrictions

Justice Barrett has previously expressed her view that abortion is immoral, but [said](#) she would not impose her personal views on her legal rulings and would instead follow Supreme Court precedent. In past cases, Justice Barrett ruled in favor of abortion restrictions, including [ruling](#) in favor of a law that would require that physicians notify the parents of minors seeking abortions and another that would ban abortions sought for reasons related to disability, life-threatening conditions of the fetus, race or sex.

What This Means: With a [high chance](#) that the Supreme Court will hear a case on abortion in the near future, Justice Barrett will likely continue to favor conservative restrictions on abortion. In a 2016 [discussion](#) at Jacksonville University, Justice Barrett said that while it is not likely that *Roe vs. Wade* would be overturned, late-term abortions and restrictions on clinics may change.

Justice Barrett on Other Upcoming Supreme Court Cases

Justice Barrett's stances on issues other than health care are not as clear cut due to her limited tenure as a federal court judge. Despite LGBTQ advocates' [alarm](#) at Justice Barrett's refusal to clarify her stance on *Obergefell v. Hodges*, she has not given a strong indication on how she may lean in [cases](#) on the Supreme Court docket that include LGBTQ discrimination, immigration and police brutality. Previously, she ruled against the Trump Administration's public charge rule, exercising a more moderate approach in ruling on a far-right policy

How These Cases May Play Out: The fear, harbored by some, that the Supreme Court will start overturning cases now that there is a conservative majority is not entirely founded. The Supreme Court can only pick up cases that have been sent to them from lower courts. Despite Justice Barrett's tendency to lean towards conservative rulings, it is not certain how she would rule in many cases. Only time will tell how cases will play out in the Court.



GAO Report Provides Recommendations on Community Benefit Requirements

The Government Accountability Office (GAO) recently released a [report](#) containing several recommendations related to the ACA's community benefit requirements, including asking Congress to specify what services and activities it considers sufficient community benefit. The

report was requested by Senate Finance Committee Chairman Chuck Grassley (R-Iowa) and House Ways and Means Committee Ranking Member Kevin Brady (R-Texas) as part of a [broader initiative](#) to ensure that tax-exempt hospitals comply with the requirements. Given the COVID-19 pandemic and the [positive image of hospitals](#), it is uncertain whether any immediate action will be taken as a result of this report. However, the report may put further pressure on the Internal Revenue Service (IRS) to increase oversight of hospitals' community benefit activities. Below are key recommendations raised in the GAO report and the reasoning provided.

Congress should specify what services and activities it considers sufficient community benefit. The report states that the IRS doesn't have the statutory authority to define specific types of services and activities that hospitals must undertake to justify their tax exemption. The report notes that this is causing several issues. For example, hospitals claiming activities that primarily benefit affluent, insured patients as community benefit, and hospitals underinvesting in activities that address social determinants of health due to a lack of clarity from the IRS' instructions.

Update Form 990, including Schedule H, and its instructions to ensure that the information demonstrating a hospital's community benefit is clear. According to the GAO, this form seeks information inconsistently, making it unclear how much community benefit hospitals actually provide. Additionally, in parts of the form, it is optional for hospitals to provide narrative answers, making it difficult to obtain a comprehensive picture of a hospital's community benefit and whether the benefits provided are sufficient to justify the tax-exemption.

Assess the benefits and costs of requiring tax-exempt hospital organizations to report community benefit expenses on Schedule H by individual facility. Currently, hospitals that are part of a health system can report collectively rather than as individual facilities. According to the GAO, this can lead to significant disparities in community contributions across facilities.

Establish a well-documented process to identify hospitals at risk of noncompliance with the community benefit standard. In the report, the GAO argues that the IRS doesn't have a well-documented process with clear instructions on referring hospitals for audits or automated queries to identify potential noncompliant hospitals. The report doesn't provide specific recommendations about how that improved process should be documented.

Establish specific audit codes for identifying potential noncompliance with the community benefit standard. According to IRS officials, audit codes are currently used to differentiate between ACA-related noncompliance and other noncompliance but there are no specific codes to track non-compliance with the community benefit standard.

HHS Extends Health IT Compliance Dates

HHS has released an [interim final rule](#) with comment period that extends the compliance dates and timeframes necessary to meet certain information blocking and health IT certification requirements.

New Applicability and Compliance Dates/Timeframes		
April 5, 2021	December 31, 2022	One Calendar Year Extension
<p>Information Blocking Provisions (45 CFR Part 171)</p> <p>Information Blocking CoC/MoC (§ 170.401)</p> <p>Assurances CoC/MoC (§ 170.402, except for § 170.402(b)(2) as it relates to § 170.315(b)(10))</p> <p>API CoC/MoC Requirement (§ 170.404(b)(4))</p> <p>Communications CoC/MoC (§ 170.403) (except for § 170.403(b)(1))</p>	<p>2015 Edition Health IT Certification Criteria Updates (except for § 170.315(b)(10) – EHI export, which is extended until December 31, 2023)</p> <p>New Standardized API Functionality (§ 170.315(g)(10))</p>	<p>Submission of initial attestations (§ 170.406)</p> <p>Submission of initial plans and results of real-world testing (§ 170.405(b)(1) and (2))</p>

Open Enrollment Begins for the Health Insurance Exchanges

Despite the current Supreme Court [challenge](#) to the ACA, open enrollment is about to begin for those looking to purchase health insurance on the law's Health Insurance Exchanges. A [recent analysis](#) from Kaiser Family Foundation predicts only modest fluctuations to premium prices compared to the previous year. From November 1st to December 15th, the federal marketplace will be open, offering subsidies for individuals with demonstrated financial need. Those who miss the December 15th cutoff will need to qualify for a [Special Enrollment Period](#) to purchase coverage after the deadline.



Updates on COVID-19 Regulations

AHPA continues to follow new COVID-19 regulations, guidance and other government actions. The updates below are the latest guidance and other developments since October 19th to help mitigate the impacts of COVID-19. For earlier COVID-19 regulations and guidance, visit the previous [Policy Brief](#).

CMS Releases Vaccine Distribution Interim Final Rule and Toolkits

- CMS has released an [interim final rule](#) outlining vaccine distribution plans, adding further COVID-19 flexibilities and extending the Comprehensive Care for Joint Replacement (CJR) model.
- A set of [toolkits](#) are also provided for clinicians, states and insurers on vaccine distribution and administration.

CMS Expands List of Covered Telehealth Services in Medicare

- CMS has [expanded](#) the list of telehealth services that Medicare fee-for-service will pay for during the COVID-19 Public Health Emergency. To view the full list of newly-added services, [click here](#).

Definition of “Close Contact” Expanded by CDC

- The CDC has expanded its [definition](#) of “close contact” with a person infected with COVID-19. Close contact will now refer to a *cumulative* total of 15 minutes over a 24-hour period, instead of 15 *consecutive* minutes.

State Medicaid and CHIP Telehealth Toolkit: COVID-19 Version

- CMS has released a new supplement to its State Medicaid and CHIP Telehealth Toolkit that provides new examples and insights from states’ COVID-19-related telehealth changes.

[Updated Supplemental Information](#) | [Full Telehealth Toolkit](#)

Medicare to Lower Lab Payments for Delayed COVID-19 Test Results

- CMS has [amended](#) an Administrative Ruling, lowering the base payment amount for COVID-19 diagnostic tests run on high-throughput technology from \$100 to \$75. Medicare will then make an additional \$25 add-on payment to laboratories that meet timeliness requirements, including completing the test within two calendar days.



Election Watch 2020: News from the Campaign Trail

President Donald Trump and Former Vice-President Joe Biden squared off in the [last debate](#) before Election Day. Click here or on the image below to read the top comments by each candidate about issues impacting public health.

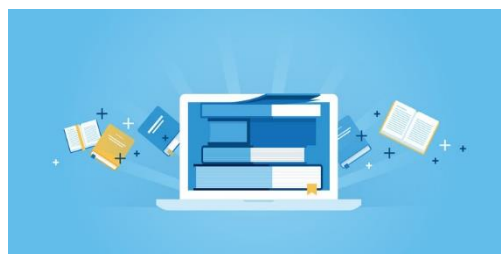


What Each Candidate Had to Say About Public Health

President Trump

Vice-President Biden

	COVID-19	The ACA	Family Separation	The Environment
President Trump	<p>“We’re rounding the corner. It’s going away.”</p> <p>“We’re opening up our country.”</p> <p>“We’re learning to live with [the virus].”</p>	<p>“No matter how well you run it, it’s no good.”</p> <p>“What we’d like to do is terminate it. We have the individual mandate done.”</p>	<p>“These children are brought here by coyotes and lots of bad people, cartels.”</p>	<p>“[Biden] would close down the oil industry. Remember that, Texas. Remember that, Pennsylvania.”</p>
Vice-President Biden	<p>“We’re about to go into dark winter and he has no clear plan.”</p> <p>“Learning to live with it? People are learning to die with it.”</p>	<p>“People deserve to have affordable health care, period.”</p>	<p>“[Separating children from their families] makes us a laughingstock and violates every notion of who we are.”</p>	<p>“I would transition from the oil industry because the oil industry pollutes, significantly.”</p> <p>“We can capture emissions; I never said I opposed fracking.”</p>



AHPA Resources

- [Webinar Recording: FY 2021 IPPS Final Rule](#)
- [Webinar Recording: FY 2021 OPPTS Proposed Rule](#)

IN OTHER NEWS

[Barack Obama and the ACA: A President Looks Back on His Toughest Fight](#) – The New Yorker

[Trump Fights in Court to Block Pandemic Food Aid for Lowest-Income Americans](#) – Politico

[Federal Agencies Warn Hackers Targeting U.S. Hospitals with Ransomware Attacks](#) – The Hill

[Fauci Expresses Support for National Mask Mandate](#) – Washington Post