



## Policy Brief

June 25, 2021



### ACA Constitutionality Upheld for Third Time

Last week, the U.S. Supreme Court (SCOTUS) delivered rulings on several controversial cases, including California vs. Texas, which had the potential to [reshape](#) health care. Due to a technicality, SCOTUS dismissed the [lawsuit](#), which debated the constitutionality of the Affordable Care Act (ACA). This is the third time since the law's passage that the ACA's [constitutionality](#) had to be defended. While this ruling does not prevent future attacks to the ACA, it reduces the likelihood that the entire law will be overturned in the future.

#### Summary of California vs. Texas

Texas' initial [suit](#) against the ACA started after Congress amended the law to “zero out” the individual mandate, which required Americans to purchase insurance or pay a tax. SCOTUS had previously upheld the constitutionality of the ACA, ruling that this was a valid exercise of Congress' ability to levy taxes. Texas believed that the entire ACA could be struck down because Congress could not zero out the tax without [striking down](#) the whole law. Ultimately, SCOTUS ruled 7-2 that they would not hear arguments from Texas because no one is injured by a law that requires them to pay zero dollars.

#### Policy Experts' Opinions

Both conservative and liberal policy experts [anticipated](#) it being thrown out. It has been well established in previous rulings that no one may file a federal lawsuit challenging a law unless they have suffered an injury that is "fairly traceable" to the law they are challenging. Even outspoken [opponents](#) of the ACA did not believe that this case had merit. While this ruling does

not completely protect the ACA from future efforts to reverse the law, it does give us more assurances that the ACA is here to stay.



### The Kids Aren't Alright: COVID-19 Impact on Youth Behavioral Health

Behavioral health in the U.S. is getting [more airtime](#) than usual because of the COVID-19 Public Health Emergency (PHE). As the pandemic stretches through 2021, much of the trauma and hardships left in its wake are coming to light. The stress and loneliness caused by social isolation, fear of infection and disruptions to daily life have wreaked havoc on individuals' [behavioral health](#). While every age group in the U.S. has struggled, children and adolescents have been particularly [impacted](#). New data is [emerging](#) that hints of a growing, quiet behavioral health epidemic bubbling up behind the COVID-19 pandemic. To learn more about the pandemic's effect on youth behavioral health and potential long-term impacts, what the federal government is doing and what else is needed, keep reading.

#### **Behavioral Health in America's Youth**

The collection of data from 2020 is beginning to show a clearer image of the PHE's impact on youth behavioral health; the statistics are shocking. Data from the CDC indicate a 31% increase in the last year in adolescents' mental health-related emergency department visits for youth aged 12-17. This joins a 50.6% [increase](#) in attempted suicide by girls during the same time. A Harvard youth poll [found](#) that 51% of young Americans felt "down," depressed or hopeless.

#### **Long-Term Impact**

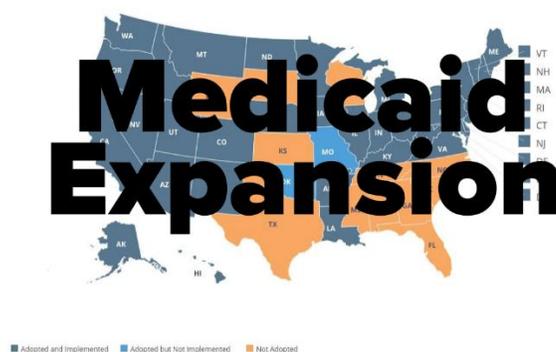
While the numbers are jarring, it is essential to note that many more are suffering in silence; the full extent of the PHE's impact on behavioral health is unknown. Without intervention, the behavioral health issues we see now in adolescents could materialize into future problems such as long-term depression, substance use disorders, and social, educational or future employment problems. Children are going to [carry](#) the baggage from the COVID-19 experience for years. Finding solutions *now* is vital to correcting course and starting the healing process.

## How the Federal Government Responded

The American Rescue Plan Act of 2021 included provisions that increased funding for the behavioral health workforce. The law included \$800 million for the National Health Service Corps (NHSC), \$200 million for the Nurse Corps, \$80 million to HRSA for behavioral health training for health care professionals and \$14.2 million to [expand](#) the Pediatric Mental Health Care Access (PMHCA) Program. Additionally, a new nationwide three-digit dialing code for suicide prevention and mental health crisis, [the 9-8-8](#), is scheduled to go live in July 2022.

## What else is needed?

Increased advocacy for youth behavioral health intervention is needed to ensure young Americans are receiving the proper care to meet their needs. Policy ideas to consider include expanding or repurposing existing resources to increase capacity of treatment and increasing the pediatric behavioral health [workforce](#) to meet growing demand. [Guidance](#) from CMS on how states can braid funding among state agencies to support crisis-related outreach that Medicaid cannot cover would be helpful. In addition, clarification over the use of Section 1115 demonstration or other Medicaid authorities to fund outreach and engagement activities could help relieve confusion and lead to meaningful action.



## Medicaid Expansion: A New Place-Based Proposal for Local Governments

With little apparent chance of bipartisan agreement, talks on expanding Medicaid in the final 12 holdout states had largely been tabled. Rep. Lloyd Doggett (D-TX) hopes his [new COVER Now Act](#) will change that. Last week, the Texas Democrat introduced a new measure that would give local governments the ability to expand Medicaid in their area, even if their state government has refused expansion. The legislation hopes to extend coverage to the remaining [2.2 million](#) low-income Americans left without coverage in non-expansion states. Even if the bill does not pass, it could inspire President Biden to include some expansion-related provisions in his upcoming legislative packages.

## **Rep. Doggett's COVER Now Act hopes to give the decision on expanding Medicaid over to local governments.**

The Cover Outstanding Vulnerable Expansion-eligible Residents (COVER) Now Act would allow cities, counties, and other localities to bypass their state governments on Medicaid expansion, instead working directly with the federal government. These regions would be able to contract directly with CMS to expand coverage within their geographic area. Through a demonstration waiver, local governments would receive 100% federal funding for the first three years of their expansion, which would gradually taper to 90% federal funding by the seventh year. Should the state choose to expand Medicaid in the future, beneficiaries in their local Medicaid programs would be automatically enrolled.

## **Many trade organizations, Democratic leaders, and congressional caucuses have already expressed their support...**

The COVER Now Act already has more than 40 congressional co-sponsors. The Congressional Black Caucus, Congressional Hispanic Caucus, and the Congressional Asian Pacific American Caucus have all written to the President, [urging him](#) to consider Doggett's proposals for inclusion in the American Families Plan. Rep. Doggett stresses that whether it is via his proposal or another, Democrats are "unwilling to walk away without a solution."

## **...but concerns still exist on both sides of the aisle.**

While most states have already expanded Medicaid, there are 12 largely Republican-led states that have refused the expansion under the Affordable Care Act, mostly due to budgetary concerns. Some Democrats have also expressed fears that the COVER Now Act would create even wider health disparities within the same state. The Congressional Budget Office is still in the process of conducting a cost estimate on Rep. Doggett's proposal.

## **Court Refuses to Back the 340B Drug Pricing Program: What Happened and Why?**

A federal judge has [refused](#) to throw out a challenge to the HRSA advisory opinion that drug makers cannot charge a covered entity more than the ceiling price for 340B drugs. The Judge noted that "Congress may very well want pharmaceutical manufacturers to deliver 340B drugs to an unlimited number of contract pharmacies," however this "kind of policymaking is for Congress, not this Court." In lieu of the judge's decision, HHS has [pulled](#) the advisory opinion. However, HHS has not withdrawn a series of letters it sent to six drug manufactures last month calling for them to end the restrictions to contract pharmacies. AHPA will keep you updated on what happens next.

## Updates to 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 June 14<sup>th</sup> to help mitigate the impacts of COVID-19. For earlier COVID-19 regulations and guidance, visit the previous Policy Briefs.

### **New OSHA COVID-19 Standards for Health Care Industry**

The Occupational Safety and Health Administration (OSHA) issued an emergency temporary standard (ETS) to aid in the protection against occupational exposure to COVID-19. The ETS requires health care employers protect their workers in settings where COVID-19 patients are treated.

[Full ETS](#) | [Fact Sheet](#) | [FAQs](#)

### **HRSA Awards Grants to Bolster COVID-19 Vaccination in Underserved Areas**

HRSA has [awarded](#) the first round of vaccine outreach funding to 14 nonprofits or public organizations. The funding is meant to support locally tailored efforts to build vaccine confidence.

### **HHS Announces New Workforce Program to Strengthen U.S. Public Health**

HHS [announced](#) that \$80 million from the America Rescue Plan will be used to establish the Public Health Informatics & Technology Workforce Development Program (PHIT Workforce Program).



## AHPA Resources

### **Missed AHPA's IPPS Webinar? No problem!**

Visit AHPA's [YouTube channel](#), where members can stream webinars on the major proposed rules at their convenience.

- [Webinar: Highlights from the Latest IPPS Proposed Rule \(Video\)](#)
- [Webinar Slides \(.PPT\)](#)
- [IPPS FY 2022 Proposed Rule Summary](#)

**Need an easy way to keep tabs on President Biden’s Executive Orders?** AHPA is keeping a running list of the latest Executive Orders coming out of the White House. [Click here](#) to download.

## WHAT WE’RE READING...

[The Doctors Are Not Alright: How the Profession Punishes Them for Seeking Mental Health Support](#) – Vox

[COVID-fueled Boom in At-Home Tests May Next Extend to STDs](#) – Politico

[Bipartisan Lawmakers Highlight COVID-19 Impact on Mental Health](#) – The Hill

[Fauci Warns of “Localized Surges” in Areas With Low Vaccination Rates](#) – The Hill