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Texas District Court Rules ACA Unconstitutional

On Friday, December 14, a Texas district court issued a much-anticipated ruling in the Texas v. Azar case, finding the Affordable Care Act (ACA) unconstitutional in the wake of the repeal of the law's individual mandate.

The plaintiffs in the case successfully argued that the individual mandate itself was unconstitutional if it was separate from a tax, and further, that because the individual mandate was essential to the entire purpose of the ACA, the “inseparability” of the individual mandate from the ACA renders the entire law unconstitutional. The ruling throws into question the future of the law and creates significant uncertainty regarding insurance coverage for more than 20 million Americans.

In the meantime, the law remains in effect and this ruling is expected to be appealed in the Court of Appeals for the Fifth Circuit, and could potentially be heard by the Supreme Court after that. As far as legislative fixes are concerned, there are also more questions than answers as a new Democrat majority in the House takes power in January and Republicans in the Senate maintain their majority. ACEP will continue to monitor any developments as this matter becomes clearer.

Federal Government Headed Toward Shutdown

As of publication, a portion of the federal government is poised to shut down at midnight, with Congress and the Administration seemingly further from a funding deal than they were just two days ago. Two weeks ago, the House and Senate passed a temporary continuing resolution (CR), which extended the government funding deadline to December 21. Earlier this week, it appeared a deal had been struck to temporarily extend funding again until Feb. 8, 2019. The Senate approved that CR by a voice vote on Wednesday. However, by Thursday morning, as the House was preparing to vote on the CR, President Trump reversed course and stated he would not sign the CR unless it contained additional funding for US-Mexico border wall. House GOP leadership scrambled to revise the CR, adding \$5 billion in border wall funding and additional funding for disaster aid, and sent the CR back to the Senate. As it is highly unlikely the Senate can muster the necessary 60 votes (including at least 9 Democrats if all GOP Senators hold the line), roughly a quarter of the federal government will be shut down at midnight Friday – with little clarity on how long a potential shutdown could last.

Trump Administration Issues Ban on “Bump Stock” Firearm Modifications

This week, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE) issued a final rule banning possession of “bump stock” devices like the ones used in the October 2017 mass shooting in Las Vegas, NV, where 58 concertgoers were killed and more than 400 were injured by gunfire. The final rule requires those in possession of such devices to destroy or turn in the devices to the ATF no later than 90 days from the publication of the rule in the Federal Register (expected today), and makes possession of such devices a felony.

“Bump stocks” are gunstocks designed to mimic the firing rate of a fully-automatic firearm – a modification that exploits a loophole in how federal law regulates “machineguns” as defined in the National Firearms Act (NFA) and Gun Control Act (GCA). The controversial devices have been subject to intense scrutiny ever since the Las Vegas shooting, and multiple Administrations have disagreed on how the devices should be regulated.

Shortly after the shooting in 2017, ACEP provided a [letter of support](#) for bipartisan legislation sponsored by Reps. Carlos Curbelo (R-FL) and Seth Moulton (D-MA) that would ban the manufacture, sale, and possession of such devices – a proposal consistent with ACEP’s “[Firearm Safety and Injury Prevention](#)” policy statement. Additionally, after the announcement of the final rule, ACEP President Vidor Friedman, MD, FACEP, issued a statement commending the Administration for the new regulation, which you can read [here](#).

New Universal Health Care Proposal Introduced by Senior House Democrats

On Thursday, Representatives Rosa DeLauro (D-CT) and Jan Schakowsky (D-IL) introduced new legislation, the “Medicare for America Act,” that would allow all Americans to purchase Medicare plans. The bill seeks to provide another option in the ongoing internal Democrat Party debate over universal health coverage proposals, which range from single-payer proposals to other similar Medicare buy-in options.

Included in the legislation are provisions that would cap premiums at a maximum of 9.69 percent of income, and would provide coverage for prescription drugs, dental, vision, and hearing services, and long-term supports and services for seniors and those with disabilities. Employers would be able to continue offering employer-sponsored insurance as a benefit, but would also be allowed to fund Medicare plans for their employees. Uninsured individuals, or those without employer-sponsored insurance (including those in the individual market) would be automatically enrolled into the Medicare for America plan.

While such a proposal would likely never see the light of day in a Republican Senate, it also remains unclear as to how the new Democrat Majority in the House will address the wide variety of health care reform and universal coverage proposals from its own members. ACEP will continue to monitor and review these health care proposals as the 116th Congress convenes in the new year.

ACEP Responds to Affordable Care Act Waiver Guidance

On Friday, ACEP responded to guidance and concepts put out by the Trump Administration related to state waivers authorized by Section 1332 of the Affordable Care Act (ACA). Section 1332 of the ACA allows states to submit a plan to CMS that, if approved, would allow health insurers in their states to offer alternative insurance options to their customers than what the ACA otherwise requires. To ensure that the newly offered insurance plans are as affordable and comprehensive as traditional ACA plans, Section 1332 of the ACA includes four “guardrails” to protect consumers. The guidance and concepts released by the Trump Administration significantly relaxes the previous legal interpretation of these guardrails, paving the way for states to allow health insurers to offer less comprehensive plans such as Association Health Plans and short-term, limited-duration plans. These

plans are not required to meet ACA requirements, including the important requirement to cover all ten essential health benefits.

While ACEP supports the goal of increasing access to affordable health insurance, we are concerned with the impact that the guidance and concepts will have on the coverage of emergency services and access to care for higher risk populations. In our comment letter, we explain why the guidance and concepts, as written, would cause people to lose access to viable, comprehensive insurance options and start to overly rely on the emergency care safety net. We ask the Administration to rescind the guidance and concepts immediately.

ACEP's full comment letter can be [found here](#).

HHS Action on Naloxone Prescribing

This week, the Department of Health and Human Services (HHS) took a number of steps to encourage clinicians to prescribe or co-prescribe naloxone.

First, on Tuesday, a Food and Drug Administration (FDA) advisory committee voted to encourage the FDA to update opioid labels to recommend that naloxone be prescribed at the same time as a pain medication. The consensus of the advisory committee was that co-prescribing should be recommended only for patients at high risk for opioid overdose, such as those with a history of substance abuse, on particularly high doses of opioids, or taking other drugs known to increase the risk of overdose and death.

Then, on Wednesday, HHS followed up with [guidance](#) recommending that naloxone be prescribed to all patients at risk of complications from taking opioid pain-relief medication. Specifically, the guidance suggests targeting naloxone at patients receiving high dosages of opioids — 50 morphine milligram equivalents per day or more — and those with respiratory conditions like chronic obstructive pulmonary disease or sleep apnea. Furthermore, patients who have been prescribed benzodiazepines, patients with non-opioid substance use disorders, patients with excessive alcohol use, and patients with mental health disorders also should receive naloxone.

Last week, ACEP submitted [comments](#) for the FDA to consider on appropriate strategies to increase the availability of naloxone products intended for use in the community. We strongly support the wide utilization of naloxone, and in our comments, we emphasize our positions on a number of important issues: 1) guidelines for prescribing naloxone; 2) education and training; and 3) cost.

Updates on Additional ACEP Legislative Priorities

As the 115th Congress prepares to adjourn with or without a continuing resolution to fund the government, several ACEP-supported legislative priorities were considered this week -- though some still await full passage.

On Wednesday, the "Traumatic Brain Injury Program Reauthorization Act of 2018," sponsored by Rep. Bill Pascrell (D-NJ), passed in an overwhelming 352-6 vote. The TBI program offers grants to help states improve care for patients with brain injuries caused by a sudden blow or penetrating head trauma that disrupts the function of the brain. The Senate approved the measure last week and it is now to the president to be signed into law.

And on Thursday, the House passed H.R. 7328, the "Pandemic and All-Hazards Preparedness and Advancing Information (PAHPAI) Act of 2018," one of ACEP's major 2018 legislative priorities. The legislation passed by the House includes several important provisions, including improved regionalization of emergency services, access for military trauma teams to provide services at civilian

trauma centers (MISSION ZERO), NDMS improvements, and expanded CDC biosurveillance capabilities. The bill was hotlined in the Senate last night and may still be passed before Congress adjourns.

Lastly, on December 11 the U.S. Senate approved by voice vote the ACEP-supported "Emergency Medical Services for Children Program Reauthorization Act of 2018" (S. 3482), sponsored by Sens. Bob Casey (D-PA), Orrin Hatch (R-UT), and Brian Schatz (D-HI). EMSC is a program operated by HHS' Health Resources and Services Administration (HRSA) that provides competitive demonstration grants or cooperative agreements to state governments and medical schools with the aim of reducing child and youth mortality and morbidity resulting from severe illness or trauma. The bill would extend the program for an additional five years beginning in fiscal year 2020. S. 3482 has been sent to the House, but it is uncertain whether the House will consider the bill with the little time remaining in the current session.

Meeting the New Members of the 116th Congress

ACEP is mounting an aggressive push throughout the next two months to meet as many of the new members as possible before or just after they are sworn in. Although we supported quite a few in their election bids, there may be more than 100 new members coming to Congress. We will be setting up local meetings between ACEP 911 Network members and the new members to introduce them to emergency medicine and our role in the health care delivery system and to establish a local contact in the health care space. The meetings will most likely be 30 minutes or less and we will provide [tips for hosting](#) ACEP members as well as a [fact sheet](#) for the new member. If you live or work in a congressional district of a new member of congress and are interested in hosting or participating in one of these meetings, please contact [Jeanne Slade](#) or [Caitlin Demchuk](#) in the ACEP Washington DC office for more details.



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