

Wednesday, July 11, 2012

U.S. Supreme Court Upholds Health Reform Law

On June 28, the U.S. Supreme Court issued its decision in the case of *Florida et al v. U.S. Department of Health and Human Services*, the lawsuit against the Affordable Care Act (ACA) filed by 26 states and the National Federation of Independent Business. In a 5-4 decision, the Supreme Court effectively upheld all major provisions of the law.

The Court's ruling addressed constitutional challenges to two provisions of the ACA: the individual mandate, which requires individuals to purchase health insurance providing a minimum level of coverage, and the Medicaid expansion, which provides federal funds to states if they offer Medicaid coverage to all citizens whose income falls below a certain level.

In its decision, the Court upheld the individual mandate as a valid exercise of Congress's taxing authority. This means that beginning in 2014, all citizens (unless exempted) must obtain health insurance or face a penalty. However, the Court concluded that the ACA's Medicaid expansion violates the Constitution by threatening states with the loss of their existing Medicaid funding if they decline to comply with the expansion. The Court limited this provision by holding that the federal government cannot take away such funding if states decline to participate in the expansion.

The Medicaid ruling may be substantial in that approximately half of the ACA's reduction in uninsured persons is to be achieved by expanding Medicaid rolls. Past estimates have found that, as designed, the law's Medicaid expansion will provide healthcare access to an additional 17 million low-income Americans.

This week, Texas Governor Rick Perry announced that Texas will not be participating in the ACA's Medicaid expansion. This action makes Texas the sixth state in which a governor has stated flat-out opposition to program expansion. "If anyone was in doubt, we in Texas have no intention to implement so-called state exchanges or to expand Medicaid under Obamacare," Gov. Perry said in a letter to HHS Secretary Kathleen Sebelius. "I will not be party to socializing healthcare and bankrupting my state in direct contradiction to our Constitution and our founding principles of limited government."

If state Medicaid programs are not expanded, consequences may include the continuation of many uninsured citizens under the ACA and the need for increased federal premium subsidies for individuals' expanded coverage, which already are projected to cost hundreds of billions.

Although the Court's decision provides a significant victory to Democrats and ACA supporters, much of its future will depend upon the results of the November Presidential and Congressional elections. For example, if Republicans win the White House and the House and Senate, they could move forward to repeal the law's individual mandate through legislation next year through the budget reconciliation process. Today, the House will hold a vote to repeal the ACA in its entirety. This vote is considered symbolic only in that it will not pass in the Democrat-majority Senate and the President would have veto power over any repeal legislation.

CMS Releases Medicare Physician Fee Schedule

On July 6, the Centers for Medicare & Medicaid Services (CMS) issued a proposed rule for the Medicare Physician Fee Schedule (PFS) for calendar year 2013. The proposed rule will appear in the July 30, 2012 Federal Register. CMS will accept comments on the proposed rule until September 4, 2012, and will respond to them in a final rule with comment period to be issued by November 1, 2012.

CMS has proposed wide cuts across specialty medicine while providing a 7% increase in primary care. Some of the proposed cuts include:

- Radiation Oncology: -15%
- Hematology/Oncology: -1%
- Entities having a specialty code of radiation therapy center in the Medicare physician/supplier enrollment file: -19%

It is important to note that the majority of the CMS proposed cuts to radiation oncology is attributed to a policy change for this year's physician fee schedule targeting IMRT and SBRT, specifically a change in updated equipment interest rate assumptions (minus 3%), discharge transition care management adjustment (minus 2%), and input changes for certain radiation therapy procedures (minus 7%). (*Continued on page 2*)

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CMS Releases Medicare Physician Fee Schedule (cont'd)

For a more detailed synopsis to the proposed rule, click [here](#). We will comment on the proposed cuts before the September 4, 2012 deadline. We are already working with our industry allies and the Congress to mitigate the proposed cuts before this is final in November and effective January 1, 2013.

To access the CMS proposed rule, [click here](#).

CARE Act Introduced in Senate

On June 25, Senator Mike Enzi (R-WY) and Sen. Tom Harkin (D-IA), and Senator Tom Harkin (D-Iowa), Ranking Member and Chairman on the Senate Health, Education, Labor and Pensions (HELP) Committee, introduced the Consistency, Accuracy, Responsibility and Excellence in Medical Imaging and Radiation Therapy Act of 2012 (CARE Act). The legislation would require operators of medical imaging and radiation therapy equipment to meet certain education, training, certification and licensing standards established by organizations designated to do so by the Department of Health and Human Services (HHS).

The CARE Act would apply to practitioners performing medical imaging, planning and delivering radiation therapy, and measuring the clinical effectiveness of medical radiation-emitting equipment, but would exempt providers with advanced training including physicians, nurse practitioners, and physician assistants. Its introduction in the Senate follows a House Energy and Commerce Subcommittee on Health [hearing](#) last month that examined the appropriateness of standards for medical imaging and radiation therapy technologists and highlighted the benefits of the CARE Act.

The CARE Act is widely supported by the medical imaging and radiation therapy communities, including the Medical Imaging and Technology Alliance, Alliance for Quality Medical Imaging and Radiation Therapy, the American Association of Physicists in Medicine, the American Society for Radiation Oncology, the Society of Nuclear Medicine and the American Society of Radiologic Technologists.

Companion legislation that would set minimum qualifications for imaging equipment operators was introduced last year by Rep. Ed Whitfield (R-KY).

Read more about the CARE Act [here](#).

CMS Announces New ACOs

On July 9, the Centers for Medicare and Medicaid Services (CMS) announced the selection of 89 new accountable care organizations (ACOs), defined as networks of health care providers working together to coordinate care for a defined population of patients – in this case, Medicare beneficiaries. If an ACO can keep down costs of care by avoiding unnecessary tests and procedures while also demonstrating high-quality care, the ACO is able to retain a share of the savings.

CMS has established quality measures for ACOs to ensure that care delivered is appropriate, safe and timely. For 2012, 33 quality measures cover care coordination and patient safety, appropriate use of preventive health services, improved care for at-risk populations, and patient and caregiver experience of care.

Today, an estimated 2.4 million seniors are covered under Medicare shared savings initiatives in 40 states and the District of Columbia, according to CMS. The latest group of ACOs joins 27 ACOs that began in April, 32 Pioneer ACOs that have been active since January 1 and six Physician Group Practice Transition Demonstration organizations that began in January 2011.

Additional ACOs will be accepted each year, with the next round beginning in January 2013. According to CMS, approximately 400 health systems have already expressed interest in applying for the program.

Read the CMS press release [here](#).

Read a CMS fact sheet on the new ACOs [here](#).

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Florida Governor Introduces New Funding Restrictions for State's Nonprofit Cancer Centers

Florida Governor Rick Scott recently sent notices to the H. Lee Moffitt Cancer Center in Tampa, the University of Miami's Sylvester Comprehensive Cancer Center and the Shands Cancer Hospital in Gainesville warning that the centers cannot profit from expanding their brands if they plan to continue to receive state research funding.

In letters to the centers, Gov. Scott wrote that organizations receiving state biomedical research funds "may not franchise their name or brand to other private entities" and "may not receive royalties or other remuneration from other entities in exchange for use of their name or brand."

As hospitals are increasingly affiliating with academic centers to gain opportunity to clinical trials and specialized care and some hospitals are considering expanding their brands as a fundraising opportunity, this may have led to Gov. Scott's action.

According to Gov. Scott's office, the letters are part of the Governor's larger objective of creating a statewide funding policy for Florida's cancer research centers. Gov. Scott informed the facilities that he wants "a robust and competitive environment" in cancer treatment and "a fair and balanced playing field for all institutions." Gov. Scott's requirements for continued state funding include: not franchising the center's name, not receiving royalties for such branding, and reporting any partnership to Florida's Department of Health.

The Governor's office has noted that his staff has begun meeting with cancer centers to discuss coordinating funding but has not yet created a formal work group on the issue.