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## Health Care Update

### ***King v. Burwell* before the Supreme Court and the Potential Congressional Response:**

The health policy community is gearing up for the highly anticipated *King v. Burwell* case in the Supreme Court. Oral arguments begin on March 4<sup>th</sup> in what is looking to be the greatest potential threat to the ACA since the 2012 landmark case on the individual mandate, *NFIB v. Sebelius*. At risk are tax subsidies for an estimated 9.3 million people who live in one of the 34 states that use federally-facilitated marketplaces (“exchanges”). Further, if the Supreme Court strikes down these subsidies, the net destabilization effect on the insurance markets in those states could cause an estimated 35 percent increase in health care premiums for all consumers, according to the Urban Institute.

Although the majority of legal experts have tended to believe that the Obama Administration will prevail, recent history indicates that even the most respected Supreme Court watchers are unable to predict with any certainty how the justices might rule.

Despite the risk, Secretary of Health and Human Services (HHS), Sylvia Burwell stated last week [before the Energy and Commerce Health Subcommittee](#), that the Administration has no contingency plans should the court rule to strike down the subsidies. GOP legislators questioned Burwell on the veracity of that statement, but most indications are that the Administration indeed has limited, if any viable, options to stabilize the insurance marketplaces should it lose the ability to provide tax subsidies to states that are unwilling to create their own marketplaces.

On the other hand, in Sunday’s [Washington Post](#), Senators Orin Hatch (R-UT) and Lamar Alexander (R-TN) and John Barrasso (R-WY)—key GOP health care leaders in the Senate—the penned an op-ed describing their intent to introduce a legislative proposal that would help “...create a bridge away from Obamacare” and provide financial assistance for some consumers during a “transitional period.” Specifics are still being developed and many stakeholders are hoping that should SCOTUS rule against the government, then the Republican-led Congress could create some kind of proposal to moderate a sudden loss in coverage for almost half of those who’ve gained coverage since the passage of the ACA.

### Implementation of the Affordable Care Act

**CMS Final Minimum Value Notice:** The Centers for Medicare and Medicaid Services (CMS) released its final 2016 [notice](#) of benefit and payment parameters. The notice states that health plans that do not include hospital benefits would not meet the ACA's minimum value test.

**IRS Publishes ACA Tax Regulations:** The Internal Revenue Service (IRS) released its final [temporary regulations](#) and a proposed [rule](#) for how the agency will deal with the health insurance tax in years 2015 and later.

**HHS Releases Details on Enrollees:** An HHS blog post [announced](#) that of the 8.84 million people who signed up for HealthCare.gov about half were new customers who did not have health coverage the previous year.

**ACA Cuts Medicare Enrollees' Prescription Drug Costs:** Prescription drug savings for 9.4 million Medicare enrollees in the last five years exceed \$15 billion, according to [HHS](#). Nearly a third of those savings came in 2014. HHS attributes these savings to the ACA, which seeks to expand access to affordable prescription drugs and preventive services with no cost sharing.

### Other Federal Regulatory Initiatives

**CMS Announces ICD-10 Testing Results:** CMS [announced](#) the results of the first week of end-to-end ICD-10 testing, calling the test a success. The test, conducted from January 26<sup>th</sup> to February 3<sup>rd</sup>, found that 12,149 of 14,929 claims received from health providers were accepted.

**CDC Warns Against Bourbon Virus:** The Centers for Disease Control (CDC) has [discovered](#) a new virus which has caused one death so far. There are eight known cases of the virus, which is a kind of togotovirus—which has never before been seen to cause human illness.

**CDC Update on Measles:** On February 20<sup>th</sup>, the CDC [updated](#) its tracking of the measles outbreak, finding 154 people from 17 states and Washington, DC have contracted measles this year—86 percent of these cases are directly linked to the Disneyland outbreak.

**CDC Reports on HIV Prevention:** More than 90 percent of the 50,000 people who contract HIV each year could prevent infection if they received diagnoses and treatments immediately, according to a CDC [study](#) published in JAMA Internal Medicine. The study, which lists HIV transmission rates at critical stages of care, examines the variables that correlate with effective treatment.

**FDA & Brookings on Medical Device Surveillance:** The Food and Drug Administration (FDA) and the Brookings Institution released a [report](#) on how to build a \$250 million medical device surveillance system over the next seven years. Among the public and private entities that prepared the report are ONC, CMS, NIH, Aetna, and Anthem.

### Congressional Initiatives

**Burwell Grilled on FY2016 Budget:** HHS Secretary Burwell appeared before the House Energy and Commerce [Subcommittee](#) on Health and the House Appropriations [Subcommittee](#) on Labor HHS to discuss the agency's FY 2016 budget. Among other things, Burwell fielded questions about HHS's response to *King v. Burwell*.

**Senate HELP Examines Public Health Preparedness:** The Senate Health, Education, Labor, and Pensions Committee held a hearing to examine the medical and public health preparedness. Witnesses from the Office of the Assistant Secretary for Preparedness and Response (ASPR) and the Biomedical Advanced Research and Development Authority (BARDA) testified.

**Oversight Tackling ACA and Taxes:** On February 26<sup>th</sup>, the House Oversight and Government Reform Subcommittee on Health Care, Benefits, and Administrative Rules held a [hearing](#) to examine the glitch that caused incorrect tax forms to 800,000 consumers.

**Ways and Means Member Criticizes Tax Errors:** Chairman of the House Ways and Means Subcommittee on Oversight Peter Roskam sent a [letter](#) to CMS Administrator Marilyn Tavenner criticizing the tax form error, saying it "has created additional uncertainty in a tax season already filled with unprecedented challenges and complexity for taxpayers."

**Ways and Means Passes Medicare Bills:** The House Ways and Means Committee [advanced](#) four bills dealing with

Medicare fraud, competitive bidding on durable medical equipment, observation status notices, and meaningful use exemptions.

**Bipartisan Disposable Medical Device Bill:** Representatives Renee Ellmers (R-NC) and GK Butterfield (D-NC) [introduced](#) the Patient Access to Disposable Medical Technology Act, which would allow these technologies to be included under the Medicare definition of durable medical equipment.

**Lawmakers Introduce CHIP Extension:** House Energy and Commerce Health Subcommittee Chairman Joe Pitts (R-PA), full committee Chairman Fred Upton (R-MI), and Senate Finance Committee Chairman Orrin Hatch (R-UT) released a [discussion draft](#) of a bill to extend CHIP.

**Lawmakers Introduced Tele-Dentistry Bill:** Senator Bernie Sanders (I-VT) and Representative Elijah Cummings (D-MD) introduced [legislation](#) to expand dental coverage through tele-dentistry. The bill enables HHS to make grants to certain health centers, instructs CMS to educate Medicaid programs, and require the Veterans Affairs Department, Defense Department, Federal Bureau of Prisons and Indian Health Service to use telemedicine to trains and provide care in underserved communities.

**Upton, Hatch, and Burr to Governors: Comment on Patient Care Act:** House Energy and Commerce Committee Chairman Fred Upton (R-MI), Senate Finance Committee Chairman Orrin Hatch (R-UT), and Senator Richard Burr (R-NC) sent a [letter](#) to the nation's governor soliciting their input on the newly-introduced Patient Choice, Affordability, Responsibility, and Empowerment (CARE) Act. The CARE Act, which the trio has billed as an alternative to the ACA, seeks to let states tailor health care policy to their needs.

**Republican Leadership to Obama: Stop MA Cuts:** Congressional Republican leaders expressed their opposition to the Administration's proposed [cuts](#) to the Medicare Advantage program in a letter to the President. They claimed that the cuts, instituted by the ACA, would disproportionately affect low and middle-income seniors.

#### Other Health Care News

**Uninsured Rate Drops Most in States Complying with the ACA:** According to a Gallup [report](#), nine of the ten states where the number of people without health insurance dropped by the greatest percent expanded Medicaid and created statewide exchanges. The outlier was Montana, which did neither. In the 21 states that implemented both parts of the ACA, the number of uninsured fell by 4.8 percent; in the other 29 states, the drop was 2.7 percent.

**AMA Suggests Changes to 21<sup>st</sup> Century Cures Initiative:** The American Medical Association wrote a [letter](#) to leaders of the House Energy and Commerce Committee, urging them to increase telemedicine payments and improve the exchange of information from electronic records through their 21st Century Cures initiative. Its specific recommendations included repealing the "pass-fail approach" to meaningful use, streamlining the EHR certification program and expanding hardship exemptions for physicians.

#### Upcoming Congressional Hearings

##### *Senate*

On Thursday March 5<sup>th</sup>, the Senate Health, Education, Labor, and Pensions Committee will hold a [hearing](#) titled "America's Health IT Transformation: Translating the Promise of Electronic Health Records Into Better Care."

##### *House*

On Tuesday, March 3<sup>rd</sup>, the House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies will hold a budget [hearing](#) on the National Institutes of Health.

On Wednesday, March 4<sup>th</sup>, the House Appropriations Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies will hold a budget [hearing](#) on the Food and Drug Administration.

On Thursday, March 5<sup>th</sup>, the House Energy and Commerce Subcommittee on Health will hold a [hearing](#) to examine the 340B Drug Pricing program.

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