

SAMHSA’s Center for Financing Reform & Innovation (CFRI)

Financing Focus: April 6

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The Center for Financing Reform and Innovations provides information, analysis, products, and technical assistance to address changes in the organization and financing of behavioral health care, and to guide Federal officials, States, Territories, Tribes, communities, and private payers on the most effective and efficient use of available resources to meet the prevention, treatment, and recovery support needs of the American public.

Implementing the Affordable Care Act (ACA)

- **Supreme Court hears ACA Case, ruling not expected until June.** Between March 26th and 28th, the **U.S. Supreme Court** heard six hours of oral arguments debating the constitutionality of the **Affordable Care Act (ACA)**. The court considered four distinct issues, devoting 90 minutes to the application of the Anti-Injunction Act (AIA); 120 minutes to the ACA's **individual mandate** and the authority of Congress to regulate inter-state commerce; 90 minutes to the severability of the individual mandate from the remainder of the ACA; and 60 minutes to state sovereignty and the ACA's **Medicaid expansion**. On the first day, the Court considered whether the AIA applies to the penalty for failure to comply with the individual mandate. Signed into law in 1867, the AIA holds that courts may only consider the constitutionality of a tax after payments are due. On the second day, the Court considered whether the ACA's individual mandate is within Congress' constitutional authority to regulate interstate commerce and "lay and collect taxes." Finally, on the third day, the court heard arguments on two issues: the extent to which a nullification of the individual mandate would affect other provisions of the ACA and whether the law's Medicaid expansion is within Congress' authority to set the terms under which it disperses funds to states ([Kaiser Health News, 3/29](#); [Kaiser Health News, 3/26](#)). For additional information, Kaiser Health News offers a [chart](#) mapping the case's legal issues and the Kaiser Family Foundation offers a [webcast](#) examining the case.
- **Two health insurers' premium increases excessive in nine states, HHS says.** Under the rate review authority granted by the ACA, on March 22, **U.S. Department of Health and Human Services (HHS) Secretary Kathleen Sebelius** announced that the Department deemed two insurers' proposed premium increases "unreasonable." The ACA allows HHS to review health insurers' premiums but does not permit HHS to modify or reject the rates. According to HHS, over 42,000 residents in Arizona, Idaho, Louisiana, Missouri, Montana, Nebraska, Virginia, Wisconsin, and Wyoming would be affected by the "unreasonable" increases. Though HHS did not disclose the insurers in question, news outlets report that they are John Alden Life Insurance Co. and Time Insurance Co., both subsidiaries of **Assurant Inc.** The same day, HHS also released a [report](#) outlining impact of the ACA's rate review provisions on consumers and the insurance market. The report finds that, since HHS implemented its review, health insurers have proposed fewer double-digit premium increases, states have taken a more active role in reducing rate increases, and consumers have been better informed about insurers' rates ([HHS, 3/22](#); [The Hill, 3/22](#); [Kaiser Health News, 3/23a](#)).
- **House votes to abolish Independent Payment Advisory Board.** In a largely party-line vote, on March 22, the GOP-controlled House approved legislation (H.R. 5) to eliminate the **Independent Payment Advisory Board (IPAB)**, created under the ACA to control Medicare costs. The House vote unlikely to advance in the Democrat-controlled Senate. Under the ACA, if Medicare spending growth exceeds preset limits, the IPAB will issue binding cost-cutting recommendations to Congress. If Congress does not approve the IPAB's changes or pass equivalent cuts, the HHS Secretary is required to implement the IPAB recommendations. The CBO estimated that repealing the IPAB could increase Medicare spending by \$3 billion between

2018 and 2022. Under current law, the IPAB would issue its first recommendations in FY2015 ([Reuters, 3/22](#); [New York Times, 3/22](#); [Kaiser Health News, 3/23b](#); [Kaiser Health News, 3/22](#)).

National News

- **TRICARE ends online behavioral health counseling program.** Citing low utilization and high cost, in March, **TRICARE** officials ended the TRICARE Assistance Program (TRIAP), which provided web-based behavioral health counseling to eligible service members and beneficiaries. Started as a \$3 million demonstration in 2009, TRIAP offered online counseling through video and instant-messaging, logging 5,109 calls over two years. A TRICARE spokesman said that the TRIAP demonstration revealed that the program was financially inefficient, adding that TRICARE offers similar services through Military OneSource ([Air Force Times, 3/31](#)).
- **Fifteen states moving forward on CMS dual eligible integrated care.** Stemming from a 15-state 2011 CMS [Medicare-Medicaid Coordination Office](#) planning grant to examine Medicaid and Medicare dual eligibility, [Minnesota](#), [New York](#), [North Carolina](#), and [Oklahoma](#) have issued proposed plans for integrating enrollee care. Meanwhile, [Ohio](#) has offered a proposal to coordinate care for dual eligibles, set to integrate care in seven urban areas before expanding state-wide in three years ([Columbus Dispatch, 4/3](#); [AP via Houston Chronicle, 3/30](#)).
- **CMS drops independent pharmacist proposal for nursing homes and other facilities.** On April 2, the Centers for Medicare & Medicaid Services (CMS) announced that it will drop a proposal previously announced in October, which would have required nursing homes and other long-term-care facilities to hire independent pharmacists to assess residents' prescriptions. CMS officials say the agency will "further study the issue for future policy considerations," noting that the proposed change would have disrupted the industry without reducing costs ([CMS; The Hill, 4/2](#); [Bloomberg, 4/3](#)).
- **House approves GOP budget, rejects bipartisan proposal.** In a largely party-line vote, on March 29, the U.S. House approved Rep. Paul Ryan's (R-WI) GOP budget proposal, which would replace Medicare with a premium support payment for individuals currently under 55, convert Medicaid to a block grant program, and repeal the ACA. Experts predict that the Ryan budget faces certain rejection in the Democrat-controlled Senate. The House also rejected a bi-partisan budget proposal modeled on the [Simpson-Bowles plan](#) as well as the House Democrats' budget proposal ([Kaiser Health News, 3/30](#); [Washington Post, 3/29](#); [Modern Healthcare, 3/27](#); [Kaiser Health News, 3/28](#)). Additional information on the Ryan budget proposal is available from the CBO [report](#).

State News

- **California: CMS approves transition from Adult Day Health Care to Community Based Adult Services.** On March 30, CMS approved California's request to move its Medicaid Adult Day Health Care (ADHC) services into the state's **Bridge to Reform Demonstration**, operating as Community Based Adult Services (CBAS). Nearly 40,000 Medicaid enrollees received services through ADHC before the California Legislature voted to eliminate the services as an optional benefit in 2011. Following a lawsuit challenging the elimination of ADHC, the state created the CBAS program, which is expected to cover roughly 32,000 residents who previously received

ADHC services. Both programs provide community-based services for elderly and disabled populations. Services offered under CBAS include: skilled nursing care, social services, therapies, personal care, family/caregiver training and support, meals, transportation, and case management ([California Healthline, 4/2](#)). Disability Rights California and the **California Department of Health Care Services** (DHCS) remain in negotiations to settle a contempt-of-court motion, which argues that the state has failed to follow the terms of its original ADHC settlement ([California Healthline, 4/3](#); [California Healthline, 3/26](#)).

- **Colorado to expand Medicaid for childless adults.** On April 1, Colorado officials will begin accepting Medicaid applications from childless adults. The program is funded through a state hospital provider fee. State estimates indicate that approximately 50,000 residents meet the new coverage criteria; however, Colorado will accept only 10,000 new applicants, making selections using a lottery system ([Denver Post, 4/3](#)).
- **Florida Medicaid must cover autism treatment, judge rules.** On March 23, the U.S. District Court for the Southern District of Florida ruled that Florida’s Medicaid program must cover **applied behavioral analysis** (ABA) for children with **autism**. The **Florida Agency for Health Care Administration** had refused to cover ABA, claiming that it was an “unproven” therapy; however, the court ruled that ABA is both proven and effective. An estimated 8,500 children enrolled in Florida’s Medicaid program have an autism spectrum disorder (ASD) and estimates indicate that providing ABA will cost Florida’s Medicaid program \$12 million annually, with \$5 million funded by state funds ([Health News Florida, 3/28](#); [Miami Herald, 3/28](#); [The Ledger, 3/27](#)).
- **Idaho Legislature’s Medicaid budget restores program for mentally ill.** The Idaho Legislature passed a \$1.9 billion Medicaid budget, using \$474 million in state funds and increasing funding by nearly \$100 million over previous funding levels. Among other changes, the budget will restore a program that treats individuals with multiple mental or developmental health conditions. Under current law, some individuals with multiple co-occurring conditions must choose to address only one condition, leaving others untreated. The budget now goes to Governor C. L. “Butch” Otter (R) ([Spokesman-Review, 3/26](#); [NPG of Idaho, 3/27](#); [State Impact Idaho, 3/6](#)).
- **Iowa to study diversion programs and alternative courts.** The Iowa Legislature passed a bill (SF 2312) to study **jail diversion programs** and **alternative courts** for offenders with mental illness. Slated to be conducted by the Iowa Department of Human Rights, the study will solicit input from relevant stakeholders regarding the creation of a state-wide court for non-violent mentally ill offenders. The measure now goes before Governor Terry Branstad (R) who is expected to sign ([Des Moines Register, 4/3](#)).
- **Michigan Legislature requires insurers to cover autism treatments.** On March 29, the Michigan Legislature gave final approval to three bills (SB 414, SB 415, and SB 981) that will require insurance companies to cover evidence-based treatments for children with **autism spectrum disorders** (ASDs) and establish a fund to cover a portion of insurers’ costs. Under the bills, insurance companies may not raise their rates as a result of the increased ASD costs, which are expected to total up to \$15 million in the first year and climb to \$40 million in five years.

Insurance carriers and third-party administrators may seek state reimbursement for paid claims; however, funding for the state reimbursement program is still undetermined. Governor Rick Snyder (R) allocated \$20.1 million for the ASD fund in his budget proposal and is expected to sign the bills. Self-insured companies are exempt from the bills' requirements ([AP via Bloomberg, 3/29](#); [MLive, 3/29](#); [Observer & Eccentric, 4/1](#))

- **New Hampshire: DOJ to join lawsuit over mental health system.** On March 27, officials with the U.S. Department of Justice (DOJ) filed a motion to intervene with an existing class action lawsuit filed on behalf of residents with mental illness. Among other allegations, the DOJ alleges that **New Hampshire's mental health system** violates the Americans with Disabilities Act (ADA) because the state fails to provide adequate community-based services, instead forcing residents to seek mental health care in inpatient hospital settings. State officials say that New Hampshire is working within a tight budget to implement a 10-year plan to improve mental health treatment ([Nashua Telegraph, 3/28](#); [Concord Monitor, 3/29](#)).
- **New York budget to alter Medicaid financing, boost health funding.** Governor Andrew Cuomo (D) and New York legislative leaders passed a \$132.6 billion budget deal that will phase out counties' responsibility for Medicaid cost growth and gradually transition local Medicaid administration to the state. The changes are estimated to save counties and New York City a combined \$1.2 billion over 5 fiscal years. The budget also allocates an additional \$56 million for health care programs, including changes to enhance access to mental health medication. In addition, the budget allocates \$1.3 million to fund a veteran peer-to-peer mental health pilot program and to increase funding for the Veteran Mental Health Training Initiative. The budget will not establish a health insurance exchange; Governor Cuomo intends to establish one by executive order ([New York Governors Office, 3/30](#); [Post Star News, 4/2](#); [Post Star News, 3/29](#); [New York Times, 3/27](#); [AP via Wall Street Journal, 3/27](#); [Bloomberg, 3/27a](#)).
- **Oregon and DOJ reach agreement on community mental health plan.** According to letters exchanged between the U.S. and Oregon Departments of Justice and obtained through Oregon's public records laws, the two governments have reached an agreement to settle an ongoing federal investigation into Oregon's mental health system. According to the letters, over several years, both governments will work cooperatively with outside experts to expand and improve Oregon's community mental health system. Under the agreement, specific reforms will occur in stages, accompanied by performance metrics to track success ([Statesman Journal, 3/26](#)).
- **Texas: J&J to pay \$158 million to settle Risperdal lawsuit.** After reaching an initial agreement in January, on March 27, the Travis County District Court approved a \$158 million settlement in a case alleging that **Johnson & Johnson (J&J)** violated the law when marketing its anti-psychotic drug, Risperdal, to Texas' Medicaid program. The state will receive 40 percent of the settlement, while the federal government will receive 31 percent to account for the federal share of Medicaid. Under the terms of the settlement, J&J admits no wrongdoing ([Bloomberg, 3/27b](#)).
- **Washington Governor suspends plan to limit payments for Medicaid ER visits.** Pending the outcome of state budget negotiations, on March 31, Governor Christine Gregoire

(D) suspended plans to limit Medicaid payments for emergency room (ER) visits that are later deemed non-emergencies. Set to go into effect April 1, the policy was initially blocked by a lawsuit filed by the Washington State Medical Association, the Washington State Hospital Association, and Washington Chapter of the American College of Emergency Physicians. The groups favor a cost control policy that emphasizes care management for Medicaid enrollees ([Seattle Times, 3/31](#)).

- **Washington Governor signs health insurance exchange legislation.** Set to go live January 1, 2014, Governor Christine Gregoire (D) signed legislation on March 23 to establish rules for the state's health insurance exchange. To ensure that insurers cannot self-select healthier enrollees, under the bill, insurers offering "bronze" plans outside of the exchange must also offer "silver" and "gold" plans. Bronze plans offer fewer benefits at lower prices. The bill also stipulates that Washington will use its largest small group health plan—Regence BlueShield Innova—as its **benchmark plan** for **essential health benefits**. Citing, "undue risk of litigation," Governor Gregoire vetoed a portion of the bill that would have closed the exchange if it failed to become self-sustaining ([Seattle Times, 3/23](#); [CBS, 3/6](#)).

Financing Reports

- ["ACA protects and improves access to preventive care for children"](#) Georgetown University Health Policy Institute, Center for Children and Families. March 21, 2012.
- ["Federal health expenditures on children on the eve of health reform: A benchmark for the future"](#) Urban Institute. Hahn, H. et al. March 19, 2012.
- ["Governors' Budgets for FY 2013 – What is proposed for Medicaid?"](#) Kaiser Family Foundation Commission on Medicaid and the Uninsured. March 27, 2012 ([KFF, 3/27](#)).
- **Hospitals and Federally Qualified Health Centers (FQHCs) explore collaboration in Missouri.** ["Hospital and FQHC collaboration: Findings and opportunities"](#) The Missouri Hospital Association & the Missouri Primary Care Association. March 2012 ([Healthcare Finance News, 4/2](#)).
- **Individual mandate to affect few people, provide large benefit.** ["The individual mandate in perspective: A timely analysis of immediate health policy issues"](#) The Urban Institute & the Robert Wood Johnson Foundation. Blumberg, L.J. et al. March 2012.
- ["Investing in America's Health: A state-by-state look at public health funding and key health facts"](#) Trust for America's Health. March 2012.
- ["Medicaid and community health centers: The relationship between coverage for adults and primary care capacity in medically underserved communities"](#) Kaiser Family Foundation. March 22, 2012 ([KFF, 3/22](#)).
- ["State cigarette excise taxes — United States, 2010–2011"](#) The Centers for Disease Control and Prevention (CDC), Morbidity and Mortality Weekly Report (MMWR) March 30, 2012.