All Eyes on Texas

Our thoughts and heartfelt prayers are with our HCA family, friends, and colleagues, as they continue to show that great conquering Texas spirit, their diverse strengths with incredible compassion for patients, neighbors, and fellow Texans during this unprecedented time.

Congress Remains in Recess Until September 5

Lawmakers return next week following the Labor Day weekend. Leadership on both sides of the aisle are scheduled to meet with White House officials to try to reach a deal to raise the debt ceiling in order to avoid a federal default on payments, build a Hurricane Harvey relief package, and continue with a number of President Trump’s nomination confirmations. President Trump is also ready for tax reform, and has been traveling the country to gain support for a tax overhaul.

Iowa Wants to Overhaul its Exchange

Iowa this week submitted to CMS the final version of its request for a so-called “state innovation waiver” under the Affordable Care Act (ACA) to

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FEDERAL

**Parliamentarian Reviews Rules on Simple Majority**

The Senate Parliamentarian is taking under advisement the length of time Republicans have to attempt a repeal of the Affordable Care Act with a simple majority of 50 votes. President Donald Trump has been outspoken about his stance on the repeal and replace, and conservatives continue to push the Senate to make another attempt at health care reform after the August recess. Parliamentarian Elizabeth MacDonough is determining whether the 2017 budget, which set up the rules for the expedited process of passing legislation with a simple majority, can still apply after the fiscal year ends September 30. There is no precedent for using a budget reconciliation bill after the 2017 fiscal year is over. Both parties acknowledge the Parliamentarian will make the final call.

Other budget experts conclude that the reconciliation bill remains in effect until overtaken by a new FY 2018 Budget Resolution conference agreement with new reconciliation instructions; however, Republican leaders had hoped to use that as a means for tax reform. If the parliamentary rules that the 2017 bill cannot be used past September, some Republicans could pressure leaders to use the 2018 budget for health care again.
replace the state's exchange as a way to address dwindling insurer participation. Under the waiver, Iowa would eliminate the state's insurance exchange and restructure premium tax credits available under the ACA to help U.S. residents purchase coverage.

Only One County Left to Cover
Wisconsin officials this week said all counties in the state will have an exchange insurer for the 2018 coverage year, including Menominee County, which had been at risk of having no exchange insurer for 2018. It is not clear which insurer intends to sell 2018 exchange plans in Menominee County. That leaves just one more county, Ohio's Paulding County, at risk of having no exchange insurer for the 2018 coverage year, according to Kaiser Family Foundation data.

Vaccine Shortage
Sanofi Pasteur, the only drugmaker licensed to manufacture a U.S.-approved yellow fever vaccine, as of July 24, completely depleted its U.S. supply of the vaccine, according to a CDC Morbidity and Mortality Weekly Report published late last month. The CDC said it has worked with the FDA and Sanofi to import from France an alternative yellow fever vaccine, called Stamaril, that will be available at a limited number of clinics throughout the United States and certain U.S. territories.

HELP to Hold Hearings on Stabilizing the Insurance Marketplace
Senator Lamar Alexander (R-TN), Chair of the Health, Education, Labor and Pensions (HELP) Committee, will lead hearings on how to stabilize the individual market when Congress returns next week. However, it is hard to say if any steps lawmakers take will have a positive effect for 2018, as insurers in most states must set premiums by September 5, and some at the very latest September 28.

"Premium increases will in many cases be as steep as they were last year," Kaiser's Cynthia Cox said, "and it's unlikely that Congress can act quickly enough to keep that from happening."

HHS Scales Back Medicare Bundled Payment Programs
Health and Human Services (HHS) is planning to roll back a pair of Obama-era programs requiring Medicare providers to participate in new care delivery models, reshaping the department's approach to overhauling how doctors and hospitals are paid.

The proposal issued on August 17, would eliminate planned mandatory initiatives holding hospitals accountable for the cost of certain joint replacement surgeries and care for heart attacks and cardiac surgeries. It also alters an existing payment program covering knee and hip replacements, and would give many participating hospitals a chance to opt out of what has so far been a mandatory trial. The decision scales back work started under the Obama administration designed to test whether bundled payments, which institute a fixed price for defined episodes like knee replacement surgery, can definitively cut costs and improve care for patients.

Before the announcement, the joint replacement program was set to expand to surgeries repairing hip and femur fractures in hospitals across 67 metropolitan areas, while the new cardiac care program targeted bypass surgeries and treatment of heart attack in nearly 100 markets. Both the joint replacement expansion and cardiac care bundle were slated to take effect early next year, as part of the broader shift away from the traditional fee-for-service model and toward paying for quality.

Instead, HHS wants to terminate the cardiac care program and joint replacement expansion, and end required participation in the existing joint replacement program for knees and hips for hospitals in 33 of the 67 metropolitan areas. Rural and low-volume hospitals would receive a special exemption allowing them to opt out of the trial in all 67 markets.

The move to end the mandatory demonstrations will not impede the broader shift toward value-based care, a goal that cuts across partisan lines and prompted passage of the 2015 Medicare Access and CHIP Reauthorization Act, which introduced large-scale reforms to the way Medicare pays doctors. But it signals a renewed effort to significantly ease the pressure on doctors and hospitals navigating the changes while closely watching their bottom lines.

STATE
Alaska
Governor Extends Assistance to Texas
Governor Bill Walker has extended assistance to Texas Governor Greg Abbott in the form of 20 personnel from the 249th Airlift Squadron and the Alaska Air National Guard. Recalling the earthquake of 1964, Governor
Walker said the he would never forget the “impact small acts of kindness meant” following the quake. In the aftermath of Hurricane Harvey, I want to extend to Texas the Alaskan spirit of pulling together and offer help.

A group of Alaska doctors, with help from a union-backed organization in Washington, D.C., is proposing a pair of ballot initiatives to establish state-level health insurance requirements like those in the federal Affordable Care Act (ACA). With the ACA under attack by President Donald Trump and congressional Republicans, one of the initiatives would enshrine many of the federal legislation's most popular provisions into state law.

The 11-page proposal would bar insurers from denying coverage based on pre-existing conditions, require family plans to cover children until they turn 26 and ensure that all plans offer 10 different "essential health benefits" like prescription drugs, emergency services and mental health care. The second initiative aims to bolster the Medicaid health care program for the low-income and disabled Alaskans that Governor Bill Walker expanded under the ACA. The expansion covered an additional 35,000 Alaskans.

That two-page measure would set health care providers' Medicaid payment rates, which have been eroding, at no less than they were January 1. And it would bar the state from making its Medicaid eligibility standards tighter than they were at the start of the year, meaning that Alaskans who got health care under the expanded program could keep it even if Congress makes federal benefits more difficult to obtain.

Currently, no state-level law specifically authorizes the expanded Medicaid program. After the Legislature rejected such legislation, Governor Bill Walker expanded the program in 2015 using his executive powers in a move that survived a court challenge from Republican lawmakers.

The four doctors (Alec Glass, George Ryneer and Megan LeMasters Soule of Anchorage and Alan Gross of Petersburg) filed the two initiative applications earlier this month with the state Division of Elections, which is now reviewing them.

If approved, the initiative backers would have until mid-January to gather more than 30,000 petition signatures from across the state, if the questions are to appear on the 2018 ballot. Before that can happen, state attorneys working with the elections division will have to rule that the proposals do not violate constitutional restrictions on initiatives, which include a ban on measures that make appropriations.

State regulators declined to comment on the proposals, with Lori Wing-Heier, the Director of the Alaska Division of Insurance, writing in an email that they are still being reviewed.

California
Covered California Weighs Long-Term Stabilization Plan
On August 31, Board members of Covered California, the state exchange, are slated to vote on a plan allowing health insurers to earn higher profits if Washington rolls back the Affordable Care Act, giving the companies greater assurance to keep operating in the state. This month the state announced an average 12.5 percent rate hike for next year, with all 11 health insurers remaining in the market.

California, which has embraced the Affordable Care Act more than any state, has unique advantages to keeping its insurance market stable. It has the financial power as the world's sixth-largest economy to make health plans think twice before exiting, and the exchange board aggressively negotiates with insurers to keep rates down. Still, some parts of the state
will see much larger rate hikes, and one of the state’s largest insurers, Anthem Blue Cross, is pulling out of most regions.

The proposal before the exchange board would allow insurers in future years to recoup losses stemming from federal efforts to roll back the Affordable Care Act (ACA), such as stopping enforcement of the individual mandate. Insurers still must adhere to the federal medical loss ratio, which requires them to spend at least 80 percent of premium dollars on care.

Covered California has already come up with a contingency plan if the ACA's Cost-Sharing Reductions (CSRs) are cut off, which would cause premium increases to double to nearly 25 percent. The entirety of the resulting rate hikes would be loaded onto the benchmark silver-tier plans, enabling customers to receive greater premium subsidies. The Kaiser Family Foundation's Larry Levitt called the plan a "Rube Goldberg scheme" that could potentially work longer term. With CSR payments in limbo, it is difficult to determine how insurers will foresee the future without subsidy payments.

Hoping to maintain robust enrollment, Covered California will keep a three-month sign-up period for 2018 health plans after the Trump administration cut the HealthCare.gov enrollment period in half to six weeks. Covered California also plans to spend about $106 million in marketing for 2018, or about the same as it did this year.

Continuity of Care Bill - SB 133
California State Senator Ed Hernandez this week amended an existing bill to make sure patients are able to finish their treatments with their same doctor if their health carrier exits the market and they are forced to change plans. SB 133 would beef up the state's existing continuity-of-care protections by extending them to consumers in the individual market. More than 300,000 Californians who have individual Anthem coverage both on and off the exchange will need to change health plans in January because the insurer has pulled out of most of the state. The bill is slated to be heard on August 29, in the Senate Health Committee, which Senator Hernandez chairs.

Colorado
Perlmutter is Back in Congressional Race, Moreno Suspends Campaign
U.S. Representative Ed Perlmutter announced on August 28, that he is back in the race for his old seat in Congress from the 7th Congressional District. The Democrat from Arvada said in April he would run for Governor but in June he said he had lost the competitive fire, and dropped out of that race.

The Colorado Pols website first reported that Perlmutter would officially seek re-election, and The Denver Post first reported Perlmutter’s statement on his decision.

Colorado Politics was the first to report Perlmutter was reconsidering his earlier decision and that he would likely run for his seat in Congress again, and that other candidates were reconsidering, as a result.

On August 28, State Senator Dominick Moreno announced that he is suspending his campaign, leaving state Senator Andy Kerr, state Representative Brittany Pettersen and Dan Baer in the Democratic primary. No Republicans have yet announced.
Oklahoma
Possibility of Special Session Continues as Lawmakers Attempt to Reach Budget Agreement
Due to a ruling from the Oklahoma Supreme Court earlier this month that struck down a smoking cessation fee approved this past legislative session, a $215 million shortfall for the Department of Human Services, the Department of Mental Health and Substance Abuse Services, and the Oklahoma Health Care Authority has been created. These three agencies were to receive the bulk of the money that was to be generated by the cessation fee.

Governor Mary Fallin's chief budget negotiator, Secretary of Finance, Administration, and Information Technology, Preston Doerflinger, issued the following statement concerning attempts to reach a budget agreement for lawmakers to consider in a possible special session:

"Budget discussions are continuing. The Governor's office is doing due diligence in preparing for a special session as Oklahomans expect by meeting with Republican and Democratic legislative leaders in attempting to reach an agreement on how to adjust the current fiscal year budget as a result of the recent state Supreme Court ruling. As part of that discussion, the fiscal staffs of both legislative chambers and the Governor's office are looking at a variety of revenue sources to make up the budget shortfall and to provide for teacher pay increases. Possible efficiency options to streamline state government operations are also being reviewed. No agreement has been reached between the Governor and any legislative party. To suggest we are even close to a deal is incredibly premature and irresponsible."

"It's important to keep in mind that not only do we have the immediate problem of the loss of $215 million from the court's ruling, but we should also be working towards filling the anticipated fiscal year 2019 budget hole."

State Applies for 1332 Waiver
State officials in Oklahoma are also working on a 1332 waiver proposal. The state is considering:

- Changing eligibility for federal premium subsidies from 100-400 percent of the federal poverty level to 0-300 percent of the federal poverty level
- Standardizing subsidies based on age and income
- Establishing two plan options - a standard plan covering 80 percent of costs and a high-deductible plan to be used in conjunction with a health savings account
- Redefining essential health benefits
- Changing age-rating bands from 3-to-1 to 5-to-1
- Integrating a reinsurance program to help cover the costs of expensive patients

The state has not finalized or submitted the waiver proposal. If the administration approves either waiver, other conservative states might explore similar policy ideas.

Texas
Hurricane Harvey
At time of publication, flood conditions remain in and around the Gulf Coast division and across southeast Texas. We are humbled by the incredible efforts of Texas division leaders, facility operators, and their teams.

Texas Voter ID Law Ruled Unconstitutional
During the 2017 regular legislative session, lawmakers passed Senate Bill
5, which requires the Secretary of State to establish a program to provide election identification certificates to voters who are otherwise unable to present acceptable proof of identification for the purpose of voting in Texas. The bill also expanded the types of acceptable documentation for this purpose. This legislation was an attempt by lawmakers to soften Texas Voter ID laws in order to respond to federal court findings that the existing law discriminated against black and Latino voters.

On August 23, a U.S. District Court Judge ruled that Senate Bill 5 does not absolve Texas lawmakers from responsibility from the 2011 law's discriminatory nature and further ruled that the state failed to prove that the new law would accommodate such voters going forward.

In a statement, Texas Attorney, General Ken Paxton, identified an intent to appeal this decision.

**Parts of Texas State House of Representatives District Map Ruled Unconstitutional**
In a decision on August 24, a panel of federal judges ruled that parts of the Texas State House of Representatives map must be redrawn before 2018 elections begin, due to a finding of intentional discrimination against minorities in the drawing of several state House districts.

The nine House districts in question, approved in 2013, involve five Dallas/Fort Worth area districts (currently represented by three Democrats and two Republicans), two central Texas districts (both represented by Republican legislators), and two south Texas coastal area districts (one Republican, one Democrat.) While only nine districts stand to be redrawn, it is likely this will impact a statewide redrawing and ripple effect.

Texas Attorney General, Ken Paxton, has indicated that an appeal of this decision is forthcoming.

**SCOTUS Stays District Court Order Invalidating Two Texas Congressional Districts**
A panel of federal judges recently invalidated two Congressional districts (Congressional District 27 - Blake Farenthold, R-Corpus Christi, and Congressional District 35 - Lloyd Doggett, D-Austin), finding that these two districts violate the United States Constitution and the Federal Voting Rights Act due to either impermissible racial gerrymandering or intentional deprivation of voting rights. The decision by the panel ordered the state to either call a special legislative session to address the map invalidation or to return to court on September 5 with a proposal for new maps.

Following this ruling, the state filed a request for a stay of the ruling to the United States Supreme Court, pending an appeal.

Justice Samuel Alito issued a stay on August 28, placing the lower court's order temporarily on hold, pending further appeal to the United States Supreme Court. This temporarily relieves the state of its obligation to comply with the district court's orders, and orders the original plaintiffs to instead respond to the state by September 5.

**Utah**

**Medicaid Expansion**
State officials have sent the Centers for Medicare and Medicaid Services (CMS) a revised proposal to enact a small-scale Medicaid expansion to include work requirements, lifetime coverage limits, and enrollment caps for the newly eligible populations. Utah wants to slightly expand Medicaid eligibility to cover individuals with mental illness or the chronic homeless, and the waiver proposal had previously been submitted to the Obama administration. The state revised it after the Trump administration signaled it
would be willing to approve several policies that the prior Democratic administration rejected. Utah's proposal would cover an estimated 6,000 people.