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Health Care Policy Roundup: Progressives Strike Back

[Here comes some sun, little darling](#). Sure, the Trump administration continues its siege on the Affordable Care Act (ACA). In fact, the Administration has gone so far as to dramatically reverse course and [back the ACA's full repeal](#) in *Texas v. U.S.*, a federal case we have written about [here](#) and [here](#). Yes, President Trump's proposed budget for 2019 would cut billions of dollars from [federal health care programs](#). Still—stay with us here—this roundup of health care policy news is a celebration of progressive wins big and small. Read on for updates on recent successes against the introduction of work requirements in Medicaid, the proliferation of junk insurance, and more.

Federal Courts Bring the Gavel Down Against Harmful and Unlawful Reforms

Last week, federal district courts struck blows against two important measures advanced by the Trump administration to weaken the health care safety net. First, CMS has pushed an agenda in the last two years to encourage states to condition the receipt of Medicaid on work requirements. Second, the Administration has pushed the expansion of association health plans (AHPs)—group health plans that allow businesses to join together to provide health coverage to employees in a manner that is not required to comply with several of the ACA's mandated consumer protections.

[Fast Facts on Arkansas Work Requirements](#)

- Arkansas initiated implementation of its work requirement in June 2018
- As of February 2019, over 116,000 people were subject to the work requirement
- Over 18,000 people lost coverage in 2018 because they did not report sufficient work-related hours
- Less than 2,000 people have regained coverage since the lockout period ended on January 1, 2019
- The online portal that beneficiaries use to report hours has been shut down, indicating compliance with last week's ruling

Under review in the cases against Medicaid work requirements were the demonstrations approved for Kentucky and Arkansas. In twin rulings, Judge James E. Boasberg of the United States District Court for the District of Columbia [blocked](#) Kentucky from implementing its program, and [ordered](#) Arkansas to discontinue its rollout.

This is the second time Judge Boasberg has struck down Medicaid work requirements...in Kentucky's Medicaid program. *Health Care in Motion* published an analysis of the first case, from June 2018, [here](#). Now, finding that demonstration approvals by the Secretary of Health and Human Services (HHS) in the cases before him were plagued by the same deficiencies, Judge Boasberg once again finds the federal government's approval of the demonstration projects to be "arbitrary and capricious." The basic purpose of Medicaid is to provide medical assistance, which the law defines as paying for medical treatment for low-income individuals. HHS failed to

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adequately consider the risk that people would lose Medicaid coverage under the demonstration, and, therefore, HHS failed to consider whether work requirements are likely to assist in promoting the objectives of the Medicaid program. Simply stated, the Court struck down work requirements because of the significant risk that this change would result in far too many people being kicked off Medicaid. As before, the opinions are peppered with references to the public record and issues raised by advocates during comment periods.

The [case on AHPs](#) was also heard in federal district court in D.C., by Judge John D. Bates. As explained above, an AHP is a type of group health plan that is organized by a group or association of employers (instead of a single employer) to provide health coverage to the employees of the AHP's employer-members. AHPs are favored by the Trump administration because these plans are not required to meet all of the consumer protection requirements that other plans subject to the Affordable Care Act have to meet. In June 2018, the Department of Labor issued a final rule ("AHP Final Rule") that significantly relaxed then-existing parameters to AHP formation, and enables small employers to take advantage of the more lax insurance market rules that benefit large employers.

Judge Bates harshly criticizes the AHP Final Rule as "intended and designed to end run the requirements of the ACA..." At various points throughout his opinion, Judge Bates identifies the AHP Final Rule as relying on a "tortured reading" of the ACA, unreasonable, and absurd. Ultimately, Judge Bates held that key problematic features of the AHP Final Rule—including the relaxed test for claiming AHP status and the ability for self-employed individuals to join AHPs—are unlawful. There were, however, collateral provisions that were not challenged in the case, such as requirements relating to nondiscrimination and organizational structure. Judge Bates remanded the AHP Final Rule to the Department of Labor to determine how to deal with these remaining issues.

Advocates have consistently admonished the Trump administration for undermining federal law via regulatory activity. These cases are a resounding reprimand of such behavior as violating the separation of powers principle. While this does not necessitate an immediate change of course—appeals could be filed, the Department of Labor could issue a revised rule, and, less than 48 hours after Judge Boasberg invalidated the Kentucky and Arkansas demonstrations, the Centers for Medicare and Medicaid Services [approved a similar proposal from Utah](#)—these wins are still worth celebrating.

Oversight is in the House

Meanwhile, over in the other, other branch of government, Democrats in the House of Representatives have been busy seeking to unwind, crack down on, and minimize harmful health care policies advanced by the Administration. In an effort to curtail the expansion of junk insurance, members of the House Energy & Commerce Committee launched an investigation into [short-term, limited duration health plans](#). The Committee on Oversight and Reform, the main investigative committee in the U.S. House of Representatives, has [raised concerns](#) regarding the new Title X rules that [threaten to dismantle access to essential reproductive and sexual health care services](#). In a divided Congress such as this, where bipartisan support is necessary for legislation but hard to secure (to say the least), hearings and investigations are a powerful tool for influencing policy.

The House of Representatives, however, is also seeking to strengthen the ACA's private insurance markets through [legislation](#). Last week, Democrats introduced a package of bills that would, among other things, direct more funding towards education and outreach and expand tax credits that support people to purchase ACA-compliant insurance. At the very least, these

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measures add pressure on other members of Congress to either break with the Administration in its crusade against the ACA or acknowledge a commitment to its reforms. Further, such measures prepare the ground for coming health care debates and increase the chances of significant reform passing Congress in the years ahead.

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While this update focuses on recent successes in federal health policy, it would be remiss not to acknowledge the slew of progressive policy reforms advancing in legislative sessions across the country. [Medicaid expansion](#). [Directing state funds to replace federal funding lost under the changes to Title X](#). [Individual mandates](#) and other initiatives to stabilize insurance markets. States, too, are striking back against harmful health care policies and seeking to protect and promote access to affordable, quality, and comprehensive health care.

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