Health Policy Update

MATT MULLIGAN, MD
ASSISTANT PROFESSOR DIVISION OF GENERAL MEDICINE UNIVERSITY OF UTAH SCHOOL OF MEDICINE

UTAH CHAPTER OF ACP: HEALTH AND PUBLIC POLICY COMMITTEE CHAIR

Disclosures

No financial disclosures

Views are my own, and do not reflect the views of the University of Utah or American College of Physicians, except when referencing official positions of the American of College of Physicians

Outline

Surprise billing

Status of the Patient Protection and Affordable Care Act in 2020

Medicaid Expansion

Surprise Billing

Surprise Billing

What is it?

Unexpectedly high medical bill from care provided by out-of-network provider when expected to be in-network

Different from balanced billing:

- Insurance pays part of bill and the patient is billed the balance
- Can result from out-of-network bills

Where does it happen?

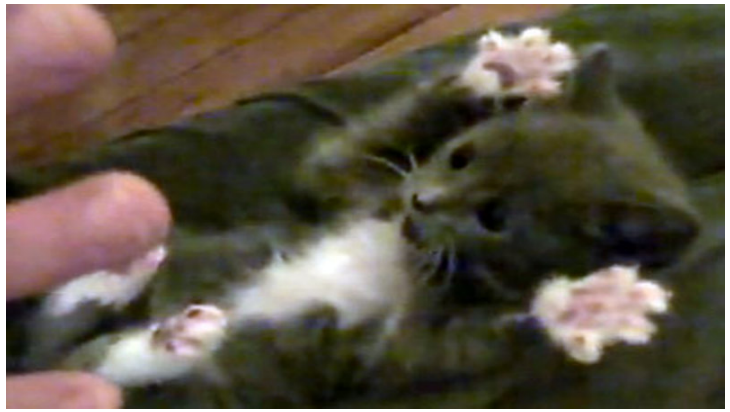
Emergency Services

- No option to select facility/provider

Non-emergency services at in-network facility

- Part of the care is provided by out-of-network provider

Medical Transport



Networks of Physicians

IN NETWORK

Insurance companies create networks of physicians

- Provide care with contracted rates

Incentive to join is based on increased patient volume

Network Adequacy Standards

- Health plan to deliver the benefits with reasonable access

In Network Rates : ~ 125% of Medicare

OUT OF NETWORK

Some physicians don't have incentive to join

- Could charge higher costs out of network

Bargaining power?

Network adequacy

- Not enough at the time?

Out of Network Rates : ~ 300% of Medicare

Surprise Billing

Ideally a health plan would be able to provide adequate in-network physicians

Surprise Billing = Market Failure:

- Failed negotiations between health insurance companies and physicians
  - Insufficient Network
  - Insufficient Access to In-Network Physicians

Leaves patients vulnerable to higher costs

High Patient Costs

Higher out of network co-pay

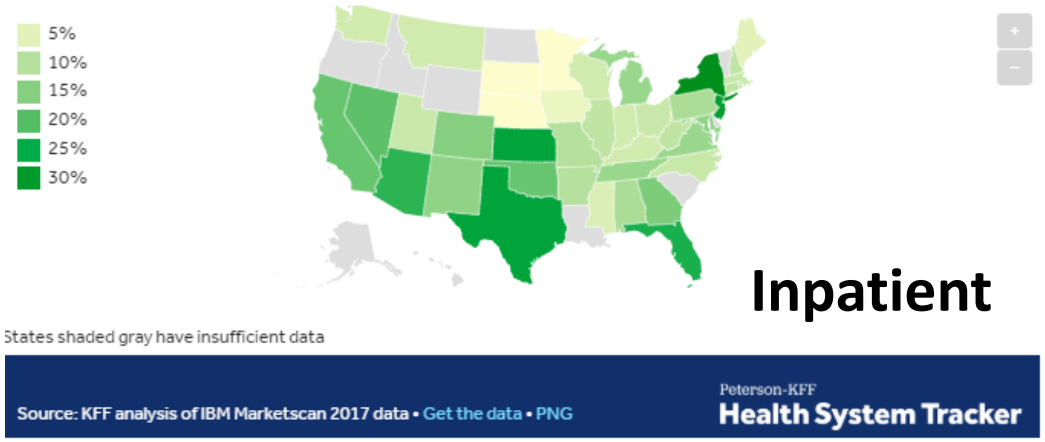
Balance Billing

- Difference between allowed amount and providers charge

Kaiser Health News and NPR: Bill of the Month

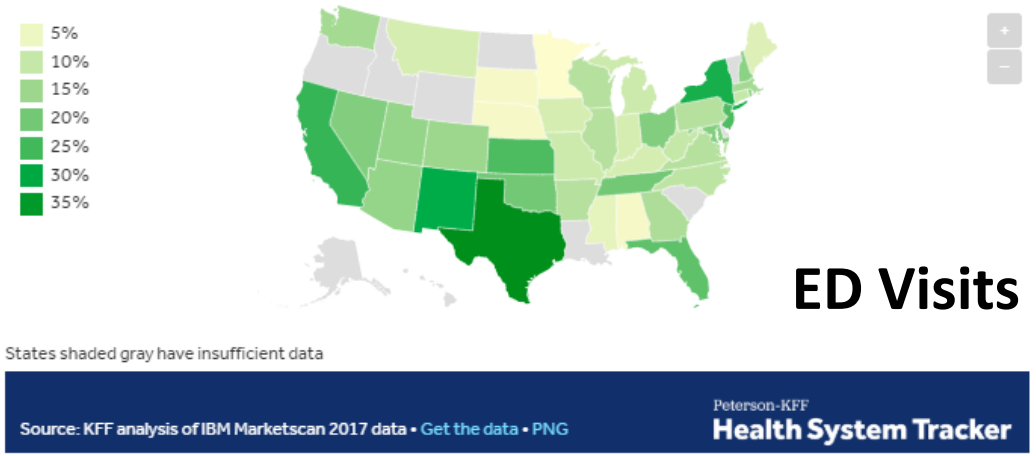
Incidence of Surprise Billing

Among people with large employer coverage, the share of in-network visits with at least one out-of-network charge, 2017



Inpatient

- 16% of in-network inpatient admissions result in at least one out-of-network charge
- Utah 8%

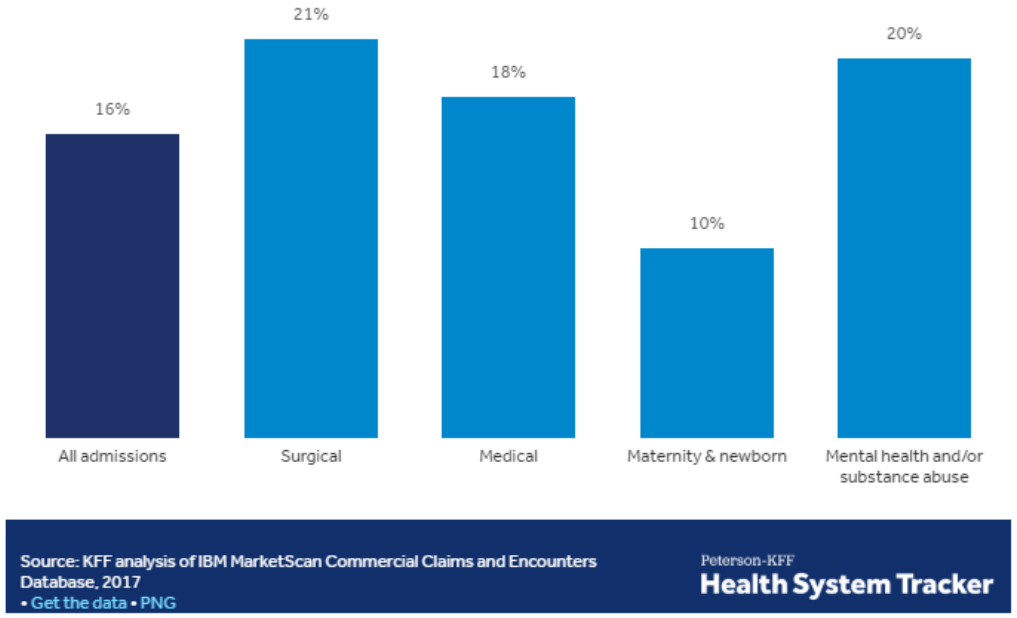


ED Visits

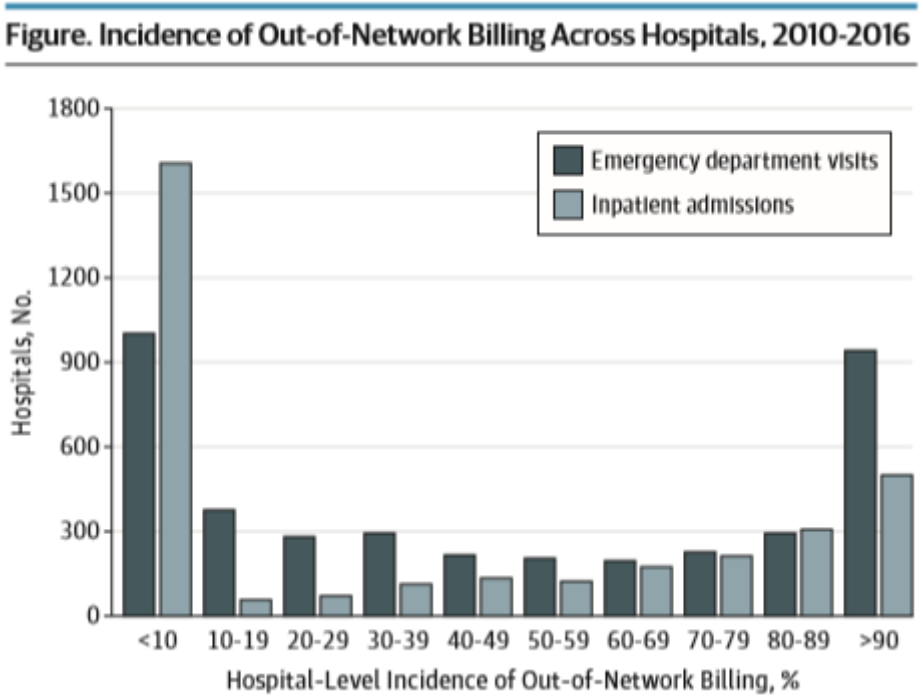
- 18% of emergency visits result in at least one out-of-network charge
- Utah 16%

Incidence of Surprise Billing

By Type of Admission



Distribution Across Hospitals



JAMA Internal Medicine | Original Investigation

Assessment of Out-of-Network Billing for Privately Insured Patients Receiving Care in In-Network Hospitals

Eric C. Sun, MD, PhD; Michelle M. Mello, JD, PhD; Jasmin Moshfegh, MA, MSc; Laurence C. Baker, PhD

Incidence of Surprise Billing: 2010-2016

JAMA Internal Medicine | Original Investigation

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Table 3. Annual Incidence and Magnitude of Out-of-Network Billing for Inpatient Admissions

Year	No. of Admissions[a]	Admissions With Out-of-Network Bill, No. (%)[b]	Potential Out-of-Network Responsibility, $[c]					
			Mean (SD)	10th	25th	50th	75th	90th
2010	607 160	159 609 (26.3)	804 (2456)	0	30	285	794	1684
2011	573 457	175 610 (30.6)	990 (2876)	0	73	389	971	2060
2012	830 824	301 568 (36.3)	1277 (3899)	0	125	508	1194	2568
2013	867 523	338 715 (39.0)	1483 (4188)	16	192	653	1428	2950
2014	803 425	327 676 (40.8)	1731 (4698)	25	244	760	1682	3474
2015	828 481	319 297 (38.5)	1920 (5157)	35	291	853	1842	3791
2016	947 111	397 447 (42.0)	2040 (4967)	44	325	984	2084	4112
Overall	5 457 981	2 019 922 (37.0)	1574 (4382)	8	183	667	1538	3215

Increase in surprise billing from **26.3%** in 2010 to **42%** in 2016

Cost of Surprise Billing

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Increase in mean potential costs from **$804** in 2010 to **$2040** in 2016

Surprise Billing in Internal Medicine

Table 4. Incidence and Magnitude of Out-of-Network Billing for Medical Transport Services and the 10 Most Common Physician Specialties for Inpatient Admissions

Specialty	No. of Admissions[a]	Admissions With Out-of-Network Bill, No. (%)[b]	Potential Out-of-Network Responsibility, $[c]					
			Mean (SD)	10th	25th	50th	75th	90th
Radiology	3 181 749	720 698 (22.6)	267 (759)	15	33	121	307	615
Emergency medicine	2 132 940	908 430 (42.6)	595 (575)	44	203	477	858	1267
Internal medicine	2 007 554	507 014 (25.3)	450 (1133)	9	65	206	483	999
Anesthesiology	1 961 192	378 239 (19.3)	1369 (1807)	0	233	794	1825	3362
Cardiology	1 701 819	333 769 (19.6)	328 (1438)	10	19	52	196	612
Unknown	1 115 844	214 992 (19.3)	544 (1489)	29	106	265	614	1136
Pathology	987 225	219 335 (22.2)	297 (542)	16	63	145	303	676
Medical transport	947 744	773 218 (81.6)	424 (2176)	0	0	44	365	832
Family practice	783 703	142 455 (18.2)	384 (1330)	0	49	148	364	798
Obstetrics & gynecology	760 049	6220 (0.8)	1228 (3457)	18	91	293	1075	1075

How do we fix it?

State and federal regulation

Basis of most proposals:

1.) Hold patients harmless
- In-network co-pays
- Prevent balanced billing

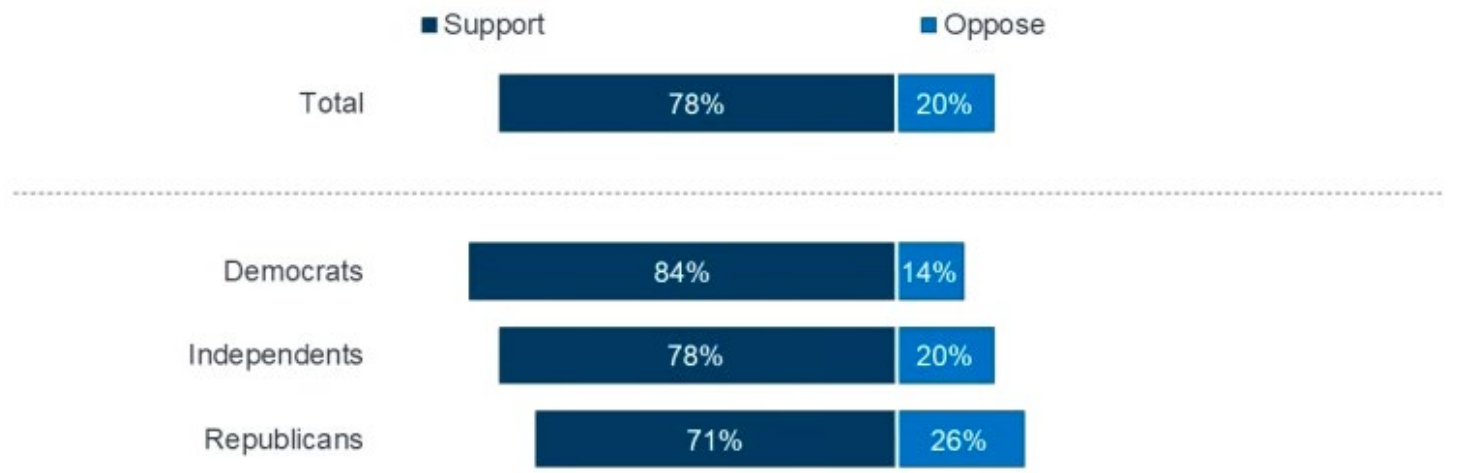
2.) Negotiating Insurance and physician payments
- Benchmarking Physician Payments
  - % Medicare rate
  - % Median in-network rate
  - % of billed charges
- Dispute resolution:
  - Independent Dispute Resolution (IDR)
  - Binding baseball style arbitration
    - Used by New York

Strong Public Support

Figure 4

Majorities Across Partisans Support Surprise Medical Bill Legislation

Do you support or oppose legislation protecting patients from paying the cost not covered by their insurance when they receive care from a provider or hospital who is not in their network?



SOURCE: KFF Health Tracking Poll (conducted September 3-8, 2019). See topline for full question wording and response options.

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POLICY-ISH

Trump Throws Support Behind Fix For Surprise Medical Bills, But Hurdles Remain

May 9, 2019 · 3:03 PM ET

JULIE ROVNER

FROM KHN

TheUpshot

Ban on Surprise Medical Bills May Pass After All

Congress is close to a deal that would help patients by resolving billing disputes between doctors and insurance companies.

Federal Legislation

- Bipartisan-bicameral legislation to stop Surprise Billing
  - Senate Health, Education, Labor, and Pensions (HELP) Committee
  - House Energy and Commerce Committee
- Incorporated into large spending bills
- Principles
  - Benchmarking at median in-network rate
  - Dispute through binding arbitration

Failed to Pass in 2019

Surprise billing legislation did NOT pass near the end of 2019

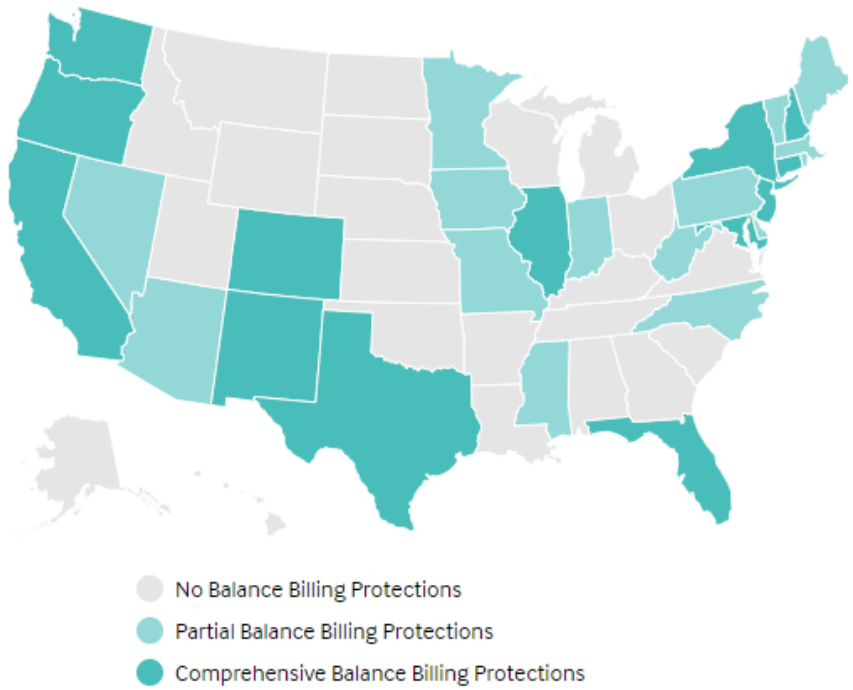
- Despite strong public support

Lobbying against legislation:

- Doctor Patient Unity - private equity physician staffing companies
- Also opposed by the Utah Medical Association

Surprise Billing at State Level

- In 2019 – 29 states enacted consumer protection
  - 13 with comprehensive protection
- Utah has NOT enacted legislation on Surprise Billing



Utah- Surprise billing

2019 LEGISLATIVE SESSION

Rep. Jim Dunnigan (District 39- Taylorsville)

Intent to pass legislation to protect patients and prohibit balanced billing

No agreement on payment “fair-agreement” with UMA.

No bill was introduced

2020 LEGISLATIVE SESSION

Utah Medical Association proposed bill for surprise billing for ED visits

Patient Protection and Affordable Care Act

STATUS IN 2020

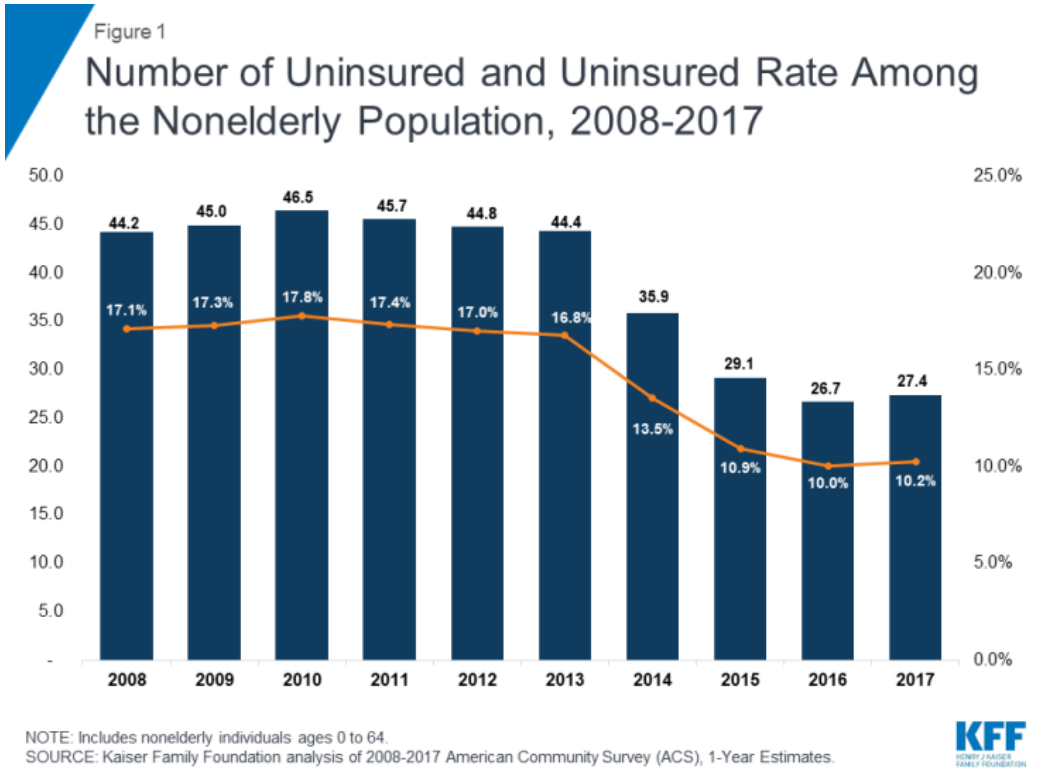
Patient Protection and Affordable Care Act

Signed into law in 2010 under President Obama

Major provisions enacted in 2014

Changed health care in United States

- Dramatic reduction in uninsured
- Increased patient protections



Many Popular Provisions

Americans' Opinions Of ACA Provisions

Percent who say they have a **FAVORABLE** opinion of each of the following provisions of the law:	Total	Democrats	Independents	Republicans
Allows young adults to stay on their parents' insurance plans until age 26	82%	90%	82%	66%
Creates health insurance exchanges where small businesses and people can shop for insurance and compare prices and benefits	82	91	78	71
Provides financial help to low- and moderate-income Americans who don't get insurance through their jobs to help them purchase coverage	81	92	82	63
Gradually closes the Medicare prescription drug "doughnut hole" so people on Medicare will no longer be required to pay the full cost of their medications when they reach the gap	81	85	82	80
Eliminates out-of-pocket costs for many preventive services	79	88	78	68
Gives states the option of expanding their existing Medicaid program to cover more low-income, uninsured adults	77	91	77	55
Requires employers with 50 or more employees to pay a fine if they don't offer health insurance	69	88	61	56
Prohibits insurance companies from denying coverage because of a person's medical history	65	70	66	58
Increases the Medicare payroll tax on earnings for upper-income Americans	65	77	69	42

NOTE: Some items asked of half sample.
SOURCE: KFF Health Tracking Poll (conducted November 14-19, 2018). See topline for full question wording and response options.

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ACA Repeal Efforts

Concerted effort among Republicans in 2017 to repeal and replace

- House passed American Health Care Act
- Senate: The Better Care Reconciliation Act (BRCA)
- 'Skinny Repeal' defeated with decisive vote by the late John McCain

Failed to pass significant repeal and replace legislation

However, changes were made to ACA:

- Reduced funding for outreach and advertising
- Shortened enrollment period
- Eliminated Cost Sharing Reduction payments → silver loading
- Removal of tax for not having health insurance

ACA and the Individual Mandate

ACA required individuals to have health insurance or pay a penalty

Challenged by Supreme Court in 2012
- *National Federation of Independent Business v Sebelius*
- Upheld as Congress' ability to implement a tax

December 2017- Congress passed a tax bill that eliminated financial penalty (tax)
- Took effect 2019

Twenty State coalition, including Utah Attorney General Sean Reyes, challenged the constitutionality of the Affordable Care Act
- Without a tax there is no mandate
- Mandate was "essential" to the ACA
- 'Inseverable' → ACA is unconstitutional

Department of Justice declined to defend the ACA

Another coalition of 16 States defend the law

Texas vs United States: December 2018

Texas Judge Strikes Down Obama's Affordable Care Act as Unconstitutional

ACP American College of Physicians®
Leading Internal Medicine, Improving Lives

Internists: Texas Judge's Decision to Take Health Care Away from Millions Must be Overturned

Statement attributable to:
Ana María López, MD, MPH, MACP
President, American College of Physicians

Appeals

DOJ and Democratic Attorneys general appealed

DOJ changed course and agreed with District Court's decision

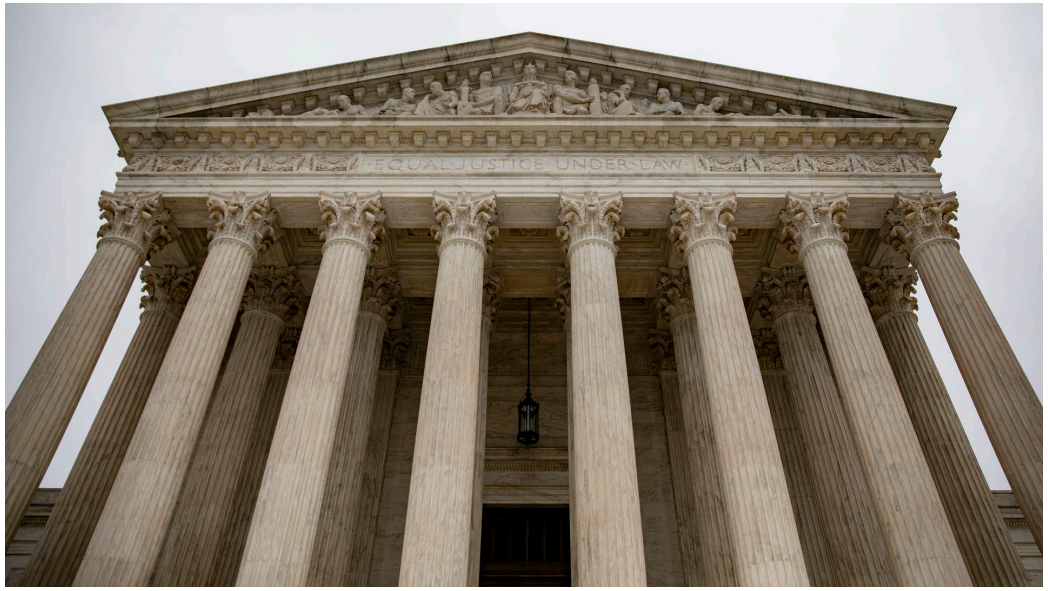
- ACA should be invalidated

December 2019 U.S. 5th Circuit Court of Appeals

- Agreed mandate with $0 penalty is unconstitutional
- Sent back to District Judge for more analysis on constitutionality of ACA

Case expected to be heard by Supreme Court

- After 2020 Presidential Election



What's at Stake

Medicaid expansion

Dependent coverage up to age 26

Pre-existing condition protection

Preventative services

Essential health benefits

Health insurance subsidies

Annual and lifetime limits

Cap on out-of-pocket cost sharing

Close Medicare "doughnut hole"

ACP American College of Physicians®
Leading Internal Medicine, Improving Lives

Internists Say Court's Decision on ACA Potentially Could Put Health Care for Millions at Risk

Statement attributable to:
Robert McLean, MD, MACP
President, American College of Physicians

Utah Medicaid Expansion

HOW DID WE GET HERE?

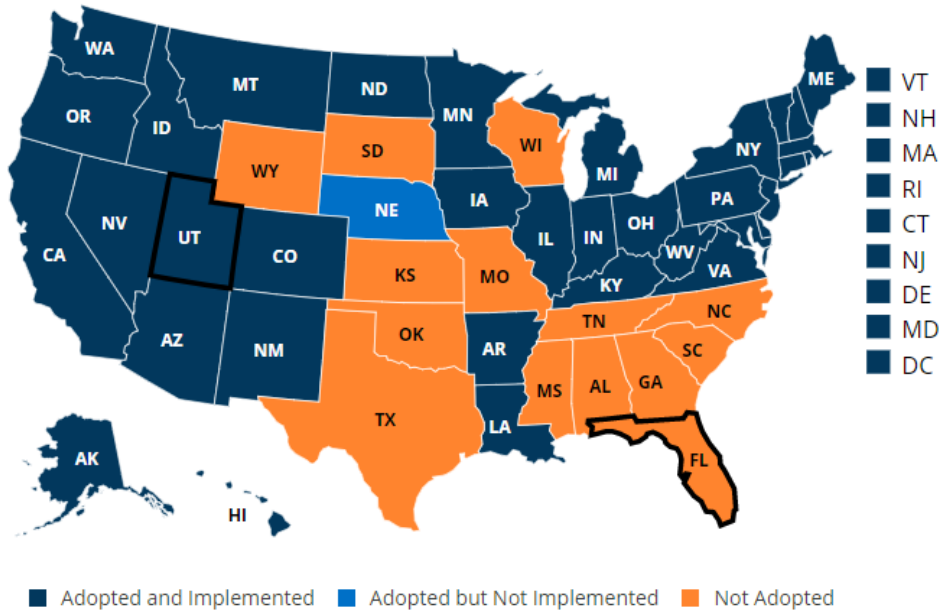
Medicaid Expansion

ACA: Medicaid expansion optional starting in 2014

- Non-elderly adults with incomes up to 138% of FPL
  - 2020: $17,236 for an adult, and $35,535 for a family of four
- Majority of cost covered by Federal Govt
  - Federal Share in 2020: 90%
- 15 million Americans have gained health insurance through Medicaid Expansion

As of January 2020:

- 37 states (including DC) expanded Medicaid
- 14 states have not expanded Medicaid



Utah and Medicaid Expansion

2014- 2018

- Utah considered several Medicaid Expansion proposals → None Passed

2018

- H.B. 472 Medicaid Waiver Expansion - Passed
  - Expand Medicaid for adults with incomes up to 100% of the federal poverty limit
  - Required Section 1115 waiver
    - Subject to CMS approval
  - Planned implementation Jan 1st, 2019
    - Work requirement
    - Enrollment caps
    - Requires ESI
- H.B. 325 Enhancement Waiver Program - Passed
  - Only if H.B. 472 not approved
  - Enhance the existing Primary Care Network
  - Decrease in benefits for some other populations

UTAH DEPARTMENT OF HEALTH
MEDICAID
A Bridge to Wellness for Utah's Vulnerable

Proposition 3: Utah Decides Health Care Act

2018 Ballot Measure – Proposition 3:Utah Decides Health Care

Full Medicaid Expansion

- Provide Medicaid for individuals under the age of 65 AND
- Incomes up to or below 138% of the FPL
- Increase in sales tax of 0.15%

Ballot Measure PASSED with 53% of the vote

Utah Proposition 3: Medicaid Expansion Initiative		
Result	Votes	Percentage
✔ **Yes**	**555,651**	53.32%
No	486,483	46.68%

Senate Bill 96: Medicaid Expansion Adjustments

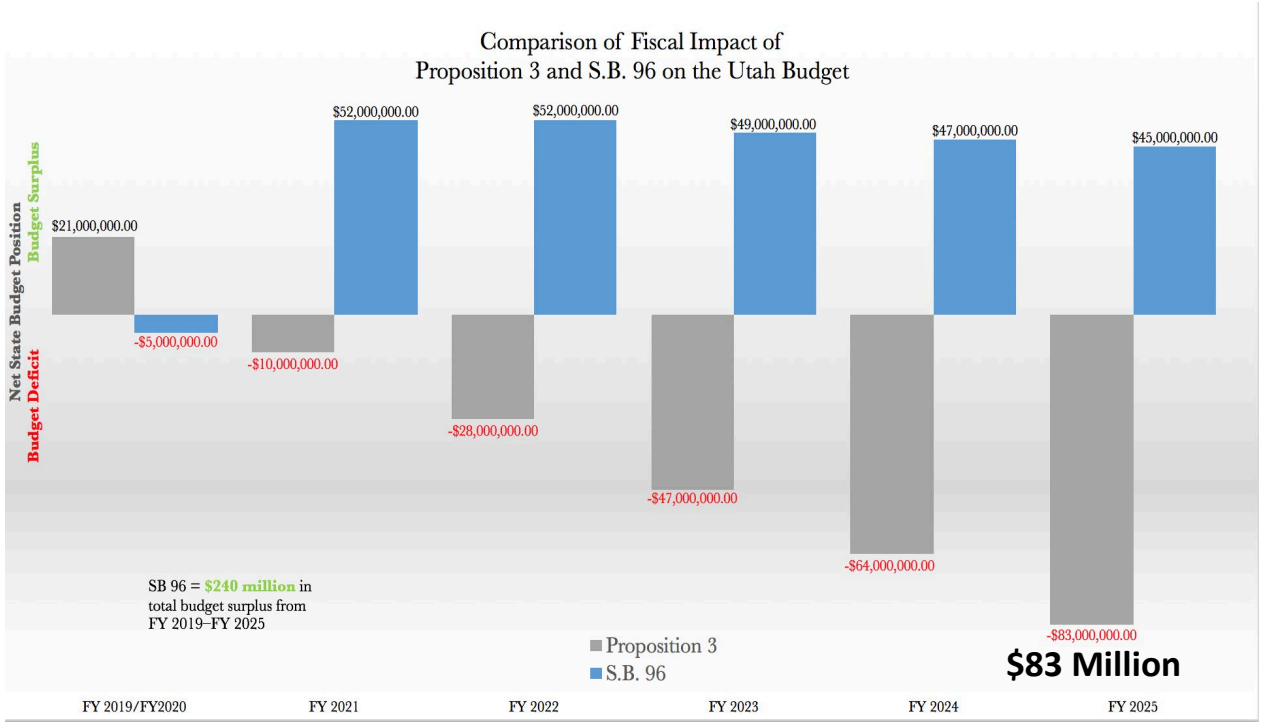
Concerns about financial sustainability with Medicaid Expansion

- Projected deficit of $83 million in FY2025

“putting pressure on other core government functions and social programs.” Gov Herbert

S.B. 96 Signed By Gov Herbert signed into law February 2019

- Expands Medicaid to 100% of FPL
- Additional flexibilities in Medicaid through State Waivers



Section 1115 Waivers

Section 1115 of the Social Security Act grants the Secretary of HHS to approve experimental, pilot, or demonstration projects to promote the objectives of the Medicaid Program

“Core objective of Medicaid is to serve the health and wellness needs of our nation’s vulnerable and low-income individual and families”

Give States more flexibility to design and improve Medicaid programs

- Robust evaluation
- Budget neutral to federal government
- Approved for 5-year period, and can be extended

UTAH DEPARTMENT OF HEALTH MEDICAID

Medicaid Expansion: At A Glance

July 2019

Expansion Plan Provisions	Bridge	Per Capita Cap	Fallback	Full Expansion
Timeline	Effective April 1, 2019	Upon CMS Approval (Submit Waiver to CMS Spring 2019)	Upon CMS Approval (Submit Waiver to CMS by March 15, 2020)	July 1, 2020 (if needed)
Federal Poverty Level	100%*	100%*	138%	138%
Authority	Waiver	Waiver	Waiver	State Plan
Presumptive Eligibility (PE)	Yes	No Hospital PE	No Hospital PE	Yes
Self-Sufficiency Requirement (Work Requirement)	Yes (effective January 1, 2020)	Yes	Yes*	No
Authority to Cap Expansion Enrollment	Yes*	Yes*	Yes	No
Lock-out for Program Requirements/Violations	No	Yes	Yes	No
Require Enrollment in Employer's Plan with Premium Reimbursement	Yes (effective January 1, 2020)	Yes	Yes*	No
Funding (% federal/% state)	70/30	90/10**	90/10	90/10

- SB 96 required provisions for implementation **90% federal match available up to per capita cap limit

Fallback Waiver

Utah received approval for the Fallback Waiver effective January 1, 2020

Waiver allows for:

- Expanded eligibility for individuals with incomes up to 138% of FPL
  - Coverage for another 45,000 Utahans
  - Enhanced federal match rate (90%)
- Community engagement requirement expanded to new Adult Expansion Population
  Requires Employer Sponsored Insurance

Not approved:

- Enrollment caps
- Removal of Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) for those aged 19 and 20
- Premiums and a charge for non-emergent use of the ED
- Several others

Estimated 120,000 Utah Adults are eligible for the Expansion Program

Utah Medicaid Work Requirements

Applied to individual who qualify through the *Adult Expansion Population*

Meet an Exemptions:

1. Age 60 or older;
2. Pregnant or up to 60 days postpartum;
3. Physically or mentally unable to meet the requirements as determined by a medical professional or documented through other data sources;
4. A parent or other member of the household with the responsibility to care for a dependent child under age six;
5. Responsible for the care of a person with a disability as defined by the ADA, section 504 of the Rehabilitation Act, or section 1557 of the Patient Protection and Affordable Care Act
6. A member of a federally recognized tribe;
7. Has applied for and is awaiting an eligibility determination for unemployment insurance benefits, or is currently receiving unemployment insurance benefits, and has registered for work at the Department of Workforce Services (DWS);
8. Participating regularly in a substance use disorder treatment program, including intensive outpatient treatment;
9. Enrolled at least half time in any school (including, but not limited to, college or university) or vocational or apprenticeship program;
10. Participating in refugee employment services offered by the state, which include vocational training and apprenticeship p rograms, case management, and employment planning;
11. State Family Employment Program (FEP) recipients who are working with an employment counselor;
12. Beneficiaries in compliance with or who are exempt from SNAP and/or TANF employment requirements; or
13. Working at least 30 hours a week, or working and earning at least what would equal the federal minimum wage earned working 30 hours a week

If no exemption than individuals must:

- Register for work through the state system
- Complete an evaluation of employment training needs
- Complete the job training modules as determined to be relevant to the individual through the assessment of employment training needs
- Applying for employment with at least 48 potential employers

Expecting 6,000-8,000 Individuals to not comply with community engagement requirements

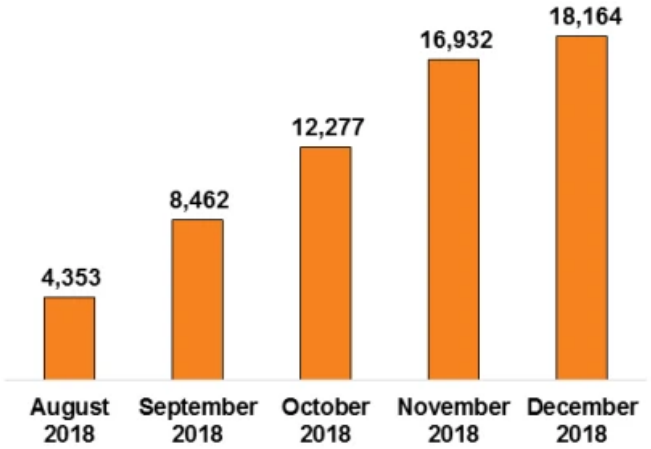
The NEW ENGLAND JOURNAL of MEDICINE

SPECIAL REPORT

Medicaid Work Requirements — Results from the First Year in Arkansas

Benjamin D. Sommers, M.D., Ph.D., Anna L. Goldman, M.D., M.P.A., M.P.H., Robert J. Blendon, Sc.D., E. John Orav, Ph.D., and Arnold M. Epstein, M.D.

Total enrollees who lost coverage in 2018 due to work and reporting requirements = 18,164



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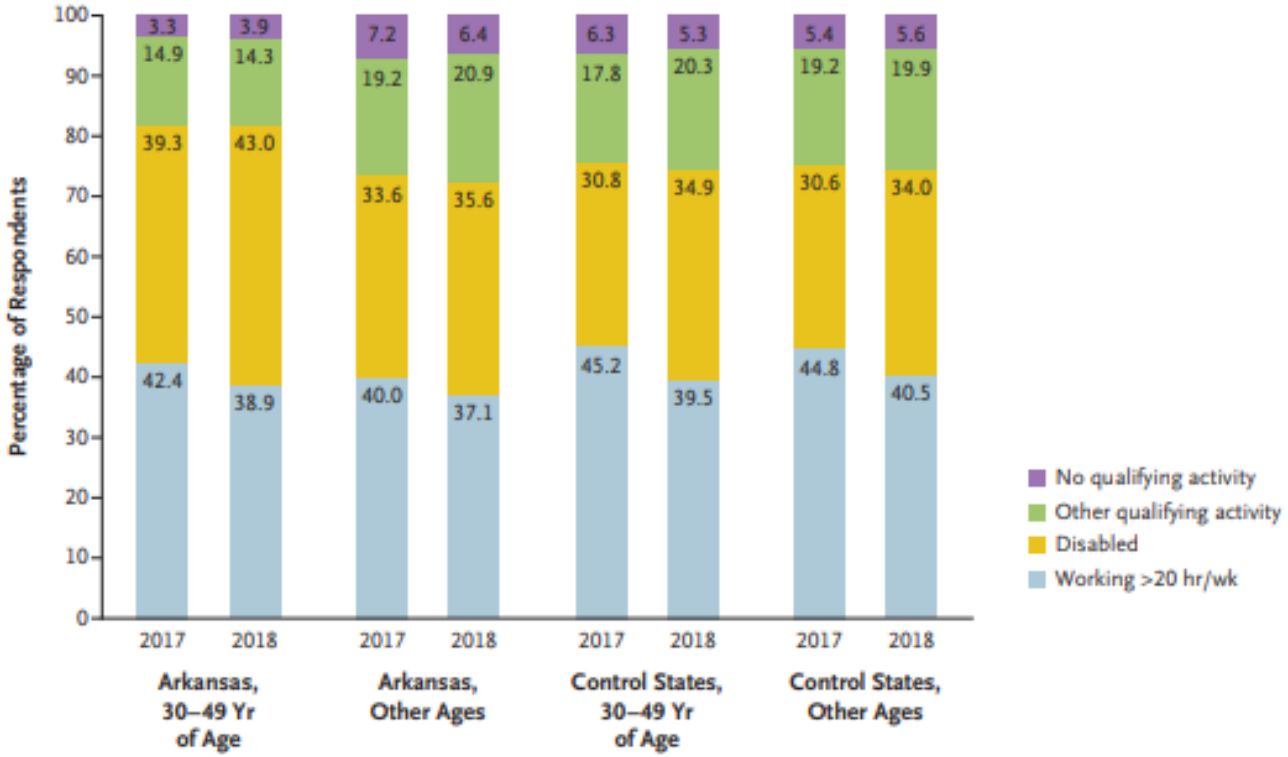
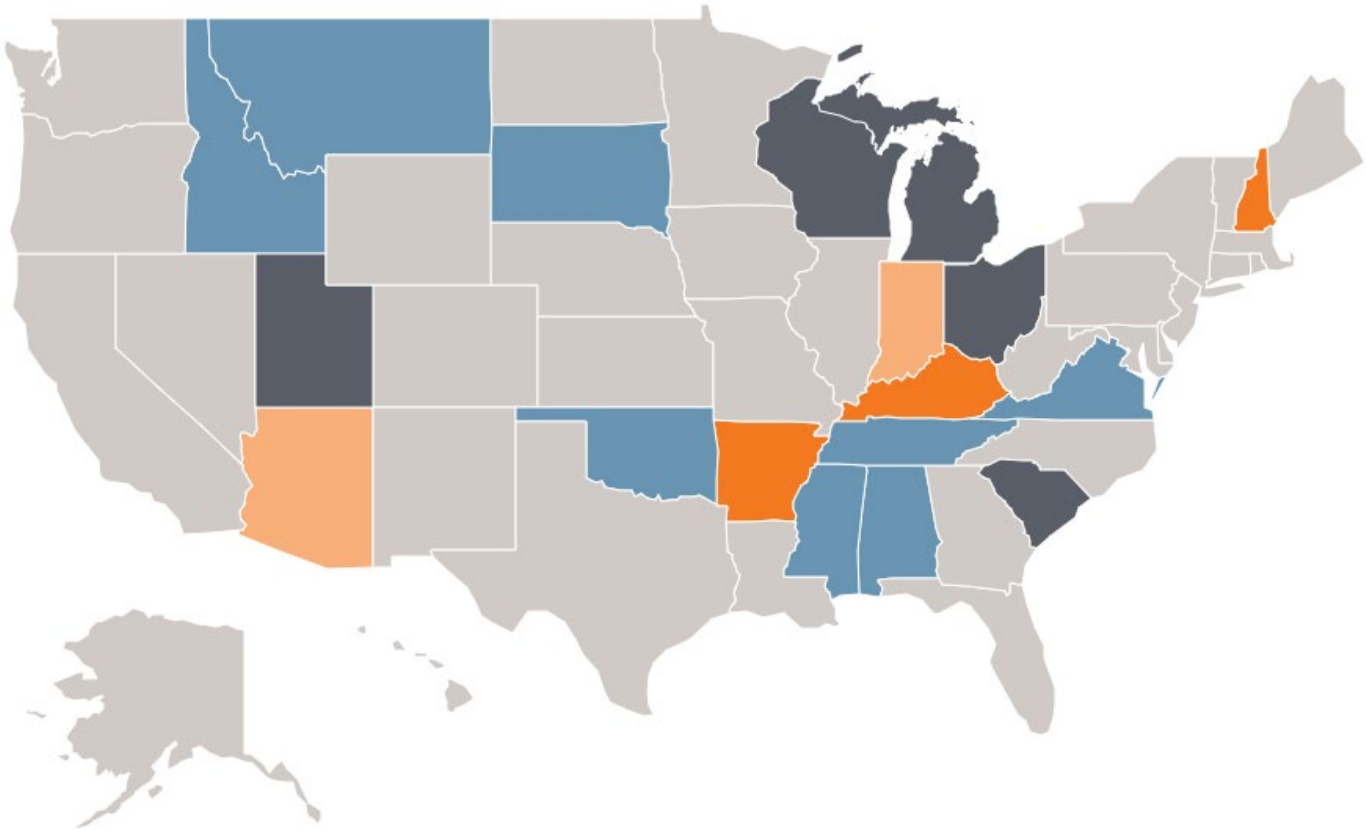


Work requirements stopped March 2019 by Federal Court

Status of Work Requirements

January 3rd, 2020



Section 1115 Demonstration Waivers and Other Proposals to Change Medicaid Benefits, Financing and Cost-sharing: *Ensuring Access and Affordability Must be Paramount*

Joint principles of the following organizations representing front-line physicians:

American Academy of Family Physicians
American Academy of Pediatrics
American College of Obstetricians and Gynecologists
American College of Physicians
American Osteopathic Association
American Psychiatric Association

Limiting Barriers to Eligibility and Coverage: CMS should ensure that waivers and other proposed changes to Medicaid do not impose punitive requirements that individuals be employed, be actively seeking a job, or be enrolled in a job training or job recruitment program and/or impose mandatory drug testing as a condition of eligibility.

Healthy Adult Opportunity

Announced January 30th, 2020

What: States must operate within a defined federal budget target

- Aggregate cap (Block Grant)
- Per-enrollee cap
- Rates expected to be below growth in Medicaid Spending

How: States can apply using Section 1115 waivers (Not mandatory)

Who: Mostly the Adult Medicaid Expansion population

Why:

- Gives States flexibilities to change coverage (must cover essential health benefits)
- Change cost-sharing changes e.g. co-pays
- Less federal oversight

Healthy Adult Opportunity

Expecting significant legal challenges

- Changes to Medicaid program without congressional approval
- Expected reduction in coverage and access

Internists Say Changes to Medicaid Program Will Put Health Care at Risk for Vulnerable Patients

Statement attributable to:

Robert McLean, MD, MACP

President, American College of Physicians

Summary

Surprise Billing:

- 16% of inpatient admission and 18% of ED visits
- Increases costs for patients
- State and Federal consumer protection bills pending

Affordable Care Act:

- Many popular provisions are in jeopardy
- Pending federal court rulings
- Likely be decided by Supreme Court in 2020 (after election)

Medicaid Expansion:

- Utah has expanded Medicaid providing thousands of low-income Utahans with healthcare coverage
- Work requirements for Medicaid eligibility approved in Utah
- Healthy Adult Opportunity Program (Block Grants), pending legal challenges, may be policy issue for Utah Medicaid

Questions?