



BOS Washington Update



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BOS Washington Update is a benefit for AAOS Board of Specialty Societies (BOS) members. For more information, please contact Jamie Gregorian in the AAOS Office of Government relations at gregorian@aaos.org or 202.546.4430.

Though Congress was out last week the executive and judicial branches were still actively crafting health policy. On the executive level, CMS proposed a new rule to eliminate a reporting exemption for certain CME-related payments pursuant to the Physician Payments Sunshine Act. Just last year, CMS had created the exemption after an extensive regulatory process as part of a Final Rule on the law that requires drug and device companies to disclose payments to physicians. In a significant reversal, CMS said its previous policy created an 'unintended' appearance of agency endorsement of commercially supported CME events. For its part, the FDA released proposed regulations to strengthen its oversight of compounding pharmacies. The rule would update the FDA's list of risky drugs that have been removed from the market or are banned from being compounded by pharmacies.

On the judicial level, the Supreme Court made another major ruling on the ACA, though not entirely relevant to orthopaedics: in a 5-4 decision, the Court ruled that some private companies may, on religious grounds, opt out of the ACA's requirement that employer-sponsored health insurance plan provide contraception coverage. Three days later, the high court voted 6-3 to provide temporary relief to a non-profit college that also objected to the contraception coverage mandate. The rulings fiercely divided the court, as well as supporters and opponents of the health law.

With both the House and Senate reconvening today with four weeks to go until the August recess, the House Energy and Commerce Committee will continue its 21st Century Cures initiative on drug and device development, holding separate sessions to examine modernizing clinical trials and incorporating patient perspectives.

2015 Fee Schedule Released. On July 3rd, CMS released their proposed 2015 physician fee schedule would eliminate an exemption for payments made to physicians speaking at continuing education events. The Physician Payment Sunshine Act requires drug and device makers to publicly report payments to providers to shine a light on potential conflicts of interest, but it makes an exception for payments to speakers at industry-funded continuing medical education programs. Quoting the proposed rule, "we are proposing to delete the Continuing Education Exclusion in its entirety. Eliminating the exemption for payments to speakers at certain accredited or certifying continuing medical education events will create a more consistent reporting requirement, and will also be more consistent for consumers who will ultimately have access to the reported data." ([PDF link to rule](#))

While there is a potential effect on industry's willingness to fund CME, there is no apparent change to the indirect payment rule, which does not require reporting in the case of indirect payments to organizations if the funder is not aware of the doctors receiving funding. [Per Forbes](#), "most payments to physicians already are excluded because of the indirect payment rule," which would somewhat diminish the impact of this rule change. More to come as this develops.

Also of note, CMS is "proposing to transform all 10- and 90-day global codes to 0-day global codes beginning in calendar year 2017," CMS said. "The Office of the Inspector General has identified a number of surgical procedures that include more visits in the global period than are being furnished." The agency plans to have one code for services provided on the day of surgery, and pay separately for postsurgical services. ([MedPage Today](#))

Patients Experience Longer Wait Times. On Sunday, the New York Times published data regarding increased wait times. From the article: “The Commonwealth Fund, a New York-based foundation that focuses on health care, compared wait times in the United States to those in 10 other countries last year...The study found that 26 percent of 2,002 American adults surveyed said they waited six days or more for appointments, better only than Canada (33 percent) and Norway (28 percent), and much worse than in other countries with national health systems like the Netherlands (14 percent) or Britain (16 percent). When it came to appointments with specialists, patients in Britain and Switzerland reported shorter waits than those in the United States, but the United States did rank better than the other eight countries.” ([NYT](#))

Despite ACA Enrollments, Healthcare Spending Decreases. The Department of Commerce's Bureau of Economic Analysis reported that spending on healthcare decreased in the first three months of the year despite a surge of ACA enrollments. An earlier estimate found healthcare spending had increased by 10 percent in the first quarter, boosting overall growth. Some experts interpreted that figure as a sign that people were using their new coverage under the Affordable Care Act (ACA). But the final GDP report paints a decidedly different picture, finding healthcare spending decreased and subtracted 0.16 percent from economic growth as the economy shrank by 2.9 percent. ([Wall Street Journal](#))

Exchange Enrollees Could Face Higher Premiums in 2015. According to a recent report by Avalere Health, many U.S. residents enrolled in health coverage through the Affordable Care Act's insurance exchanges might have to pay substantially higher premiums in 2015 if they do not switch plans during the upcoming open enrollment period. Avalere researchers examined preliminary rate filings in Connecticut, Indiana, Maine, Maryland, Oregon, Rhode Island, Vermont, Virginia and Washington, and found that two-thirds of exchange enrollees in those states who enrolled in silver plans in 2014 chose one of the two lowest-cost options.

Researchers also found that the range in premium prices increased from 2014 to 2015, in part because new insurers entered the exchanges with lower rates in an attempt to gain more market share. Meanwhile, other insurers that significantly increased their market share in 2014 raised their rates in 2015. ([Kaiser](#) and [Vox](#))

Boehner to Sue over Executive Action on ACA. House Speaker John Boehner (R-OH) announced the House will file a lawsuit against President Obama because of actions he has taken without the approval of Congress, and suggested that healthcare has played a role in the decision. Republicans have repeatedly criticized the White House for what it describes as “selective enforcement” of the ACA. Mr. Boehner can use his authority as speaker to convene the Bipartisan Legal Advisory Group, a five-member legal panel appointed by GOP and Democratic House leaders, but weighted towards the majority. This group has authority to direct the U.S. House Office of General Counsel, to participate in litigation and represent the U.S. House itself.

Republicans have slammed the President for not enforcing the employer mandate this year and implementing another transition for 2015 that gives some employers an additional year to comply. Republicans have said that if the Administration can unilaterally delay the employer mandate because it is a burden on businesses, it should also not enforce the law's mandate that most individuals be required to have health insurance. ([USA Today](#))

SCOTUS Rulings Limit ACA's Contraception Mandate. On June 30th, the Supreme Court ruled 5-4 that closely held companies with religious objections did not have to provide certain forms of contraception to which they objected. This came about as a result of a lawsuit filed by the *Hobby Lobby* chain of stores that objected to the contraception coverage mandate in the ACA.

Shortly thereafter, the Court ruled a Christian college in Illinois will not have to follow part of the regulations under the Affordable Care Act's contraception mandate. Wheaton College will not have to complete a form sent to both the federal government and third-party insurers, which would then provide contraceptives for free with a government subsidy. Wheaton and more than 120 other nonprofits have sued, saying the workaround violates their religious views.

Opponents of the contraception mandate hailed both rulings as triumphs for religious liberty. But the mandate's backers and the Court's liberals warned of a slippery slope that could provide a means for companies to discriminate in hiring on the basis of race or gender, simply by claiming religious objections. Legal analysts said the rulings would likely trigger thousands of new religious-belief challenges to the ACA's contraception mandate, opening the door to additional Supreme Court rulings in the future. ([NYT](#), [Fox News](#), [WaPo](#))

More Fun with ICD-10. Over Memorial Day weekend, *BOS Washington Update* was in Charleston and Kiawah Island, SC where we not only encountered beautiful weather, but also came across an alligator. Lucky for us, ICD-10 [now offers three codes](#) for each of the following: Bitten by alligator; Struck by alligator; Crushed by alligator, and; Other contact with alligator. Of course, if we had come across a crocodile rather than an alligator, there would be separate codes for those bites/strikes/crushes/other.