

# Health Care in Motion

Timely, Substantive Updates on Policy Shifts • Actionable Advocacy to Protect Health Care

Updated March 11, 2020 to respond to the evolving policy landscape.

March 5, 2020

## People Get Ready – Preparing for the Coronavirus in the Age of Trump

Today's *Health Care in Motion* will focus on preparedness for coronavirus disease 2019 (COVID-19). Over the last ten days, headlines have been dominated by the growing global spread of COVID-19 and its effect across the United States. Readers who advocate on behalf of people living with HIV/AIDs would be justified in objecting to the [appointment](#) of Vice President Mike Pence to lead the Trump Administration's response effort as a particularly ill-suited choice. While Governor of Indiana, Pence's ideological opposition to common sense preventive health measures exacerbated a localized HIV outbreak. A subsequent study concluded that an earlier, more proactive response from Indiana officials would have "[substantially blunted](#)" the outbreak, with the authors later concluding that "[Pence's handling of the Indiana HIV outbreak is a case study in mismanagement of a public health crisis.](#)" As with so much in this Administration, health care advocates feel like they have [stepped through the looking glass](#) as they watch the COVID-19 crisis unfold. Such concerns lead directly to the question of what we can do in the meantime to prepare in the face of an inadequate governmental response.

### Coronavirus Preparedness and Access to Prescription Medications

As our understanding of COVID-19 and its potential impact in the United States continues to evolve, increased attention is being paid to preparedness. While [there are many aspects to preparedness](#), one recommendation that is particularly relevant to people living with cancer, HIV, hepatitis C, diabetes, and other chronic illness is this: [Make sure you have at least a 30-day supply of your prescription medications.](#)

Having an available supply of medications helps ensure that access to essential regimens is not affected by potential disruptions in the health care system, and also helps alleviate potential stress on the health care system if situations worsen. Unfortunately, insurance policies can be a barrier to medication preparedness. For example, an insurance company may only authorize a refill of a prescription when a person's previous supply has been nearly finished.

Importantly, some states have laws or other policies in place to support prescription preparedness in the event of a public health emergency. On March 1<sup>st</sup>, Florida Governor Ron Desantis issued an [executive order](#) declaring a state of emergency which, among other implications, means that health insurers, managed care organizations, and other entities licensed by the Florida Office of Insurance Regulation that provide prescription medication coverage [must waive time restrictions on prescription medication refills.](#)

Similarly, the Centers for Medicare and Medicaid Services (CMS) [requires](#) Medicare Part D (prescription drug) plans to lift "refill too soon" limits when a Presidential major disaster or emergency declaration is issued. As of March 4,

2020, President Trump has not issued a declaration that would trigger the requirement to take effect; however, CMS also [encourages](#) plans to lift limits in advance of an impending disaster.

Please note: The Secretary of the Department of Health and Human Services can also declare a public health emergency that lifts “refill too soon” limits and triggers other requirements. A public health emergency, as declared by Secretary Azar, has been in place since [January 27, 2020](#). CMS issued related [guidance for Part D sponsors](#) on March 10, 2020.

Advocates and other concerned persons can take the following steps right now towards prescription preparedness in the face of COVID-19:

- Review your state laws, regulation, and guidance documents to understand whether, and under what circumstances, insurance companies are required to ease refill restrictions. (CHLPI has initiated research on this issue for several states, which can be accessed [here](#).)

Link removed given the quickly evolving landscape.

- If insurance companies are required to ease restrictions subject to the occurrence of a specific event (such as a declaration of emergency), advocate for government officials to take such necessary steps.
- In states that do not have requirements, advocate for regulators to release a bulletin encouraging insurance companies to support emergency preparedness.
- Call insurance companies to ask if they will waive refill restrictions to support preparedness.

Events such as COVID-19 and recent natural disasters highlight gaps in law and policy that increase the likelihood of poor health outcomes among vulnerable communities. CHLPI is working to ensure reforms that strengthen coordination and enable continuity of care.

#### **About CHLPI’s Emergency/Disaster Preparedness Project:**

In 2019, CancerCare, a leading national nonprofit providing free, professional support services to individuals affected by cancer, launched a project to identify and begin to address the challenges cancer patients face in the wake of a natural disaster. CHLPI is working with CancerCare to provide policy guidance and support for the disaster response program.

CancerCare’s initiative is funded by the Bristol-Myers Squibb Foundation and the Merck Foundation.

The current crisis highlights another important effect of our work. Advocates for access to health care generally believe that universal health insurance coverage is essential. The COVID-19 outbreak underscores an important but underappreciated aspect of universal coverage. Access to care amidst a pandemic benefits not only the people who are themselves covered, but also [mitigates the effect of the virus across the entire U.S. population](#). When Medicaid beneficiaries are guaranteed COVID-19 testing without a co-pay, [for example](#), the beneficial effects in disease mitigation will compound across all residents in a state.

## Additional Health Care in Motion Updates

- Longtime *Health Care in Motion* readers will remember legal advocates' ongoing struggle [against work requirements](#) in Medicaid via waivers. Kentucky and Arkansas, two states to adopt work requirements early, had their waivers [overturned](#). Their appeal was recently [decided](#) on February 14, handing advocates an extra sweet valentine with a 3-0 decision affirming the lower court. In the wake of this decision, a lower court has now entered summary judgment against the government, [invalidating Medicaid work requirements in Michigan as well](#). For a more in-depth breakdown of the appeals court decision, checkout this [Harvard Law Review Blog post](#) authored by Jenny Samuels, a clinical student in the Center for Health Law and Policy Innovation of Harvard Law School.
- We have also followed the legal challenge to the Affordable Care Act originating out of Texas in early 2018. When [last we checked in on the case](#) in December, the 5th Circuit Court of Appeals issued its ruling and agreed with the District Court that the individual mandate was unconstitutional. However, the Appeals Court was reluctant to determine which provisions of the ACA should fall with it, and asked the lower court to re-do its analysis, which found that the entire ACA must fall, "with a finer-toothed comb." This week, the United States Supreme Court [granted a request](#) to hear an appeal of that ruling in its next term. This means that [in October 2020](#) -- at the very height of the presidential election -- the fate of the Affordable Care Act is likely to again be at the top of everyone's news feed. The Trump Administration and its Justice Department are on the record here with the unorthodox position that a duly enacted law should be wholly struck down as unconstitutional. Suffice it to say that coverage of this case will shine a light on significant differences between the two candidates running for president. The outcome of the case remains uncertain – the ACA has survived many legal challenges, and will hopefully survive this one. With the popularity of the ACA [near an all-time high](#), the timing of this case also has the potential to backfire on ACA opponents and swing the election towards a candidate who wants to protect the millions of people who have gained health care coverage under the ACA. Only [time will tell](#).

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*Health Care in Motion is written by Robert Greenwald, Faculty Director; Kevin Costello, Litigation Director and Associate Director; Phil Waters, Clinical Fellow; Maryanne Tomazic, Senior Clinical Fellow; and Rachel Landauer, Clinical Fellow.*

*Erin Freeman and Dana Molt, clinical students in the Health Law and Policy Clinic of Harvard Law School, led the research on federal and state policies governing insurer flexibilities in an emergency/natural disaster.*

*For further questions or inquiries please contact us at [chlpi@law.harvard.edu](mailto:chlpi@law.harvard.edu).*