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# Idaho Medical Association

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## IMA Wire

January 1, 2019

IMA Files Brief in Lawsuit to Defend Prop 2 As reported in the December 15 *IMAg*es newsletter, the IMA's request to intervene in the lawsuit challenging Prop 2 was granted by the Supreme Court on December 18. The Supreme Court ordered that an Intervenor/Respondents brief be filed by December 24. The brief was filed on behalf of two individuals in the gap as well as an individual physician (Bruce Belzer, MD) along with the IMA to the Supreme Court and is available on the [IMA website](#).

The brief outlines that falling into Idaho's health coverage gap has "harsh consequences," even if a family's household income is just a few dollars lower than the poverty line.

Prior to enactment of Proposition 2, the voter-approved Medicaid expansion initiative, a family of four in Ada County with a household income just below the federal poverty level of \$25,100 would have to pay \$903 per month for a health insurance policy with an annual deductible of more than \$10,000, according to the brief.

If that same family made just above the poverty line, it'd pay just \$30 a month in premiums for the same health insurance plan, because of subsidies provided through the state insurance exchange.

The Idaho Freedom Foundation is challenging the voter-passed law as unconstitutional, saying it improperly delegates legislative authority to the federal government and the Idaho Department of Health & Welfare. Like earlier legal arguments filed by the state Attorney General's office, the new intervenors' brief says that's simply not true.

"Legislation directing the Idaho Department of Health & Welfare to implement express policy changes is not a delegation of legislative authority," the attorneys write. "It not only is completely within the executive branch's authority, it is its constitutional obligation to do so, and it is a common practice that has been endorsed by this court."



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Also like the Attorney General, the brief argues that the Freedom Foundation, through its board chairman Brent Regan, lacks standing to sue and that the state's highest court lacks jurisdiction to hear the case — and that the case should be dismissed on those grounds, as well.

The two individuals named in the lawsuit are Deleena Foster of Pocatello, a mother of three whose husband works as a roofer; and Pamela Blessinger of Boise, a married mother of two children with disabilities who works part time and whose husband is a disabled Iraq veteran. Their household incomes put them squarely in the gap.

The brief cites a long line of cases upholding the constitutionality of Idaho laws that make references to federal statutes or delegate implementation authority to an executive branch agency, as Proposition 2 does.

“The party challenging a statute on constitutional grounds bears the burden of establishing the statute is unconstitutional and ‘must overcome a strong presumption of validity,’” the lawyers wrote, citing a 2010 Idaho Supreme Court case. “When the people approve an initiative, they are exercising legislative power granted under Article III, Section 1 of the Idaho Constitution.”

The Freedom Foundation has until January 9 to file a reply brief. The IMA will present oral arguments before the justices of the Supreme Court on January 29. IMA's participation in the legal battle to defend Prop 2 would not be possible without the support of the AMA Litigation Center.

Additional information on the brief is available in an [article](#) published by the *Idaho Press*. Please contact IMA CEO Susie Pouliot at [susie@idmed.org](mailto:susie@idmed.org) if you have any questions.

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**AMA Assessment of Texas v. Azar Decision** Late on Friday, December 15, a federal district court in Texas struck down the Affordable Care Act (ACA) in its entirety, finding that the 2017 Tax Cuts and Jobs Act (TCJA), which zeroed out the tax penalties associated with the ACA's individual mandate, renders the mandate unconstitutional. The judge further concluded that since the individual mandate is “essential” to the ACA, it could not be severed from the rest of the ACA, and the entire ACA was therefore unconstitutional.

While the Texas district court decision was unfortunate, it is important to keep it in perspective. The court did not issue an injunction, so immediate compliance is not required. In addition, the Trump Administration

announced that it will continue to administer the law until a formal decision is made by the U.S. Supreme Court, which will not occur until 2020 at the earliest, after additional legal steps are completed.

Nonetheless, the atmosphere of uncertainty created by this decision on top of other steps taken by Congress and the Administration will likely contribute further to the instability of the individual insurance market.

For physicians and patients it is important to recognize that, if the district court's ruling were to stand, many important and broadly supported patient protections provided by the ACA would be eliminated, such as:

- Access to their parents' plan coverage for young adults up to age 26
- Elimination of annual and lifetime caps on benefits
- No pre-existing condition coverage exclusions or medical underwriting
- Coverage of prevention and screening benefits with no deductibles or copayments
- Required coverage for mental health and addiction treatment services
- Federal support for expanded Medicaid eligibility
- Premium subsidies for low- and moderate-income individuals and families to purchase coverage and cost sharing subsidies to lower out-of-pocket costs

Further, the nearly 20 million individuals who became insured since the ACA's passage would be left with few affordable coverage options.

The AMA disagrees strongly with the district court's decision. We led an amicus brief filed last June that urged the court to reject the plaintiffs' challenge to the ACA. Other organizations that joined the AMA in filing the brief included the American College of Physicians, American Academy of Family Physicians, American Academy of Pediatrics, and the American Academy of Child and Adolescent Psychiatry.

The AMA will continue to be a champion for access to affordable and meaningful health insurance coverage for all Americans, joining patient and other health stakeholder groups in pursuing an appeal and reversal of this regrettable decision.

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## 2019 IMA Legislative Preview

The First Session of the Sixty-Fifth Idaho Legislature begins on January 7, 2019. As always, there will be a lot of activity on the healthcare front. This preview focuses on the IMA's two primary legislative issues for 2019: implementation of Medicaid expansion and funding for expansion of Idaho Graduate Medical Education (GME) programs. There will be many more issues that surface as we move throughout the session. Please be sure to read the IMA's weekly legislative reports for the most current information and to respond to our requests for physician input or action. Things move quickly during the legislative session and we do our best work with our members' support and involvement.

Implementation of Prop 2 – Medicaid Expansion. Following the passage of Proposition 2 for Medicaid expansion on November 6, both the Idaho Department of Health and Welfare and the Idaho Legislature will be working on the many aspects of implementation of the law.

- According to the language of Prop 2, IDHW must submit a Medicaid state plan amendment (SPA) to the federal government by February 15. The SPA indicates the new eligibility requirements for Idaho Medicaid and is the first step in implementation.
- Legislators must authorize the expenditure of the ninety percent match of federal funds to cover the costs of expansion and must also decide how best to fund Idaho's ten percent of the cost. IMA supports funding expansion with existing revenues and cost savings, and not a tax increase.
- Some legislators are still opposed to full implementation of Medicaid expansion even though Idaho voters passed the initiative by a 61 percent to 39 percent margin. IMA anticipates there will be extensive discussions on whether to create barriers on Medicaid coverage. IMA does not support legislative requirements that would:
  - Create excessive administrative overhead and drive up state costs
  - Unnecessarily delay implementation
  - Unduly burden patients and take away their coverage
- IMA and other healthcare advocates oppose unnecessary and costly barriers to coverage in Idaho

because experience in other states shows that restrictions are very expensive for the state and do not prove to be effective at doing anything other than endangering the very coverage Idahoans voted to provide.

- If the Idaho Legislature decides to move forward with state-imposed restrictions, a separate waiver would need to be filed with and approved by the federal government.
- IDHW is ultimately aiming for an enrollment date of October 2019.

Residency Expansion. The Idaho State Board of Education adopted a ten-year Graduate Medical Education (GME) expansion plan in late 2017, with initial funding of the plan in 2018. In 2019, funding for year two of the plan will be considered by the Legislature. The plan addresses:

- An increase in and stabilization of existing program funding
- Coordinated planning for creation of new programs
- Development and funding of fellowship programs
- Coordination with undergraduate medical education programs to ensure the availability of Idaho residency slots
- Creation of a statewide GME committee
- Appropriate accountability for programs receiving state funding
- Quality workforce production
- Appropriate distribution of resources to all parts of Idaho.

IMA will continue to be a primary advocate for this plan and will likely be calling on members to contact legislators when votes on funding are imminent.

This is certainly not a comprehensive list of legislative issues we'll face this year. As mentioned above, you'll receive weekly legislative reports keeping you informed of healthcare related legislative issues that arise in the 2019 Idaho Legislature, so be sure the IMA has your current email address on file. As always, please contact IMA CEO Susie Pouliot ([susie@idmed.org](mailto:susie@idmed.org)) or IMA Policy Director Molly Steckel ([molly@idmed.org](mailto:molly@idmed.org)) with questions.

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## 103,000 Idahoans Enrolled in 2019 Health Insurance Through State Exchange Over 103,150 Idahoans enrolled in health insurance coverage for 2019 through Your Health Idaho, the state's health insurance marketplace.

This is the second-highest number of enrollments Your Health Idaho has experienced since its inception, the organization announced December 28. Last year, nearly 102,000 Idahoans enrolled in health insurance through the exchange. Open enrollment ran from November 1 to December 15.

About 83 percent of customers renewed their plans. Pat Kelly, executive director of Your Health Idaho, told the Idaho Press that last year, about 74 percent of customers were renewals.

"We attribute this success to Idahoans understanding the vital role the exchange plays and our ability to offer individuals and families a robust number of insurance plans with a variety of options in coverage," Kelly said in Friday's press release.

In 2018, the average premium Idahoans paid through the exchange was just under \$500, while the average tax credit was about \$400, Kelly said. Kelly did not have numbers for 2019 enrollment yet.

This year, Your Health Idaho offered 293 health and dental plans on the exchange through its partnerships with the Department of Insurance and seven carriers.

The enrollment increase is in contrast to a national drop in health insurance enrollment by about four percent, amounting to about 367,000 fewer people, according to a story by [National Public Radio](#). Kelly said he attributes Idaho's increase to its state-based marketplace, which helps develop plans that work for Idahoans, as well as the good relationships among the marketplace, agents and brokers. [Bamer, *Idaho Press*, 12/28]

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Physician Compare 30-Day Preview Period Extended to 1/7 After advocacy by the American Medical Association (AMA), the Center for Medicare and Medicaid Services (CMS) has extended the Physician Compare preview period through January 7, 2019.

On November 30, CMS opened the 30-Day Preview Period for the 2016 performance information targeted to be publicly reported on [Physician Compare](#) starting in early 2019. The preview was scheduled to end on December 31 at 8pm ET. CMS will extend the preview through Monday, January 7 at 8pm ET.

For additional assistance with accessing the Quality Payment Program website, or obtaining your EIDM user role, contact the Quality Payment Program service center at [QPP@cms.hhs.gov](mailto:QPP@cms.hhs.gov).

If you have any questions about Physician Compare, public reporting, or the preview period, please contact [PhysicianCompare@Westat.com](mailto:PhysicianCompare@Westat.com).

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## 2019 IMA Webinars

First Session Scheduled for Wednesday, January 23

Happy New Year! January 23 kicks off the 2019 schedule of the IMA's teleconference/webinar series when IMA Reimbursement Director Teresa Cirelli, CPC, CPMA presents *Challenges and Changes: First Quarter Updates*. Join her for a timely review of policy and reimbursement changes from payers and an in depth look at chronic care and transitional care management coding.

Then, on February 20, the book review series returns with a review of AMA's *Risk Adjustment Documentation & Coding*. Detailed documentation and compliant diagnosis coding are critical for proper risk adjustment. The book will be available for purchase for \$55, but is not required to participate in the webinar.

The 2019 schedule of educational sessions has been finalized and several new topics are featured along with returning favorites. The schedule is available on the home page of the IMA website at [www.idmed.org](http://www.idmed.org). Online registration for the webinars is available this year. If you have any questions, please contact IMA Executive Assistant Rebecca Adams at [rebecca@idmed.org](mailto:rebecca@idmed.org) or 208-344-7888.

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**AMA Reimagining Residency Initiative** On January 3, the American Medical Association distributed a Request for Proposals (RFP) for its new "[Reimagining Residency](#)" grant program. The goal of the five-year, \$15-million Reimagining Residency grant program is to transform residency training to best address the workforce needs of the current and future healthcare system. It will support innovations that provide a meaningful and safe transition from UME to GME, establish new curricular content and experiences to enhance readiness for practice, and promote well-being in training.

Funding will be provided to U.S. medical schools, GME programs, GME sponsoring institutions, health systems and other organizations associated with GME to support bold and innovative projects that promote systemic change in graduate medical education.

Letters of Intent are due on February 1, 2019. Visit [changeresed.org](http://changeresed.org) to learn more about the "Reimagining Residency" program and access the RFP.

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**Opioids Training Modules** The Centers for Disease Control & Prevention (CDC) launched two new opioid trainings that support providers in safer prescribing of opioids for chronic pain. The modules are part of a series of interactive online trainings that feature recommendations from the [CDC Guideline for Prescribing Opioids for Chronic Pain](#), clinical scenarios, tools, and resource libraries to enhance learning. The modules offer free continuing education.

- [Determining Whether to Initiate Opioids for Chronic Pain](#): Identify and consider important patient

factors when starting or continuing opioid therapy

- [Implementing CDC's Opioid Prescribing Guideline into Clinical Practice](#): Walk through a quality improvement process using the set of 16 clinical measures outlined in [Quality Improvement and Care Coordination: Implementing the CDC Guideline for Prescribing Opioids for Chronic Pain](#)

View additional modules in the series on the CDC [Interactive Training Series](#) webpage.

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