The key healthcare cases of 2013: Where they stand

By: Terry Baynes – February 8, 2013

2013 is shaping up as an important year in health law, with several high-profile cases that could affect the contraceptive mandate of the Obama administration's healthcare law, how the government calculates Medicare payments and the fate of the healthcare exchanges. Here is a look at the top six lawsuits, based on interviews with eight lawyers in the healthcare field, and a status report on where the cases stand.

NON-PROFIT RELIGIOUS GROUPS TACKLE THE BIRTH CONTROL MANDATE

Summary: When the Obama administration announced in August 2011 that the Affordable Care Act would require employers to provide free contraceptive coverage, many non-profit religious institutions objected and began bringing legal challenges.

Because the administration in February 2012 said it eventually would create an exemption for non-profit religious institutions, courts began dismissing many of the lawsuits as premature. One exception, however, was an action brought by Wheaton College, a Christian liberal arts school near Chicago. In that case, the U.S. Court of Appeals for the District of Columbia Circuit chose to put proceedings on hold and ordered the government to report back every 60 days on its progress in finalizing the exemption for religious organizations.

Status: Last week, Health and Human Services finally issued the proposed rule, which adopts the definition of "religious employer" from the Internal Revenue Code. Wheaton's lawyer, Kyle Duncan of the Becket Fund for Religious Liberty, said the compromise failed to resolve the school's objections. The federal government is required to file its first status report with the D.C. Circuit in mid-February.

Case: Wheaton College v. Sebelius, U.S. Court of Appeals for the D.C. Circuit, No. 12-5273.

RELIGIOUS OBJECTIONS FROM BUSINESS OWNERS

Summary: There are also a number of for-profit companies with religious owners who are seeking an exemption from the requirement that employers provide free birth control coverage to employees. The most high profile of these challenges has been brought by the arts and crafts chain Hobby Lobby, which contends that the morning-after and week-after birth control pills are tantamount to abortion. It also objects to providing coverage for certain kinds of intrauterine devices.

In December, the 10th U.S. Circuit Court of Appeals rejected Hobby Lobby's request for temporary relief. The court's ruling was a blow for opponents of the birth control coverage mandate, but it is not the final word. That same month the 7th Circuit granted a similar request from the Catholic owners of a construction company.

"You've already got the makings of a split among the circuits," said the Becket Fund's Kyle Duncan, who also represents Hobby Lobby. He said the issue could eventually land before the U.S. Supreme Court. The government's proposed rule does not exempt family businesses like Hobby Lobby, he said.

Status: Hobby Lobby on Jan. 10 asked the full 10th Circuit to rehear the case. The court has not yet ruled on that request.

Case: Hobby Lobby Stores Inc v. Sebelius, 10th U.S. Circuit Court of Appeals, No. 12-6294.

TARGETING HEALTH INSURANCE EXCHANGES

Summary: In this lawsuit filed in Oklahoma federal court, Oklahoma Attorney General Scott Pruitt argues that an Internal Revenue Service rule to facilitate federal health insurance exchanges conflicts with the Affordable Care Act. The U.S. government has challenged the state's right to file the lawsuit.

If the lawsuit succeeds, it would pose a serious problem for the implementation of the healthcare law, as numerous states have already opted out of creating their own exchanges.

Oklahoma's argument has gained some traction since it was first introduced by the Cato Institute's Michael Cannon and Jonathan Adler, a law professor at Case Western Reserve University. But its chances of success remain slim, said Stephen Weiner, the chair of Mintz Levin's health law practice.

Status: In a Jan. 25 court filing, Oklahoma defended its standing to bring the lawsuit, saying that the IRS rule will punish large employers in the state with millions of dollars in tax penalties. A hearing on the federal government's motion to dismiss is not yet scheduled.

Case: Pruitt v. Sebelius, U.S. District Court for the Eastern District of Oklahoma, No. 11-30.

HOW TO COUNT MEDICARE PATIENTS

Summary: Twenty-seven hospitals are suing the secretary of the U.S. Department of Health and Human Services for changing how the government counts patients covered by Medicare Advantage, which allows Medicare beneficiaries to enroll in a managed care program. The change lowered the payments many hospitals received for treating low-income patients, and the hospitals sued on grounds that the government's rule-making process was flawed.

Status: In a sharply worded rebuke, the Washington, D.C. district court in November agreed, criticizing the government for arbitrarily changing the Medicare payment formula. The secretary of Health and Human Services appealed to the U.S. Court of Appeals for the District of Columbia Circuit on Jan. 14. The case is not yet scheduled for oral argument.

Case: Allina Health Services v. Sebelius, U.S. Court of Appeals for the D.C. Circuit, No. 13-5011.

WHAT IF A PATIENT QUALIFIES FOR MEDICARE AND MEDICAID?

Summary: This lawsuit instead challenges the way the government formula accounts for patients who qualify for both Medicare and Medicaid. The case stems from another change to reimbursement policies made by Health and Human Services, which the agency sought to apply retroactively. Catholic Health objected, claiming that the government could not apply a new methodology to lower the hospital's payments for past years. If the hospitals win, it could mean increased reimbursements for some hospitals.

Status: The district court in early 2012 agreed with the hospital. Sebelius appealed to the D.C. Circuit, and oral arguments are scheduled for April.

Case: Catholic Health Initiatives v. Sebelius, U.S. Court of Appeals for the D.C. Circuit, No. 12-5092

AUDITING HOSPITAL RECORDS

Summary: This lawsuit challenges a government program that was launched in 2005 to curtail improper Medicare payments. The program dispatches private auditors to scour hospital records for evidence that patients were treated on an inpatient basis when they could have been treated as outpatients. When auditors find Medicare patients who should not have been admitted, the government reclaims what it paid. The American Hospital Association contends that even if a patient should have been treated as an outpatient instead of an inpatient, the government still has to reimburse the provider for medically necessary care.

Status: The lawsuit is pending in federal district court in Washington. The hospital group has filed a motion for summary judgment, and the federal government is seeking to have the case dismissed. The parties will file briefs on those motions through July.

Case: American Hospital Association v. Sebelius, U.S. District Court for the District of Columbia, No. 12-1770.