By Kelly J. Rooney, J.D., M.P.H.

On the heels of democratic attorneys general (AGs) of fifteen states and the District of Columbia filing a motion to intervene in an Obama era case brought by the House of Representatives challenging the subsidy payments made to insurers to help make monthly insurance premiums more affordable for consumers, the parties requested another 90 day delay in the case. The case has been under abeyance since December 2016 after the court granted the House of Representatives’ motion requested to hold the proceedings in abeyance until after the Trump Administration was in place. A motion to lift the abeyance to consider the motion to intervene was also filed by the AGs.

Case background. The case, now referred to as House v. Price (formerly, House v. Burwell), was brought by House Republicans challenging the legality of cost-sharing subsidies established under the Affordable Care Act (ACA) (P.L. 111-148). Summary judgment was granted to the House but, pending appeal, subsidies were permitted to continue during the abeyance (see Court puts cost-sharing appeal on hold, awaits possible Trump policy, December 7, 2016). The abeyance was granted after the election. Most recently, a March 2, 2017, order by the court continued the abeyance for 90 days and ordered a status report by May 22, 2017.

AGs’ motion. Joining California Attorney General Xavier Becerra and New York Attorney General Eric Schneiderman who are leading the effort are Connecticut, Delaware, Hawaii, Illinois, Iowa, Kentucky, Maryland, Massachusetts, Minnesota, New Mexico, Pennsylvania, Vermont, Washington, and the District of Columbia. Becerra cites the more than 5 million people in California that receive “quality, affordable” health care under the ACA as the reason to seek to intervene in the case. Schneiderman notes that hundreds of thousands of families in New York (and millions across the country) rely on the subsidies at issue. “For President Trump and the Republicans to use them as pawns in a political game is simply unconscionable,” according to Scheiderman. As noted in Becerra’s press release “[d]uring [the abeyance], the President has continually played politics with people’s access to affordable healthcare, including threatening to shut down the federal government by taking health care subsidies away from Americans who need health care.”

Kentucky joined the motion to intervene for different reasons, centering on the ACA’s drug treatment as being paramount to fighting the states opioid drug epidemic.

Joint status report. The joint status report, signed by attorneys for both the House of Representatives and HHS, notes that they “continue to discuss measures that would obviate the need for judicial determination of this appeal, including potential legislative action.” In turn, the parties request for the abeyance to be continued and status reports be filed at 90-day intervals. They recognize the motion to intervene filed by the states and will respond separately.