



## Health Policy Briefing

December 11, 2017

### Congress Passes Two-Week CR, Avoids Government Shutdown

Congress successfully passed a two-week spending bill (H.J.Res. 123) to keep the government open through December 22. The bill passed a day ahead of the deadline to prevent a government shutdown - the previous continuing resolution (CR) expired on Friday (Dec. 8). H.J. Res. 123 passed the House of Representatives on Thursday by a vote of 235-193, largely along party lines, and was advanced by the Senate later in the day by a vote of 81-14. Democrats in the House opposed the measure because it did not include several of their priorities, such as protections for young immigrants or additional funding for the opioid crisis.

The latest short-term government funding measure redirects additional money to states that are running out of dollars for their Children’s Health Insurance Program (CHIP). The bill would direct the Secretary of Health and Human Services to allocate previously unused CHIP funding first to “emergency shortfall states”—or ones that are in danger of running out of money—before other states. A longer-term solution is expected to be included in the larger spending package to keep the government running beyond December 22.

The two-week CR provides Congress and the President with additional time to negotiate overall funding levels for defense and nondefense spending. Nevertheless, Congress is expected to pass another short-term CR come December 22 prior to passage of an omnibus spending bill to fund the government through the rest of fiscal year (FY) 2018.

#### *Fate of ACA Stabilization Measures Remains Unclear*

Sen. Susan Collins (R-Maine) continues to express confidence that her agreement with Senate GOP leadership and the President to move individual insurance market stabilization legislation before the end of the year in exchange for her vote in support of the tax bill will be kept. The bills would create high risk pools and provide funding for cost-sharing reduction (CSR) payments. The House Freedom Caucus has proposed linking

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Obamacare stabilization to the December 22 spending deal. They propose to fully fund defense programs through the end of fiscal year (FY) 2018, while passing another CR to keep the remaining non-defense agencies open until an omnibus package can be drafted. The Republican Study Committee, however, supports excluding any talk of CSRs, immigration and the debt limit from spending bill negotiations. Sen. Collins has said that she awaits the final conference report on the *Tax Cuts and Jobs Act*, and that her ultimate vote on the tax bill could be changed. Her opposition would leave Republicans with no margin of error in the Senate.

### ***Tax Conference Committee to Meet on Wednesday***

The House-Senate Conference Committee on the Tax Cuts and Jobs Act (H.R. 1) will meet this Wednesday to begin resolving the differences between the House- and Senate-passed tax reform bills. Congressional leadership named the following lawmakers to serve on the committee: Conference Chair Kevin Brady (R-Texas), Reps. Devin Nunes (R-Calif.), Peter Roskam (R-Ill.), Diane Black (R-Tenn.), Kristi Noem (R-S.D.), Rob Bishop (R-Utah), Don Young (R-Alaska), Fred Upton (R-Mich.), John Shimkus (R-Ill.), Richard Neal (D-Mass.), Sander Levin (D-Mich.), Lloyd Doggett (D-Texas), Raúl Grijalva (D-Ariz.), Kathy Castor (D-Fla.), and Sens. Orrin Hatch (R-Utah), John Cornyn (R-Texas), John Thune (R-S.D.), Rob Portman (R-Ohio), Tim Scott (R-S.C.), Pat Toomey (R-Pa.), Mike Enzi (R-Wyo.), Lisa Murkowski (R-Alaska), Ron Wyden (D-Ore.), Debbie Stabenow (D-Mich.), Robert Menendez (D-N.J.), Tom Carper (D-Del.), Bernie Sanders (D-Vt.), Patty Murray (D-Wash.), and Maria Cantwell (D-Wash.). In reconciling the two versions of the legislation, the conference committee will have to address a number of health care policy provisions. Repeal of the individual mandate was not included in the House-passed legislation, but is widely supported by House Republicans and is expected to be included in the final bill. The House bill, however, did include a provision that would end the tax exemption for private activity bonds, which are often used by non-profit organizations such as hospitals and universities for capital improvement projects. Chairman Brady has indicated that there may be a path forward for preserving or reigning in the infrastructure-financing private activity bonds. The House bill would also end the ability of individuals to deduct certain medical expenses if costs exceed 10 percent of their income. The Senate bill, however, would expand this deduction by lowering the income threshold to 7.5 percent. Chairman Brady has said that he is being pressed by a number of his colleagues to maintain some form of protection for people with extraordinary medical expenses. Lawmakers will also have to take steps to officially waive the PAYGO rule, which would trigger cuts to Medicare and other federal programs to offset the impact of the tax bill on the deficit. The waiver is widely supported by congressional Republicans, even the staunch fiscal conservatives of the House Freedom Caucus.

### ***Trump to Speak on Tax Bill***

President Trump is scheduled to speak at the Treasury Department on Wednesday to a group of young people and middle-class families. He plans to discuss how the Republican tax package will benefit the economy and the middle-class. The president wants to rally support for the bill as the congressional conference committee meets to work through the differences in the House and Senate bills with the goal of passing a conference report before Congress breaks for the holidays – currently scheduled for December 22.

### ***Lawmakers Debate Obamacare Tax Delay***

Chairman of the House Ways and Means Committee Kevin Brady (R-Texas) announced that negotiations are underway to repeal or delay several Obamacare taxes, including the medical device tax, which kicks in on January 1, and the tax on high cost health plans known as the Cadillac tax, scheduled to begin in 2020. Lawmakers are also debating whether or not to provide partial relief from the annual health insurance provider fee, which was also created by the Affordable Care Act (ACA) and is levied on certain insurers. Under the current proposal, the fee, which Congress postponed until January 1, 2018, would be suspended for Medicare Advantage plans and those plans on the individual health insurance markets in 2018 before being halted for all insurers in 2019.

### ***Alexander In Favor of Expanded Opioid Funding for NIH***

Chairman of the Senate Health, Education, Labor, and Pensions (HELP) Committee Lamar Alexander (R-Tenn.) has stated that he would support the provision of new spending authority to the National Institutes of Health (NIH) to bolster the agency's ability to respond to the opioid crisis. NIH Director Francis Collins has called for other transactions authority, which would give the NIH more flexibility in funding research grants and firing research partners who fail to meet expectations. Sen. Alexander said that he plans on discussing the issue with HELP Committee Ranking Member Patty Murray (D-Wash.).

### ***Senators Urge Delay of 340B Cuts***

A bipartisan group of six senators have **written** to Senate leadership requesting their support in blocking the implementation of a regulation that would reduce Medicare reimbursement for 340B hospitals. Earlier this year, the Centers for Medicare and Medicaid Services (CMS) finalized a rule that would change reimbursement for separately payable drugs under the 340B drug discount program from average sales price (ASP) plus six percent to 22.5 percent less than ASP, effective January 1, 2018. The lawmakers request that legislation be attached to a year-end bill to block or delay the change. The letter was signed by Sens. John Thune (R-S.D.), Bill Nelson (D-Fla.), Rob Portman (R-Ohio), Tammy Baldwin (D-Wis.), Shelley Moore Capito (R-W.V.), and Debbie Stabenow (D-Mich.).

### ***Ryan Calls for Entitlement Reform in 2018***

Speaker of the House Paul Ryan (R-Wis.) has stated that he intends to focus on entitlement reform in 2018. He identified Medicare as the largest entitlement program that requires an overhaul because of its significant impact on the nation's deficit and debt. Ryan also expressed support for a revamping of social programs in order to get beneficiaries from "welfare to work." The Speaker stated that he is in talks with the President about the importance of choice and competition in health care. House Ways and Means Committee Chairman Kevin Brady (R-Texas) has also stated that welfare reform is the next item on his agenda, once work on the GOP tax bill is complete.

### ***Energy and Commerce Announces Subcommittee Changes***

The House Energy and Commerce Committee announced several changes to subcommittee leadership and assignments last week. Rep. Gregg Harper (R-Miss.) will chair the Subcommittee on Oversight and Investigations. Rep. Adam Kinzinger (R-Ill.) will begin serving as vice chair of the Subcommittee on Digital Commerce and Consumer Protection, while Rep. Jeff Duncan (R-S.C.) will join the subcommittee. Rep. Bob Latta (R-Ohio) will join the Subcommittee on Health.

### ***Franken to Resign in Coming Weeks***

Sen. Al Franken (D-Minn.) announced that he will resign from Congress in the coming weeks following several allegations of sexual misconduct. He did not specify when he will step down. Under state law, Minnesota Governor Mark Dayton (D) will appoint a candidate to serve until the 2018 elections. Whoever wins the election will serve the remainder of Franken's term, which runs through 2020. Franken currently holds seats on the Health, Education, Labor, and Pensions (HELP) Committee and the Judiciary Committee.

### ***Conyers and Franks Resign from the House***

Rep. John Conyers (D-Mich.) resigned earlier in the week following numerous accusations of sexual harassment. Conyers has endorsed his son, John Conyers III, whom has not yet announced his candidacy. However, state Sen. Ian Conyers, the congressman's great-nephew, announced he will run for the seat, as well as state Sen. Coleman Young II. Michigan Gov. Rick Snyder (R) announced the seat will remain vacant until the November 2018 election. In addition, Rep. Trent Franks (R-Ariz.) announced his resignation on Friday related to complaints of sexual harassment. Arizona Republican Gov. Doug Ducey will call for an election with a primary in spring 2018 and a general election in late June. Both Conyers and Franks served on the Judiciary Committee.

## Upcoming Congressional Hearings and Meetings

*Senate Health, Education, Labor, and Pensions Committee hearing “The Cost of Prescription Drugs: An Examination of The National Academies of Sciences, Engineering, and Medicine Report “Making Medicines Affordable: A National Imperative;” 10:00 a.m., 430 Dirksen Bldg.; December 12*

*Senate Judiciary Committee hearing “Oversight of the Ensuring Patient Access and Effective Drug Enforcement Act;” 10:00 a.m., 226 Dirksen Bldg.; December 12*

*House Transportation and Infrastructure Subcommittee on Economic Development, Public Buildings, and Emergency Management hearing “The Opioid Epidemic in Appalachia: Addressing Hurdles to Economic Development in the Region;” 10:00 a.m., 2167 Rayburn Bldg.; December 12*

*House Energy and Commerce Oversight and Investigations Subcommittee hearing “Examining Concerns of Patient Brokering and Addiction Treatment Fraud;” 10:15 a.m., 2322 Rayburn Bldg.; December 12*

*Senate Health, Education, Labor, and Pensions Committee hearing “Implementation of the 21st Century Cures Act: Responding to Mental Health Needs;” 10:00 a.m., 430 Dirksen Bldg.; December 13*

*House Energy and Commerce Health Subcommittee hearing “Examining the Drug Supply Chain;” 10:00 a.m., 2123 Rayburn Bldg.; December 13*

*House Science, Space and Technology Subcommittee on Research and Technology hearing “Head Health Challenge: Preventing Head Trauma from the Football Field to Shop Floor to Battlefield;” 10:00 a.m., 2318 Rayburn Bldg.; December 13*

*Senate Armed Services Subcommittee on Personnel hearing “Update on Research, Diagnosis, and Treatment for Traumatic Brain Injury/Concussion in Service Members;” 10:00 a.m., 222 Russell Bldg.; December 13*

## Recently Introduced Health Legislation

*H.R.4515 (introduced by Rep. Ryan A. Costello): To amend title XXI of the Social Security Act to provide for a special rule during the first quarter of fiscal year 2018 for the redistribution of certain Children’s Health Insurance Program allocations for certain shortfall States; Energy and Commerce*

*H.R.4520 (introduced by Rep. Lynn Jenkins): To provide for the extension of the enforcement instruction on supervision requirements for outpatient therapeutic services in critical access and small rural hospitals through 2017; Energy and Commerce, Ways and Means*

*H.R.4521 (introduced by Rep. Al Lawson, Jr.): To amend the Food and Nutrition Act of 2008 to simplify the SNAP recertification process for the elderly and disabled, and to spur innovation in the application processes of SNAP, the Medicare Savings Program, and supplemental security income that will increase the utilization of entitlement programs among the most vulnerable of populations; Agriculture, Ways and Means, Energy and Commerce*

*S.Res.346 (introduced by Sen. Ron Johnson): A resolution recognizing the importance and effectiveness of trauma-informed care; Health, Education, Labor, and Pensions*

*S.2183 (introduced by Sen. Dean Heller): A bill to amend title XXI of the Social Security Act to provide for a special rule during the first quarter of fiscal year 2018 for the redistribution of certain Children’s Health Insurance Program allocations for certain shortfall States; Finance*

*S.2184 (introduced by Sen. John McCain): A bill to amend title 38, United States Code, to improve veterans’ health care benefits, and for other purposes; Veterans’ Affairs*

*H.Con.Res.96 (introduced by Rep. Barbara Lee): Supporting the goals and ideals of World AIDS Day; Energy and Commerce, Foreign Affairs*

*H.J.Res.123 (introduced by Rep. Rodney Frelinghuysen): Making further continuing appropriations for fiscal year 2018, and for other purposes; Appropriations*

*H.R.4541 (introduced by Stephanie N. Murphy): To extend funding for certain public health programs, and for other purposes; Energy and Commerce, Ways and Means*

*S.2186 (introduced by Sen. Christopher A. Coons): A bill to modernize laws and policies, and eliminate discrimination, with respect to people living with HIV/AIDS, and for other purposes; Judiciary*

*H.R.4552 (introduced by Rep. Mike Gallagher): To amend title XVIII of the Social Security Act to establish rules for payment for graduate medical education (GME) costs for hospitals that establish a new medical residency training program after hosting resident rotators for short durations; Ways and Means, Energy and Commerce*

*H.R.4554 (introduced by Rep. Peter J. Roskam): To establish a smart card pilot program to combat fraud, waste, and abuse and to protect beneficiary identity under the Medicare program; Ways and Means, Energy and Commerce*

*H.R.4556 (introduced by Rep. Carol Shea-Porter): To amend title 38, United States Code, to require the Secretary of Veterans Affairs to furnish dental care in the same manner as any other medical service, and for other purposes; Veterans' Affairs*

*S.2193 (introduced by Sen. Johnny Isakson): An original bill to amend title 38, United States Code, to improve health care for veterans, and for other purposes; Veterans' Affairs*

*H.R.4571 (introduced by Rep. Susan A. Davis): To amend title 10, United States Code, to expand eligibility for the TRICARE program to include certain veterans entitled to benefits under the Medicare program due to conditions or injuries incurred during service in the Armed Forces and to waive the Medicare part B late enrollment penalty for such veterans, and for other purposes; Armed Services, Energy and Commerce, Ways and Means*

*H.R.4572 (introduced by Rep. Debbie Dingell): To direct the Secretary of Health and Human Services to enter into an arrangement with the National Academy of Medicine to evaluate the preparedness of hospitals, long-term care facilities, dialysis centers, and other medical facilities for public health emergencies; Energy and Commerce*

*H.R.4575 (introduced by Rep. Billy Long): To amend title XXVII of the Public Health Service Act to preserve consumer and employer access to licensed independent insurance producers; Energy and Commerce*

*H.R.4579 (introduced by Rep. Peter Welch): To amend title XVIII of the Social Security Act to implement Medicare payment policies designed to improve management of chronic disease, streamline care coordination, and improve quality outcomes without adding to the deficit; Ways and Means, Energy and Commerce*

*H.R.4580 (introduced by Rep. Peter Welch): To amend title XVIII of the Social Security Act to improve the Medicare accountable care organization (ACO) program, and for other purposes; Ways and Means, Energy and Commerce*

*H.R.4582 (introduced by Rep. Pete Olson): To amend title XVIII of the Social Security Act to preserve access to rehabilitation innovation centers under the Medicare program; Ways and Means, Energy and Commerce*

*H.R.4587 (introduced by Rep. Matt Cartwright): To require the Secretary of Defense to award grants to fund research on orthotics and prosthetics; Armed Services*

*S.Res.352 (introduced by Sen. Lamar Alexander): A resolution designating the week of December 3 through December 9, 2017, as "National Nurse-Managed Health Clinic Week"; submitted, considered, and agreed to without amendment and with a preamble by Unanimous Consent*

*S.2204 (introduced by Sen. Bill Cassidy): A bill to amend title XVIII of the Social Security Act to preserve access to rehabilitation innovation centers under the Medicare program; Finance*

*S.2208 (introduced by Sen. Edward J. Markey): A bill to provide for the issuance of an Alzheimer’s Disease Research Semipostal Stamp; Homeland Security and Governmental Affairs*

*S.2209 (introduced by Sen. John Cornyn): A bill to amend title XIX of the Social Security Act to require States to count monetary winnings from lotteries and other lump-sum income of \$80,000 or more as if they were obtained over multiple months for purposes of determining income eligibly for medical assistance; Finance*

*S.2212 (introduced by Sen. Elizabeth Warren): A bill to establish the “Biomedical Innovation Fund”, and for other purposes; Health, Education, Labor, and Pensions*