



## Health Policy Briefing

June 19, 2017

### Both Republican and Democratic Senators Await Obamacare Repeal Text

Republican senators continue to negotiate legislation to repeal and replace the Affordable Care Act (ACA), while attempting to avoid Byrd rule problems that would prevent the bill from being passed with a simple majority under reconciliation. The GOP does not yet have 51 votes to bring a bill to the floor.

Over the last week, sources have stated that Republicans are considering adding funding for opioid abuse treatment to their repeal bill. Senators may also be considering whether to vary Medicaid payment rates by state in order to address discrepancies between those states that have expanded their programs and those that have not. Moderate Republicans like Susan Collins (R-Maine) continue to express concerns about the Republican approach to changing Medicaid, acknowledging the need to reduce program costs, but wary of changes that would reduce program enrollment. The most conservative members of the GOP, however, are worried that Senate proposals have not gone far enough to repeal Obamacare regulations. Another sticking point is the issue of Planned Parenthood. A provision that would eliminate the entire \$555 million in federal funding for the organization may need to be dropped in order to gain the support of members like Sen. Collins and Sen. Lisa Murkowski (R-Alaska). There is a general consensus that achieving success is going to be difficult. Latest reports indicate that the Senate bill is not as drastically different from the House-passed American Health Care Act (AHCA) as originally assumed.

The President met with Secretary of the U.S. Department of Health and Human Services (HHS) Tom Price, Administrator of the Centers for Medicare and Medicaid Services (CMS) Seema Verma, and a group of thirteen GOP senators last week: Rob Portman (Ohio), John Thune (S.D.), Pat Toomey (Pa.), Mike Lee (Utah), Ted Cruz (Texas), Lamar Alexander (Tenn.), John Barrasso (Wyo.), Cory Gardner (Colo.), Tom Cotton (Ark.), Lisa Murkowski (Alaska), Susan Collins (Maine), Joni Ernst (Iowa), and Orrin Hatch (Utah). While the meeting did not produce any breakthroughs, the President did indicate that he may support a more generous bill that includes additional funding beyond that included in the AHCA.

A group of eight major stakeholder organizations including patients, providers, and advocates have announced

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a series of events to pressure the Senate not to repeal the health care law. The groups include AARP, the American Cancer Society Cancer Action Network, the American Diabetes Association, the American Heart Association, American Hospital Association, the American Medical Association, the Federation of American Hospitals, and the March of Dimes. The organizations will start by targeting states that expanded Medicaid but are represented by Republican senators – Colorado, Ohio, Nevada, and West Virginia. They are warning against jeopardizing the coverage of the expanded Medicaid population and the affordability of coverage for those with pre-existing conditions.

### ***Drug Pricing EO Expected in Coming Weeks and Legislative Activity***

The White House is working to prepare an executive order (EO) aimed at lowering drug prices. The President met with HHS Secretary Tom Price and Office of Management and Budget (OMB) Director Mick Mulvaney to discuss the order, which could be released before the Fourth of July congressional recess. Executive orders cannot change the law, but they can direct agencies to pursue certain regulatory actions. Potential policies that could be a part of the order include pursuing value-based purchasing contracts for drugs in federal health programs, or strengthening the intellectual property rights of pharmaceutical companies.

Sen. Ron Wyden (D-Ore.) has introduced legislation aimed at preventing price gouging in the pharmaceutical market. The SPIKE Act would require manufacturers to submit a price justification to the HHS Secretary. The justification would also be made public. The bill would require HHS to notify the company if their product costs at least \$10 and experiences a price increase of 300 percent or more over a five year period, a 100 percent increase annually, or if the drug is included in the top 50th percentile of net drug spending in Medicare or Medicaid and has had a price increase of 50 percent or more.

Sens. Sherrod Brown (R-Ohio) and Kirsten Gillibrand (D-N.Y.) have also introduced a bill that would require drug companies to report and justify price increases. The Stop Price Gouging Act includes an Internal Revenue Service (IRS)-enforced penalty should the manufacturer increase the price by more than medical inflation but less than 15 percent, with the penalty equal to 50 percent of the profit. If the price increase is more than 20 percent, the penalty would increase to 100 percent of the profit. Revenues would be put toward drug research and development at the National Institutes of Health (NIH).

Chairman of the Senate Health, Education, Labor, and Pensions (HELP) Committee Lamar Alexander (R-Tenn.) has announced plans to hold two more hearings on the topic of prescription drug costs. The first in the series of hearings was held last week, and featured academic witnesses discussing how the drug delivery system affects what patients pay. The Committee will hold a second hearing on the manufacturing and development process. The third hearing will cover a forthcoming report from the National Academy of Sciences on ensuring patient access to affordable prescription drugs.

### ***Trump Administration Staff Announcements***

The U.S. Department of Health and Human Services (HHS) Office of Intergovernmental and External Affairs announced the filling of several leadership roles last week. Renee Elmers, a former N.C. congresswoman, will serve as regional director. Kyle McGowan, former staff for Tom Price during his time in Congress, will serve as director of external affairs. Darcie Johnston, a former Vermont official for the Trump campaign, will serve as director of intergovernmental affairs. The White House has nominated Elinore McCance-Katz as assistant secretary for mental health and substance use at HHS. She was the first chief medical officer for the Substance Abuse and Mental Health Services Administration (SAMHSA), joining in 2013. The President has also named Norman E. Sharpless as head of the National Cancer Institute (NCI). Sharpless is currently is the director of the University of North Carolina Lineberger Comprehensive Cancer Center.

### ***House Passes Additional Health Reform Legislation***

The House of Representatives passed several bills last week as a part of a broader strategy to repeal and replace the Affordable Care Act (ACA). H.R. 2372, the VETERAN Act, sponsored by Rep. Sam Johnson (R-Texas), was passed by voice vote. It would clarify rules surrounding veteran health insurance and eligibility for premium tax credits should the American Health Care Act (AHCA) become law. H.R. 2579, the Broader Options for Americans Act, sponsored by Rep. Pat Tiberi (R-Ohio), would allow individuals to qualify for premium tax credits under the Consolidated Omnibus Budget Reconciliation Act (COBRA) and was passed by a vote of 267-144. The House also passed H.R. 2581, the Verify First Act, sponsored by Rep. Lou Barletta (R-Pa.), which would require individuals to have a Social Security number in order to receive a health care tax credit. The bill passed by a vote of 238-184. The chamber will next consider H.R. 1215, which would set parameters for medical liability lawsuits involving government subsidized health coverage.

### ***House of Representatives Begins FY 2018 Appropriations Process***

The House Appropriations Committee approved its first spending bill for fiscal year (FY) 2018, to provide funding for Military Construction and Veterans Affairs (VA). The \$88.8 billion legislation would provide a \$6 billion increase over current spending, and was reported out of Committee by voice vote. Democrats did express concerns that the increased funding for the military and VA would mean cuts for non-security programs later in the appropriations process. A Committee vote on an FY 2018 budget resolution has not yet taken place, but is expected to occur as early as this week. The resolution would provide budget caps for annual discretionary spending bills.

### ***Upcoming Congressional Hearings and Meetings***

***Senate Appropriations Subcommittee on Agriculture, Rural Development, Food and Drug Administration Review of the FY2018 Food & Drug Administration Budget Request; 10:30 a.m., 192 Dirksen Bldg.; June 20***

***Senate Foreign Relations Subcommittee on Multilateral International Development, Multilateral Institutions, and International Economic, Energy, and Environmental Policy; hearing to “examine the World Health Organization and pandemic protection in a globalized world;” 2:30 p.m., 419 Dirksen Bldg.; June 20***

***Senate Homeland Security and Governmental Affairs; hearing to “examine cybersecurity regulation harmonization;” 10:30 a.m., 342 Dirksen Bldg.; June 21***

***Senate Appropriation Subcommittee on Military Construction, Veterans Affairs, and Related Agencies Review of the FY2018 Budget Request for the U.S. Department of Veterans Affairs; 2:30 p.m., 124 Dirksen Bldg.; June 21***

***House Armed Services Subcommittee on Readiness; markup of H.R. 2810 - National Defense Authorization Act for Fiscal Year 2018; 9:00 a.m., 2212 Rayburn Bldg.; June 22***

***Senate Appropriations Subcommittee on Labor, Health and Human Services, Education and Related Agencies Hearing to Review the FY2018 Budget Request for the National Institutes of Health; 10:00 a.m., 138 Dirksen Bldg.; June 22***

***House Energy and Commerce Health Subcommittee hearing “Examining the Extension of Safety Net Health Programs;” 9:00 a.m., 2123 Rayburn Bldg.; June 23***

**Recently Introduced Health Legislation**

*H.R.2871 (introduced by Rep. Morgan H. Griffith): To amend the Federal Food, Drug, and Cosmetic Act with respect to compounding pharmacies, and for other purposes; Energy and Commerce*

*H.R.2881 (introduced by Rep. Lynn Jenkins): To amend title XVIII of the Social Security Act to provide payment under part A of the Medicare Program on a reasonable cost basis for anesthesia services furnished by an anesthesiologist in certain rural hospitals in the same manner as payments are provided for anesthesia services furnished by anesthesiologist assistants and certified registered nurse anesthetists in such hospitals, and for other purposes; Ways and Means*

*S.1334 (introduced by Sen. Mark Warner): A bill to amend title XVIII of the Social Security Act to provide for advanced illness care coordination services for Medicare beneficiaries, and for other purposes; Finance*

*H.R.2889 (introduced by Rep. Welch): To amend title III of the Public Health Service Act to limit the orphan drug exclusion under the drug discount program under section 340B of such title; Energy and Commerce*

*H.R.2891 (introduced by Rep. Bishop): To amend title 38, United States Code, to clarify the eligibility of children of Vietnam veterans born with spina bifida for benefits of the Department of Veterans Affairs; Veterans' Affairs*

*H.R.2894 (introduced by Rep. Keating): To amend the Public Health Service Act to provide for education and outreach with respect to the prevention and treatment of tick-borne illnesses; Energy and Commerce*

*H.Res.382 (introduced by Rep. Burgess): Providing for consideration of the bill (H.R. 1215) to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system; Rules*

*S.1347 (introduced by Sen. Wyden): A bill to amend title XVIII of the Social Security Act to prevent catastrophic out-of-pocket spending on prescription drugs for seniors and individuals with disabilities; Finance*

*S.1348 (introduced by Sen. Wyden): A bill to amend title XI of the Social Security Act to require drug manufacturers to publicly justify unnecessary price increases; Finance*

*H.R.2900 (introduced by Rep. Nydia M. Velazquez): To amend the Public Health Service Act with respect to the prevention and treatment of the use of synthetic recreational drugs, and for other purposes; Energy and Commerce*

*S.1351 (introduced by Sen. Chuck Grassley): A bill to amend the Public Health Service Act with respect to the designation of general surgery shortage areas, and for other purposes; Health, Education, Labor, and Pensions*

*S.1354 (introduced by Sen. Thomas R. Carper): A bill to establish an Individual Market Reinsurance fund to provide funding for State individual market stabilization reinsurance programs; Health, Education, Labor, and Pensions*

*S.1355 (introduced by Sen. Jeanne Shaheen): A bill to combat the heroin epidemic and drug sample backlogs; Judiciary*

*S.1357 (introduced by Sen. Tammy Baldwin): A bill to amend title XIX of the Social Security Act to provide a standard definition of therapeutic family care services in Medicaid; Finance*

*S.1358 (introduced by Sen. Bill Cassidy): A bill to amend the Internal Revenue Code of 1986 to provide for the treatment of certain direct primary care service arrangements and periodic provider fees; Finance*

*H.R.2906 (introduced by Rep. Larry Bucshon): To amend the Public Health Service Act with respect to the designation of general surgery shortage areas, and for other purposes; Energy and Commerce*

*H.R.2913 (introduced by Rep. Grace F. Napolitano): To amend the Public Health Service Act to revise and extend projects relating to children and violence to provide access to school-based comprehensive mental health programs; Energy and Commerce*

*H.R.2918 (introduced by Rep. Jim Banks): To intensify stem cell research showing evidence of substantial clinical benefit to patients, and for other purposes; Energy and Commerce*

*H.R.2920 (introduced by Rep. Steve Cohen): To extend the principle of federalism to State drug policy, provide access to medical marijuana, and enable research into the medicinal properties of marijuana; Energy and Commerce, Judiciary, Veterans' Affairs*

*H.R.2925 (introduced by Rep. James P. McGovern): To amend title XVIII of the Social Security Act to provide coverage for wigs as durable medical equipment under the Medicare program, and for other purposes; Energy and Commerce, Ways and Means*

*S.1361 (introduced by Sen. Mike Crapo): A bill to amend title XVIII of the Social Security Act to allow physician assistants, nurse practitioners, and clinical nurse specialists to supervise cardiac, intensive cardiac, and pulmonary rehabilitation programs; Finance*

*S.1369 (introduced by Sen. Sherrod Brown): A bill to amend the Internal Revenue Code of 1986 to establish an excise tax on certain prescription drugs which have been subject to a price spike, and for other purposes; Finance*

*S.1370 (introduced by Sen. Al Franken): A bill to amend the Public Health Service Act to revise and extend projects relating to children and violence to provide access to school-based comprehensive mental health programs; Energy and Commerce*

*S.1374 (introduced by Sen. Cory A. Booker): A bill to extend the principle of federalism to State drug policy, provide access to medical marijuana, and enable research into the medicinal properties of marijuana; Judiciary*

*S.Res.194 (introduced by Sen. Richard Blumenthal): A resolution designating June 15, 2017, as "World Elder Abuse Awareness Day"; Judiciary*