



## Health Policy Briefing

January 21, 2019

### Democrats Reject WH DACA/Border Wall Proposal to End Shutdown

There have been no signs of a breakthrough to end the partial government shutdown, the longest in modern history, as it enters its 31st day. Over the weekend, Democrats rejected a proposal from the White House to link \$5.7 billion in funding for a border wall to temporary protections for Deferred Action for Childhood Arrivals (DACA) program recipients and Temporary Protected Status (TPS) holders. The proposal was originally introduced by Sens. Lindsey Graham (R-S.C.) and Dick Durbin (D-Ill.) as the **BRIDGE Act**. Senate Majority Leader Mitch McConnell (R-Ky.) plans to bring the plan to a vote this week.

Should the shutdown continue through Jan. 24, the Office of Management and Budget (OMB), under the current pay-as-you-go (PAYGO) statute, would be required to make \$839 million in sequestration cuts from nonexempt, mandatory programs across the federal government. This figure represents the new amount added to the fiscal year (FY) 2019 deficit by laws enacted last year. Approximately 90 percent of the sequestration cuts, or \$752 million, would come from the Medicare program. But according to a senior OMB official, the administration does not plan to execute the cuts until the relevant documentation is no longer “on hold” due to the shutdown. Congress routinely wipes the PAYGO scorecard clean at the end of the year, and House Democrats have included such provisions, which would eliminate the potential automatic cuts, in the spending measures they have sent to the Senate to reopen the government. If the cuts come to pass, this would be the first time the reductions have been triggered since the 2010 law was enacted.

Last week, the Commissioner of the Food and Drug Administration (FDA) opted to expand the number of employees reporting to work after the agency leaders decided crucial drug, device, and food inspection needs were not being met. While the agency simultaneously opted to furlough other individuals in an attempt to prioritize activities within the core mission, the agency will run out of carryover funding in approximately five weeks should the shutdown continue. The FDA is attempting to stretch the user fees as long as possible. Once those funds are depleted, drug approval times will be impacted. To ease the backlog of regulations, the Trump administration recently

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altered the rules for the Federal Register during the partial government shutdown, allowing agencies to publish rules certifying that delaying publication until the government reopens would prevent or significantly damage funded functions.

The President signed legislation last week that would give federal workers back pay for work during the shutdown. The Senate had passed the ***Government Employee Fair Treatment Act of 2019*** (S. 24) by voice vote; the bill subsequently passed the House by a vote of 411-7. Meanwhile, Sen. Ron Wyden (D-Ore.) has requested clarification from the Office of Personnel Management (OPM) on conflicting health care coverage information provided to furloughed federal employees and whether the Federal Employee Health Benefits (FEHB) program will continue during the shutdown.

Democrats in the House have released six new spending bills to end the shutdown, but the legislation is unlikely to be considered in the Senate due to the lack of funds for the construction of a border wall. The House plans to vote on all six bills as a package (H.R. 648). The Agriculture-FDA bill would provide approximately \$23 billion in discretionary funding, \$32 million above current levels.

While she has not yet officially rescinded the President's invitation to speak, Speaker of the House Nancy Pelosi (D-Calif.) has asked President Trump to postpone his State of the Union address, scheduled for Jan. 29, until the partial government shutdown is over. Congressional leadership has also decided to cancel the week-long Martin Luther King Jr. Day recess.

### ***Senate Passes Medicaid Extenders Act of 2019***

The Senate passed by voice vote H.R. 259 last week, which would provide \$112 million in funding to continue projects under the Money Follows the Person Rebalancing Demonstration Grant for FY 2019. The bill would be paid for by reducing Medicaid funding for states that don't have asset verification programs for Medicaid eligibility determination beginning in 2021. The legislation was passed by the House on Jan. 8.

### ***Oversight Launches Drug Pricing Investigation***

The House Committee on Oversight and Reform has opened up an investigation into the prescription drug industry's pricing decisions. The Committee has sent letters to 12 drug companies – AbbVie, Amgen, AstraZeneca, Celgene, Eli Lilly, Johnson & Johnson, Mallinckrodt, Novartis, Novo Nordisk, Pfizer, Sanofi, and Teva – requesting information about price increases, investments in research and development, and corporate strategies to preserve market share and pricing power. The letters focus on the products most costly to Medicare Part D, most costly per beneficiary, and the products with the largest price increases over a five-year period. The goals of the investigation are to determine why prices are increasing, how companies are using profits, and what steps can be taken to reduce drug prices. The issue of drug pricing is a priority for Chairman Elijah Cummings (D-Md.). The panel's first hearing is expected to take place on Jan. 29, when members will hear from experts and patients about rising drug costs.

### ***Azar on the Hill to Talk Drug Pricing***

U.S. Department of Health and Human Services (HHS) Secretary Alex Azar was on the Hill last week to meet with lawmakers on the subject of drug prices. The Secretary met with Republicans on the Senate Finance Committee, Senate Health, Education, Labor, and Pensions (HELP) Committee Chairman Lamar Alexander (R-Tenn.), and House Oversight and Reform Committee Chairman Elijah Cummings (D-Md.). Azar is gathering views on what policies lawmakers hope to pass during the 116th Congress to lower the cost of prescription drugs.

During his meeting with Finance Committee Republicans, Medicare negotiation, drug rebates, and rising list prices were discussed. According to Sen. Grassley, Senate Republicans are split on the administration's International Pricing Index (IPI) proposal. Grassley himself plans to withhold judgement on the idea until after the administration responds to public comments. Rep. Cummings exited his meeting hopeful that drug pricing could be addressed on a bipartisan basis. He discussed with Secretary Azar the slate of bicameral legislation introduced by himself and Sen. Bernie Sanders (I-Vt.)

earlier this month. The bills would tie the price of prescription drugs in the U.S. to the median price paid by foreign governments, allow Americans to import certain drugs, and expand the Secretary's power to negotiate in Medicare.

Azar plans to sit down with Finance Committee Ranking Member Ron Wyden (D-Ore.) and panel Democrats, HELP Ranking Member Patty Murray (D-Wash.), and House Ways and Means Committee Chairman Richard Neal (D-Mass.) in the coming weeks. Department spokespeople have stated that all options that "preserve drug safety and keep patients at the center" are on the table.

### ***Dems Raise Concerns About Shutdown and Health Premiums***

A group of congressional Democrats has [written](#) to Treasury Secretary Steven Mnuchin and HHS Secretary Alex Azar expressing concerns about premium spikes due to the ongoing government shutdown. Premium subsidies in the Affordable Care Act (ACA) marketplace are administered by the Internal Revenue Service (IRS), whose operations have been impacted by the shutdown. The lawmakers urge the administration "to ensure that consumers are not faced with unexpected premium costs, do not lose coverage, and have access to the filing assistance they need." The letter was signed by Sens. Ron Wyden (Ore.), Patty Murray (Wash.), and Bob Casey (Pa.), and Reps. Frank Pallone (N.J.), Richard Neal (Mass.), and Bobby Scott (Va.).

### ***116th Congress Committee Rosters Announced***

House Energy and Commerce Committee Chairman Frank Pallone (D-N.J.) announced the full Democratic rosters for the panel's six subcommittees in the 116th Congress, including the six subcommittee chairs and the full Committee Vice Chair. Rep. Yvette Clarke (N.Y.) was elected by panel Democrats as Vice Chair of the full Committee. Rep. Anna Eshoo (Calif.) will chair the Health Subcommittee, which added Ann Kuster (N.H.), Robin Kelly (Ill.), Nanette Barragán (Calif.), and Lisa Blunt Rochester (Del.) to its membership. Energy and Commerce Ranking Member Greg Walden (R-Ore.) announced subcommittee ranking members. Rep. Michael Burgess, M.D. (Texas) will be the ranking Republican on the Health Subcommittee, which added Rep. Greg Gianforte (Mont.) to its membership.

House Ways and Means Committee Chairman Richard Neal (D-Mass.) also announced the chairs and Democratic membership of his panel for the current congress. Rep. Lloyd Doggett (Texas) will chair the Health Subcommittee, which will be comprised of Reps. Mike Thompson (Calif.), Earl Blumenauer (Ore.), Ron Kind (Wis.), Brian Higgins (N.Y.), Terri Sewell (Ala.), Judy Chu (Calif.), Dwight Evans (Pa.), Brad Schneider (Ill.), Jimmy Gomez (Calif.), and Steven Horsford (Nev.). On the Republican side, Devin Nunes (Calif.) will serve as Ranking Member alongside Reps. Vern Buchanan (Fla.), Adrian Smith (Neb.), Kenny Marchant (Texas), Tom Reed (N.Y.), Mike Kelly (Pa.), and George Holding (N.C.).

Senate HELP Committee Chairman Lamar Alexander (R-Tenn.) also announced his panel's chairmen and membership assignments for this congress. The Primary Health and Retirement Security Subcommittee will be led by Sen. Mike Enzi (R-Wyo.). The Employment and Workplace Safety Subcommittee will be led by Sen. Johnny Isakson (R-Ga.). The Children and Families Subcommittee will be led by Sen. Rand Paul (R-Ky.).

## *Department of Health and Human Services Announces Personnel Changes*

The U.S. Department of Health and Human Services has announced several personnel changes.

- **Colin Roskey** has been appointed to serve as Deputy Assistant Secretary for Legislation – Oversight and Investigations. Roskey was most recently a partner at Scully, Roskey, and Missmar, PLLC, and previously worked as a health policy advisor and counsel for the Senate Finance Committee.
- **Traci Vitek** has been appointed to serve as senior counselor in the Office of the Assistant Secretary for Legislation – Oversight and Investigations. She was most recently a senior policy director at Crowell & Moring and has previously worked as a Congressional affairs advisor in the Office of the Inspector General (OIG) at HHS.
- **Chris Traylor**, Deputy Administrator for Strategy at the Centers for Medicare and Medicaid Services (CMS), will begin serving as Acting Director of the Center for Medicaid & CHIP Services.
- **Kyle Zebley**, Senior Policy Advisor in the Office of Global Affairs (OGA), has been promoted to Chief of Staff in OGA.
- **Valerie Huber**, Senior Advisor in the Office of the Assistant Secretary for Health has been promoted to Senior Policy Advisor in OGA.
- **Kathryn Bell**, Policy Advisor in the Immediate Office, has been promoted to Senior Policy Advisor for the Assistant Secretary for Preparedness and Response (ASPR).

HHS also announced the departures of Mary Mahew, Director of the Center for Medicaid & CHIP Services; Chris Meekins, Deputy Assistant Secretary and Chief of Staff; John Martin, Principal Deputy Commissioner for Legislative Affairs at FDA; and Maddie Brabrook, assistant at the Administration for Children and Families.

## *Upcoming Congressional Hearings and Meetings*

*House Committee on Oversight and Reform hearing on prescription drug price increases; time and place TBD; January 29*

*Senate Health, Education, Labor, and Pensions (HELP) Committee hearing “Access to Care: Health Centers and Providers in Underserved Communities;” 10:00 a.m., 430 Dirksen Bldg.; January 29*

## *Recently Introduced Health Legislation*

*H.R.501 — To amend the Public Health Service Act to reauthorize and enhance the poison center national toll-free number, national media campaign, and grant program, and for other purposes; Sponsor: Rep. Engel, Eliot L. [D-NY-16]; Committees: House - Energy and Commerce*

*H.R.506 — To amend title XVIII of the Social Security Act to increase hospital competition, and for other purposes; Sponsor: Rep. Banks, Jim [R-IN-3]; Committees: House - Energy and Commerce, Ways and Means, Judiciary*

*H.R.518 — To bar Supreme Court decisions in certain Patient Protection and Affordable Care Act cases from citation; Sponsor: Rep. King, Steve [R-IA-4]; Committees: House - Judiciary*

*H.R.519 — To amend the Internal Revenue Code of 1986 to allow a deduction for premiums for insurance which constitutes medical care; Sponsor: Rep. King, Steve [R-IA-4]; Committees: House - Ways and Means*

*H.R.520 — To amend title XVIII of the Social Security Act to exclude coverage of advance care planning services under the Medicare program; Sponsor: Rep. King, Steve [R-IA-4]; Committees: House - Ways and Means, Energy and Commerce*

*H.R.525 — To amend title XI of the Social Security Act to direct the Secretary of Health and Human Services to establish a public-private partnership for purposes of identifying health care waste, fraud, and abuse; Sponsor: Rep. Walden, Greg [R-OR-2]; Committees: House - Energy and Commerce, Ways and Means*

*H.R.534 — To amend the Public Health Service Act, in relation to requiring adrenoleukodystrophy screening of newborns; Sponsor: Rep. Clarke, Yvette D. [D-NY-9]; Committees: House - Energy and Commerce*

*S.Res.18 — A resolution authorizing the Senate Legal Counsel to represent the Senate in Texas v. United States No. 4:18-cv-00167-O (N.D. Tex.); Sponsor: Sen. Manchin, Joe, III [D-WV]; Committees: Senate - Rules and Administration*

*S.116 — A bill to address maternal mortality and morbidity; Sponsor: Sen. Gillibrand, Kirsten E. [D-NY]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.123 — A bill to require the Secretary of Veterans Affairs to enter into a contract or other agreement with a third party to review appointees in the Veterans Health Administration who had a license terminated for cause by a State licensing board for care or services rendered at a non-Veterans Health Administration facility and to provide individuals treated by such an appointee with notice if it is determined that an episode of care or services to which they received was below the standard of care, and for other purposes; Sponsor: Sen. Ernst, Joni [R-IA]; Committees: Senate - Veterans' Affairs*

*S.130 — A bill to amend title 18, United States Code, to prohibit a health care practitioner from failing to exercise the proper degree of care in the case of a child who survives an abortion or attempted abortion; Sponsor: Sen. Sasse, Ben [R-NE]; Committees: Senate - Judiciary*

*S.131 — A bill to amend title XIX of the Social Security Act to prohibit Federal Medicaid funding for the administrative costs of providing health benefits to individuals who are unauthorized immigrants; Sponsor: Sen. Cassidy, Bill [R-LA]; Committees: Senate - Finance*

*H.R.547 — To amend title 38, United States Code, to direct the Secretary of Veterans Affairs to adopt and implement a standard identification protocol for use in the tracking and procurement of biological implants by the Department of Veterans Affairs, and for other purposes; Sponsor: Rep. Roe, David P. [R-TN-1]; Committees: House - Veterans' Affairs*

*H.R.566 — To amend title 38, United States Code, to remove the manifestation period required for the presumptions of service connection for chloracne, porphyria cutanea tarda, and acute and subacute peripheral neuropathy associated with exposure to certain herbicide agents; Sponsor: Rep. Courtney, Joe [D-CT-2]; Committees: House - Veterans' Affairs*

*H.R.573 — To amend the Public Health Service Act to prohibit the Secretary of Health and Human Services from conducting or supporting any research involving human fetal tissue that is obtained pursuant to an induced abortion, and for other purposes; Sponsor: Rep. Luetkemeyer, Blaine [R-MO-3]; Committees: House - Energy and Commerce*

*H.R.576 — To expand Medicare coverage to include eyeglasses, hearing aids, and dental care; Sponsor: Rep. Roybal-Allard, Lucille [D-CA-40]; Committees: House - Energy and Commerce, Ways and Means*

*S.143 — A bill to authorize the Department of Energy to conduct collaborative research with the Department of Veterans Affairs in order to improve healthcare services for veterans in the United States, and for other purposes; Sponsor: Sen. Ernst, Joni [R-IA]; Committees: Senate - Energy and Natural Resources*

*S.172 — A bill to delay the reimposition of the annual fee on health insurance providers until after 2021; Sponsor: Sen. Gardner, Cory [R-CO]; Committees: Senate - Finance*

*H.R.584 — To amend title XIX of the Social Security Act to provide the same level of Federal matching assistance for every State that chooses to expand Medicaid coverage to newly eligible individuals, regardless of when such expansion takes place; Sponsor: Rep. Veasey, Marc A. [D-TX-33]; Committees: House - Energy and Commerce*

*H.R.594 — To provide for further comprehensive research at the National Institute of Neurological Disorders and Stroke on unruptured intracranial aneurysms; Sponsor: Rep. Clarke, Yvette D. [D-NY-9]; Committees: House - Energy and Commerce*

*H.R.601 — To increase the number of manufacturers registered under the Controlled Substances Act to manufacture cannabis for legitimate research purposes, to authorize health care providers of the Department of Veterans Affairs to provide recommendations to veterans regarding participation in federally-approved cannabis clinical trials, and for other purposes; Sponsor: Rep. Gaetz, Matt [R-FL-1]; Committees: House - Energy and Commerce, Judiciary, Veterans' Affairs*

*H.R.603 — To amend the Internal Revenue Code of 1986 to expand the permissible use of health savings accounts to include health insurance payments and to increase the dollar limitation for contributions to health savings accounts, and for other purposes; Sponsor: Rep. Gallagher, Mike [R-WI-8]; Committees: House - Ways and Means*

*H.R.617 — To authorize the Department of Energy to conduct collaborative research with the Department of Veterans Affairs in order to improve healthcare services for veterans in the United States, and for other purposes; Sponsor: Rep. Norman, Ralph [R-SC-5]; Committees: House - Science, Space, and Technology, Veterans' Affairs*

*H.R.647 — To amend the Public Health Service Act to increase the number of permanent faculty in palliative care at accredited allopathic and osteopathic medical schools, nursing schools, social work schools, and other programs, including physician assistant education programs, to promote education and research in palliative care and hospice, and to support the development of faculty careers in academic palliative medicine; Sponsor: Rep. Engel, Eliot L. [D-NY-16]; Committees: House - Energy and Commerce*

*H.R.652 — To direct the Secretary of Health and Human Services to issue a final regulation based on the proposed regulation relating to the Programs of All-Inclusive Care for the Elderly (PACE) under the Medicare and Medicaid programs; Sponsor: Rep. Blumenauer, Earl [D-OR-3]; Committees: House - Ways and Means, Energy and Commerce*

*H.R.660 — To improve the health outcomes in communities through community-relevant health information and new health supporting incentives and programs funded without further appropriations; Sponsor: Rep. Fortenberry, Jeff [R-NE-1]; Committees: House - Energy and Commerce*

*H.R.663 — To direct the Secretary of Defense to include in periodic health assessments, separation history and physical examinations, and other assessments an evaluation of whether a member of the Armed Forces has been exposed to open burn pits or toxic airborne chemicals, and for other purposes; Sponsor: Rep. Gabbard, Tulsi [D-HI-2]; Committees: House - Armed Services, Veterans' Affairs*

*H.R.674 — To authorize the appropriation of funds to the Centers for Disease Control and Prevention for conducting or supporting research on firearms safety or gun violence prevention; Sponsor: Rep. Maloney, Carolyn B. [D-NY-12]; Committees: House - Energy and Commerce*

*H.R.675 — To amend the Internal Revenue Code of 1986 to provide for a credit against tax for improving the safety of fuel systems in emergency medical rotorcraft; Sponsor: Rep. Neguse, Joe [D-CO-2]; Committees: House - Ways and Means*