



Health Policy Briefing

August 20, 2018

Senate to Debate Labor-HHS Spending Bill This Week

The Senate returned from its shortened August recess last week and began debate on a massive spending bill to fund the departments of Defense, Labor, Education, and Health and Human Services (HHS). The Senate is using the House-passed defense measure (H.R. 6157) as its vehicle and plans to file a substitute amendment that includes the language of the Senate’s Defense (S. 3159) and Labor-HHS-Education (S. 3158) spending measures. The combined bills amount to approximately 60 percent of the entire appropriations for fiscal year (FY) 2019. S. 3158 includes \$179.3 billion in funding, \$2.2 billion above current levels. While dozens of amendments are likely to be filed, only a few are expected to get floor time. The leaders of both parties have agreed to keep the process free of controversial policy riders. Today, the Senate plans to vote on two amendments, including one from Sen. Bob Menendez (D-N.J.) that would provide \$1 million for a firefighter cancer registry. Work on the minibus is likely to be completed this week. Senate Majority Leader Mitch McConnell (R-Ky.) hopes to complete conference negotiations on nine of the 12 appropriations bills before the end of the fiscal year on September 30. A stop gap spending measure would then need to be passed to extend current levels of funding for the remaining agencies. Lawmakers have yet to begin conference negotiations on any spending bill. The House of Representatives remains in recess until its scheduled return on September 4th.

W&M Releases Medicare Red Tape Report

House Ways and Means Committee Chairman Kevin Brady (R-Texas) and Health Subcommittee Chairman Peter Roskam (R-Ill.) released a report last week detailing steps to reduce regulatory burdens within the Medicare program. The report includes recommendations for both legislative and administrative changes and is the result of the Committee’s year-long “Medicare Red Tape Relief Project.” Through their request for information and roundtable discussions with stakeholders, the lawmakers identified several major themes, including the need to remove red tape that

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distracts providers from patient care, stands in the way of streamlining and coordinating care, increases the cost of health care, stands in the way of modernizing the Medicare program, burdens facilities with reduced staffing, stands in the way of transparency for providers and beneficiaries, and exacerbates the shortage of health care workers. The report identifies several issues applicable to all provider groups, such as the need for improved flexibility to provide telehealth services, challenges associated with the Stark Law as well as documentation and reporting burdens. The full report can be found [here](#).

Physician Lawmakers to Request Guidance on Part D Prior Authorization

Reps. Phil Roe (R-Tenn.) and Ami Bera (D-Calif.) plan to send a [letter](#) to the Centers for Medicare and Medicaid Services (CMS) requesting that the agency issue guidance detailing how and when Medicare Advantage (MA) managed care plans can require prior authorization. They also request a report describing agency oversight of MA prior authorization policies and audit protocols. Reps. Roe and Bera, who are both physicians, argue that CMS must ensure that MA does not create inappropriate barriers to care for Medicare patients. They acknowledge the role prior authorization can play in controlling costs and providing appropriate treatment, but they also point to situations in which plans require repetitive prior authorizations, which is burdensome to providers and delays medically necessary care. The letter argues that additional guidance would increase transparency, streamline the prior authorization process, and minimize patient impact. The lawmakers are currently circulating the letter among their colleagues for additional signatures in hopes of sending it to the agency in September with strong bipartisan support.

Opioid-Related News Update

Preliminary data from the Centers for Disease Control and Prevention (CDC) indicates that drug overdose deaths reached a record high in 2017. More than 72,000 Americans died from a drug overdose last year – a 6.6 percent increase compared to 2016. The CDC believes these numbers likely underestimate the total number of deaths. More than 49,000 deaths were opioid related. Deaths involving synthetic opioids rose significantly, while deaths from heroin, prescription opioids, and methadone decreased. Final mortality figures are typically released at the end of the calendar year.

During a cabinet meeting last week, President Trump stated that he would support a federal lawsuit being brought against opioid manufacturers. He also asked Attorney General Jeff Sessions to examine how to stop illicit opioids coming into the country from China and Mexico, characterizing the situation as a form of warfare.

In other related news, Sens. Catherine Cortez Masto (D-Nev.) and John Kennedy (R-La.) introduced a bill that would give Medicare Part D the authority to suspend payments to pharmacies under investigation for fraud to protect seniors that misuse the Medicare program to acquire opioids. The *Stop Excessive Narcotics in our Retirement (SENIOR) Communities Protection Act* is a response to situations in which seniors have had their Medicare numbers stolen and then used to bill Medicare for opioids. Medicare Parts A and B already have the ability to cut payments to pharmacies suspected of such fraudulent behavior. The House of Representatives passed a package of bills aimed at addressing the opioid epidemic earlier this year, and legislation to combat the opioid crisis is on the Senate's agenda for the remainder of August.

Azar Holds Stakeholder Meeting on Step Therapy

HHS Secretary Alex Azar met with specialty and patient groups last week to discuss drug pricing and the Administration's proposal to allow the use of step therapy in Medicare Advantage. Most of the stakeholder groups in attendance have expressed opposition to the new policy and voiced concerns about delays in patient treatment and additional administrative burden on providers. According to a statement from the department, Azar shared his openness to solutions that may alleviate the burden imposed by the use of step therapy as a new drug pricing negotiation tool.

Grassley Requests Review of PBM/Insurer Mergers

Senate Judiciary Committee Chairman Chuck Grassley (R-Iowa) has **requested** that the Department of Justice's (DOJ) Antitrust Division review the proposed mergers of Cigna with Express Scripts Holding and CVS with Aetna. The deals would vertically integrate the nation's largest pharmacy benefit managers with insurance companies. Grassley acknowledges that such integration could result in increased efficiencies and benefits for patients, but he also expresses concern that the deals could increase barriers to competition, cut consumer access, and reduce innovation, particularly in underserved areas. He urges the DOJ to collaborate with the Federal Trade Commission and the Food and Drug Administration while analyzing the mergers.

ACA Lawsuit Set to Begin September 10

Oral arguments in the Texas lawsuit aiming to strike the Affordable Care Act (ACA) as unconstitutional are set to begin on September 10. The twenty Republican attorneys general seek a preliminary injunction that would halt enforcement of the ACA. The Trump administration has stated that it will not defend the law's insurance protections. However, Democratic attorneys general have stepped in to defend the law and most stakeholders in the health care industry – including hospitals, doctors, insurers, and patient groups – have filed briefs in opposition to the lawsuit.

Upcoming Congressional Hearings and Markups

Senate Homeland Security and Governmental Affairs Committee hearing to examine Centers for Medicare and Medicaid Services efforts to fight Medicaid fraud and overpayments; 10:00 a.m., 342 Dirksen Bldg.; August 21

Senate Health, Education, Labor, and Pensions Committee hearing "Prioritizing Cures: Science and Stewardship at the National Institutes of Health;" 10:00 a.m., 428 Dirksen Bldg.; August 23

Recently Introduced Health Legislation

H.R.6651 — To extend certain authorities relating to United States efforts to combat HIV/AIDS, tuberculosis, and malaria globally, and for other purposes; Sponsor: Rep. Smith, Christopher H. [R-NJ-4]; Committees: House - Foreign Affairs

H.R.6662 — To amend title XVIII of the Social Security Act to extend the special election period under part C of the Medicare program for certain deemed individuals enrolled in a reasonable cost reimbursement contract to certain nondeemed individuals enrolled in such contract; Sponsor: Rep. Paulsen, Erik [R-MN-3]; Committees: House - Ways and Means, Energy and Commerce

S.3351 — A bill to amend the Fair Credit Reporting Act to institute a 180-day waiting period before medical debt will be reported on a consumer's credit report and to remove paid-off and settled medical debts from credit reports that have been fully paid or settled, to amend the Fair Debt Collection Practices Act to provide a timetable for verification of medical debt and to increase the efficiency of credit markets with more perfect information, and for other purposes; Sponsor: Sen. Merkley, Jeff [D-OR]; Committees: Senate - Banking, Housing, and Urban Affairs