



Health Policy Briefing

September 4, 2018

Congress to Return This Week with Opioids, Appropriations on the Agenda

The Senate completed their work for the month of August last Tuesday, confirming seven judicial nominations and agreeing to vote on another eight post-Labor Day. Most senators returned to their home states before coming back to Washington on Friday for services in remembrance of the late Sen. John McCain.

Senate leadership hopes to vote on an opioids package this week, which combines provisions reported out of the three key committees – Health, Education, Labor, and Pensions (HELP), Judiciary, and Finance. Majority Leader Mitch McConnell (R-Ky.) announced that there are no objections on the Republican side to advancing the legislation. One Democratic holdout, however, remains. There are also several members who object to passing the bill under unanimous consent; they want the opportunity to offer amendments on the floor. The Majority Leader is not expected to allow an open amendment process. Any legislation that passes the Senate will still need to be reconciled with the House package that passed earlier this year, but this is not expected to occur until after the midterm elections. The Senate’s bill is more modest than the House legislation, which made more significant changes to the Medicare and Medicaid programs.

Lawmakers will also be working to iron out the differences between the nine spending bills passed by both the House and Senate before the end of the fiscal year. Although the House is only scheduled to be in session for 11 legislative days before September 30, agreements still remain to be reached on a number of contentious differences between the House and Senate legislation. The Senate’s Labor-Health and Human Services (HHS) appropriations bill would increase spending by \$2.2 billion, while the House bill keeps funding at fiscal year (FY) 2018 levels. The House bill would also eliminate funding for teen pregnancy grants and eliminate the Title X family planning program. While lawmakers sought to avoid a debate on immigration, the House legislation would cut HHS’ general administration budget as a penalty for failing to reunify parents and children separated at the border by the given deadline. Additionally, lawmakers must still reach an agreement on how to pay for the \$1.7 billion VA MISSION Act included in the Military Construction-Veterans Affairs spending bill. House appropriators cut funds from the Homeland Security spending bill to pay for MISSION, while

Inside

- [Baldwin to Force Vote on Short-Term Plans.....](#)2
- [Lawmakers Urge HRSA Oversight of 340B.....](#)2
- [E&C Requests Information on PBMs, Hospital Consolidation.....](#)2
- [Lawmakers to Comment on CMS E&M Proposed Rule.....](#)3
- [Upcoming Congressional Hearings and Markups.....](#)3
- [Recently Introduced Health Legislation.....](#)4

the Senate did not include an offset. The conference agreement for Energy-Water/Military Construction-Veterans Affairs/Legislative Branch could be taken up as early as this week, and action on the remaining minibuses could occur soon thereafter. Any bills not completed by September 30 would need to be included in a continuing resolution (CR) that would likely last until December. The stopgap spending measure will likely include State-Foreign Operations, Homeland Security, and Commerce-Justice-Science.

Baldwin to Force Vote on Short-Term Plans

Sen. Tammy Baldwin (D-Wis.) has introduced Senate Joint Resolution 63 that would force a vote on overturning the Administration's expansion of short-term limited-duration health insurance plans. The bill requires 30 signatories to force a Senate vote, and only a simple majority in either chamber to pass. The resolution of disapproval was cosponsored by 29 other Democrats. The bill would reverse a recent regulation that increased access to health insurance plans that are not required to comply with the Affordable Care Act's (ACA) popular consumer protections. Baldwin has not yet secured the support of any of her Republican colleagues.

Lawmakers Urge HRSA Oversight of 340B

Bipartisan leadership of the House Energy and Commerce Committee and Senate HELP Committee sent a **letter** to the Health Resources and Services Administration (HRSA) regarding the agency's oversight of the 340B Drug Pricing Program. The lawmakers acknowledge that HRSA has requested that Congress consider legislative action to provide the agency with broader rulemaking authority over the program, but also point out that HRSA has not used its existing authority to implement regulations to better administer 340B. The letter outlines HRSA's authority to (1) establish and implement a binding Administrative Dispute Resolution (ADR) process for the resolution of certain disputes relating to compliance with 340B Program requirements, (2) provide for the imposition of civil monetary penalties (CMPs) against manufacturers that knowingly and intentionally overcharge a covered entity for a 340B drug, and (3) issue precisely defined standards of methodology for calculation of 340B ceiling prices. Additional regulations from HRSA "could help clarify and update program requirements in pursuit of strengthening access to necessary care and proper administration of the program," the lawmakers write.

E&C Requests Information on PBMs, Hospital Consolidation

Republican leadership of the House Energy and Commerce Committee have **contacted** several pharmacy benefit managers (PBMs) in an attempt to better understand their role in the drug supply chain. The lawmakers seek information about drug negotiations, PBM work in the Medicare and Medicaid programs, and specialty drugs. "We request your assistance in order to better understand the relationship of a drug's list price with the price negotiated and the different incentives that are offered to encourage reductions in list price," the letter states. They also request details on what percentage of rebates or discounts are passed along to PBM clients, and whether PBMs inform their clients if manufacturers offer to lower list prices for particular clients. The letters were signed by Chairman Greg Walden (R-Ore.), Health Subcommittee Chairman Michael Burgess (R-Texas), and Oversight and Investigations Subcommittee Chairman Gregg Harper (R-Miss.). They request a response from CVS, EnvisionRXOptions, Express Scripts Holding Company, Humana Inc., Prime Therapeutics, Procure Pharmacy Benefit Manager, Inc., and UnitedHealth Group by September 30.

Rep. Walden, Burgess, and Harper also sent a **letter** to the Medicare Payment Advisory Commission (MedPAC) last week, requesting that the commission conduct research into hospital consolidation and the financial impact it has on the Medicare program and its beneficiaries. The lawmakers acknowledge the efficiencies and economies of scale that can be accomplished through consolidation, while also highlighting the data which indicates that hospital consolidation can increase spending for both the Medicare program and patients. According to the letter, the lawmakers wish "to determine the impact consolidation has on patients, and if patients end up paying higher prices due to consolidation for no identifiable benefit to the beneficiary." The lawmakers pose a series of questions for MedPAC and request a response with 30 days.

Lawmakers to Comment on CMS E&M Proposed Rule

A bipartisan group of House lawmakers are circulating a **letter** urging the Centers for Medicare and Medicaid Services (CMS) to abandon a proposal that would revise physician payment rates for certain office visits in 2019. CMS proposes to pay the same rate for doctor visits regardless of complexity. The letter argues that the July proposed rule to consolidate billing codes for evaluation and management (E&M) services would reduce access to care for the sickest patients and “devalues the expertise, clinical decision-making, and time of physicians who treat patients with complex conditions.” Reps. Marsha Blackburn (R-Tenn.), Brad Wenstrup (R-Ohio), Earl Blumenauer (D-Ore.), and Doris Matsui (D-Calif.) request sign-on from their colleagues by September 5. Comments on the CMS proposal are due September 10.

Upcoming Congressional Hearings and Markups

House Energy and Commerce Health Subcommittee hearing “Opportunities to Improve Health Care;” 10:00 a.m., 2123 Rayburn Bldg.; September 5

House Veterans’ Affairs Subcommittee on Oversight and Investigations hearing “Reusable Medical Equipment: Continuing to Examine VHA’s Sterile Processing Problems;” 10:00 a.m., 334 Cannon Bldg.; September 5

House Ways and Means Committee markup of Empowering Seniors’ Enrollment Decision Act of 2018 (H.R. 6662), Fighting Fraud to Protect Care for Seniors Act of 2018 (H.R. 6690), Comprehensive Care for Seniors Act of 2018 (H.R. 6561), Local Coverage Determination Clarification Act of 2017 (H.R. 3635), and Requesting the President to transmit to the House of Representatives certain documents in the possession of the President relating to the determination to impose certain tariffs and to the strategy of the United States with respect to China. (H. Res. 1018); 2:00 p.m., 1100 Longworth Bldg.; September 5

House Energy and Commerce Oversight and Investigations Subcommittee hearing “Examining Federal Efforts to Ensure Quality of Care and Resident Safety in Nursing Homes;” 10:15 a.m., 2322 Rayburn Bldg.; September 6

House Foreign Affairs Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations hearing “Tackling Fentanyl: Holding China Accountable;” 2:00 p.m., 2200 Rayburn Bldg.; September 6

House Veterans’ Affairs Subcommittee on Technology Modernization hearing “The Role of the Interagency Program Office in VA Electronic Health Record Modernization;” 2:00 p.m., 334 Cannon Bldg.; September 13

House Committee on Veterans’ Affairs hearing “Veteran Suicide Prevention: Maximizing Effectiveness and Increasing Awareness;” 10:30 a.m., 334 Cannon Bldg.; September 27

Recently Introduced Health Legislation

H.R.6690 — To establish a smart card pilot program to combat fraud, waste, and abuse and to protect beneficiary identity under the Medicare program; Sponsor: Rep. Roskam, Peter J. [R-IL-6]; Committees: House - Ways and Means, Energy and Commerce

H.R.6689 — To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require that group and individual health insurance coverage and group health plans provide coverage for treatment of a congenital anomaly or birth defect; Sponsor: Rep. Peterson, Collin C. [D-MN-7]; Committees: House - Energy and Commerce, Ways and Means, Education and the Workforce

H.R.6688 — To provide for the establishment of the Prescription Safety Alert System with respect to covered drug products, and for other purposes; Sponsor: Rep. MacArthur, Thomas [R-NJ-3]; Committees: House - Energy and Commerce

S.J.Res.63 — A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Secretary of the Treasury, Secretary of Labor, and Secretary of Health and Human Services relating to “Short-Term, Limited Duration Insurance”; Sponsor: Sen. Baldwin, Tammy [D-WI]; Committees: Senate - Health, Education, Labor, and Pensions

S.3392 — A bill to address maternal mortality and morbidity; Sponsor: Sen. Gillibrand, Kirsten E. [D-NY]; Committees: Senate - Health, Education, Labor, and Pensions