



Health Policy Briefing

November 6, 2017

WH Opioid Commission Approves Final Report

The White House Commission on Opioids released its **final report** containing a series of more than 50 recommendations to combat the opioid epidemic. The report does not request any new spending but acknowledges the importance of increased funding to implement the recommendations. Among the recommendations contained in the report, the Commission urges:

- Increased access to addiction therapy, recovery programs, and medication-assisted treatment (MAT);
- Expansion of first responders' ability to administer naloxone;
- Increased oversight by the Department of Labor over health plan compliance with parity laws;
- Upgrading of drug abuse programs taught in schools;
- Removal of questions about pain from patient satisfaction surveys for physicians and hospitals;
- Consideration by the Food and Drug Administration's (FDA) of the dose and duration for specific indications, as well as the possibility of issues like misuse and diversion, during the drug approval process;
- Passage of the bipartisan Prescription Drug Monitoring Program Act (S. 778), which would tie federal funding to the required use of prescription drug monitoring programs (PDMPs);
- An increase in federal sentencing penalties for the trafficking of the synthetic opioid fentanyl;
- Consideration by lawmakers of what information patients should receive before being prescribed an opioid for chronic pain;
- Establishment of drug courts in every judicial district nationwide; those violating their probation through substance use be sent to a drug court and not prison;
- Establishment of a coordinated system by the Office of National Drug Control Policy (ONDCP) to track all relevant federally funded initiatives in order to invest in the most effective programs;
- A White House funded multiplatform media campaign addressing the danger of substance use and opioids, as well as the stigma around addiction; and
- The development of

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a national curriculum and standard of care by the U.S. Department of Health and Human Services (HHS) for the prescribing of prescription painkillers.

In related news, the FDA has scheduled an upcoming meeting to explore the agency's existing authorities to regulate how opioid products are packaged, stored, and discarded in order to improve patient safety. Commissioner Scott Gottlieb stated that the FDA is considering innovations such as packaging that limits the number of pills dispensed or allows providers or family members to track the number of doses that have been taken. The Packaging: Abuse-Deterrent Strategies (PADS) Task Force meeting will be held December 11-12.

Obamacare Premiums on the Rise

According to a new report from the U.S. Department of Health and Human Services (HHS), Obamacare premiums are on the rise across the country. The data examines benchmark plans on the exchanges, and finds an increase in premiums averaging 37 percent. Due to increasing tax credit subsidies, however, approximately 80 percent of enrollees will have access to a plan for less than \$75 a month – an increase from 71 percent during the last plan year. HHS also notes that insurer participation is declining, with an increasing number of counties left with only one insurer – which could in part contribute to higher premiums.

House Passes IPAB, EMS, and CHIP Legislation

The House of Representatives successfully passed H.R. 849, the “Protecting Seniors Access to Medicare Act,” legislation to repeal the Independent Payment Advisory Board (IPAB), by a vote of 307-111 last week. Despite some concerns and objections from Democratic leadership regarding a lack of both urgency and offsets for the bill, 76 Democrats backed elimination of the board. It is not likely that the Senate will act on the legislation before the end of the year. The House also passed H.R. 304, the “Protecting Patient Access to Emergency Medications Act” by unanimous consent. H.R. 304 would clarify that emergency medical services (EMS) professionals are allowed to administer controlled substances pursuant to standing or verbal orders under certain conditions.

Before adjourning for the week on Friday, the House passed H.R. 3922, the CHAMPIONING HEALTHY KIDS Act. The bill would fund the Children's Health Insurance Program (CHIP) for an additional five years and reauthorize funding for community health centers for two years. Other public health programs, including the National Health Service Corps (NHSC), Teaching Health Center Graduate Medical Education, Family-to-Family Health Information Centers, the Youth Empowerment Program, and the Personal Responsibility Education Program, would be extended for two years. H.R. 3922 also includes a two-year delay of Medicaid disproportionate share hospital (DSH) payment cuts as well as \$1 billion in support of Puerto Rico's and the U.S. Virgin Islands' Medicaid programs. While the policies contained in the bill were the result of bipartisan negotiations, the final vote fell largely along party lines due to a disagreement over offsets used to pay for the legislation. The bill was offset by raising Medicare premiums for high-income beneficiaries and making cuts to the Affordable Care Act's (ACA) Prevention and Public Health Fund. H.R. 3922 passed by a vote of 242-174, with 15 Democrats voting in favor of the bill and three Republicans voting in opposition.

The Senate has reached a bipartisan agreement on reauthorization policy, but has not yet identified any pay-fors. A group of 22 Senate Democrats have already warned that they would not support the offsets used in the House in a letter sent to Senate leadership last week. Senate negotiations between Orrin Hatch (R-Utah) and Ron Wyden (D-Ore.) have stalled, and it appears increasingly likely that CHIP funding won't be renewed until the end of the year as part of the omnibus spending bill or an emergency hurricane aid package – both of which could be difficult to achieve due to outstanding issues.

Bicameral CSR Proposal Officially Introduced

House Ways and Means Committee Chairman Kevin Brady (R-Texas) and Senate Finance Committee Chairman Orrin Hatch (R-Utah) have introduced their bicameral proposal to temporarily extend funding for cost sharing reduction (CSR) payments through 2019. The Healthcare Market Certainty and Mandate Relief Act (H.R. 4200/S. 2052) would require plan issuers to not tie premium levels to the assumption of CSR receipt. It would provide relief from the individual mandate between 2017 and 2021 and relief from the employer mandate between 2015 and 2017. The proposal would also increase the maximum contribution limit for health savings accounts (HSAs).

House GOP Releases Tax Reform Plan

The House GOP unveiled their tax reform proposal last Thursday. The “Tax Cuts and Jobs Act” (H.R. 1), which would reduce the number of tax brackets and increase the standard deduction, also includes specific provisions that would impact patients and stakeholders in the health care industry. Most notably, the bill would eliminate the ability of individuals to deduct qualified medical expenses effective 2018. Under current law, individuals are allowed to deduct health care costs that exceed 10 percent of their adjusted gross income (AGI) for the year. The deduction is key particularly for elderly Americans in nursing homes and their families. The proposal also repeals the student loan interest deduction, available to anyone paying interest on student loans who make less than \$80,000 per year. Many recent medical, nursing, and health professional school graduates benefit from the deduction. H.R. 1 would also eliminate the deduction for dependent care assistance, which makes day care, nursery school, and care for aging family members more affordable. In addition, the tax plan would eliminate the orphan drug tax credit, which allows drug companies conducting rare disease research to claim a credit equal to 50 percent of their clinical testing expenses when researching treatments for diseases that affect fewer than 200,000 Americans. Finally, the bill also raises additional questions for pharmaceutical and technology firms. H.R. 1 would impose a 20 percent tax on 50 percent of high foreign returns, appeared to be directed at companies with intangible off-shore income from things like intellectual property.

The tax plan does not include a provision to repeal the Affordable Care Act’s (ACA) individual mandate, which President Trump and some Congressional Republicans like Sen. Tom Cotton (R-Ark.) and House Freedom Caucus Chairman Mark Meadows (R-N.C.) strongly support repealing. The addition of this language became more likely with the release of the Congressional Budget Office (CBO) and Joint Committee on Taxation (JCT) score, which indicated that there would be a potential Byrd rule problem in the Senate. The Byrd rule requires that all required deficits occur within the budget window. However, the analysis indicates that the plan adds \$156 billion to the budget shortfall in 2027 – a sure sign that it would add to the deficit in 2028. While the House plan scores at \$1.41 trillion over 10 years – below the \$1.5 trillion maximum indicated in the budget resolution, without additional changes related to 2028 (such as changes to the individual mandate), Democrats will have an opening to raise an objection to the bill on the Senate floor that would require 60 votes to overcome. According to House Ways and Means Committee Chairman Kevin Brady (R-Texas), the individual mandate proposal is still under consideration. Some Republicans are obviously concerned that pairing tax reform with the health care debate could cause both to fail. The Ways and Means Committee will begin its markup of the bill today. As for the overall process, Chairman Brady has indicated that he will likely have a substantial amendment for Committee’s deliberations, while also stating that the time for amendments will be in the Committee, not on the House floor. Therefore, the Committee will need to address these larger budgetary and policy issues as part of the Committee deliberations.

Legislation to Provide EHR Regulatory Relief Reintroduced

The “Electronic Health Record (EHR) Regulatory Relief Act” (S. 2059) has been reintroduced in the Senate. The legislation aims to reduce the burden of meaningful use requirements through the creation of a 90-day reporting period, removal of the all-or-nothing scoring approach, and expansion of hardship exceptions. It would also eliminate a statutory requirement for the Secretary of the U.S. Department of Health and Human Services (HHS) to create more stringent measures of meaningful use. The legislation was introduced by Sens. John Thune (R-S.D.), Lamar Alexander (R-Tenn.), Mike Enzi (R-Wy.), Pat Roberts (R-Kan.), Richard Burr (R-N.C.), and Bill Cassidy (R-La.). The same six senators authored a 2013 report entitled “**REBOOT: Re-examining the Strategies Needed to Successfully Adopt Health IT.**”

Lawmakers Request Information on Flu Preparedness

Ranking Member of the Senate Health, Education Labor, and Pensions (HELP) Committee Patty Murray (D-Wash.) and Ranking Member of the House Energy and Commerce Committee Frank Pallone, Jr. (D-N.J.), joined by Sen. Elizabeth Warren (D-Mass.), Rep. Gene Green (D-Texas), and Rep. Diana DeGette (D-Colo.), have **written** to the Director of the Centers for Disease Control and Prevention (CDC) requesting information on the agency's seasonal flu preparedness plans. The Democrats had requested this information earlier in the year, but have yet to receive a response. They point to warnings from public health officials about an especially bad seasonal flu this year and express particular concern for those displaced by recent natural disasters, who may be more vulnerable to infection. The letter requests a response from the CDC no later than November 16.

Dems Outline Criteria to Evaluate Next HHS Secretary

Senate Finance Committee Ranking Member Ron Wyden (D-Ore.) and Senate Health, Education, Labor, and Pensions (HELP) Committee Ranking Member Patty Murray (D-Wash.) have sent a **letter** to the President outlining the 51 priorities they will use to assess the next nominee for Secretary of the U.S. Department of Health and Human Services (HHS). Many of the criteria are in direct opposition of the Administration's current policies and agenda. The Senators state that the nominee should support Obamacare outreach and education efforts as well as access to Medicaid and Planned Parenthood. Both Committees are expected to hold confirmation hearings for the nominee, but only the Senate Finance Committee has jurisdiction to vote to advance the nomination.

Upcoming Congressional Hearings and Meetings

House Ways and Means Committee markup of H.R. 1 - Tax Cuts and Jobs Act; 12:00 p.m., 1100 Longworth Bldg.; November 6

House Energy and Commerce Health Subcommittee hearing "MACRA and Alternative Payment Models: Developing Options for Value-based Care;" 10:00 a.m., 2123 Rayburn Bldg.; November 8

House Veterans' Affairs Committee markup of pending legislation; 10:00 a.m., 334 Cannon Bldg.; November 8

House Education and Workforce Joint Subcommittee on Early Childhood, Elementary, and Secondary Education and Higher Education and Workforce Development hearing "Close to Home: How Opioids are Impacting Communities;" 10:30 a.m., 2175 Rayburn Bldg.; November 8

Recently Introduced Health Legislation

H.R.4169 (introduced by Rep. Kenny Marchant): To amend title XVIII of the Social Security Act to remove the enrollment restriction on certain physicians and practitioners prescribing covered outpatient drugs under the Medicare prescription drug program; Energy and Commerce, Ways and Means

H.R.4173 (introduced by Rep. Jim Banks): To direct the Secretary of Veterans Affairs to conduct a study on the Veterans Crisis Line; Veterans' Affairs

H.R.4178 (introduced by Rep. Jody C. Arrington): To amend title XVIII of the Social Security Act to provide for reform to and a permanent extension of the Medicare-dependent hospital program, and for other purposes; Ways and Means

H.R.4190 (introduced by Rep. Ann M. Kuster): To amend the 21st Century Cures Act to ensure the equitable distribution of resources to address the opioid epidemic, and for other purposes; Energy and Commerce

H.R.4191 (introduced by Rep. Billy Long): To amend the Public Health Service Act to authorize the Secretary of Health and Human Services to designate an officer within the Department of Health and Human Services as having primary

responsibility for the information security (including cybersecurity) programs of the Department, and for other purposes; Energy and Commerce

H.R.4199 (introduced by Rep. Louise McIntosh Slaughter): To direct the Attorney General to establish a national pharmaceutical stewardship program to facilitate the collection and disposal of prescription medications; Energy and Commerce

S.2042 (introduced by Sen. Amy Klobuchar): A bill to authorize a joint action plan and report on drug waste; Finance

H.R.4200 (introduced by Rep. Kevin Brady): To provide for temporary funding for health insurance cost-sharing reduction payments and provide targeted tax relief, and for other purposes; Ways and Means, Energy and Commerce

H.R.4206 (introduced by Rep. Larry Bucshon): To amend title XVIII of the Social Security Act to modernize the physician self-referral prohibitions to promote care coordination in the merit-based incentive payment system and to facilitate physician practice participation in alternative payment models under the Medicare program, and for other purposes; Energy and Commerce, Ways and Means

H.R.4215 (introduced by Rep. Erik Paulsen): To amend title XVIII of the Social Security Act to ensure that providers of services receive adequate payments for the acquisition of hematopoietic stem cells under the Medicare program, and for other purposes; Ways and Means

S.Res.319 (introduced by Sen. Sherrod Brown): A resolution supporting the goals, activities, and ideals of Prematurity Awareness Month; Health, Education, Labor, and Pensions

S.2051 (introduced by Sen. Rob Portman): A bill to amend title XVIII of the Social Security Act to modernize the physician self-referral prohibitions to promote care coordination in the merit-based incentive payment system and to facilitate physician practice participation in alternative payment models under the Medicare program, and for other purposes; Finance

S.2052 (introduced by Sen. Orrin G. Hatch): A bill to provide for temporary funding for health insurance cost-sharing reduction payments and provide targeted tax relief, and for other purposes; Finance

S.2055 (introduced by Sen. Gary C. Peters): A bill to amend the Public Health Service Act to better address substance use and substance use disorders among young people; Health, Education, Labor, and Pensions

S.2057 (introduced by Sen. Tammy Baldwin): A bill to prevent conflicts of interest that stem from the revolving door that raises concerns about the independence of pharmaceutical regulators; Homeland Security and Government Affairs

H.R.4225 (introduced by Rep. Richard Hudson): To amend the Patient Protection and Affordable Care Act by clarifying that State Exchanges are prohibited from imposing fees or assessments on issuers of excepted benefits and standalone dental plans not sold through an Exchange; Energy and Commerce

H.R.4226 (introduced by Rep. Ron Kind): To amend the Public Health Service Act to designate certain medical facilities of the Department of Veterans Affairs as health professional shortage areas, and for other purposes; Energy and Commerce

H.R.4229 (introduced by Rep. Cathy McMorris Rodgers): To extend the transition to new payment rates for durable medical equipment under the Medicare program and amend title XVIII of the Social Security Act to update the Medicare budget neutrality requirement for oxygen; Energy and Commerce, Ways and Means

S.2059 (introduced by Sen. John Thune): A bill to amend title XVIII of the Social Security Act to provide for a 90-day period for the determination of whether a MIPS eligible professional or eligible hospital is a meaningful EHR user and to remove the all-or-nothing approach to meaningful use, and for other purposes; Finance

S.2063 (introduced by Sen. Jon Tester): A bill to direct the Secretary of Veterans Affairs to submit to Congress certain documents relating to the Electronic Health Record Modernization Program of the Department of Veterans Affairs; Veterans' Affairs

S.2065 (introduced by Sen. Todd C. Young): A bill to establish a demonstration program to provide integrated care for Medicare beneficiaries with end-stage renal disease, and for other purposes; Finance

S.2066 (introduced by Sen. Bill Nelson): A bill to provide housing and Medicaid assistance to families affected by a major disaster, and for other purposes; Finance

S.2067 (introduced by Sen. Mike Crapo): A bill to amend title XVIII of the Social Security Act to provide for coverage under the Medicare program of certain DNA Specimen Provenance Assay clinical diagnostic laboratory tests; Finance