



Health Policy Briefing

December 4, 2017

Congress has a busy agenda to accomplish in the coming weeks if lawmakers hope to be home for the holidays.

On page 3, we discuss the state of negotiations to avoid a **government shutdown**. The current continuing resolution (CR) expires on December 8. Another short-term spending bill will likely be necessary, with current reports indicating that the next CR will fund the government through December 22. One key health-related question is how much additional funding will be included to address the opioid crisis.

A long-term appropriations agreement will need to address the 2018 caps set by the **Budget Control Act (BCA)**, which will automatically trigger across the board spending cuts in the absence of congressional action to raise the caps. Congressional leaders are currently negotiating a deal to raise the budgetary caps by as much as \$200 billion over two years. The National Defense Authorization Act (NDAA) included funding \$77.4 billion above the caps for defense, and Democrats are pushing for a similar amount for non-defense spending.

As noted on page 3, Democrats and Republicans are currently at odds over the inclusion of a Deferred Action for Childhood Arrivals (**DACA**) provision that would allow Dreamers to avoid deportation. President Trump ended the DACA program effective mid-March 2018.

Lawmakers are also debating the inclusion of an **individual insurance market stabilization package** [to extend cost-sharing reduction (CSR) payments and fund reinsurance programs] in the long-term omnibus spending bill. This provision is discussed in more detail on page 2.

Congress has yet to reauthorize the **Children's Health Insurance Program (CHIP)**, community health centers, and other expiring health care programs. Once an agreement is reached on offsets for such a package, it could also be attached to a year-end spending bill. For more details on the state of negotiations, please see page 3.

Finally, the Administration is seeking to extend sequestration under the BCA from fiscal year (FY) 2025 to FY 2027 in order to pay for a \$44 billion **disaster-relief package** they want attached to the FY 2018 spending bill.

While the House and Senate have successfully passed **tax reform** legislation, each

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chamber's proposals now head to conference committee to be reconciled, with hopes to get a final bill to the President's desk by the end of the year. Because of the bill's impact on the federal deficit, lawmakers will also have to grapple with a waiver to Senate **PAYGO** rules, in order to avoid a Medicare sequester. We provide more details on this subject below. Finally, the House and Senate also need to pass a Medicare extenders package, which will likely be included in the end of the year spending package.

Senate Passes Tax Reform Legislation

The Senate passed its version of tax reform, the Tax Cuts and Jobs Act (H.R. 1) by a vote of 51-49 in the early hours of Saturday, December 2 along a party-line vote. The vote followed two days of debate and amendments.

The bill would add \$1 trillion to the national debt over 10 years. Republican leadership has offered assurances that a waiver of the PAYGO rules, if required, would be included in a must-pass vehicle before the end of the year in order to prevent a sequester.

The Senate bill would repeal the Affordable Care Act's (ACA) individual mandate, which would result in \$300 billion in savings but is criticized for potentially destabilizing the individual health insurance market. A coalition of 19 patient groups, including the American Cancer Society Cancer Action Network, the American Diabetes Association, and the American Heart Association joined the list of health care stakeholders already in opposition to mandate repeal last week. The coalition argued that repeal of the mandate would result in an increase in the number of uninsured as well as an increase in individual market premiums.

A handful of Republican senators raised concerns with the tax legislation, citing its impact on the deficit, the possible repercussions of individual mandate repeal, and the effect it could have on small businesses. Ultimately, however, the only Republican holdout to vote against the legislation was Sen. Bob Corker (R-Tenn.).

Because the Senate bill differs significantly from the version of tax reform passed by the House, the two chambers will now hold a conference to reconcile the differences before both voting on a revised bill. Their goal is to send a final package to the President by the end of the year for his signature. Republican leadership in the House have suggested that repeal of the individual mandate is likely to be included in the final conference committee bill. President Trump has said that he will sign whatever tax bill is passed by Congress.

Collins Appears to Secure Deal on Stabilization Legislation

In a closed-door meeting with GOP senators last week, the President apparently promised support for two proposals aimed at stabilizing the Obamacare marketplace in exchange for the inclusion of individual mandate repeal in the Republican tax reform legislation. A proposal from Sens. Lamar Alexander (R-Tenn.) and Patty Murray (D-Wash.) would fund cost-sharing reduction (CSR) payments, while a bill from Sens. Susan Collins (R-Maine) and Bill Nelson (D-Fla.) would provide funding for the creation of state reinsurance programs. The agreement may have been key in securing the vote of Sen. Susan Collins (R-Maine) in favor of the tax reform package. Sen. Collins believes the bills will mitigate the effects of repealing the individual mandate on uninsurance rates and premiums. The Congressional Budget Office (CBO), however, reports that stabilization proposals would not substantially change the number of people with coverage or prevent increases in health insurance premiums. CBO estimates that repeal of the individual mandate would increase the number of uninsured by 13 million in 2027, while increasing premiums by 10 percent each year. Sen. Collins said that Majority Leader Mitch McConnell (R-Ky.) has promised to include the stabilization legislation in the year-end spending deal. This plan, however, is opposed by conservative members of the House and the House Freedom Caucus, who characterize the stabilization proposals as a bail out of the insurance industry.

Negotiations Slowly Progress on CHIP Funding

Funding for the Children's Health Insurance Program (CHIP) expired over two months ago, and lawmakers are making slow progress on bipartisan negotiations to reauthorize CHIP and a number of other expiring health care programs. Some states are now relying on temporary cash infusions from the federal government to keep their programs operating.

Lawmakers are working toward an agreement on how to pay for the package, and Senate Finance Committee Chairman Orrin Hatch (R-Utah) -- one of the original authors of the program -- has pledged to not let the CHIP program run out of money. The package would extend funding for CHIP, community health centers, and other expiring Medicare programs. The Senate Finance Committee's bipartisan CHRONIC Care Act might also be included in the final deal.

The CHIP package will likely be included in the longer-term funding bill Congress will debate before the end of the year. While the House has already passed a CHIP funding measure, the offsets are strongly opposed by Democrats. The Senate Finance Committee has also advanced a funding bill, but did not include any pay-fors in the measure.

States are using contingency measures to keep their programs functional, and the Centers for Medicare and Medicaid Services (CMS) has distributed nearly \$607 million in unspent funds from prior years to states and territories in October and November. Five states and the District of Columbia could run out of CHIP money by early January, and some locations have begun notifying enrollees that coverage for their children could lapse. In addition, community health centers have begun hiring freezes and are examining their ability to scale back services in light of the funding uncertainty.

Spending Bill Debate Stalls Over Immigration Reform

House Minority Leader Nancy Pelosi (D-Calif.) and Senate Minority Leader Chuck Schumer (D-N.Y.) cancelled a meeting at the White House last week to negotiate a bipartisan agreement on government funding. The decision followed a tweet from President Trump stating that he did not believe a deal could be reached to avoid a government shutdown. Democrats are demanding that the spending bill include protections for young undocumented immigrants known as "Dreamers." They face deportation next year due to the President's decision to end the Obama-era Deferred Action for Childhood Arrivals (DACA) program. Speaker of the House Paul Ryan (R-Wis.) would prefer to consider spending legislation and immigration reform separately. The current funding bill expires on December 8. Congress is expected to pass another short term continuing resolution (CR) to allow for additional time to negotiate an appropriations deal that would last through the end of the fiscal year (FY) – September 30, 2018.

Kellyanne Conway to Lead WH Opioid Crisis Response

President Trump has asked White House adviser Kellyanne Conway to coordinate and lead the Administration's efforts to combat the opioid overdose epidemic. The announcement followed a statement from Sen. Lamar Alexander (R-Tenn.) during the confirmation hearing of Alex Azar, U.S. Department of Health and Human Services (HHS) Secretary nominee, that the federal government does not need an opioids czar; rather, the next HHS secretary should lead the charge of the federal government's response to the opioid crisis. The Administration has countered that headlines touting Conway as the opioid czar are incorrect – their announcement instead indicates a continuation of her role handling the White House's opioids portfolio.

NAS Report Recommends Federal Government Rx Negotiations

A new **report** from the National Academies of Sciences, Engineering and Medicine (NAS) recommends that the federal government negotiate drug prices and allow for more flexible drug formularies. The report examines the role of generics and biosimilars, intellectual property issues, financial transparency, drug advertising, and insurance benefit design in the prescription marketplace. The National Academies argue that increasing prescription drug and medical costs, which equal 18 percent of the nation's gross domestic product (GDP), are unsustainable to society as a whole, and make recommendations aimed at improving the affordability of prescription drugs while continuing innovation in drug development. The report includes 27 action items, in addition to the following eight overarching recommendations:

- Accelerate the market entry and use of safe and effective generics as well as biosimilars;
- Consolidate and apply governmental purchasing power, strengthen formulary design, and improve drug valuation methods;
- Assure greater transparency of financial flows and profit margins in the biopharmaceutical supply chain;
- Promote the adoption of industry codes of conduct and discourage direct-to-consumer advertising of prescription drugs as well as direct financial incentives for patients;
- Modify insurance benefits designs to mitigate prescription drug cost burdens for patients;
- Eliminate misapplication of funds and inefficiencies in federal discount programs that are intended to aid vulnerable populations;
- Ensure that financial incentives for the prevention and treatment of rare diseases are not extended to widely sold drugs; and
- Increase the available information and implement reimbursement incentives to more closely align prescribing practices of clinicians with treatment value.

The Senate Health, Education, Labor, and Pensions (HELP) Committee plans to hold a hearing on December 12 to hear from NAS regarding the report.

Upcoming Congressional Hearings and Meetings

Senate Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies hearing “Addressing the Opioid Crisis in America: Prevention, Treatment & Recovery;” 10:00 a.m., 124 Dirksen Bldg.; December 5

Senate Health, Education, Labor, and Pensions Committee hearing “Implementation of the 21st Century Cures Act: Progress and the Path Forward for Medical Innovation;” 10:00 a.m., 430 Dirksen Bldg.; December 7

House Committee on Veterans’ Affairs hearing “New Names, Same Problems: The VA Medical Surgical Prime Vendor Program;” 10:00 a.m., 334 Cannon Bldg.; December 7

House Oversight and Government Reform Subcommittee on Information Technology hearing “Oversight of IT and Cybersecurity at the Department of Veterans Affairs;” 2:00 p.m., 2154 Rayburn Bldg.; December 7

Senate Health, Education, Labor, and Pensions Committee hearing “Implementation of the 21st Century Cures Act: Responding to Mental Health Needs;” 10:00 a.m., 430 Dirksen Bldg.; December 13

Recently Introduced Health Legislation

H.R.4456 (introduced by Rep. Brian Babin): To amend the Internal Revenue Code of 1986 to allow a deduction for amounts paid for medical expenses to a health care sharing ministry, and for other purposes; Ways and Means

H.R.4457 (introduced by Rep. Doug Lamborn): To amend title 38, United States Code, to establish the Veterans Accountable Care Organization and to provide veterans access to private health insurance plans, and for other purposes; Veterans' Affairs, Ways and Means, Oversight and Government Reform, Energy and Commerce, Armed Services

S.2164 (introduced by Sen. Angus S. King, Jr.): A bill to amend the Congressional Budget Act of 1974 respecting the scoring of preventive health savings; Budget

S.2168 (introduced by Sen. Cory Gardner): A bill to amend the Veterans Access, Choice, and Accountability Act of 2014 to include in the Veterans Choice Program all veterans enrolled in the patient enrollment system of the Department of Veterans Affairs, and for other purposes; Veterans' Affairs

H.R.4482 (introduced by Rep. Mark Meadows): To deter opioid abuse and addiction, to establish additional registration requirements for prescribers of opioids, to encourage the development of abuse-deterrent formulations, to require a study and report on policy changes that may have contributed to the opioid epidemic, and for other purposes; Energy and Commerce, Judiciary

H.R.4487 (introduced by Rep. Peter Welch): To authorize the collection of supplemental payments to increase congressional investments in medical research, and for other purposes; Energy and Commerce

S.2172 (introduced by Sen. Elizabeth Warren): A bill to authorize the collection of supplemental payments to increase congressional investments in medical research, and for other purposes; Health, Education, Labor, and Pensions

H.R.4501 (introduced by Rep. David Loebsack): To increase funding for the State response to the opioid misuse crisis and to provide funding for research on addiction and pain related to the substance misuse crisis; Energy and Commerce

S.2174 (introduced by Sen. Todd C. Young): A bill to direct the Secretary of Veterans Affairs to conduct a study on the Veterans Crisis Line; Veterans' Affairs

S.2175 (introduced by Sen. Bill Cassidy): A bill to amend title XVIII of the Social Security Act to preserve Medicare beneficiary access to ventilators, and for other purposes; Finance