



## Health Policy Briefing

February 8, 2016

### House Fails to Override Veto on ACA Repeal

Last week, members of the House of Representatives failed to override the presidential veto of legislation that would repeal large parts of the Affordable Care Act (ACA) and restrict federal funding for Planned Parenthood. With a vote of 241-186, Republicans were unable to secure the two-thirds majority necessary to override President Obama's veto. The House has voted more than 60 times to repeal the health care law since Republicans took over the majority, but this was the first time a bill was sent to the President's desk. Republican leadership will be convening a task force to work on a Republican alternative to the law. Additionally, at the committee retreat last week House Ways and Means Chairman Kevin Brady (R-Texas) said that his Committee would be working with other committees of jurisdiction to craft an alternative to the ACA in the coming year, though a timeframe and details have yet to be determined. Other issues he outlined as priorities for Ways and Means included overhauling the tax code and reforming the welfare system.

#### President Meets with Speaker, Majority Leader

President Barack Obama sat down with Senate Majority Leader Mitch McConnell (R-Ky.) and House Speaker Paul Ryan (R-Wis.) last week to discuss any overlapping policy priorities for 2016. The President highlighted the Trans-Pacific Partnership (TPP) trade deal, heroin abuse, and the Cancer Moonshot as particularly important for the coming year. Majority Leader McConnell and Speaker Ryan urged the President to combat the spread of the Zika virus.

#### President to Request Funds to Fight Opioid Abuse, Cure Cancer; Hold AIDS Research Flat

The President's fiscal year (FY) 2017 budget will be released tomorrow, but the White House previewed several proposals included in the budget last week. The President will propose spending \$1 billion in new funding over two years to address the opioid and

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heroin abuse epidemic, an increase of about \$600 million compared to the current fiscal year. Increased funding would be allocated for expanding access to state medication-assisted treatment for addiction. It would also be set aside for expanding overdose prevention efforts and improving the availability of drugs like naloxone. The President's full budget proposal will include Medicaid guidance to the states on best practices for addressing the abuse epidemic, focusing on Medicaid pharmacy benefit management strategies. The White House will also ask Congress for \$1 billion to implement the National Cancer Moonshot initiative. The budget is expected to include \$755 million in mandatory funding for cancer related research activities, carried out largely through the National Institutes of Health (NIH) and the Food and Drug Administration (FDA), with backing from the Department of Defense and Veterans Affairs. These investments will help support prevention and cancer vaccine development, early cancer detection, cancer immunotherapy and combination therapy, genomic analysis of tumors and surrounding cells, enhanced data sharing, an Oncology Center of Excellence, pediatric cancer, and the Vice President's Exceptional Opportunities in Cancer Research Fund. Additional funding will also be included to support competitive research. Details on how federal agencies will spend funds included in the FY 2016 appropriations package will also be included in the President's FY 2017 budget request. For example, the NIH have confirmed that its spending on AIDS research would be \$3 billion in FY 2016, the same level as the previous budget year.

### ***TPP Deal Signed***

U.S. Trade Representative Michael Froman signed the Trans-Pacific Partnership (TPP) trade agreement last week during a ceremony in Auckland, New Zealand with the 11 other TPP nations. The President was granted fast-track authority for the TPP pact by Congress in June 2015. This authority allows Congress to vote on the agreement but not amend it. The President first released the text of the agreement in November 2015, but has not indicated when he will send enabling legislation to Congress. Under the fast-track negotiating authority, March is the earliest he could sign the legislation should it be approved by Congress. Since the agreement is opposed by most Democratic members, the administration will now begin engaging pro-trade Democrats and Republican members to help address any of their concerns.

### ***Zika Declared International Emergency***

The World Health Organization (WHO) has amplified their concerns about the spread of the Zika virus and declared its spread a global public health emergency. As many as 4 million cases of the mosquito-borne virus are expected in the next year. Bipartisan leaders of the House Energy and Commerce Committee have requested a briefing on the situation in the immediate future from Dr. Thomas Frieden, Director of the Centers for Disease Control and Prevention (CDC), Dr. Nicole Lurie, Assistant Secretary for Preparedness and Response (ASPR), and Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Diseases. The committee leaders also pose a number of **questions** to the agencies about their response to the crisis. Following a request from Senate Majority Leader Mitch McConnell (R-Ky.), the administration announced that Health and Human Services Secretary Sylvia Burwell will brief congressional leadership and relevant committees on the disease this week. Additionally, Rep. Chris Stewart (R-Utah) has introduced legislation that would increase funding to research the Zika virus by granting flexibility to federal agencies to use money originally allocated to combat Ebola. As much as half of the \$2.4 billion in funding set aside in 2014 to fight Ebola has yet to be used.

### ***Task Forces Announced to Further Republican 2016 Agenda***

House Republican leadership have announced the formation of six committee-led task forces that will help further the Republican agenda for the coming months. The task forces are also charged with seeking input from rank and file membership. The Health Care Reform Task Force membership includes Budget Committee Chairman Tom Price (R-Ga.), Education and the Workforce Committee Chairman John Kline (R-Minn.), Energy and Commerce Committee Chairman Fred Upton (R-Mich.), and Ways and Means Committee Chairman Kevin Brady (R-Texas), and its goal will be to repeal and replace the Affordable Care Act (ACA) with a patient-centered system that gives patients more choice and control, increases quality, and reduces costs. The Tax Reform Task Force is headed by Ways and Means Committee Chairman Kevin Brady (R-Texas) and will examine how to create jobs, grow the economy, and raise wages by reducing rates, removing special interest carve-outs, and making the tax code simpler and fairer. The Reducing Regulatory Burdens Task Force consists of Agriculture Committee Chairman Mike Conaway (R-Texas), Energy and Commerce Committee Chairman Fred Upton (R-Mich.), Financial Services Committee Chairman Jeb Hensarling (R-Texas), Judiciary Committee Chairman Bob Goodlatte (R-Va.), Natural Resources Committee Chairman Rob Bishop (R-Utah), Oversight and Government Reform Committee Chairman Jason Chaffetz (R-Utah), Science, Space, and Technology Committee Chairman Lamar Smith (R-Texas), Small Business Committee Chairman Steve Chabot (R-Ohio), and Transportation and Infrastructure Committee Chairman Bill Shuster (R-Pa.). The task force's goal will be to make it easier to invest, produce, and build things in America with a regulatory system that reduces bureaucracy and eases the burden on small businesses and job creators, while still protecting the environment, public safety, and consumer interests.

### ***OMB Will Not be Invited to Testify on President's Budget Proposal***

Senate Budget Committee Chairman Mike Enzi (R-Wyo.) and House Budget Committee Chairman Tom Price (R-Ga.) announced last week that they would not hold hearings with White House Budget Director Shaun Donovan to review the president's fiscal year (FY) 2017 budget, as is customary practice. The budget chairmen blame the administration's focus on new spending instead of reducing the nation's debt as reason for their decision. The announcement was strongly criticized by both the administration and congressional Democrats. The President's budget will officially be released tomorrow, and congressional Republicans are expected to release their own budget proposal in the coming weeks.

### ***Feedback Sought on Site Neutral Payments***

Energy and Commerce Committee Chairman Fred Upton (R-Mich.) and Health Subcommittee Chairman (R-Pa.) are soliciting **input** on policy changes regarding site neutral payments, specifically policies that would potentially amend or expand the site-neutral provision included in the Bipartisan Budget Act of 2015. The Committee requests written feedback be provided no later than February 19.

## **FDA News**

### ***FDA Announces Plans to Change Opioid Approvals***

The Food and Drug Administration (FDA) has announced a new set of actions to address the opioid abuse epidemic. The announcement was made in response to holds placed on the nomination of Robert Califf to lead the FDA over senators' concerns about agency opioid approval policies. The FDA will convene independent advisory committees for new opioid drugs that do not have abuse-deterrent properties. The agency will strengthen post-market reporting requirements for manufacturers of opioids, and make changes to opioid labeling requirements. It will also update its opioid risk evaluation and mitigation strategy program, and issue guidance on approval standards for the development of drugs with abuse-deterrent formulations. The FDA will work on increasing access to drugs like naloxone, and evaluate how it considers risk when reviewing opioid drug applications. Sen. Edward Markey (D-Mass.) and Sen. Joe Manchin III (D-W.V.) praised some of the agency's actions but reaffirmed their position that the FDA does not go far enough to strengthen the oversight of opioid medications.

### ***MACPAC Releases Report on Medicaid DSH Payments***

The Medicaid and CHIP Payment Advisory Committee (MACPAC) has released a **report** to Congress examining how Medicaid disproportionate share hospital (DSH) payments relate to changes in the number of uninsured individuals, amounts and sources of hospitals' uncompensated care costs and the number of hospitals with high levels of uncompensated care that also provide access to essential community services for low-income, uninsured and vulnerable populations. The analysis does not find a meaningful relationship between state DSH allotments and any of these factors. The Commission recommends that DSH payments be better targeted towards states and hospitals that serve a disproportionate share of Medicaid and low-income patients and that have higher levels of uncompensated care. MACPAC notes the need for greater transparency on how hospitals are being paid and more data on hospital uncompensated care.

### ***Medicare Telehealth Bill Introduced***

Sen. Mark Warner (D-Va.) and Sen. Brian Schatz (D-Hawaii) have introduced legislation to expand Medicare payments for telehealth services. The Creating Opportunities Now for Necessary and Effective Care Technologies (CONNECT) for Health Act (S. 2484) would expand the use of telehealth and remote patient monitoring services in Medicare. The bill already has bipartisan support from members Roger Wicker (R-Miss.), John Thune (R-S.D.), and Benjamin Cardin (D-Md.). The bill also has the support of Senate Appropriations Chairman Thad Cochran (R-Miss.), who has said that he would help ensure that future spending on telehealth programs was as generous as possible. A possible vehicle for the bill could be found in the Senate Finance Committee's effort on chronic care. The House telehealth companion measure (H.R. 4442) has the support of Diane Black (R-Tenn.), Peter Welch (D-Vt.), Gregg Harper (R-Miss.), and Mike Thompson (D-Calif.).

## **Affordable Care Act News**

### ***Third ACA Enrollment Period Closes***

The Obama administration announced that approximately 12.7 million people signed up for insurance through the exchanges this year, including four million new enrollees, up from the 11.7 million people who signed up in 2015. The average consumer had over 10 insurers to choose from in picking a plan. The third open enrollment period for health plans under the Affordable Care Act (ACA) closed on January 31, the first time an open enrollment period has ended on time. The administration's goal for this year's enrolment period was between 11 million and 14.1 million sign-ups. Congressional budget analysts predicted that 13 million people would enroll in plans this year. Adults who remain uninsured in 2016 will face a fine the greater of \$695 per person or 2.5 percent of household income.

### ***Changes to Cadillac Tax Proposed in President's Budget***

The President's budget will include a proposal to scale back the Affordable Care Act's (ACA) tax on high-cost health insurance plans. The proposal would raise the threshold at which plans are subject to the tax in states with higher health care costs. This would reduce the tax rate in places where care is particularly expensive, reflexing regional differences in the cost of practicing medicine. This would, in effect, result in fewer employers paying the tax. Details of the plan will be released in the President's fiscal year (FY) 2017 budget proposal on Tuesday.

## Upcoming Congressional Meetings and Hearings

*Senate Health, Education, Labor and Pensions Committee markup: S.1622, the “FDA Device Accountability Act of 2015”; S.2030, the “Advancing Targeted Therapies for Rare Diseases Act of 2015”; S.849, the “Advancing Research for Neurological Diseases Act of 2015”; S.2014, the “Next Generation Researchers Act”; S.800, the “Enhancing the Stature and Visibility of Medical Rehabilitation Research at the NIH Act”; S. 2503, the “Preventing Superbugs and Protecting Patients Act”; and an original bill entitled “Improving Health Information Technology”; 10:00 a.m.; 430 Dirksen Bldg.; February 9*

*Senate Judiciary Committee hearing: “Breaking the Cycle: Mental Health and the Justice System”; 10:00 a.m.; 226 Dirksen Bldg.; February 10*

*House Energy and Commerce Health Subcommittee hearing: “Examining Medicaid and CHIP’s Federal Medical Assistance Percentage;” 10:00 a.m., 2322 Rayburn Bldg.; February 10*

*House Ways and Means Committee hearing on President Obama’s budget proposals for the Department of Health and Human Services (HHS) for fiscal year 2017; witness: the Honorable Sylvia Mathews Burwell, Secretary, U.S. Department of HHS; 2:00 p.m., 1100 Longworth Bldg.; February 10*

*House Veterans’ Affairs Health Subcommittee: hearing on “Choice Consolidation: Improving VA Community Care Billing and Reimbursement;” 10:00 a.m., 334 Cannon Bldg.; February 11*

*Senate Judiciary Committee executive business meeting on bills including S. 483, Ensuring Patient Access and Effective Drug Enforcement Act of 2015 (Hatch, Whitehouse, Vitter) and S. 524, Comprehensive Addiction and Recovery Act of 2015 (Whitehouse, Portman, Leahy, Hatch, Feinstein, Graham, Schumer, Klobuchar, Franken, Coons, Blumenthal); 10:00 a.m., 226 Dirksen Bldg.; February 11*

*Senate Finance Committee hearing on “The President’s FY2017 Budget;” witness: HHS Secretary Sylvia Mathews Burwell; 10:00 a.m., 215 Dirksen Bldg.; February 11*

*House Energy and Commerce Oversight and Investigations Subcommittee hearing titled “Outbreaks, Attacks, and Accidents: Combatting Biological Threats;” 9:00 a.m., 2123 Rayburn Bldg.; February 12*

*Senate Health, Education, Labor and Pensions Committee hearing on the Zika virus; 10:00 a.m., 430 Dirksen Bldg.; February 24*

*Senate Health, Education, Labor and Pensions Committee executive session on the innovation agenda; time and place TBA; March 9*

*Senate Health, Education, Labor and Pensions Committee final markup on innovation agenda; time and place TBA; April 6*

## Introduced Health Legislation

*H.R. 4400 (introduced by Rep. Butterfield): A bill to expand the tropical disease product priority review voucher program to encourage treatments for Zika virus; to the Committee on Energy and Commerce; February 1*

*H.R.4428 (introduced by Rep. Diane Black): A bill to amend title XVIII of the Social Security Act to ensure fairness in Medicare hospital payments by establishing a floor for the area wage index applied with respect to certain hospitals; to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned; February 2*

**H.R.4435 (introduced by Rep. Gene Green):** A bill to *improve access to mental health and substance use disorder prevention, treatment, crisis, and recovery services; to the Committee on Energy and Commerce, and in addition to the Committees on the Judiciary, Ways and Means, Education and the Workforce, and Natural Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned; February 2*

**H.R.4437 (introduced by Rep. Jeff Miller):** A bill to *extend the deadline for the submittal of the final report required by the Commission on Care; to the House Committee on Veterans' Affairs; February 2*

**H.R. 4442 (introduced by Rep. Black):** A bill to *amend titles XVIII and XI of the Social Security Act to promote cost savings and quality care under the Medicare program through the use of telehealth and remote patient monitoring services, and for other purposes; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned; February 3*

**H.R. 4446 (introduced by Rep. Stewart):** A bill to *authorize the use of Ebola funds for Zika response and preparedness; to the Committee on Energy and Commerce, and in addition to the Committees on Foreign Affairs, and Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned; February 3*

**H.R. 4447 (introduced by Rep. Courtney):** A bill *making appropriations to address the heroin and opioid drug abuse epidemic for the fiscal year ending September 30, 2016, and for other purposes; to the Committee on Appropriations, and in addition to the Committee on the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned; February 3*

**H.R. 4460 (introduced by Rep. Pascrell):** A bill to *reduce sports-related concussions in youth, and for other purposes; to the Committee on Energy and Commerce; February 4*

**H.R. 4467 (introduced by Rep. Blumenauer):** A bill to *amend the Controlled Substances Act to allow for advertising relating to certain activities in compliance with State law; to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned; February 4*

**H.R. 4469 (introduced by Rep. Paulsen):** A bill to *amend the Internal Revenue Code of 1986 to improve access to health care through expanded health savings accounts, and for other purposes; to the Committee on Ways and Means, and in addition to the Committees on the Judiciary, and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned; February 4*

**H.R. 4475 (introduced by Rep. Adams):** A bill to *authorize the Secretary of Health and Human Services to award grants to support the access of marginalized youth to sexual health services, and for other purposes; to the Committee on Energy and Commerce; February 4*

**H. Res. 606 (introduced by Rep. Israel):** A resolution *expressing support for designation of February 4, 2016, as National Cancer Prevention Day; to the Committee on Energy and Commerce; February 4*

**S.2479 (introduced by Sen. Blumenthal):** A bill to *amend Public Health Service Act to expand access to prescription drug monitoring programs; to the Committee on Health, Education, Labor, and Pensions; February 2*

**S.2484 (introduced by Sen. Brian Schatz):** A bill to *amend titles XVIII and XI of the Social Security Act to promote cost savings and quality care under the Medicare program through the use of telehealth and remote patient monitoring services, and for other purposes; to the Committee on Finance; February 2*

- S. 2487 (introduced by Sen. Boxer): A bill to direct the Secretary of Veterans Affairs to identify mental health care and suicide prevention programs and metrics that are effective in treating women veterans as part of the evaluation of such programs by the Secretary, and for other purposes; to the Committee on Veterans' Affairs; February 3
- S. 2493 (introduced by Sen. Cassidy). A bill to expand eligibility for hospital care and medical services under section 101 of the Veterans Access, Choice, and Accountability Act of 2014 to include veterans who are age 75 or older, and for other purposes; to the Committee on Veterans' Affairs; February 3
- S. 2498 (introduced by Sen. Bennet): A bill to amend title XVIII of the Social Security Act to establish a pilot program to improve care for the most costly Medicare fee-for-service beneficiaries through the use of comprehensive and effective care management while reducing costs to the Federal Government for these beneficiaries, and for other purposes; to the Committee on Finance; February 4
- S. 2499 (introduced by Sen. Hatch): A bill to amend the Internal Revenue Code of 1986 to improve access to health care through expanded health savings accounts, and for other purposes; to the Committee on Finance; February 4
- S. 2500 (introduced by Sen. Bennet): A bill to provide for the establishment of a health insurance premium reduction program to ensure that health insurance premiums remain low for American families; to the Committee on Health, Education, Labor, and Pensions; February 4
- S. 2503 (introduced by Sen. Murray): A bill to establish requirements for reusable medical devices relating to cleaning instructions and validation data, and for other purposes; to the Committee on Health, Education, Labor, and Pensions; February 4
- S. 2504 (introduced by Sen. Wyden): A bill to amend the Controlled Substances Act to allow for advertising relating to certain activities in compliance with State law; to the Committee on the Judiciary; February 4
- S. 2508 (introduced by Sen. Udall): A bill to reduce sports-related concussions in youth, and for other purposes; to the Committee on Commerce, Science, and Transportation; February 4