



Health Policy Briefing

July 18, 2016

Congress Adjourns for Summer Recess

Both the House and the Senate adjourned for a nearly two-month break on Thursday, in advance of the parties' presidential nominating conventions followed by their normal August recess. Republicans will be in Cleveland for their convention this week, while Democrats head to Philadelphia the week of July 25. The chambers left Washington without passing funding to combat the Zika virus, or finishing their work on fiscal year (FY) 2017 appropriations bills. Senate Democrats had vowed to block both the Zika conference committee agreement, as well as appropriations legislation, citing their Republican colleagues' use of 'poison pill' riders. The Senate has passed three of the 12 spending bills, and the House has passed four, but none have been sent to the president. It is all but certain that Congress will pass a stopgap measure known as a Continuing Resolution (CR) after members return on September 6 in order to avoid a government shutdown on October 1. What remains to be seen is how long that stopgap funding measure would last and whether it will leave appropriations work to the next Congress.

Senate Approves Opioid Conference Report

The Senate overwhelmingly approved the conference report to the Comprehensive Addiction and Recovery Act (CARA), aimed at fighting opioid abuse and addiction. Despite concerns from the White House and Democratic lawmakers that the agreement did not include enough new funding to address prescription painkiller addiction, it was approved by a vote of 92-2 and did not receive a veto threat from the President. Sen. Ben Sasse (R-Neb.) and Sen. Mike Lee (R-Utah) were the only senators to vote against the legislation. They argued that the problem of opioid abuse is better left to state and local governments to solve. Republican leadership pledged \$500 million in funding to address this issue through the appropriations process. The bill had previously passed the House of Representatives, also with overwhelming support.

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Zika Update

Congress adjourned for a lengthy recess without settling the question of Zika funding. Republicans blocked Democratic efforts to reconsider the agreement previously passed by the Senate, while Democrats blocked Republican attempts to reconsider the House-Senate Zika funding conference report. Republican leadership has argued that because the administration has been slow to disburse the \$600 million currently available in funding to combat the Zika virus, Congress' failure to act until after Labor Day will not negatively impact the situation. \$112 million of the \$589 million redirected from Ebola funding has been spent on Zika as of July 5. Federal officials responded that the process for spending federal dollars is a lengthy one – the Centers for Disease Control and Prevention (CDC) is expected to give states and territories \$100 million to fight Zika over the next month, and the Biomedical Advanced Research and Development Authority (BARDA) plans to exhaust the remainder of the funds in its Zika vaccine development work. In a letter to congressional leaders, U.S. Department of Health and Human Services (HHS) Secretary Sylvia Mathews Burwell and Director of the Office of Management and Budget (OMB) Shaun Donovan warned that the lack of Zika funding would negatively impact vaccine development efforts, noting that vaccine makers would be “reticent to proceed” in the absence of more assured funding. The first Zika-related death in the continental U.S. was reported last week. It is likely that the elderly person contracted the disease while travelling abroad.

President Obama Published in JAMA

Barack Obama has become the first sitting president to publish an **article** in the Journal of the American Medical Association (JAMA). His article argues that his 2010 landmark health care legislation the Affordable Care Act (ACA) has improved the nation's health care system, but that more progress can still be made. He believes that the law's provisions, including Medicaid expansion and delivery system reform, should be sustained, while lawmakers should also increase their focus on financial assistance and affordability for consumers. He also urges Congress to implement cost-controls for pharmaceuticals, and allow the Centers for Medicare and Medicaid Services (CMS) to negotiate prices for certain drugs. Most notably, he encourages lawmakers to pursue a public option to compete alongside private health care insurers in areas of the country with little competition in the marketplace. The President's proposals are in line with those of presumptive Democratic presidential nominee Hillary Clinton, though Clinton has voiced support for the ability to buy into Medicare starting at age 55 and the availability of a public option in all areas of the country.

House Appropriations Committee Advances HHS Spending Bill

Following a lengthy markup with votes on over two dozen amendments, the House Appropriations Committee approved the fiscal year (FY) 2017 Labor, HHS, Education spending bill and forwarded the legislation to the full chamber. The health bill is historically among the most contentious appropriations measures debated in Congress. This is the first time in a decade that this particular spending measure has been marked up in two consecutive years, and the first time that the bill will reach the floor since 2009. It is also the 12th and final spending bill that the House Appropriations Committee needed to clear this year. The spending bill passed the committee by a vote of 31-19, with Rep. Henry Cuellar (D-Texas) joining the majority in favor of the bill. Funding is held relatively flat at \$161.6 billion, though the National Institutes of Health (NIH) does receive a significant \$1.25 billion increase. The committee approved a manager's amendment from Subcommittee Chairman Tom Cole (R-Okla.) including a year-long extension of a mandate that insurers cover mammographies to women in their 40s without co-pays. The report language accompanying the bill, which was released last week, urges the Health Resources and Services Administration (HRSA) to increase the organ donation pool. Appropriators advise the Centers for Disease Control and Prevention (CDC) to increase their efforts to form public-private partnerships in order to develop products for the Strategic National Stockpile. The report also includes a request that the Centers for Medicare and Medicaid Services (CMS) explain why the agency does not have the authority to waive the coinsurance payment for growth removal during colonoscopies.

Agencies Push for UDI in Claims

Acting Administrator of the Centers for Medicare and Medicaid Services (CMS) Andy Slavitt and Commissioner of the Food and Drug Administration (FDA) Robert Califf have **written** to the Accrediting Standards Committee X12 in support of the inclusion of unique device identifiers (UDIs) for implantable devices on health insurance claims forms. The UDI is a part of FDA's strategy to improve post-market surveillance. CMS has previously been reluctant to endorse UDIs, because of concerns from hospitals that coders will face difficulty incorporating the lengthy numbers into the form. Advocates for UDIs say that they will improve value-based reimbursement based on device performance. The Accrediting Standards Committee X12 Committee is responsible for updating claims forms, and their work on the next version of the forms is expected to be released in December for public comment. The form will not be revised again until for another decade. It would cost at least an estimated \$300 million to complete the UDI switchover.

Half of Doctors Unfamiliar with MACRA

Half of non-pediatric physicians have never before heard of the Medicare Access and CHIP Reauthorization Act (MACRA), according to a new **study** by Deloitte. Only 21 percent of self-employed or small-group physicians and just nine percent of physicians employed by hospitals or larger groups reported that they were even somewhat familiar with the 2015 law. Fifty-eight percent of survey respondents attested that they would join a larger organization in order to diminish their financial risks, while 80 percent expect the law to prompt physicians to join larger organizations or networks. MACRA designs a new reimbursement plan that will put four percent or more of physician payments at risk beginning in 2019. The Centers for Medicare and Medicaid Services' (CMS) own projections show that the vast majority of physicians in small groups will suffer penalties under the law.

Recently Introduced Health Legislation

H.R.5712 (introduced by Rep. Luke Messer): A bill to amend the Internal Revenue Code of 1986 to flatline the individual mandate penalty; to the House Committee on Ways and Means; July 11

H.R.5713 (introduced by Rep. Patrick J. Tiberi): A bill to provide for the extension of certain long-term care hospital Medicare payment rules, clarify the application of rules on the calculation of hospital length of stay to certain moratorium-excepted long-term care hospitals, and for other purposes; to House Energy and Commerce; July 11

H.R.5717 (introduced by Rep. Leonard Lance): A bill to amend title XIX of the Social Security Act to improve collection of Medicaid data and to expand coverage of tobacco cessation services to mothers of newborns; to the House Committee on Energy and Commerce; July 11

H.R.5721 (introduced by Rep. Lynn Jenkins): A bill to amend title XVIII of the Social Security Act in order to improve the process whereby medicare administrative contractors issue local coverage determinations under the Medicare program, and for other purposes; to House Energy and Commerce; July 11

H.R.5723 (introduced by Rep. Sander M. Levin): A bill to amend title XVIII of the Social Security Act to provide for a temporary exception to the site neutral payment rate for certain discharges from long-term care hospitals that involve severe wounds; to House Energy and Commerce; July 11

H.R.5772 (introduced by Rep. Raul Ruiz): A bill to amend title XVIII of the Social Security Act to establish a system to educate individuals approaching Medicare eligibility, to simplify and modernize the eligibility enrollment process, and to provide for additional assistance for complaints and requests of Medicare beneficiaries that relate to their enrollment in the Medicare program, and for other purposes; to the House Committee on Energy and Commerce; July 13

H.R.5767 (introduced by Rep. Thomas MacArthur): A bill to amend title XVIII of the Social Security Act to permit hospitals in all-urban States to be considered Medicare dependent hospitals, and for other purposes; to the House Committee on Ways and Means; July 13

H.R.5763 (introduced by Rep. Larry Bucshon): A bill to clarify the treatment of certain DNA Specimen Provenance Assay tests as reasonable and necessary for the diagnosis or treatment of illness for coverage under the Medicare program; to the House Committee on Ways and Means; July 13

H.R.5746 (introduced by Rep. Suzan K. DelBene): A bill to amend the Public Health Service Act to prohibit wellness programs from sharing personally identifiable information related to individuals' use of or prescriptions for contraceptives; to the House Committee on Energy and Commerce; July 13

S.3209 (introduced by Sen. Amy Klobuchar): A bill to require the use of prescription drug monitoring programs and to facilitate information sharing among States; to the Committee on Health, Education, Labor, and Pensions; July 13

S.3195 (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; to the Committee on Finance; July 13

S.3191 (introduced by Sen. Al Franken): A bill to amend titles XVIII and XIX of the Social Security Act to improve the quality of health care furnished in rural areas, and for other purposes; to the Committee on Finance; July 13

S.3190 (introduced by Sen. Al Franken): A bill to enhance the rural health workforce, and for other purposes; to the Committee on Health, Education, Labor, and Pensions; July 13

S.3189 (introduced by Sen. Al Franken): A bill to improve access to health care in rural areas, and for other purposes; to the Committee on Health, Education, Labor, and Pensions; July 13

S.3178 (introduced by Sen. Robert Menendez): A bill to amend title XVIII of the Social Security Act to permit hospitals in all-urban States to be considered Medicare dependent hospitals, and for other purposes; to the Committee on Finance; July 13

S.3176 (introduced by Sen. Sherrod Brown): A bill to amend the Public Health Service Act to enhance efforts to address antibiotic resistance, and for other purposes; to the Committee on Health, Education, Labor, and Pensions; July 13

S.3173 (introduced by Sen. John Thune): A bill to amend title XVIII of the Social Security Act to provide for a 90-day EHR reporting period for the determination of whether an 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; to the Committee on Finance; July 13

S. 3211 (introduced by Sen. Cornyn): A bill to amend title XVIII of the Social Security Act to establish a national Oncology Medical Home Demonstration Project under the Medicare program for the purpose of changing the Medicare payment for cancer care in order to enhance the quality of care and to improve cost efficiency, and for other purposes; to the Committee on Finance; July 14

S. 3218 (introduced by Sen. Wicker): A bill to remove the limitation on certain amounts for which large non-rural hospitals may be reimbursed under the Healthcare Connect Fund of the Federal Communications Commission, and for other purposes; to the Committee on Commerce, Science, and Transportation; July 14

S. 3223 (introduced by Sen. Murray): A bill to increase funding to reduce opioid use disorders and overdose, and for other purposes; to the Committee on Health, Education, Labor, and Pensions; July 14

- S. 3224 (introduced by Sen. Grassley): A bill to amend the Controlled Substances Act to add certain synthetic substances to schedule I, and for other purposes; to the Committee on the Judiciary; July 14
- S. 3225 (introduced by Sen. Markey): A bill to amend the Controlled Substances Act to require the Attorney General to make procurement quotas for opioid analgesics publicly available, and for other purposes; to the Committee on the Judiciary; July 14
- S. 3236 (introduced by Sen. Casey): A bill to amend title XVIII of the Social Security Act to establish a system to educate individuals approaching Medicare eligibility, to simplify and modernize the eligibility enrollment process, and to provide for additional assistance for complaints and requests of Medicare beneficiaries that relate to their enrollment in the Medicare program, and for other purposes; to the Committee on Finance; July 14
- S. 3239 (introduced by Sen. Bennet): A bill to amend the Federal Food, Drug, and Cosmetic Act to establish a program to provide additional incentives for the development of new drugs to treat pediatric cancers, and for other purposes; to the Committee on Health, Education, Labor, and Pensions; July 14
- S. 3242 (introduced by Sen. Ayotte): A bill to amend the Internal Revenue Code of 1986 to provide the opportunity for responsible health savings to all American families; to the Committee on Finance; July 14
- S. 3244 (introduced by Sen. Roberts): A bill to amend title XXVII of the Public Health Service Act to clarify the treatment of pediatric dental coverage in the individual and group markets outside of Exchanges established under the Patient Protection and Affordable Care Act, and for other purposes; to the Committee on Health, Education, Labor, and Pensions; July 14
- S. 3245 (introduced by Sen. Merkley): A bill to amend title VIII of the Public Health Service Act to extend advanced education nursing grants to support clinical nurse specialist programs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions; July 14
- S. 3251 (introduced by Sen. Cotton): A bill to amend the Internal Revenue Code of 1986 to provide an exemption to the individual mandate to maintain health coverage for certain individuals whose premium has increased by more than 10 percent, and for other purposes; to the Committee on Finance; July 14
- S. 3255 (introduced by Sen. Toomey): A bill to gather information about the illicit production of illicit fentanyl in foreign countries and to withhold bilateral assistance from countries that do not have emergency scheduling procedures for new illicit drugs, cannot prosecute criminals for the manufacture or distribution of controlled substance analogues, or do not require the registration of tableting machines and encapsulating machines; to the Committee on Foreign Relations; July 14
- S. 3262 (introduced by Sen. Hoeven): A bill to treat all controlled substance analogues, other than chemical substances subject to the Toxic Substances Control Act, as controlled substances in schedule I regardless of whether they are intended for human consumption; to the Committee on the Judiciary; July 14
- S. 3269 (introduced by Sen. Feinstein): A bill to require the Attorney General to make a determination as to whether cannabidiol should be a controlled substance and listed in a schedule under the Controlled Substances Act and to expand research on the potential medical benefits of cannabidiol and other marijuana components; to the Committee on the Judiciary; July 14
- S. 3280 (introduced by Sen. Cassidy): A bill to provide for a Public Health Emergency Fund, and for other purposes; to the Committee on Health, Education, Labor, and Pensions; July 14

S.J. Res. 37 (introduced by Sen. Alexander): A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule relating to the extent to which an employer may offer an inducement to an employee for the employee's spouse to provide information about the spouse's manifestation of disease or disorder in connection with an employer-sponsored wellness program; to the Committee on Health, Education, Labor, and Pensions; July 14

S.J. Res. 38 (introduced by Sen. Alexander): A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule relating to the extent to which employers may use incentives to encourage employees to participate in wellness programs that ask the employees to respond to disability-related inquiries or undergo medical examinations; to the Committee on Health, Education, Labor, and Pensions; July 14

S. Res. 538 (introduced by Sen. Rubio): A resolution designating September 2016 as ``National Spinal Cord Injury Awareness Month''; considered and agreed to; July 14

S. Res. 545 (introduced by Sen. Stabenow): A resolution supporting the designation of July 15, 2016, as ``Leiomyosarcoma Awareness Day''; considered and agreed to; July 14

H.R.5799 (introduced by Rep. Lynn Jenkins): A bill to amend title XVIII of the Social Security Act to provide for payments for certain rural health clinic and Federally qualified health center services furnished to hospice patients under the Medicare program; to the House Committee on Ways and Means; July 14

H.R.5832 (introduced by Rep. Daniel M. Donovan, Jr.): A bill to amend title 18, United States Code, to provide for the option to use a diversion program to treat maternal drug abuse in a family-centered medical context, and for other purposes; to the House Committee on the Judiciary; July 14

H.R.5837 (introduced by Rep. Alcee L. Hastings): A bill to amend title XIX of the Social Security Act to remove the exclusion from medical assistance under the Medicaid program of items and services furnished in an institution for mental diseases in the case of inpatient, non-hospital substance use disorder treatment facility services furnished for nonelderly adults; to the House Committee on Energy and Commerce; July 14

H.R.5841 (introduced by Rep. Mike Kelly): A bill to amend title XVIII of the Social Security Act to establish a population based payment demonstration project under which Patient Care Networks are paid prospective monthly capitated payments for coordinated care furnished to Medicare beneficiaries; to House Energy and Commerce; July 14

H.R.5842 (introduced by Rep. Ann M. Kuster): A bill to direct the Secretary of Veterans Affairs to carry out a pilot program to improve treatment for veterans suffering from opioid addiction and chronic pain, and for other purposes; to the House Committee on Veterans' Affairs; July 14

H.R.5845 (introduced by Rep. John B. Larson): A bill to amend the Internal Revenue Code of 1986 to establish an excise tax on the production and importation of opioid pain relievers, and for other purposes; to House Energy and Commerce; July 14

H.R.5856 (introduced by Rep. Sean Patrick Maloney): A bill to amend the Patient Protection and Affordable Care Act to allow sole proprietors and the spouses and domestic partners of sole proprietors to purchase insurance on the small business exchange, and for other purposes; to the House Committee on Energy and Commerce; July 14

H.R.5858 (introduced by Rep. Michael T. McCaul): A bill to amend the Federal Food, Drug, and Cosmetic Act to establish a program to provide additional incentives for the development of new drugs to treat pediatric cancers, and for other purposes; to the House Committee on Energy and Commerce; July 14

H.R.5868 (introduced by Rep. Markwayne Mullin): A bill to prohibit the Secretary of Health and Human Services from using any type of fee collected to advertise or market Exchanges established under the Patient Protection and Affordable Care Act; to the House Committee on Energy and Commerce; July 14

H.R.5880 (introduced by Rep. Cedric L. Richmond): A bill to amend title II of the Social Security Act to prohibit inclusion of Social Security account numbers on Medicare cards, and for other purposes; to the House Committee on Ways and Means; July 14

H.R.5902 (introduced by Rep. Paul Tonko): A bill to amend title XIX of the Social Security Act to provide a temporary higher Federal medical assistance percentage for Federal expenditures under the Medicaid program that are associated with the cost of compliance with certain Federal regulations with respect to services furnished in certain intermediate care facilities or home and community-based services furnished to individuals with intellectual and developmental disabilities; to the House Committee on Energy and Commerce; July 14

H.R.5904 (introduced by Rep. Mark Walker): A bill to require the Secretary of Health and Human Services to deposit certain funds into the general fund of the Treasury in accordance with provisions of Federal law with regard to the Patient Protection and Affordable Care Act's Transitional Reinsurance Program; to House Appropriations; July 14

H.Res.832 (introduced by Rep. Maxine Waters): A resolution supporting the goals and ideals of National Clinicians HIV/AIDS Testing and Awareness Day, and for other purposes; to the House Committee on Energy and Commerce; July 14