



Health Policy Briefing

July 3, 2017

Senate Postpones BCRA Vote

The Senate Republican's "Better Care Reconciliation Act of 2017" (BCRA) was updated last week to include requirements related to continuous coverage. While the bill does not contain the 30 percent surcharge for a lack of continuous coverage, it does have a newly added provision that would require a six-month waiting period if there is a gap of 63 days or longer in coverage in the prior year, for health insurance coverage that is in effect beginning January 1, 2019. The provision is intended to stabilize the marketplace and replace the individual mandate which penalizes those who do not purchase insurance.

The Congressional Budget Office (CBO) released an **estimate** of the revised bill, noting that the legislation would reduce the deficit by \$321 billion over a decade, which is larger than the CBO estimate of the House-passed American Health Care Act (AHCA) (\$119 billion). In addition, CBO estimates that the number of uninsured individuals will increase to 49 million by 2026 (compared to 51 million under the House bill and 28 million under current law). The CBO projects that under BCRA, Medicaid spending would be cut by 35 percent by 2036, and 15 million fewer people would be enrolled in the program over the next decade. Insurance premiums would increase by 20 percent in 2018 and 10 percent in 2019. By 2020, premiums would fall by 30 percent. By 2026, premiums would be 20 percent lower than under Obamacare. Republicans have responded to the CBO's score by pointing out the difficulty of predicting human behavior, and thus accurately forecasting the coverage effects of the legislation.

Despite pressure from President Trump, Majority Leader Mitch McConnell (R-Ky.) announced that the Senate would not begin debate of the bill before the July 4th recess due to ongoing concerns from both conservative and moderate Republicans. Despite the fact that lawmakers were unable to reach a new agreement on further revisions before the July 4th recess, the White House and GOP leadership continue to be optimistic about the chances of Senate passage.

Some senators like Susan Collins (R-Maine),

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Mike Rounds (R-S.D.), and Bob Corker (R-Tenn.) are questioning whether the bill should repeal the Affordable Care Act's (ACA) 3.8 percent tax on wealthy Americans' net investment income. Keeping the tax would allow Republicans to increase subsidies for low-income enrollees in the individual market. Changes to how federal funding for Medicaid is determined are also under discussion. Linking funding to the medical component of the consumer price index (CPI) would shore up additional funding for the program relative to the current Senate proposal. Additionally, some senators are signaling that leadership could dramatically increase funding for the state innovation fund in order to secure the votes of moderate Republicans.

Other lawmakers, like Sen. Rand Paul (R-Ky.) continue to push for the bill to be more conservative. Sen. Paul is demanding that the continuous coverage provision be removed from the bill, along with the removal of stability fund appropriations and repeal of Obamacare insurance regulations, including preventing discrimination against individuals with preexisting conditions. Some lawmakers are even beginning to back a strategy of repealing the health care law first, and replacing it at a later point in time.

According to sources familiar with the ongoing negotiations, the White House and GOP leadership are leaning toward the inclusion of at least a \$45 billion response to the opioid epidemic, up from the current \$2 billion, in order to get members like Sens. Rob Portman (R-Ohio) and Shelley Moore Capito (R-W.V.) on board. Leadership is also considering a provision to allow consumers to use health savings accounts (HSAs) to pay for their premiums.

The American Medical Association (AMA) came out in **opposition** to the Senate health bill last week, saying that subsidy and waiver provisions would expose patients to higher costs and greater difficulty affording care. The AMA also criticized the Planned Parenthood and Medicaid policies contained in the bill.

The Senate will reconvene on July 10, with 14 legislative days in July before the scheduled five-week August recess. Senate Majority Whip John Cornyn (R-Texas) has now identified August 1st as a "drop-dead" deadline to vote on the bill.

Senators Comment on Zika Vaccine Pricing

Six senators have **written** to the French drug company Sanofi to express concerns about the manufacturer's refusal to commit to a reasonable licensing agreement for a Zika vaccine. The lawmakers state that they will urge the U.S. Army not to finalize any contracts with Sanofi until terms that will ensure an affordable price are met. The Army began a \$43 million partnership with Sanofi last year to bring a vaccine to market, with the potential for Sanofi to earn an additional \$130 million in funding. Separately, the senators have requested a public hearing on the acquisition of a Zika vaccine. The letter was signed by Sens. Dick Durbin (D-Ill.), Sherrod Brown (D-Ohio), Bernie Sanders (I-Vt.), Richard Blumenthal (D-Conn.), Ed Markey (D-Mass.), and Angus King (I-Maine).

Lawmakers Investigate NIH Research Protocol

Leadership of the House Energy and Commerce Committee are investigating a medical research protocol that allegedly does not align with the Food and Drug Administration's (FDA) rules for informed consent. Chairman Greg Walden (R-Ore.) and Oversight and Investigations Subcommittee Chairman Tim Murphy (R-Pa.) have **written** to the National Institutes of Health (NIH) on behalf of a constituent whose now-deceased wife went into cardiac arrest, and was later considered a participant in the Resuscitation Outcomes Consortium (ROC), sponsored by the National Heart, Lung, and Blood Institute (NHLBI). The constituent learned that participants have to actively opt-out of the study. Because his wife was unconscious, she was automatically enrolled in the ROC. The lawmakers pose a number of questions about the NIH's protocol, and ask for a response from NIH Director Francis Collins by July 18, 2017.

Trump Nominates New Surgeon General

President Trump has tapped Jerome Adams to be U.S. Surgeon General. Adams is an anesthesiologist and is currently serving as the health commissioner for the state of Indiana, a post he was appointed to in 2014 by now-Vice President Mike Pence. He has previously worked as a staff anesthesiologist and assistant professor of anesthesiology at the Indiana University School of Medicine. If confirmed, Dr. Adams would replace Rear Admiral Sylvia Trent-Adams, the current acting surgeon general, who took over the post after Vivek Murthy was dismissed by President Trump.

House Passes MLR Legislation

The House of Representatives passed legislation to overhaul the medical liability system last week. H.R. 1215, the Protecting Access to Care Act (PACA), was passed by a vote of 218-210, with 19 Republicans crossing the aisle to join all House Democrats to vote against the bill. PACA is considered a part of the GOP's broader effort to repeal and replace Obamacare. The bill would limit damages and lawyers' fees for cases related to federally subsidized health care. Medical malpractice awards for non-economic damages would be capped at \$250,000 under the bill. The bill would also establish a three-year statute of limitations after an injury, or one year after the discovery of an injury. PACA would preempt state laws, except in cases where the state has already specified a shorter time period for the statute of limitations, or a particular amount of damages that can be awarded in a lawsuit. The Congressional Budget Office (CBO) estimates that the bill would reduce the deficit by \$50 billion over the next decade. It is unclear whether the bill will advance in the Senate, where Democrats are opposed to the liability cap, and some Republicans have voiced concerns about infringing upon states' rights. More than two-dozen states already have award caps in place. To respond to concerns related to state' rights, the provisions in the PACA legislation are limited to when a medical liability case involves federal healthcare funds.

Drug Pricing Hearings to be Postponed

According to Stat News, Senate Health, Education, Labor, and Pensions (HELP) Committee Chairman Lamar Alexander (R-Tenn.) is suspending his panel's investigation into the high cost of prescription drugs. He blames panel Democrats for the decision, citing their refusal to focus on the issue at hand during the first drug pricing hearing, and instead focusing on ongoing efforts to repeal and replace the Affordable Care Act (ACA). The second hearing in the drug pricing series was originally scheduled to take place this month with a third hearing planned for the fall.

E&C Health Advances Four Public Health Bills

The House Energy and Commerce Health Subcommittee marked up four pieces of public health legislation last week. H.R. 767, the Stop, Observe, Ask and Respond (SOAR) Act, authored by Rep. Steve Cohen (D-Tenn.), would set up a pilot project to identify and assist human trafficking victims. H.R. 880, the Military Injury Surgical Systems Integrated Operationally Nationwide to achieve ZERO Preventable Deaths (MISSION ZERO) Act, authored by Rep. Michael Burgess (R-Texas), would provide grants to trauma centers to help improve military surgical systems. H.R. 931, the Firefighter Cancer Registry Act, authored by Rep. Chris Collins (R-N.Y.), would require the Centers for Disease Control and Prevention (CDC) to develop a voluntary registry of firefighters and link the data to state cancer registries. H.R. 2422, the Action for Dental Health Act, authored by Rep. Robin Kelly (D-Ill.), would improve access to dental care for low-income and underserved individuals. Each of the bills was advanced to the full Committee by voice vote.

Appropriators Make Progress on FDA Spending Bill

The House Appropriations Agriculture, Rural Development, Food and Drug Administration (FDA), and Related Agencies Subcommittee voted to advance its fiscal year (FY) 2018 spending bill last week. The appropriations legislation totals \$20 billion, \$4.64 billion higher than the President's budget request. The legislation includes \$2.8 billion in discretionary spending for the FDA, which is in keeping with current spending levels. Including user fee revenues, total FDA funding would reach \$5.2 billion, \$490 million above current levels. While Democrats did express concerns that the bill could underfund the ability of the FDA to conduct oversight activities, the bill was passed with unanimous support.

Republicans were not, however, able to close party divisions on overall FY 2018 spending levels in order for the House Budget Committee to proceed with passage of a budget resolution before departure for the July 4th recess. Additionally, the House Tuesday Group has said that they are reticent to support any budget resolution that is not bipartisan and bicameral. In a letter to Speaker of the House Paul Ryan (R-Wis.), the moderate group of Republicans express concerns about the \$200 billion in mandatory spending cuts that are currently being negotiated between the House Freedom Caucus and Budget Committee leadership.

Recently Introduced Health Legislation

H.R.3032 (introduced by Rep. John Katko): To amend title XVIII of the Social Security Act to provide for the coverage of marriage and family therapist services and mental health counselor services under part B of the Medicare program, and for other purposes; Energy and Commerce, Ways and Means

H.R.3044 (introduced by Rep. Patrick Meehan): To amend title XVIII of the Social Security Act to expand supplemental benefits to meet the needs of chronically ill Medicare Advantage enrollees under the Medicare program, and for other purposes; Ways and Means, Energy and Commerce

H.R. 3059 (introduced by Rep. Clyburn): A bill to provide funding for Federally Qualified Health Centers, the National Health Service Corps, Teaching Health Centers, and the Nurse Practitioner Residency Training program; Energy and Commerce

S. 1441 (introduced by Sen. Sanders): A bill to provide funding for Federally Qualified Health Centers, the National Health Service Corps, Teaching Health Centers, and the Nurse Practitioner Residency Training program; Health, Education, Labor, and Pensions

S. Res. 203 (introduced by Sen. Heitkamp): A resolution designating the month of June 2017, as "National Post-Traumatic Stress Awareness Month" and June 27, 2017, as "National Post-Traumatic Stress Awareness Day"; Judiciary

H.R.3073 (introduced by Rep. Carlos Curbello): To provide for the issuance of a Mental Health Awareness Semipostal Stamp; Oversight and Government Reform, Energy and Commerce

S.1449 (introduced by Sen. Dan Sullivan): A bill to authorize payment by the Department of Veterans Affairs for the costs associated with training and supervision of medical residents and interns at certain facilities that are not Department facilities, to require the Secretary of Veterans Affairs to carry out a pilot program to establish or affiliate with residency programs at facilities operated by Indian tribes, tribal organizations, and the Indian Health Service, and for other purposes; Veterans' Affairs

H.R.3095 (introduced by Rep. Seth Moulton): To prohibit or suspend certain health care providers from providing non-Department of Veterans Affairs health care services to veterans, and for other purposes; Veterans' Affairs

H.R.3098 (introduced by Rep. Linda T. Sanchez): To amend title XVIII of the Social Security Act to provide for coverage of certified adult day services under the Medicare program, and for other purposes; Ways and Means, Energy and Commerce

H.Res.420 (introduced by Rep. Sander M. Levin): Expressing support for the designation of the week of July 9 through July 15, 2017, as “Sarcoma Awareness Week” and July 15, 2017, as “Leiomyosarcoma Awareness Day”; Energy and Commerce

S.Res.207 (introduced by Sen. Debbie Stabenow): A resolution designating the week of July 9 through July 15, 2017 as “Sarcoma Awareness Week” and designating July 15, 2017 as “Leiomyosarcoma Awareness Day”; Judiciary

S.1452 (introduced by Sen. Ted Cruz): A bill to amend title 38, United States Code, to establish within the Office of the Under Secretary for Health of the Department of Veterans Affairs the position of Chief Information Officer of the Veterans Health Administration, and for other purposes; Veterans’ Affairs

S.1453 (introduced by Sen. Joe Donnelly): A bill to allow the Secretary of Health and Human Services to designate certain substance use disorder treatment facilities as eligible for National Health Service Corps service; Health, Education, Labor, and Pensions

S.1461 (introduced by Sen. Joni Ernst): A bill to amend title 10, United States Code, to provide for the eligibility of certain former members of the Armed Forces who are medically retired and who are entitled to hospital insurance benefits under Medicare part A by reason of previous entitlement to social security disability insurance benefits to enroll in the TRICARE program regardless of whether such members decline enrollment under Medicare part B, and for other purposes; Armed Services

S.1462 (introduced by Sen. Jeanne Shaheen): A bill to amend the Patient Protection and Affordable Care Act to improve cost sharing subsidies; Health, Education, Labor, and Pensions

S.1466 (introduced by Sen. Richard J. Durbin): A bill to require the Secretary of Defense to award grants to fund research on orthotics and prosthetics, and for other purposes; Armed Services

S.1467 (introduced by Sen. Richard J. Durbin): A bill to require the Secretary of Veterans Affairs to award grants to establish, or expand upon, master’s degree programs in orthotics and prosthetics, and for other purposes; Veterans’ Affairs

H.R.3111 (introduced by Rep. Sander M. Levin): To amend title XVIII of the Social Security Act to provide for coverage of dental, vision, and hearing care under the Medicare program; Energy and Commerce, Ways and Means

H.R.3120 (introduced by Rep. Michael C. Burgess): To amend title XVIII of the Social Security Act to reduce the volume of future electronic health record-related significant hardship requests; Ways and Means, Energy and Commerce

H.R.3124 (introduced by Rep. Diana DeGette): To amend title XVIII of the Social Security Act to reduce the occurrence of diabetes in Medicare beneficiaries by extending coverage under Medicare for medical nutrition therapy services to such beneficiaries with pre-diabetes or with risk factors for developing type 2 diabetes; Energy and Commerce, Ways and Means

S.1475 (introduced by Sen. Orrin G. Hatch): A bill to provide for the identification and documentation of best practices for cyber hygiene by the National Institute of Standards and Technology, and for other purposes; Commerce, Science, and Transportation

S.1509 (introduced by Sen. Orrin G. Hatch): A bill to amend the Federal Food, Drug, and Cosmetic Act to authorize an extension of exclusivity periods for certain drugs that are approved for a new indication for a rare disease or condition, and for other purposes; Health, Education, Labor, and Pensions

S.1511 (introduced by Sen. Benjamin L. Cardin): A bill to bring stability to the individual insurance market, make insurance coverage more affordable, lower prescription drug prices, and improve Medicaid.

S.1516 (introduced by Sen. Dean Heller): A bill to expand health care choices by allowing Americans to buy health care coverage across State lines; Health, Education, Labor, and Pensions