



Health Policy Briefing

February 10, 2020

House Votes to Condemn Medicaid Block Grant Proposal

The House of Representatives passed by a vote of 223-190 a nonbinding resolution (H.Res. 826) disapproving of the Trump administration’s new Medicaid block grant proposal. No Republicans voted in support of the resolution. The guidance released on January 30 by the Centers for Medicare and Medicaid Services (CMS) would allow states to transition open-ended federal Medicaid funding to a capped amount for the Affordable Care Act’s (ACA) expansion population. The guidance would provide for greater section 1115 demonstration waiver authority for Medicaid funding, permitting states increased flexibility to administer services to able-bodied adults under the age of 65 in return for receiving federal funding for that subset of the population as either a capped total or a capped amount per beneficiary. The plan has been assailed by Democrats for its potential to result in cuts to the safety net program and undermine health care for vulnerable populations. Proponents of the proposal argue that block grants could help control rising costs and Medicaid enrollment and pave the way for state innovation. The resolution is not likely to be taken up by the GOP-controlled Senate.

House Panels to Consider Surprise Billing Proposals This Week

New bipartisan [legislation](#) to eliminate surprise insurance gaps was unveiled by leaders of the House Ways and Means Committee last week. The **Consumer Protections Against Surprise Medical Bills Act of 2020** would require the establishment of an independent mediated negotiation process to resolve billing disagreements between providers and payers. Arbiters would be required to consider median contracted rates used by health plans, but prohibited from considering usual and customary charges. Prior to the mediation process, both

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parties would enter into a 30-day period during which information about median in-network rates and typical payments is exchanged. The bill would also require plans to provide patients with an upfront cost estimate at least three days in advance of scheduled procedures. Air ambulance providers would be required to publicly report cost data to HHS, while insurers would submit to HHS claims for air ambulance services.

Ways and Means will mark up its surprise medical billing measure on Wednesday. Reps. Brad Wenstrup (D-Ohio) and John Larson (D-Conn.) have explained that their recently introduced bill (H.R. 5807) to require insurers to establish a current provider directory database and a verification process to ensure directories are up-to-date will be incorporated into the base text of the bill prior to markup. Their legislation would also require that providers notify insurers when changes to directory information occur or face a financial penalty.

In December, the House Energy and Commerce and Senate Health, Education, Labor, and Pensions (HELP) committees had negotiated a bipartisan, bicameral surprise billing plan that would use a federal benchmark payment rate to settle billing disputes while providing for an arbitration process as a backstop. Energy and Commerce Chairman Frank Pallone (D-N.J.) appeared optimistic that he could negotiate a compromise with his counterparts on the Ways and Means Committee, as long as the final bill saves taxpayer dollars and does not result in an increase in premiums.

The House Education and Labor Committee, which has jurisdiction over employer-based insurance, became the fourth congressional panel to put forth a proposal to hold patients harmless from surprise medical bills last week. The Committee plans to mark up its bipartisan [legislation](#), which closely mirrors the Energy and Commerce and Senate HELP proposal, on Tuesday. Payment rates under the Education and Labor bill would be based on the median payment for the specified service in the particular geographic area, with the option of an independent dispute resolution (IDR) process for charges above \$750. The bill also sets a benchmark payment rate for air ambulance bills. Rep. Donna Shalala (D-Fla.) has already announced that she plans to vote against the measure unless it is amended due to concerns that it would negatively impact hospitals in her district. Other lawmakers have voiced similar concerns. Rep. Shalala, alongside Reps. Phil Roe (R-Tenn.), Joseph Morelle (D-N.Y.), and Van Taylor (R-Texas), released a statement in response to the legislation introduced by Ways and Means Committee leadership, praising the bill for utilizing an IDR model to settle disputed charges.

House leadership has instructed the committees of jurisdiction to unite behind a single proposal as quickly as possible. Lawmakers hope to reach an agreement on surprise billing legislation before President's Day so that they can pivot to the issue of prescription drug prices after the week-long recess. A final surprise billing and drug pricing package is expected to move alongside reauthorization of health care programs that expire on May 22.

Trump Touts Health Care Accomplishments in SOTU

During his 83-minute address to Congress on Tuesday night, President Trump spent roughly 15 minutes discussing his administration's work on health care-related issues. He underscored White House efforts to increase health transparency. He also touted the administration's success in combatting the opioid epidemic and reducing overdose deaths. The President pledged to protect Medicare against proposals like "Medicare for All" and noted his administration's efforts to uphold protections for patients with preexisting conditions and to expand the availability of low-cost health insurance options. He called on Congress to pass legislation barring undocumented immigrants from receiving public benefits such as health care, announced a new \$50 million request for neonatal research, and mentioned investments to improve kidney care and fight HIV. During his speech, President Trump urged Congress to act to eliminate surprise medical billing. He also pushed for unity on the issue of drug pricing, saying that he was in talks with Senate Finance Committee Chairman Chuck Grassley (R-Iowa) on legislation to lower the cost of prescription drugs. Without endorsing a particular bill, President Trump stated that if drug pricing legislation is sent to his desk that he "will sign it into law immediately."

The State of the Union was widely criticized by Democrats for the campaign-style tone in which it was delivered. In the Democrats' official response, Michigan Governor Gretchen Whitmer criticized Republicans for undermining the Affordable Care Act (ACA). She highlighted Democratic support for the ACA's coverage expansions in contrast to the administration's support for the lawsuit to strike down the law.

FDA Commissioner Hahn: Coronavirus Situation Remains Fluid

House and Senate lawmakers have been briefed on the government's response to the coronavirus outbreak situation for at least the third time in recent weeks. The administration's coronavirus task force is meeting at least twice daily and continues to request permission from the Chinese government to send experts to assist on the ground. During his State of the Union address on Tuesday, the President said that the U.S. in coordinating with China on the outbreak, and that his "administration will take all necessary steps to safeguard our citizens from this threat."

The Food and Drug Administration (FDA) has said that no shortages of drugs or devices in the U.S. have been reported as a result of the coronavirus, but Commissioner Stephen Hahn acknowledged that "the situation is fluid." Concerns about shortages have been voiced by both the White House and lawmakers on both sides of the aisle. China provides active pharmaceutical ingredients (APIs) for 13 percent of U.S. drugs and is home to 400 drug manufacturing facilities. Sens. Marco Rubio (R-Fla.) and Chris Murphy (D-Conn.) have requested information from Dr. Hahn about how the coronavirus has impacted the agency's ability to oversee the safety of imported drugs and devices from China. They ask whether the FDA has the resources necessary to ensure that the coronavirus outbreak does not affect the U.S. supply of drugs and devices, and what steps the agency is taking to ensure that there are no shortages due to manufacturing disruptions stemming from the outbreak. The FDA has pulled its inspectors from China as a result of the coronavirus epidemic.

The World Health Organization (WHO) is warning of potential shortages of protective medical gear stemming from the coronavirus. Demand for such products is up 100 times higher than normal, while prices have increased by a factor of 20. Assistant Secretary for Preparedness and Response Robert Kadlec has urged people to avoid using masks when they are not necessary.

The U.S. Department of Health and Human Services (HHS) has notified Congress that it may transfer an additional \$136 million to combat the coronavirus outbreak. The Centers for Disease Control and Prevention (CDC) has already begun to deplete the \$105 million set aside through the Infectious Diseases Rapid Response Reserve Fund, using the money for immediate planning and response, enhancing laboratory capacity, communication and education efforts, and medical screening and monitoring of citizens returning from China. The additional funding would support the CDC (\$75 million), the Office of the Assistant Secretary for Preparedness and Response (ASPR) (\$52 million), and the Office of Global Affairs (\$8 million). By law, HHS must wait 15 days after providing Congress with notice before shifting appropriated funds from one account to another. HHS did not indicate which accounts from which it would be transferring the money.

Lawmakers have repeatedly stressed that they are ready to provide additional resources if it becomes necessary, with House Democrats writing to HHS Secretary Alex Azar urging him to request an emergency supplemental funding package from Congress to aid with coronavirus response. The letter was sent by House Appropriations Chairwoman Nita Lowey (D-N.Y.) and Labor, Health and Human Services Subcommittee Chairwoman Rosa DeLauro (D-Conn.). They ask that the emergency supplemental request to cover enhanced screening, quarantines, and vaccine research be submitted no later than February 10, alongside the submission of the President's fiscal year (FY) 2021 budget. They also request details on how HHS anticipates spending the coronavirus response money. The lawmakers are pushing for the additional funding to avoid dollars being transferred from other public health priorities, such as the National Institutes of Health (NIH). A senior administration official has responded that the administration does not require a supplemental coronavirus spending bill.

Rep. Derek Kilmer (D-Wash.) and Sen. Patty Murray (D-Wash.) have led a bipartisan [letter](#) calling on CDC to distribute rapid diagnostic tests for the coronavirus as quickly as possible. The letter, signed by 48 lawmakers, asks that states with confirmed cases of the virus receive available test kits first. On Thursday, CDC [announced](#) that an initial 200 test kits would be made available, with additional kits scheduled to be released.

Moderate Dems Endorse Bills to Strengthen Health Care System

The New Democrat Coalition has endorsed several pieces of legislation that aim to improve the way the health care system functions. The bills include H.R. 3107, ***Improving Seniors' Timely Access to Care Act***; H.R. 2061, ***Pathway to Universal Coverage Act***; H.R. 4336, ***Easy Enrollment Act***; H.R. 1763, ***Resident Physician Shortage Reduction Act***; H.R. 2564, ***Medicare Enrollment Protection Act***; H.R. 4575, ***Improving Provider Directories Act***; and H.R. 4576, ***Health Savings for Families Act***. The coalition is a group of more than 100 centrist Democrats in the House of Representatives. They hope the measures will be included in a health reform package that Democratic leadership plans to unveil around the 10th anniversary of the Affordable Care Act (ACA) being signed into law on March 23.

LDT Legislation Expected Later this Month

House Energy and Commerce Oversight Subcommittee Chair Diana DeGette (D-Colo.) and Larry Bucshon, MD (R-Ind.) are expected to introduce legislation to overhaul the regulation of laboratory-developed tests (LDTs) before the end of February, according to House staff. The bill would give the Food and Drug Administration (FDA) new authority over diagnostics by creating a category of medical products called "in vitro clinical tests." LDTs are currently considered under medical device regulations.

Launch of Bipartisan Personalized Medicine Caucus

Sens. Tim Scott (R-S.C.) and Kyrsten Sinema (D-Ariz.) and Reps. Eric Swalwell (D-Calif.) and Tom Emmer (R-Minn.) announced the launch of the Congressional Personalized Medicine Caucus last week. The group will hold its first briefing on February 26 to educate Congress and the public about the benefits of early detection, targeted treatment, and improved prevention strategies in personalized medicine.

Maloney, Warren Request Info on Gun-Related Health Care Costs

House Oversight Committee Chair Carolyn Maloney (D-N.Y.) and Sen. Elizabeth Warren (D-Mass.) have [written](#) to the Government Accountability Office (GAO) to request more information on U.S. health care costs associated with gun injuries. The lawmakers express interest in the cost of readmissions, rehab, long-term care, and other treatments resulting from gun violence particularly to federal health care programs.

President's FY 2021 Budget Proposal Expected Today

President Trump is set to release his fiscal year (FY) 2021 budget proposal sometime today. Early reporting on the proposed budget suggest a 5% cut in domestic spending, including \$135 billion in savings from drug pricing reform. The budget request is a largely symbolic document outlining the administration's priorities that is unlikely to be considered by the Democratic-controlled House of Representatives as it begins the annual appropriations process.

FDA Looks To Shorten Biosimilar Approval Process

The Food and Drug Administration (FDA) released a guidance document last week that would shorten the application process for biosimilar manufacturers looking to expand the use of their products for different health conditions. The proposal would streamline the agency's expanded-use application review process from 10 months to six months, and clarify that biosimilar manufacturers can request delay of FDA's consideration of a specific use for the drug until reference product patents or exclusivity periods expire. The guidance is a part of the administration's effort to increase generic competition and lower drug prices. It was also announced last week that the FDA will work together with the Federal Trade Commission (FTC) to address false or misleading biologic product advertising and to prevent brand manufacturers from blocking biosimilar competition.

BPC Releases Bipartisan Rx for America's Health Care

The Bipartisan Policy Center (BPC) published a new [report](#) last week making recommendations for reforming the nation's health care system. The BPC proposes a federally-funded and state-administered reinsurance program, auto-enrollment for subsidy-eligible individuals, restoration of cost-sharing reduction (CSR) payments, expansion of federal outreach and enrollment activities, and the creation of premium tax credits for the middle-income population. The authors of the report argue in favor of limiting or eliminating the preferred tax treatment of employer-sponsored insurance, and of repealing the employer mandate. In an effort to reduce system-wide costs, the report recommends requiring hospitals to enter into negotiations with the Federal Trade Commission (FTC). While many rural providers would be exempted, hospitals that choose not to negotiate would be prohibited from charging private insurers more than amounts defined by the U.S. Department of Health and Human Services (HHS) and the FTC. The report would address the problem of surprise insurance gaps by limiting charges for out-of-network services to in-network rates. The BPC also suggests creating a state option for 12-month continuous Medicaid eligibility for adults.

Upcoming Congressional Hearings and Markups

House Veterans' Affairs Subcommittee on Health hearing "Achieving Health Equity for America's Minority Veterans;" 10:00 a.m., 210 Capitol Bldg.; February 11

Senate Judiciary Committee hearing "The Infant Patient: Ensuring Appropriate Medical Care for Children Born Alive;" 10:00 a.m., 226 Dirksen Bldg.; February 11

House Education and Labor Committee markup of H.R 5800, Ban Surprise Billing Act; 10:15 a.m., 2175 Rayburn Bldg.; February 11

House Energy and Commerce Subcommittee on Environment and Climate Change hearing "EPA's Lead and Copper Proposal: Failing to Protect Public Health;" 10:30 a.m., 2322 Rayburn Bldg.; February 11

House Education and Labor Subcommittee on Workforce Protections hearing "Balancing Work, Health, and Family: The Case for Expanding the Family and Medical Leave Act;" 2:00 p.m., 2175 Rayburn Bldg.; February 11

Senate Homeland Security and Governmental Affairs Committee hearing to examine protecting the United States from global pandemics; 9:30 a.m., 342 Dirksen Bldg.; February 12

Senate Special Committee on Aging hearing "There's No Place Like Home: Home Health Care in Rural America;" 9:30 a.m., 366 Dirksen Bldg.; February 12

House Veterans' Affairs Subcommittee on Technology Modernization hearing "Data Privacy and Portability at VA: Protecting Veterans' Personal Data;" 10:00 a.m., 210 Capitol Bldg.; February 12

House Budget Committee hearing "The President's Fiscal Year 2021 Budget;" 10:00 a.m., 210 Cannon Bldg.; February 12

House Energy and Commerce Subcommittee on Health hearing "Protecting Women's Access to Reproductive Health Care;" 10:00 a.m., 2123 Rayburn Bldg.; February 12

House Ways and Means Committee markup of surprise billing measure; time and place TBD; February 12

Recently Introduced Health Legislation

H.Res.826 — 116th Congress (2019-2020); Expressing disapproval of the Trump administration's harmful actions towards Medicaid; Sponsor: Rep. Veasey, Marc A. [D-TX-33]; Committees: House - Energy and Commerce

H.R.5741 — To amend title XI of the Social Security Act to clarify parameters for model testing and add accountability to model expansion under the Center for Medicare and Medicaid Innovation, and for other purposes; Sponsor: Rep. Sewell, Terri A. [D-AL-7]; Committees: House - Energy and Commerce; Ways and Means; Rules

H.Res.831 — Expressing support for designation of February 4, 2020, as National Cancer Prevention Day; Sponsor: Rep. Dingell, Debbie [D-MI-12]; Committees: House - Energy and Commerce

H.R.5749 — To amend title XI of the Social Security Act to establish the American Insulin Program to provide for lower prices for insulin drugs, to maintain effort throughout the insulin supply chain, and for other purposes; Sponsor: Rep. Crist, Charlie [D-FL-13]; Committees: House - Energy and Commerce; Ways and Means

H.R.5754 — To direct the Secretary of Health and Human Services to revise regulations to remove the requirement under the Medicare program that an off-campus facility or organization shall be located within a 35-mile radius of a hospital or critical access hospital, and for other purposes; Sponsor: Rep. Green, Mark E. [R-TN-7]; Committees: House - Energy and Commerce; Ways and Means

H.R.5763 — To amend the Public Health Service Act to advance telehealth by developing a plan for adoption and coordination by Federal agencies, and for other purposes; Sponsor: Rep. Gianforte, Greg [R-MT-At Large]; Committees: House - Energy and Commerce

H.R.5771 — To amend the Controlled Substances Act to list fentanyl-related substances as schedule I controlled substances; Sponsor: Rep. Chabot, Steve [R-OH-1]; Committees: House - Energy and Commerce; Judiciary

H.R.5774 — To direct the Secretary of Veterans Affairs to conduct a review on opioid overdose deaths among veterans, and for other purposes; Sponsor: Rep. Murphy, Gregory [R-NC-3]; Committees: House - Veterans' Affairs

H.R.5790 — To amend the Public Health Service Act to reauthorize and extend the Fetal Alcohol Spectrum Disorders Prevention and Services program, and for other purposes; Sponsor: Rep. McCollum, Betty [D-MN-4]; Committees: House - Energy and Commerce; Education and Labor

H.R.5794 — To amend the Public Health Service Act to expand research and education with respect to endometrial cancer, and for other purposes; Sponsor: Rep. Scott, David [D-GA-13]; Committees: House - Energy and Commerce