



## Health Policy Briefing

December 9, 2019

### Additional Proposals Forthcoming as Surprise Billing Agreement Reached

House Education and Labor Committee Democrats Donna Shalala (D-Fla.) and Joe Morelle (D-N.Y.) are circulating a Dear Colleague letter on the issue of surprise insurance gaps exclusively through an independent dispute resolution (IDR) process in the case of out-of-network billing disputes between providers and payers. The IDR process would have no dollar threshold and would allow an arbiter to consider median in-network payment rates. Rep. Morelle has said that he estimates the proposal would save \$15 billion over the next decade. Education and Labor Chairman Bobby Scott (D-Va.) has not signaled whether he supports the proposal or plans to hold a markup. It's unclear how this effort, along with a surprise billing measure expected to soon be introduced from the House Ways and Means Committee, will impact the deal reached between the House Energy and Commerce and Senate Health, Education, Labor, and Pensions (HELP) committees. Leaders of the two panels announced that they had reached a bipartisan, bicameral agreement on the **Lower Health Care Costs Act of 2019** over the weekend. The bill will address surprise insurance gaps and provide for a new system of IDR, raise the legal age to purchase tobacco products to 21, and increase competition in the pharmaceutical market. Walden stated that if the legislation can gain the support of House and Senate leadership it will likely be included in an end-of-the-year package to fund the federal government. The White House announced last week that the President is "comfortable" with a surprise billing solution that includes IDR, depending on how much money the compromise would save. The administration had previously expressed concerns that the process could be disruptive and burdensome.

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### ***FDA Nomination Advances to Full Senate***

The Senate Health, Education, Labor, and Pensions (HELP) Committee has advanced the President's nominee for Commissioner of Food and Drugs, Dr. Stephen Hahn. Hahn's nomination was approved with bipartisan support by a vote of 18-5, with Ranking Member Patty Murray (D-Wash.) voting against the nomination citing concerns about the nominee's plan to address youth vaping rates. During his confirmation hearing, the Texas oncologist and MD Anderson executive faced scrutiny from panel members on both sides of the aisle regarding his position on the administration's reversal of a proposal to ban flavored e-cigarettes. Senate Majority Leader Mitch McConnell (R-Ky.) filed for cloture on the nomination on Thursday, setting up a vote on the FDA nominee for this week. The FDA has been without a permanent leader since Scott Gottlieb's departure from the agency in April.

### ***House to Vote on H.R. 3 This Week***

The House of Representatives plans to vote on Democratic leadership's drug pricing measure, the ***Lower Drug Costs Now Act*** (H.R. 3), this week. The bill would allow Medicare to negotiate the prices of some drugs. Majority Leader Mitch McConnell (R-Ky.) has vowed to block a vote on the bill in the Senate.

According to a new [estimate](#) from the White House Council of Economic Advisers, H.R. 3 would cost \$1 trillion over the next decade and result in the availability of 100 fewer drugs. This is in contrast to the Congressional Budget Office's (CBO) preliminary analysis of the price negotiation portion of the bill, which estimates \$345 billion in savings to the Medicare program. CBO is expected to release an estimate of savings from the entire bill before the vote this week.

Chairman of the House Ways and Means Subcommittee on Health Lloyd Doggett (D-Texas) hopes to offer an amendment to H.R. 3 that would increase the number of drugs subject to government pricing negotiations. His measure would apply Medicare negotiation to any treatment with a launch price higher than the median household income. Doggett has threatened to vote against the package if progressive attempts to revise the bill are rejected. Congressional Progressive Caucus (CPC) Co-Chair Mark Pocan (D-Wis.) has also warned that some Democrats may vote against the bill unless revisions are made. Progressive lawmakers will meet with leadership early this week to discuss increasing the minimum number of drugs that can be negotiated under the legislation, extending the lower negotiated prices to uninsured individuals, and fully repealing the ban on Medicare drug price negotiations. The CPC is conducting a whip count of its members to determine how many would be willing to vote no on the rule for the legislation, a procedural motion that could stop the bill from coming up for a vote, which could incentivize leadership to make changes to the underlying bill or to allow floor votes on progressive amendments. Democratic leadership are reportedly considering weakening an amendment to the bill inserted by progressive congresswoman Pramila Jayapal. The change would direct the government to conduct a study on the feasibility of extending limits on drug price increases to private health plans, rather than requiring regulations be issued to implement such a policy. The amendment may be stripped from the bill due to the additional time necessary for CBO to analyze the cost of the provision.

The House Rules Committee will consider H.R. 3 on Tuesday, setting up a floor vote on the legislation no later than Thursday.

### ***Finance Drug Package Stalled by Senate Leadership***

Senate Finance Committee Chairman Chuck Grassley (R-Iowa) and Ranking Member Ron Wyden (D-Ore.) released an updated version of their bipartisan health care package last week. The second draft of the ***Prescription Drug Pricing Reduction Act*** would lower Medicare enrollee's out-of-pocket expenses in the initial phase of a prescription drug plan from 25 percent to 20 percent and would allow beneficiaries the option to more evenly divide what they pay each month for their medications, capping out-of-pocket costs at \$3,100 per year. The latest version of the bill also includes several health care extenders, which would be paid for with the drug pricing provisions of the legislation. The Committee did not provide any new savings estimates. While the package has the support of President Trump, who praised the new version of the bill and urged its passage this year, it remains stalled by Majority Leader Mitch McConnell's (R-Ky.) reluctance to bring it up for a vote on the Senate floor. McConnell has reportedly expressed thoughts in private conversations that the bill is bad policy and is hesitant to hold votes that could divide Republicans. Nine GOP Finance panel members voted against the measure in Committee, specifically objecting to a provision that would require manufacturers to pay rebates to the Medicare program if their prices rise faster than inflation – a policy the lawmakers argue is akin to a government price control. Such GOP objections make it unlikely that the bill will be attached to must-pass, end-of-the-year legislation. McConnell has instead focused the chamber's time on confirming the President's judicial nominations; according to the Senate Finance Committee Chairman Chuck Grassley (R-Iowa), a vote on the drug pricing bill "would be dependent upon the White House asking him to do it at this point."

### ***House Will Remain In Session Through Dec. 20***

The House of Representatives has changed its schedule to remain in session the week of December 16, with last votes expected on December 20, the day the current stopgap spending measure expires. Lawmakers are working to draft the 12 appropriations bills in the midst of disagreements over border wall funding and abortion-related provisions in order to avoid a government shutdown at the end of the month. The House had previously planned to recess for the year on December 13. The President supports efforts to pass the 12 appropriations bills, according to remarks from White House legislative affairs director Eric Ueland, but he continues to push for the inclusion of border wall funding. Ueland has also highlighted trade and prescription drug pricing reforms as priorities for the administration before the end of the year.

### ***E&C Chairman Releases Draft Bill to Modernize Cosmetics Regulations***

House Energy and Commerce Committee Chairman Frank Pallone (D-N.J.) released a draft proposal to modernize the Food and Drug Administration's (FDA) ability to regulate cosmetics ahead of a hearing in his panel's Health Subcommittee on the same subject. The ***Cosmetic Safety Enhancement Act of 2019*** would give the agency the authority to recall cosmetics and require cosmetics companies to report adverse events. Federal cosmetics regulations have not been updated in 80 years and concerns were raised during the hearing regarding the patchwork of state laws that have arisen to regulate cosmetic products. Chairman Pallone's legislation would not preempt state laws regarding civil or criminal action against cosmetic manufacturers, but the Chairman stated that he was still open to making revisions to the bill.

### ***Lawmakers Continue Push for E-Cig Guidance***

A group of lawmakers have [written](#) to the President urging him to finalize a previously announced compliance policy designed to ban all flavored e-cigarettes from the market. The letter stressed that any guidance on flavored e-cigarettes should include mint and menthol and apply to all retailers. The letter was signed by Reps. Raja Krishnamoorthi (D-Ill.) and Peter King (R-N.Y.) and Sens. Dick Durbin (D-Ill.), Richard Blumenthal (D-Conn.), and Chris Van Hollen (D-Md.).

### ***Businesswoman Loeffler Selected to Fill GA Senate Seat***

Georgia Governor Brian Kemp (R) has appointed business executive Kelly Loeffler to fill the seat that will be vacated by Sen. Johnny Isakson (R) when he retires at the end of the year. Loeffler is the Chief Executive Officer (CEO) of the financial services firm Bakkt. There will not be a primary to fill Isakson's seat, which he has held since 2005, next year. Instead, Georgia will hold a special election in which all candidates will appear on the ballot in November together. If no candidate achieves a 50 percent threshold, a runoff election between the top two candidates will be held in January 2021.

### ***Holding, Graves Announce Plans to Retire***

Rep. George Holding (R-N.C.) announced his decision to retire at the end of the 116th Congress. Holding is a member of the House Ways and Means Committee. Rep. Tom Graves (R-Ga.), who serves on the House Appropriations Committee, also announced his retirement last week. Rep. Duncan Hunter (R-Calif.) also announced that he will plead guilty to campaign finance violations and resign his congressional seat shortly after the holidays.

### ***Senate Releases CY 2020 Schedule***

The Senate has released its [schedule](#) for calendar year (CY) 2020. The previously-released 2020 calendar for the House of Representatives can be found [here](#).

### ***Hospitals Sue HHS Over Price Transparency Rule***

The hospital industry is suing the Trump administration to block a regulation that would require them to publish the rates they negotiate with insurers. The lawsuit argues that requiring the disclosure of negotiated payment rates violates the First Amendment, the Affordable Care Act (ACA), and the Administrative Procedures Act. The hospitals believe that regulation would undermine competition, confuse patients, and impose a massive financial and time-consuming burden on hospitals. The final rule, which was issued on November 15, is scheduled to take effect January 1, 2021. The lawsuit was filed in federal district court by the American Hospital Association, the Association of American Medical Colleges, the Federation of American Hospitals, the National Association of Children's Hospitals, and three individual hospitals. The hospitals seek expedited review of the case because of the extensive steps they believe will be required to comply with the rule.

### ***AARP Pushes Congress to Keep Medical Expense Deduction***

The AARP is urging Congress to include a permanent repeal of the increased income threshold above which medical expenses can be deducted. The ACA increased the threshold for which taxpayers could deduct medical expenses from 7.5 percent of adjusted gross income (AGI) to 10 percent. Congress lowered the floor back to 7.5 percent in 2017, but the change was only in effect through January 1, 2019. AARP argues that the policy should be reversed as soon as possible to avoid 4.4 million Americans who use the deduction from facing higher taxes this filing season. Bicameral legislation (S.110/H.R. 2073) has been introduced to restore the pre-ACA threshold. The Senate Finance Committee had examined the medical deduction in its effort to address certain expiring provisions but has not reached a consensus on how to act on any of the health-related issues.

## Upcoming Congressional Hearings and Markups

*House Energy and Commerce Subcommittee on Oversight and Investigations hearing “Securing the U.S. Drug Supply Chain: Oversight of FDA’s Foreign Inspection Program;” 10:00 a.m., 2123 Rayburn Bldg.; December 10*

*Senate Judiciary Committee hearing to examine encryption and lawful access, focusing on evaluating benefits and risks to public safety and privacy; 10:00 a.m., 226 Dirksen Bldg.; December 10*

*House Energy and Commerce Subcommittee on Health hearing “Proposals to Achieve Universal Health Care Coverage;” 10:30 a.m., 2322 Rayburn Bldg.; December 10*

*House Rules Committee meeting on H.R. 3—Lower Drug Costs Now Act of 2019; 3:00 p.m., H-313 Capitol; December 10*

*Senate Commerce, Science, and Transportation Committee executive session to consider legislation including S. 2661, National Suicide Hotline Designation Act; 10:00 a.m., G50 Dirksen Bldg.; December 11*

*Senate Health, Education, Labor, and Pensions (HELP) Committee executive session to consider legislation including Title VII Reauthorization and S. 2080, Palliative Care and Hospice Education and Training Act (PCHETA); 10:00 a.m., 430 Dirksen Bldg.; December 12*

## Recently Introduced Health Legislation

*H.Res.735 — Recognizing the maternal health crisis among indigenous women in the United States, which includes American Indian, Alaska Native, and Native Hawaiian women, recognizing the importance of reducing mortality and morbidity among indigenous women, and calling for urgent Federal funding changes to ensure comprehensive, high-quality, and culturally competent maternal health and family planning services are available; Sponsor: Rep. Haaland, Debra A. [D-NM-1]; Committees: House - Natural Resources; Energy and Commerce*

*S.2959 — A bill to amend title XIX of the Social Security Act to modify the reductions in Medicaid DSH allotments; Sponsor: Sen. McSally, Martha [R-AZ]; Committees: Senate - Finance*

*H.R.5279 — To amend the Federal Food, Drug, and Cosmetic Act to improve cosmetic safety, and for other purposes; Sponsor: Rep. Pallone, Frank, Jr. [D-NJ-6]; Committees: House - Energy and Commerce*

*H.R.5281 — To amend title XIX of the Social Security Act to improve transparency and prevent the use of abusive spread pricing and related practices in the Medicaid program; Sponsor: Rep. Carter, Earl L. “Buddy” [R-GA-1]; Committees: House - Energy and Commerce*

*H.R.5291 — To amend the Patient Protection and Affordable Care Act to require the Secretary of Health and Human Services to set forth a method of determining annual updates to premium tax credit eligibility and maximum out-of-pocket limits; Sponsor: Rep. Van Drew, Jefferson [D-NJ-2]; Committees: House - Energy and Commerce*

*S.2966 — A bill to amend title 38, United States Code, to make permanent the authority of the Secretary of Veterans Affairs to transport individuals to and from facilities of the Department of Veterans Affairs in connection with rehabilitation, counseling, examination, treatment, and care, and for other purposes; Sponsor: Sen. Tester, Jon [D-MT]; Committees: Senate - Veterans’ Affairs*

*H.R.5295 — To consolidate activities of the Agency for Healthcare Research and Quality into the National Institutes of Health as the National Institute for Research on Safety and Quality, and for other purposes; Sponsor: Rep. Meadows, Mark [R-NC-11]; Committees: House - Energy and Commerce*

*H.R.5299 — To provide for the issuance of a Lyme Disease Research Semipostal Stamp; Sponsor: Rep. Delgado, Antonio [D-NY-19]; Committees: House - Oversight and Reform; Energy and Commerce*

*H.R.5304 — To amend title XXVII of the Public Health Service Act to require health plan oversight of pharmacy benefit manager services, and for other purposes; Sponsor: Rep. Schrader, Kurt [D-OR-5]; Committees: House - Energy and Commerce*

*H.R.5321 — To amend the Public Health Service Act to expand, enhance, and improve public health data systems, and for other purposes; Sponsor: Rep. McBath, Lucy [D-GA-6]; Committees: House - Energy and Commerce*

*H.R.5326 — To amend titles XVIII and XIX of the Social Security Act to prohibit skilled nursing facilities and nursing facilities from using pre-dispute arbitration agreements with respect to residents of those facilities under the Medicare and Medicaid programs, and for other purposes; Sponsor: Rep. Sanchez, Linda T. [D-CA-38]; Committees: House - Ways and Means; Energy and Commerce*

*S.2986 — A bill to amend part A of title XI of the Social Security Act to establish an interagency council on social determinants of health, and for other purposes; Sponsor: Sen. Young, Todd [R-IN]; Committees: Senate - Finance*

*S.2991 — A bill to direct the Secretary of Veterans Affairs to conduct an independent review of the deaths of certain veterans by suicide, and for other purposes; Sponsor: Sen. Sullivan, Dan [R-AK]; Committees: Senate - Veterans' Affairs*

*S.2993 — A bill to amend titles XVIII and XIX of the Social Security Act with respect to nursing facility requirements, and for other purposes; Sponsor: Sen. Warner, Mark R. [D-VA]; Committees: Senate - Finance*

*S.2995 — A bill to require the Secretary of Veterans Affairs to submit to Congress reports on patient safety and quality of care at medical centers of the Department of Veterans Affairs, and for other purposes; Sponsor: Sen. Manchin, Joe, III [D-WV]; Committees: Senate - Veterans' Affairs*