



## Health Policy Briefing

March 12, 2018

### Push for Obamacare Fixes Continues

A coalition of health insurance companies and provider organizations has written a letter to Congressional Leadership calling for the inclusion of funding for the Patient Protection and Affordable Care Act's (ACA) cost sharing reduction (CSR) payments in any potential omnibus legislation. The coalition, which includes the American Medical Association, the American Hospital Association, and America's Health Insurance Plans (AHIP) is asking Congress to include multiple years of funding for CSRs and a reinsurance program, with the goal of bringing down health care premiums. The conservative wing of the House of Representatives continues to oppose the reinstating of CSR payments, insisting any bill that includes them is the equivalent of a bailout for health insurance companies. While support for CSRs has mainly come from Democratic lawmakers, Republican Senators Lamar Alexander (R-Tenn.) and Susan Collins (R-Maine) have pushed for the payments for months. The White House signaled last week that any plan to shore up the health insurance markets with CSR payments must include provisions like greater availability of short term health plans, the blocking of funding for organizations that have a role in abortions, general changes in consumer protections from the ACA, and alterations to the rules surrounding health savings accounts (HSAs).

Negotiations on including CSR payments in the omnibus for Fiscal Year 2018 (FY18) broke down this week, as lawmakers reached an impasse around funding for family planning and teen pregnancy, including those for Planned Parenthood. Differing versions of the House and Senate Appropriations language for the Departments of Labor, Health and Human Services, and Education have created a roadblock for some House Democrats on the committee, including Budget Committee Ranking Member John Yarmuth (D-Ky.) who called the lack of alignment "a huge issue."

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This could put the odds of passing the bill in the House in peril, as a number of fiscally conservative House Republicans could vote against the spending bill, meaning some Democratic support would be necessary for the legislation to clear the chamber before the March 23 deadline.

### ***UnitedHealth Group to Pass Along Drug Rebates***

**U**nitedHealth Group, the country's largest insurer, says it will begin passing on rebates it gets from pharmaceutical companies to some customers when they purchase prescription drugs. The insurer says it's trying to bring greater transparency to drug pricing. It also recently [launched a tool](#) that allows doctors to go online and see exactly how much patients will pay for prescription drugs at their preferred pharmacy. U.S. Department of Health and Human Services (HHS) Secretary Azar applauded the move.

### ***Secretary Azar Outlines 4-Point Plan to Accelerate Shift Toward a Value-based System***

**L**ast Monday in a speech to the Federation of American Hospitals, HHS Secretary Alex Azar outlined a 4-point plan to accelerate movement toward a value-based system, including: (1) Moving ownership and control of electronic health records from providers to patients; (2) Providing payers and providers with incentives to be more transparent about healthcare costs; (3) Using Medicare and Medicaid to drive industry change; and (4) Reducing regulatory burden. Watch Azar's full remarks [here](#) and read the text of his remarks [here](#).

**S**peaking to health insurers on Thursday, Azar reiterated much of what he said on Monday, adding that some form of federal government intervention will be needed to provide cost effective outcomes for patients. "The status quo is far from a competitive free market in the economic sense of the term, and health care is such a complex system, that facilitating a competitive, value-based marketplace is going to be disruptive to existing actors," Azar said to a speech in front of America's Health Insurance Plans (AHIP). Azar recognized the irony of a Republican administration suggesting potential government intervention, saying this notion "may sound surprising coming from an administration that deeply believes in the power of markets and competition."

**I**n related news, the Administrator for the Centers for Medicare and Medicaid Services (CMS) Seema Verma announced on Tuesday a new initiative, MyHealthEData, which is designed to improve electronic health record (EHR) patient data access. The initiative is intended to give patients more control of their own EHR data and will do this by breaking down existing barriers to health data access and use. MyHealthEData aims to allow patients to receive copies of their entire EHRs, share their personal health data with anyone they choose, and put themselves at the center of the healthcare system. House Ways and Means Committee Chairman Kevin Brady (R-Texas) and Health Subcommittee Chairman Peter Roskam (R-Ill.) applauded the initiative. Verma also noted that CMS will overhaul its meaningful-use initiative that compelled providers to adopt electronic health records. Chairman of the House Energy and Commerce Health Subcommittee Michael Burgess, MD (R-Texas) applauded the announcement, saying that it builds on the committee's work in the Medicare and CHIP Reauthorization Act of 2015 (MACRA) and the 21st Century Cures Act.

### ***Opioid Crisis Worsens***

**A**cting Director of the Centers for Disease Control and Prevention (CDC) Anne Schuchat, MD said this week that the opioid abuse crisis is worsening, pointing to new emergency room data showing a sharp uptick in opioid overdoses across the country. A new agency [report](#) found hospitalizations for opioid overdoses jumped by 30 percent in 45 states between July 2016 and September 2017. The Midwest saw the largest increase (70 percent) in hospitalizations for opioid overdoses, with rates in Wisconsin jumping 109 percent. Illinois was up 66 percent, and Indiana had a 35 percent increase. House Energy and Commerce Committee Chairman Greg Walden (R-Ore.), Health Subcommittee Chairman Michael C. Burgess, MD (R-Texas), and Oversight and Investigations Subcommittee Chairman Gregg Harper (R-Miss.) acknowledged the troubling report and re-iterated their commitment to do more to stem the tide of the epidemic. The House Energy and Commerce Committee announced it will have a two-day legislative hearing (March 21-22) to consider more than 20 bills relating to public health and prevention efforts to combat the opioid crisis.

## ***We&M Requests Information on Opioids***

**A**s mentioned in last week's newsletter, the House Ways and Means Committee is **requesting information** from insurers, pharmacy benefit managers (PBMs), and health care providers and prescribers about how to better protect Medicare beneficiaries from opioid dependence and overdose. The Committee is currently drafting its own bipartisan opioid-related legislation and is looking to leverage Medicare to combat opioid abuse and addiction. The lawmakers request feedback by March 15 related to overprescribing, data tracking, communication and education, and expanding treatment options in Medicare.

## ***Appropriations Discussions Continue***

**M**embers of Congress are struggling to negotiate a \$1.2 trillion omnibus spending bill needed to keep the government open after March 23. While lawmakers still have more than two weeks to reach an agreement, there may be a need for yet another continuing resolution (CR) for all or part of the government. Recently, Republicans decided to limit an accounting gimmick known as CHIMPS (Changes in Mandatory Program Spending) to \$14 billion that could be used to pay for spending elsewhere. This will likely result in \$5 billion in cuts for the Labor-Health and Human Services appropriations bill.

**I**n related news, Republican leaders on Capitol Hill insist that no decisions have been made on what will be included in a potential omnibus spending package, but a number of health-related provisions are reportedly being considered. Lawmakers from both parties are pushing to include legislation that would ban branded drug companies from using risk plans required by the Food and Drug Administration (FDA) to block generic competition to the spending bill. Simultaneously, some Republicans on Capitol Hill are considering revoking a Medicare rule that requires drug companies to pay more for discounts to beneficiaries.

## ***Arkansas Medicaid Work Requirements Approved***

**T**he Trump administration has approved Arkansas' request to impose work requirements on certain Medicaid beneficiaries, but punted on a controversial proposal that would have rolled back the state's Medicaid expansion. Arkansas became the third state to get permission to impose work requirements after CMS approved a Medicaid waiver that included a requirement for recipients to work, participate in job training or job search activities for 80 hours a month. But the administration did not make a decision on a request to roll back the eligibility level for Medicaid beneficiaries. CMS did not outright reject the provision, and Gov. Asa Hutchinson (R) said he is continuing to work with the administration on it. If that provision had been approved, combined with the work requirements, an estimated 60,000 people were projected to lose coverage. Hutchinson sought to restrict the program so that only people who are at the federal poverty level would be eligible. The federal poverty line this year is \$12,140 for a single person, or \$25,100 for a family of four.

## ***Manchin Unveils Bill to Change Controversial Opioid Enforcement Law***

**S**en. Joe Manchin (D-W.Va.) unveiled legislation (S.2493) last Monday aimed at helping the Drug Enforcement Administration (DEA) improve its ability to stop suspicious shipments of opioids from overtaking communities. Manchin's bill changes a law that drew a firestorm of criticism after an explosive "60 Minutes" - Washington Post joint investigation reported the bill made it harder for the DEA to freeze opioid shipments from drug companies in the midst of a full-blown crisis.

## **Cochran Resigns Effective April 1**

**S**en. Thad Cochran (R-Miss.) will resign from the Senate on April 1, his office announced Monday, triggering a second Senate election in Mississippi this fall and reshaping the leadership of the Senate Appropriations Committee -- one of Congress's most powerful committees. "I regret my health has become an ongoing challenge," Cochran said in a statement released on Monday afternoon. Cochran, who was first sworn into his Senate seat in 1978, is the chairman of the Senate Appropriations Committee. Sen. Richard Shelby (R-Ala.) will reportedly take the reins of the committee upon Cochran's departure. Cochran's resignation could have an impact on health care spending, but it likely won't be a major shift. Both Shelby and Cochran have supported increasing medical research spending, work that has been led by Sens. Roy Blunt (R-Mo.) and Patty Murray (D-Wash.), who head the Appropriations Subcommittee on Labor-Health and Human Services Appropriations.

**G**ov. Phil Bryant (R-Miss.) will appoint Cochran's replacement, who will hold the seat until the special election on November 6. Sen. Roger Wicker (R-Miss.) is up for reelection in November and is currently facing a primary challenge from conservative state Sen. Chris McDaniel (R-Miss.). With Cochran's resignation, a special election will take place the same day to fill out the rest of Cochran's term, which runs until 2020. McDaniel could switch and run for Cochran's seat if he believes the appointed senator is more vulnerable than Wicker.

## ***Energy and Commerce Committee Dems Request Gun Hearings***

**L**ast week, Rep. Frank Pallone (D-N.J.), the lead Democrat on the House Energy and Commerce Committee, sent [a letter](#) to Committee Chairman Greg Walden (R-Ore.) urging him to hold hearings to address gun violence in America. The letter, which was signed by all 24 Democratic Members of the committee, asked that they hold a hearing on 4 gun violence topics including: (1) The demographics, details, and geography of the victims involved in gun violence; (2) The lethality of guns and gun accessories; (3) Issues and loopholes in purchasing guns; and (4) The role of social media in the divisions within the gun debate. The call for hearings followed a [February 16th letter](#) from committee Democrats urging a hearing on gun violence prevention research.

## ***Gottlieb Blames PBMs and Others for High Drug Costs***

**C**ommissioner of Food and Drugs Scott Gottlieb, MD criticized pharmacy benefit managers (PBMs), health insurers, and drug makers on Wednesday for "Kabuki drug-pricing constructs" that profit the industry at the expense of consumers. Gottlieb aimed particular criticism at giant PBMs that contract with health plans to administer coverage of drugs, saying the industry's tactics have stymied cheaper copies of expensive biotechnology drugs. "Consolidated firms -- the PBMs, the distributors, and the drug stores; team up with payors," Gottlieb said. "They use their individual market power to effectively split monopoly rents with large manufacturers and other intermediaries; rather than passing on the saving garnered from competition to patients and employers." While the FDA has little or no power over PBMs, Gottlieb's remarks make clear that administration health officials place the blame for high drug costs not just on biotechnology and pharmaceutical companies but also on other parts of the complex medical supply chain.

## ***Ongoing Questions Regarding How to Spend Opioid Funding***

The Bipartisan Budget Agreement announced February 9 provided up to \$3 billion for opioid funding in FY18, and Congress is still working to determine how to allocate those funds. While the appropriators were initially leaning toward providing all of the key funds through Substance Abuse and Mental Health Services Administration (SAMHSA) grants to support state-run treatment programs, the introduction of a bipartisan Senate bill, S. 2456, dubbed “CARA 2.0,” suggests a different path. The bill would authorize \$1 billion in additional funding, which includes \$10 million for a national education campaign, \$300 million to expand access to medication assisted treatment (MAT), \$200 million to build a national infrastructure for recovery support services, and \$300 million for expanding first responder training and access to naloxone. Previously, HHS Secretary Alex Azar told lawmakers during an oversight hearing that \$1 billion should go to targeted state grant programs while \$400 million should go for federal community health centers, \$150 million should go to rural health programs, and more than \$150 million could be used on programs to halt the spread of infectious diseases related to drug use. In addition, according to Azar, drug courts and programs to support pregnant woman addicted to drugs should receive some of the funding.

## ***Energy & Commerce Oversight Subcommittee Examines Seasonal Flu***

On Thursday, the House Energy and Commerce Oversight Subcommittee held a hearing titled “Examining U.S. Public Health Preparedness for and Response Efforts to Seasonal Influenza.” The subcommittee heard from the CDC, FDA, National Institutes of Health (NIH), and Biomedical Advanced Research and Development Authority (BARDA), which discussed why this season’s flu reached epidemic proportions, the effectiveness of this year’s vaccine, and efforts to develop a universal flu vaccine.

Last month, Sen. Edward Markey (D-Mass) and Rep. Rosa DeLauro (D-Mass.) introduced companion legislation to provide \$1 billion for NIH to conduct research towards the discovery and development of a universal flu vaccine.

## ***House to Vote on Revised Right to Try Legislation***

House leadership announced that the House will vote on Tuesday to consider revised ‘Right to Try’ legislation which will be formally introduced today. Last Thursday, Chairman on the House Energy and Commerce Committee Greg Walden (R-Ore.) issued a joint statement with Health Subcommittee Chairman Michael Burgess, MD (R-Texas) stating “This is a complicated issue with passionate advocates on both sides and it was imperative we got the policy right. After months of thoughtful discussions, we believe this legislation is ready for a vote in the House.” **The bill** would prevent the government from blocking access to drugs that have only undergone preliminary testing in humans. The legislation is an amended version of S. 204, which was passed by the Senate last year. Advancing this legislation has been a priority for President Trump, who mentioned the issue in his 2018 State of the Union Address, and Vice President Mike Pence, who signed ‘Right to Try’ legislation into law while serving as Governor of Indiana.

## **Azar Floats Renewable Short-term Health Plans**

**H**HS Secretary Alex Azar said on Thursday that the Administration wants to make renewable certain plans that do not comply with ACA rules. Currently, short term insurance plans can only be offered for a maximum of 3 months, while the administration has proposed expanding that time to a full year. Azar argues that allowing for the renewal of the so call “skinny plans” would increase affordability for healthy patients in the market that do not need as extensive of coverage required by the ACA. These plans would not be required to cover those with pre-existing conditions. This shift by the administration follows an Executive Order signed by President Trump in October 2017 directing federal agencies to examine ways to expand and extend short term health plans, increase those enrolled in association health plans, and scale back rules around employer health plan reimbursement. Opponents of this approach, including America’s Health Insurance Plans (AHIP) and the Blue Cross Blue Shield Association, argue that increased availability of skinny plans creates a parallel insurance market that will lead to higher costs for those with ACA compliant plans.

**I**n related news, the Trump Administration rejected a plan by Idaho’s insurance regulators to offer health insurance policies that removed a number of consumer protections mandated under Obamacare. These included the elimination of provisions that do not allow insurers to charge higher premiums based on age, and guaranteed coverage for patients with pre-existing conditions. In a letter to Idaho’s Governor Butch Otter (R), CMS Administrator Seema Verma expressed her thanks for the state’s “efforts to address the damage caused” by the ACA. While the letter states that this action is not the administration’s preference, the move by Idaho’s regulators would undermine current law, and therefore must be blocked by CMS. This put the administration in the new and uncomfortable position of upholding a law they do not support. Verma also stated that, with certain modifications, the scaled down insurance plans may be legally offered as short-term policies.

## **Upcoming Congressional Meetings and Markups**

**House Veterans’ Affairs Subcommittee on Health field hearing “VA Healthcare: Maximizing Resources in Puerto Rico;” 10:00 a.m., San Juan, PR; March 12**

**House Science, Space, and Technology Committee hearing “National Laboratories: World-Leading Innovation in Science;” 10:00 a.m., 2318 Rayburn Bldg.; March 14**

**House Energy and Commerce Health Subcommittee hearing “Reauthorization of Animal Drug User Fees: ADUFA and AGDUFA;” 10:15 a.m., 2322 Rayburn Bldg.; March 14**

**Senate Indian Affairs Committee oversight hearing “Opioids in Indian Country: Beyond the Crisis to Healing the Community”; 2:30 p.m., 628 Dirksen Bldg.; March 14**

**Senate Health, Education, Labor and Pensions (HELP) Committee hearing “Perspectives on the 340B Drug Discount Program;” 10:00 a.m., 430 Dirksen Bldg.; March 15**

**House Veterans’ Affairs Subcommittee on Health hearing “FY 2019 Department of Veterans Affairs Budget Request for the Veterans Health Administration;” 10:00 a.m., 334 Cannon Bldg.; March 15**

**House Appropriations Labor/HHS/Education Subcommittee hearing “FY19 Budget Hearing – Department of Health and Human Services;” 10:00 a.m., 2358-C Rayburn Bldg. The only witness will be HHS Secretary Azar; March 15**

**House Appropriations Military Construction, Veterans Affairs Subcommittee hearing “FY19 Budget Hearing - Veterans Affairs;” 10:00 a.m., 2362-A Rayburn Bldg. The only witness will be VA Secretary Shulkin; March 15**

**House Energy and Commerce Health Subcommittee hearing on >20 bills relating to public health and prevention efforts to combat the opioid crisis. Time and location TBA; March 21-22**

## Recently Introduced Health Legislation

**H.R.5160 (introduced by Rep. Mark DeSaulnier): A bill to provide for coverage of cancer care planning and coordination under the Medicare program; Energy and Commerce, Ways and Means**

**H.R.5155 (introduced by Rep. Frank Pallone): A bill to amend the Patient Protection and Affordable Care Act to improve affordability of, undo sabotage with respect to, and increase access to health insurance coverage, and for other purposes; Energy and Commerce, Ways and Means, Education and the Workforce**

**H.R.5176 (introduced by Rep. David McKinley): A bill to require the Secretary of Health and Human Services to provide coordinated care to patients who have experienced a non-fatal overdose after emergency room discharge; Energy and Commerce**

**H.R.5202 (introduced by Rep. Ryan Costello): A bill to amend the Controlled Substances Act to provide for the delivery of a controlled substance by a pharmacy to an administering practitioner; Energy and Commerce, Judiciary**

**H.R.5197 (introduced by Rep. Bill Pascrell): A bill to direct the Secretary of Health and Human Services to conduct a demonstration program to test alternative pain management protocols to limit the use of opioids in emergency departments; Energy and Commerce**

**H.R.5191 (introduced by Rep. Mike Coffman): A bill to direct the Secretary of Veterans Affairs to establish Alzheimer's Disease research, education, and clinical centers; Veterans' Affairs**

**H.R.5228 (introduced by Rep. Frank Pallone): A bill to strengthen the authorities of the Food and Drug Administration to address counterfeit drugs, illegal and synthetic opioids, and opioid-like substances; Energy and Commerce, Budget**

**H.R.5219 (introduced by Rep. Rodney Davis): A bill to require sellers of opioids at retail to verify the identity of the prospective purchaser and enter certain information about the purchase into the respective State's prescription drug monitoring system; Energy and Commerce**

**S.2496 (introduced by Sen. Mike Enzi): A bill amend the Internal Revenue Code of 1986 to establish Small Business Health Accounts; Finance**

**S.2494 (introduced by Sen. Tammy Baldwin): A bill to provide standards for short-term limited duration health insurance policies; Health, Education, Labor, and Pensions (HELP)**

**S.2493 (introduced by Sen. Joe Manchin): A bill to clarify the congressional intent behind the requirements relating to immediate suspension orders and corrective action plans under the Controlled Substances Act that were added by the Ensuring Patient Access and Effective Drug Enforcement Act of 2016; Judiciary**

**S.2502 (introduced by Sen. Chuck Grassley): A bill to address gun violence, improve the availability of records to the National Instant Criminal Background Check System, address mental illness in the criminal justice system, and end straw purchases and trafficking of illegal firearms; Judiciary**

**S. 2507 (introduced by Sen. John Barrasso): A bill to require short-term limited duration insurance issuers to renew or continue in force such coverage at the option of the enrollees; Health, Education, Labor, and Pensions**

**S. 2516 (introduced by Sen. Cory Booker): A bill to direct the Secretary of Health and Human Services to conduct a demonstration program to test alternative pain management protocols to limit the use of opioids in emergency departments; Health, Education, Labor, and Pensions**

**S. 2523 (introduced by Sen. Shelley Moore Capito): A bill to provide coverage under the Medicare program for FDA-approved qualifying colorectal cancer screening blood-based tests; Finance**

**S. 2524 (introduced by Sen. Joe Donnelly): A bill to amend the Public Health Service Act to authorize a loan repayment**

*program for substance use disorder treatment employees; Health, Education, Labor, and Pensions*