



## Health Policy Briefing

March 19, 2018

### Congress Must Pass Spending Deal Before Friday Midnight

Congressional leadership from both chambers have been negotiating to settle on terms for a federal spending deal to keep the government running past the March 23 deadline. Their goal is to pass an omnibus appropriations package to fully fund the remainder of fiscal year (FY) 2018, that ends on September 30. House Majority Leader Kevin McCarthy (R-Calif.) signaled late last week that his caucus would like to see the package released to the public Sunday evening. The House could vote on the potential spending deal as early as Tuesday. The Rules Committee scheduled a meeting for Monday evening to consider a rule on the bill. This would give the Senate little or no time to make any amendments before the March 23 deadline. Early last week, Sen. Rand Paul (R-Ky.) signaled his opposition to the potential deal, expressing frustrations with the budget deal from earlier this year that raised government spending caps. With Sen. Paul's opposition and the absence of Sen. John McCain (R-Ariz.) from the Senate due to his ongoing cancer treatment, the Senate would need to rely on support from Democrats to pass the legislation.

Issues holding up the negotiations include the \$13 billion Gateway Project tunnel to link New Jersey and New York under the Hudson River, language differences around funding for groups that provide abortion services, and the ongoing dispute regarding protections for millions of so called "Dreamers" that arrived in the country as minors and could lose temporary protective status under the Deferred Action for Childhood Arrivals (DACA) immigration policy. Republicans also decided in recent weeks 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 could result in \$5 billion in cuts for programs within the Departments of Labor and

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Health and Human Services.

Key health items still being discussed include the allocation of the funds for opioids, given that the budget agreement included up to \$6 billion for FY18 and FY19, as well as inclusion of the cost-sharing reduction (CSR) payments sought to stabilize the health insurance market. The CSR payments face concerns on both sides. Some Republicans have voiced concerns with the current provisions given that it does not explicitly apply the Hyde amendment that prohibits taxpayer funds from being used for most abortions, while some Democrats have voiced concerns that the CSR payments would not be sufficient to stabilize the market and, as such, would prefer a broader package. Last Monday, renewed opposition was brought forward in a [letter](#) to congress from 15 conservative organizations, including Heritage Action, the Club for Growth, and Americans for Prosperity. The groups claim that any funding of CSRs would equate to a bailout for private health insurance companies and claim that the payments and reinsurance programs are costly and unnecessary.

### *National Match Day Celebrates Biggest Numbers in History*

On Friday, the National Resident Matching Program (NRMP) released results to applicants seeking medical residency and fellowship training positions. 37,103 applicants applied for 37,162 available positions, signifying the largest ever number of slots offered on match day. Of the available positions, 96.2% were filled, up 0.2% from 2017. Specialties that filled 100% of their available slots include Neurological Surgery, Physical Medicine and Rehabilitation, Integrated Interventional Radiology, and Thoracic Surgery. According to the Association of American Medical Colleges (AAMC) the U.S. faces a current shortage of up to 104,900 doctors by 2030. A bill to provide increases to graduate medical education (GME) slots, the Resident Physician Shortage Reduction Act ([H.R. 2267/S. 1301](#)), was reintroduced in 2017 by Reps. Joseph Crowley (D-N.Y.), and Ryan Costello (R-Pa.), and Sens. Bill Nelson (D-Fla.) and Dean Heller (R-Nev.).

### *HHS Secretary Azar Announces Staff Changes*

On Friday, it was reported that the Office of the Secretary at the Department of Health and Human Services (HHS) is making two key personnel changes. John Brooks, a counselor to the Secretary, is being detailed to the White House Domestic Policy Council. Brooks was part of the HHS onboarding team in early 2017, and previously worked at the MITRE Corporation, a non-profit organization that operates research and development centers sponsored by the federal government. Taking over Brooks' portfolio at HHS will be John O'Brien. The portfolio includes drug pricing, the Centers for Medicare and Medicaid Services (CMS), the Health Resources and Services Administration (HRSA), the Agency for Healthcare Research and Quality (AHRQ), and the Office of the Assistant Secretary for Planning and Evaluation (ASPE). O'Brien had served as the Deputy Assistant Secretary at ASPE since 2017.

### *Ways and Means Committee Hosts Red Tape Initiative Roundtable*

On Thursday, the House Ways and Means Committee Republicans held a roundtable discussion with various healthcare provider groups to discuss Medicare red tape relief. Participating doctors and healthcare experts shared their stories with committee members about the struggles they face due to the regulatory burdens placed on them by Washington. Participating organizations included the American College of Emergency Physicians, American College of Surgeons, and the Alliance of Specialty Medicine, among others. According to the Committee, while a variety of policy recommendations were discussed, there were a few common themes, including (1) standardizing documentation guidelines; (2) eliminating unnecessary and duplicative paperwork and reporting burdens in all settings; (3) modernizing laws such as Stark laws that are slowing down providers' ability to fully work together to create efficiencies and lower costs for the patients and taxpayers; and (4) expanding the use of innovations in healthcare, particularly telehealth.

### ***Congressional Leaders Urge CMS to Improve Medicaid Data***

Bipartisan leaders of the Senate Finance Committee and the House Energy and Commerce Committee sent a **letter** to the Centers for Medicare & Medicaid Services (CMS) regarding the Transformed Medicaid Statistical Information System (T-MSIS), an upgraded data system that holds great potential to ensure the completeness, accuracy, and timeliness of Medicaid data. The letter -- signed by Senate Finance Committee Chairman Orrin Hatch (R-Utah), Senate Finance Committee Ranking Member Ron Wyden (D-Ore.), Energy and Commerce Committee Chairman Greg Walden (R-Ore.) and Energy and Commerce Committee Ranking Member Frank Pallone, Jr. (D-N.J.) – requested a response from CMS within 30 days to provide additional information on key gaps identified by a recent Government Accountability Office (GAO) **study**. The leaders asked CMS a range of questions based on the GAO findings, including asking CMS for further information regarding concrete steps in their work plan and implementation timeframes.

### ***Congressional Leaders Urge Key improvements to Medicare Advantage Program***

House Ways and Means Health Subcommittee Chairman Peter Roskam (R-Ill.) and House Energy and Commerce Health Subcommittee Chairman Michael Burgess, M.D. (R-Texas), along with 42 Republican Members of both Committees, sent a letter to HHS Secretary Alex Azar and CMS Administrator Seema Verma regarding their annual Advance Notice and Draft Call Letter proposing new rates and policies for the Medicare Advantage Program for 2019. The **letter** included key recommendations for improvement, including for the fee-for-service (FFS) normalization factor, especially as it relates to the Program for All-Inclusive Care for the Elderly (or “PACE” program); predictive, transparent, and stable risk adjustment methodologies; and ongoing acknowledgement of challenges within Puerto Rico.

### ***Senators Introduce Bills to End Pharmaceutical ‘Gag Clauses’***

A group of bipartisan senators, including Sen. Susan Collins (R-Maine), Sen. Debbie Stabenow (D-Mich.), Sen. Bill Cassidy (R-La.), Sen. John Barrasso (R-Wyo.), and Sen. Claire McCaskill (D-Mo.), want to remove barriers that prevent pharmacists from telling customers about cheaper options for prescription drugs. The senators introduced two bills aimed at prohibiting insurers and pharmacy benefit managers (PBMs) from including “pharmacy gag clauses” in contracts. The first bill – **S. 2554**, the Patient Right to Know Drug Prices Act – targets ‘gag clauses’ offered within the exchanges or private employers, while the second bill – **S. 2553**, the Know the Lowest Price Act – provides the same protection for those covered by Medicare Advantage and Medicare Part D plans. The second bill is also cosponsored by Sen. Ron Wyden (D-Ore.). The clause prevents a pharmacy from telling a customer they can buy a drug cheaper out of pocket instead of going through their insurance plan. A **recent study** published in the Journal of the American Medical Association (JAMA) that reviewed 9.5 million insurance claims found that 23 percent of prescriptions filled through insurance ended up costing more for customers than if they would have paid out of pocket. The Pharmaceutical Care Management Association, which represents PBMs, said the issue has already been addressed in the marketplace.

### ***FDA Announces Draft Rule to Reduce Nicotine Levels in Cigarettes***

On Thursday, as part of a **comprehensive plan on tobacco and nicotine regulation** announced last summer, the Food and Drug Administration (FDA) issued an **advance notice of proposed rulemaking** to explore a product standard to lower nicotine in cigarettes to minimally or non-addictive levels. The FDA provided data to support reducing levels of nicotine to 0.3 to 0.5 milligrams per cigarette – much lower than the current range of 1.1 to 1.7 milligrams in conventional domestic cigarettes. The idea is to help wean millions of smokers off their deadly habit and prevent millions more from becoming regular smokers in the first place. The FDA also said it will be seeking comment on additional new regulations of the tobacco industry, including possibly limiting menthol in cigarettes.

### ***Veteran New York Democratic Rep. Louise Slaughter Has Died***

Veteran Congresswoman Rep. Louise Slaughter died Friday, days after falling in her residence. The 88-year-old lawmaker had been the first woman to chair the House Rules Committee and was her party's top member on the panel when she died. The New York Democrat died at George Washington University Hospital in Washington, a week after a fall in which she'd sustained a concussion. Slaughter was serving her 16th term in the House, and her 31 years in the chamber were the third longest on record for any woman. Speaker Paul Ryan (R-Wis.) ordered the flags above the Capitol to be lowered to half-staff in her honor. Senate Minority Leader Chuck Schumer (D-N.Y.) described Slaughter as a "giant" whose death will "leave a gaping hole in our hearts and our nation."

### ***House to Revive 'Right to Try' Bill***

Today, the House of Representatives' Rules Committee will take up the **H.R. 5247**, the Trickett Wendler, Frank Mongiello, Jordan McLinn, and Matthew Bellina Right to Try Act– the same bill that failed to pass under suspension last week by a vote of 259-140. The Rules Committee action will pave the way for the House to pass the bill with a simple majority. However, given that the House bill is different than the Senate bill (**S. 204**) passed last August, for final passage, the bills will need to be reconciled. Critics of both bills, including academics, industry leaders, patient advocates, and former FDA Commissioner Rob Califf have said that Right-to-Try legislation is a solution in need of a problem, as FDA approves more than 99% of all expanded access requests, enabling those with terminal illnesses to access investigational treatments that companies allow. Proponents of the legislation, however, say that those with terminal illnesses should be allowed to ask companies to access experimental drugs, and if allowed, access them without FDA oversight, though the House bill would still require companies to report adverse events to FDA.

### ***Trump to Release New Opioid Plan***

President Donald Trump returns to New Hampshire today for the first time since his 2016 campaign . As part of that visit, Trump is expected to announce a new plan aimed at combatting the opioid crisis. The ambitious plan, which the White House has quietly been circulating among political appointees this month, will likely include a mix of prevention and treatment measures as well as beefed-up enforcement in line with the president's frequent calls for a harsh crackdown on drug traffickers and dealers. The White House's most concrete proposal yet to address opioids comes after complaints from state health officials and advocates that Trump has moved too slowly to combat the epidemic after his bold campaign promises to wipe out the crisis touching all parts of the country.

### ***Azar Says There Is No Need to Lift CDC Ban on Gun Research***

The federal research agencies don't need Congress to lift a longstanding ban on gun violence advocacy in order to do more research on firearms deaths, HHS Secretary Alex Azar told lawmakers March 15, a claim that contradicts many former researchers for the Centers for Disease Control and Prevention (CDC). The CDC collects and publishes data on deaths in general, including homicides and suicides by firearms, but does not fund studies into the cause of such deaths. The CDC hasn't done this work since Congress passed a prohibition on federal agencies advocating for gun control measures in 1996, known as the Dickey Amendment. Since 2013, the federal government has spent \$13.22 million on research projects involving firearms, nearly all of it occurring at the National Institutes of Health (NIH) in 2016 and 2017, according to federal budget records. None of the research was funded by or performed by the CDC.

## MedPAC Advises Congress to End MIPS

On March 15, the Medicare Payment Advisory Commission (MedPAC) released its **March 2018 Report to Congress: Medicare Payment Policy**. The report suggests that Congress scrap the Merit-based Incentive Payment System (MIPS), given that it is too complex and will not help beneficiaries choose a high-quality professional. Instead, they argue, Congress should substitute a new program, known as the voluntary value program. The voluntary value program that MedPAC contemplates “would be a stepping-stone or on-ramp” for physicians who are not ready to join an alternative payment model. With the proposed program, doctors’ care would be measured similar to an advanced alternative payment model. On March 21, the House Ways and Means Health Subcommittee has scheduled a hearing to examine how MIPS and the advanced alternative payment system are working. The subcommittee wants to ensure that there is clarity and certainty for Medicare doctors while improving care for the beneficiaries they serve.

## Upcoming Congressional Meetings and Markups

*House Rules Committee hearing on H.R. 4566—Alleviating Stress Test Burdens to Help Investors Act; and H.R. 5247—Trickett Wendler, Frank Mongiello, Jordan McLinn, and Matthew Bellina Right to Try Act of 2018; 5:00 p.m., H-313 Capitol Bldg; March 19*

*House Energy and Commerce Oversight and Investigations Subcommittee hearing on “The Drug Enforcement Administration’s Role in Combating the Opioid Epidemic;” 10:00 a.m., 2322 Rayburn Bldg. The only witness will be DEA Acting Administrator Robert W. Patterson. March 20*

*House Education and the Workforce Subcommittee on Health, Employment, Labor, and Pensions hearing on “Expanding Affordable Health Care Options: Examining the Department of Labor’s Proposed Rule on Association Health Plans;” 10:00 a.m., 2175 Rayburn Bldg; March 20*

*Senate Finance Committee hearing to examine the nominations of John J. Bartrum, of Indiana, to be an Assistant Secretary, and Lynn A. Johnson, of Colorado, to be Assistant Secretary for Family Support, both of the Department of Health and Human Services;” 10:00 a.m., 215 Dirksen Bldg; March 20*

*House Energy and Commerce Health Subcommittee 2-day hearing on “Combating the Opioid Crisis: Prevention and Public Health Solutions;” 9:00 a.m., 2123 Rayburn Bldg. For the list of bills to be discussed, please see [HERE](#). March 21*

*House Oversight and Government Reform Subcommittee on Government Operations and Subcommittee on Intergovernmental Affairs joint hearing on “Improper Payments in State-Administered Programs: Medicaid;” 10:00 a.m., 2154 Rayburn Bldg; March 21*

*House Ways and Means Health Subcommittee hearing on “The Implementation of MACRA’s Physician Payment Policies;” 2:00 p.m., 1100 Longworth Bldg; March 21*

*Continuation of House Energy and Commerce Health Subcommittee hearing on “Combating the Opioid Crisis: Prevention and Public Health Solutions;” 10:00 a.m., 2123 Rayburn Bldg. For the list of bills to be discussed, please see [HERE](#). March 22*

*House Energy and Commerce Subcommittee on Communications and Technology “Legislative Hearing on Four Communications Bills;” 10:15 a.m., 2322 Rayburn Bldg. H.R. 2345, National Suicide Hotline Improvement Act is one of the four bills to be discussed. March 22*

*House Veterans’ Affairs Committee field hearing “Partnering, Payment, and Provider Access: VA Community Care in North Carolina;” 10:00 a.m., Fayetteville Technical Community College, General Classroom Building Rooms 108 & 114, 2817 Fort Bragg Road, Fayetteville, NC 28303. March 23*

**Recently Introduced Health Legislation**

*H.R.5322 — To amend the Public Health Service Act to provide for a national program to conduct and support activities toward the goal of significantly reducing the number of cases of overweight and obesity among individuals in the United States. Sponsor: Rep. Norton, Eleanor Holmes [D-DC-At Large]. Committees: House - Energy and Commerce*

*H.R.5314 — To amend title 38, United States Code, to provide for unlimited eligibility for health care for mental illnesses for veterans of combat service during certain periods of hostilities and war. Sponsor: Rep. Cartwright, Matt [D-PA-17]. Committees: House - Veterans' Affairs*

*H.R.5311 — To reauthorize and expand the Comprehensive Addiction and Recovery Act of 2016. Sponsor: Rep. Blackburn, Marsha [R-TN-7]. Committees: House - Energy and Commerce, Judiciary, Education and the Workforce*

*H.R.5306 — Ensuring Medicaid Provides Opportunities for Widespread Equity, Resources (EMPOWER) and Care Act: A bill to reauthorize the Money Follows the Person Demonstration Program. Sponsor: Rep. Guthrie, Brett [R-KY-2]. Committees: House - Energy and Commerce*

*H.R.5298 — To amend the Controlled Substances Act to deem drugs or other substances that act as opioid mu receptor agonists to be in schedule I, subject to exceptions for substances intended for legitimate medical or research use, and for other purposes. Sponsor: Rep. Roe, David P. [R-TN-1]. Committees: House - Energy and Commerce, Judiciary*

*H.R.5294 — To amend title 40, United States Code, to address the impact of drug abuse on economic development in Appalachia, and for other purposes. Sponsor: Rep. Barletta, Lou [R-PA-11]. Committees: House - Transportation and Infrastructure*

*H.R.5272 — To ensure that programs and activities that are funded by a grant, cooperative agreement, loan, or loan guarantee from the Department of Health and Human Services, and whose purpose is to prevent or treat a mental health or substance use disorder, are evidence-based. Sponsor: Rep. Stivers, Steve [R-OH-15]. Committees: House - Energy and Commerce*

*H.R.5267 — To amend the Controlled Substances Act to clarify the process for denying, revoking, or suspending a registration to manufacture, distribute, or dispense a controlled substance, and for other purposes. Sponsor: Rep. Welch, Peter [D-VT-At Large]. Committees: House - Energy and Commerce, Judiciary*

*H.R.5261 — To amend the Public Health Service Act to provide for regional centers of excellence in substance use disorder education, and for other purposes. Sponsor: Rep. Johnson, Bill [R-OH-6]. Committees: House - Energy and Commerce*

*H.R.5258 — To amend the Internal Revenue Code of 1986 to expand eligibility to receive refundable tax credits for coverage under a qualified health plan. Sponsor: Rep. DeSaulnier, Mark [D-CA-11]. Committees: House - Ways and Means*

*H.R.5254 — To direct the Secretary of Health and Human Services to conduct a study on the feasibility of expanding eligibility for enrollment in Medicare Advantage plans to individuals enrolled under the Medicaid program or enrolled under a group health plan. Sponsor: Rep. Budd, Ted [R-NC-13]. Committees: House - Ways and Means, Energy and Commerce*

*H.R.5251 — To make demonstration grants to eligible local educational agencies or consortia of eligible local educational agencies for the purpose of increasing the numbers of school nurses in public elementary schools and secondary schools. Sponsor: Rep. Titus, Dina [D-NV-1]. Committees: House - Education and the Workforce, Energy and Commerce*

*H.R.5247 — Trickett Wendler, Frank Mongiello, Jordan McLinn, and Matthew Bellina Right to Try Act of 2018 Sponsor: Rep. Fitzpatrick, Brian K. [R-PA-8]. Committees: House - Energy and Commerce*

*H.Res.783 — Expressing support for designation of September as “National Brain Aneurysm Awareness Month”. Sponsor: Rep. Lynch, Stephen F. [D-MA-8]. Committees: House - Energy and Commerce*

*S. 2561 — A bill to authorize the Attorney General to suspend a controlled substances registration if there is a likelihood of a threat of diversion of a controlled substance, and for other purposes. Sponsor: Sen. Feinstein, Dianne [D-CA]. Committees: Senate - Judiciary*

*S.2554 — A bill to ensure that health insurance issuers and group health plans do not prohibit pharmacy providers from providing certain information to enrollees. Sponsor: Sen. Collins, Susan M. [R-ME]. Committees: Senate - Health, Education, Labor, and Pensions*

*S.2553 — A bill to amend title XVIII of the Social Security Act to prohibit health plans and pharmacy benefit managers from restricting pharmacies from informing individuals regarding the prices for certain drugs and biologicals. Sponsor: Sen. Stabenow, Debbie [D-MI]. Committees: Senate - Finance*

*S.2548 — A bill to amend title 38, United States Code, to direct the Secretary of Veterans Affairs to furnish mental health care to certain former members of the Armed Forces who are not otherwise eligible to receive such care, and for other purposes. Sponsor: Sen. Heller, Dean [R-NV]. Committees: Senate - Veterans' Affairs*

*S.2545 — A bill to amend the Public Health Service Act to authorize a special behavioral health program for Indians. Sponsor: Sen. Smith, Tina [D-MN]. Committees: Senate - Indian Affairs*

*S.2535 — A bill to amend the Controlled Substances Act to strengthen Drug Enforcement Administration discretion in setting opioid quotas. Sponsor: Sen. Durbin, Richard J. [D-IL]. Committees: Senate - Judiciary*

*S.2533 — A bill to amend title III of the Public Health Service Act to allow National Health Service Corps members to provide obligated service as behavioral and mental health professionals at schools, other community-based settings, or patient homes, and for other purposes. Sponsor: Sen. Smith, Tina [D-MN]. Committees: Senate - Health, Education, Labor, and Pensions*

*S.2532 — A bill to make demonstration grants to eligible local educational agencies or consortia of eligible local educational agencies for the purpose of increasing the numbers of school nurses in public elementary schools and secondary schools. Sponsor: Sen. Tester, Jon [D-MT]. Committees: Senate - Health, Education, Labor, and Pensions*