



Health Policy Briefing

June 11, 2018

House Passes White House Rescission Request

Last Thursday, the House of Representatives passed H.R. 3, the Spending Cuts to Expired and Unnecessary Programs Act by a vote of 210-206. The bill would rescind nearly \$15 billion in previously approved government funding as proposed by the Trump administration. The package targets approximately \$8 billion from the U.S. Department of Health and Human Services (HHS), including rollbacks to unobligated funds within the Children’s Health Insurance Program (CHIP). The White House had walked back its rescission request earlier in the week, eliminating its proposal to claw back \$252 million in unspent funding from the 2015 Ebola outbreak. Democrats and public health groups expressed strong opposition to the proposal, especially in light of the ongoing Ebola outbreak in the Democratic Republic of the Congo (DRC) that has killed 27 people. Previously, Senate Majority Leader Mitch McConnell (R-Ky.) said the senate would look at the package after House passage.

House to Begin Consideration of Opioid Proposals This Week

The House of Representatives plans to vote on dozens of bills to combat the opioid epidemic over the next two weeks. Most of the bills are non-controversial and are expected to receive wide bipartisan support on the House’s suspension calendar. The final details are still being worked out, but many of the bills are expected to be combined into a larger package before being sent to the Senate for consideration. Senate Majority Leader Mitch McConnell (R-Ky.) has said that the Senate could take up opioid legislation in August, now that he has decided to cancel the chamber’s scheduled month-long recess. A full list of bills to be considered by the House will be posted [here](#), as they become available.

The Senate Finance Committee plans to mark up its opioid package on Tuesday. The panel will consider the Helping to End Addiction and Lesson (HEAL) Substance Use Disorders Act of 2018, which includes approximately 20 different bills and would encourage states to expand access to family-focused residential treatment programs and telemedicine when treating substance use disorders. It

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would also require doctors to screen Medicare beneficiaries for opioid misuse and abuse during their annual wellness visits.

Last week, the Food and Drug Administration (FDA) contacted nine online networks, a total of 53 websites, warning them to stop marketing dangerous, unapproved, and misbranded versions of opioid medications. Commissioner Scott Gottlieb stated that the agency will take action against firms whose websites deliberately break the law. He also noted that the FDA will be taking additional steps in the coming months to crack down on the flow of illegal opioids sold online and shipped through the mail. The agency requests responses within 10 days to inform the FDA what specific actions the companies will take.

Also last week, the White House's Office of National Drug Control Policy (ONDCP) in partnership with the Ad Council and the Truth Initiative debuted four ads targeted at teens and young adults to warn people about the dangers of opioid abuse and raise awareness about the nationwide epidemic of addiction. The ads feature true stories about young people who have struggled with addiction. Facebook, Turner, Amazon, NBC, and Google are expected to donate ad time equivalent to at least \$30 million. The White House plans to roll out additional campaigns aimed at other age groups in the future.

Senate Cancels August Recess

Senate Majority Leader Mitch McConnell announced his decision to officially cancel the chamber's scheduled August recess. McConnell blames Democratic obstruction of the president's nominees for his decision. He stated that lawmakers should expect to remain in session to pass appropriations bills and make progress on the consideration of executive nominees. Senate Democratic leader Chuck Schumer (D-N.Y.) stated that his caucus welcomes the additional time as an opportunity to work on many health care related issues, including reigning in rising health insurance premiums, expanding access to Medicare, and lowering drug prices. The plan is for senators to recess the week of August 6 before returning to work the following week and remaining in session for the rest of the month. Senators were previously scheduled to recess until after Labor Day.

Trump Administration Won't Defend Key Provisions of ACA

Attorney General Jeff Sessions has told Congress that the Justice Department will no longer defend the constitutionality of the Affordable Care Act's (ACA) individual health insurance mandate. The plaintiffs in a Texas-led lawsuit are arguing that Congress' repeal of the mandate penalty last year means that all of Obamacare should be repealed. Sessions sent a letter to House Speaker Paul Ryan (R-Wis.), explaining that the Department of Justice (DOJ) will argue that certain parts of the ACA are inseparable from the individual mandate, which would impact the guaranteed-issue and community rating provisions of the law. While the Attorney General acknowledges that the DOJ has a longstanding tradition of defending federal laws, this is "a rare case where the proper course is to forgo defense" of the law. Seventeen Democratic-led states have already intervened to defend Obamacare in DOJ's absence. Legal experts are skeptical about the potential success of the DOJ's strategy, given that Congress itself indicated that the rest of the law could still stand without the mandate when lawmakers repealed the individual mandate tax penalty last year.

WH to Propose HHS Restructuring; FDA Also Considers Changes

President Trump is considering a reorganization of the federal government. His plan, which is expected to be released in the coming weeks by the Office of Management and Budget (OMB), would consolidate safety-net and welfare programs within the U.S. Department of Health and Human Services (HHS). HHS would be renamed, perhaps to restore the term 'welfare' to its title; the agency was previously called the Department of Health, Education, and Welfare. The President's proposal would also make cuts to USAID and the State Department. The biggest changes contained in the forthcoming report would likely require congressional approval.

Commissioner of Food and Drugs Scott Gottlieb also announced that the FDA plans to improve the efficiency of the drug-approval process through structural changes and product-specific guidance. The agency will increase the number of offices that make decisions about drug marketing and regulatory oversight to remove administrative barriers. The FDA will also make an effort to engage sponsors earlier in the drug approval process.

Lawmakers Inquire on HHS Cybersecurity Role

Bipartisan leadership of the House Energy and Commerce Committee and the Senate Health, Education, Labor, and Pensions (HELP) Committee have **written** to HHS Secretary Alex Azar about the implementation of the Cybersecurity Information Sharing Act (CISA). The law aimed to strengthen cybersecurity through increasing data on digital threats. The lawmakers outline a number of information gaps in the Department's Cyber Threat Preparedness Report (CTRP), delivered to Congress last April. The report lacked information about the role and status of the Healthcare Cybersecurity and the Department of Homeland Security's Communications Integration Center (HCCIC). The lawmakers also request clarification on how HHS plans to manage its role as both a regulator of the health care sector and the Sector Specific Agency (SSA) responsible for providing guidance and support during cybersecurity incidents.

2018 Medicare Trustees Report

The **2018 Medicare Trustees Report** was released last week. The report finds that Medicare's Hospital Insurance (HI) trust fund which funds Medicare Part A will be depleted in 2026, three years earlier than last year's report predicted. At this point, it is estimated that Medicare will only be able to cover 91 percent of program costs. The report cites the repeal of the individual mandate as one factor responsible for the state of the program; Medicare will face increased payments to hospitals for uncompensated care costs as a result of an increased number of uninsured individuals. Diminishing revenues from payroll and Social Security taxes are also responsible for the trust fund's decline. The Trustees recommend that Congress and the administration take steps in the near future to address the depletion of the trust fund and projected growth in program spending. In response to the report, many congressional Republicans acknowledged the need to reform the Medicare program to ensure its fiscal sustainability.

CMS to Begin Issuing Medicaid/CHIP Scorecard

The Centers for Medicare and Medicaid Services (CMS) announced the creation of a Medicaid and Children's Health Insurance Program (CHIP) Scorecard. The publication will track Medicaid and CHIP quality metrics and federally reported measures in a scorecard format as a means to foster transparency and increase accountability for program outcomes and performance. Administrator Seema Verma says she intends the Scorecard to be used for tracking the best practices of high performing states. The site relies on states' voluntary participation, consolidating data submitted by states in one location, posting CMS' own performance data, and ranking states by performance. The metrics reflected in the first Scorecard include well child visits, mental health conditions, children's preventive dental services, and other chronic health conditions. The Scorecard will not be used to penalize poor-performing programs. It is the first time that CMS is making public state and federal administrative performance metrics, like state/federal timeliness of managed care capitation rate reviews, time from submission to approval for Section 1115 demonstrations, and state/federal plan amendment processing times. CMS plans to update the Scorecard annually with new functionality and metrics, including opioid-related and home and community-based services-related quality metrics, along with the ability to compare spending patterns. It could also potentially be used to hold states more accountable in the future.

Drug Spending Rises, Despite Decrease in Prescriptions

The HHS Office of the Inspector General (OIG) released new data indicating that Medicare spending on brand-name drugs rose by 62 percent between 2011 and 2015, despite the fact that the number of brand-name drug prescriptions in Medicare Part D decreased over the same time period. The increase does take into account discounts and rebates paid by manufacturers to insurers and pharmacy benefit managers (PBMs). Medicare spending increased from \$49 billion in 2011 to \$80 billion in 2015, while the number of prescription fell 17 percent and the total amount of rebates doubled during the five-year period. The report also finds that seniors' out-of-pocket (OOP) costs are increasing. Part D beneficiaries spent 40 percent more on brand-name drugs from 2011 to 2015 and the percentage of beneficiaries with OOP costs of \$2,000 or more per year doubled. The average OOP cost per brand name drug rose by 40 percent, from \$161 to \$225. In addition, the average unit cost of brand-name drugs increased by 29 percent.

Reduction in HACs Saves Lives, Reduces Costs

The Agency for Healthcare Research and Quality (AHRQ) has released new **data** indicating that the Partnership for Patients campaign was successful in averting deaths and avoiding costs. The campaign to improve hospital safety and disseminate best practices was launched in 2011, alongside ACA provisions to penalize hospital-acquired conditions (HACs) and the launch of other quality improvement efforts. The federal data indicates that the Partnership helped save 8,000 lives and \$3 billion in health care costs between 2014 and 2016.

GAO Medicaid MCO Report Finds Improper Payments

The Government Accountability Office (GAO) is recommending that CMS take action to address improper payments in the Medicaid program. The GAO issued a new **report** at the request of the House Energy and Commerce Committee which found that the agency's current efforts to estimate the Medicaid improper managed care payment rate do not account for overpayments and unallowable costs. The managed care component of the Payment Error Rate Measurement (PERM) review only measures capitated payments, and therefore does not account for the totality of integrity risks in Medicaid managed care. The GAO's audits and investigations, which only involved a small fraction of the managed care organizations (MCOs) in operation, identified \$68 million in overpayments and unallowable costs that were not included in PERM estimates. The Department of Health and Human Services agreed with the GAO recommendation.

Upcoming Congressional Meetings and Markups

Senate Health, Education, Labor, and Pensions Committee hearing "The Cost of Prescription Drugs: Examining the President's Blueprint 'American Patients First' to Lower Drug Prices;" 10:00 a.m., 430 Dirksen Bldg.; June 12

Senate Finance Committee Open Executive Session to Consider an Original Bill Entitled Helping to End Addiction and Lessen (HEAL) Substance Use Disorders Act of 2018; 2:00 p.m., 215 Dirksen Bldg.; June 12

House Veterans' Affairs Health Subcommittee legislative hearing on H.R. 2787; H.R. 3696; H.R. 5521; H.R. 5693; H.R. 5864; H.R. 5974; Draft bill, the Veterans Serving Veterans Act; and Draft bill, to improve the productivity and management of VA health care facilities; 3:00 p.m., 334 Cannon Bldg.; June 13

House Energy and Commerce Oversight and Investigations Subcommittee hearing "The State of U.S. Public Health Biopreparedness: Responding to Biological Attacks, Pandemics, and Emerging Infectious Disease Outbreaks;" 9:00 a.m., 2123 Rayburn Bldg.; June 15

Senate Health, Education, Labor, and Pensions Committee hearing "Effective Administration of the 340B Drug Pricing Program;" 10:00 a.m., 430 Dirksen Bldg.; June 19

Recently Introduced Health Legislation

H.R.5985 — To amend title XVIII of the Social Security Act to permit review of certain Medicare payment determinations for disproportionate share hospitals, and for other purposes; Sponsor: Rep. Paulsen, Erik [R-MN-3]; Committees: House - Ways and Means

H.R.5992 — To establish a grant program relating to the prevention of student and student athlete opioid misuse; Sponsor: Rep. Esty, Elizabeth H. [D-CT-5]; Committees: House - Energy and Commerce

H.R.5997 — To amend titles XVIII and XIX of the Social Security Act to ensure prompt coverage of breakthrough devices under the Medicare and Medicaid programs, and for other purposes; Sponsor: Rep. DelBene, Suzan K. [D-WA-1]; Committees: House - Ways and Means, Energy and Commerce

H.R.5998 — To amend the Public Health Service Act to reauthorize a loan repayment program under which health professionals agree to conduct prevention activities, as employees of the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry, in consideration of the Federal Government agreeing to make payments on the principal and interest of the educational loans of such health professionals, and for other purposes; Sponsor: Rep. Schakowsky, Janice D. [D-IL-9]; Committees: House - Energy and Commerce

H.R.6004 — To amend title XIX of the Social Security Act to provide States with the option of providing medical assistance at a residential pediatric recovery center to infants with neonatal abstinence syndrome; Sponsor: Rep. Jenkins, Evan H. [R-WV-3]; Committees: House - Energy and Commerce

S.3000 — A bill to amend title XI of the Social Security Act to make improvements to the transparency report requirements under section 1128G of such Act; Sponsor: Sen. McCaskill, Claire [D-MO]; Committees: Senate - Finance

S.3008 — A bill to direct the Secretary of Health and Human Services to conduct a study and submit to Congress a report containing recommendation on how to improve the use of non-opioid treatments for acute and chronic pain management for individuals entitled to benefits under part A or enrolled under part B of the Medicare program, and for other purposes; Sponsor: Sen. Young, Todd C. [R-IN]; Committees: Senate - Finance

S.3014 — A bill to amend title XVIII of the Social Security Act to support rural residency training funding that is equitable for all States, and for other purposes; Sponsor: Sen. Gardner, Cory [R-CO]; Committees: Senate - Finance

S.3016 — A bill to amend the Public Health Service Act to improve essential oral health care for low-income and other underserved individuals by breaking down barriers to care, and for other purposes; Sponsor: Sen. Booker, Cory A. [D-NJ]; Committees: Senate - Health, Education, Labor, and Pensions

S.3024 — An original bill making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2019, and for other purposes; Sponsor: Sen. Boozman, John [R-AR]; Committees: Senate - Appropriations

S.3029 — A bill to revise and extend the Prematurity Research Expansion and Education for Mothers who deliver Infants Early Act (PREEMIE Act); Sponsor: Sen. Alexander, Lamar [R-TN]; Committees: Senate - Health, Education, Labor, and Pensions

S.3032 — A bill to amend the Controlled Substances Act to provide for a new rule regarding the application of the Act to marihuana, and for other purposes; Sponsor: Sen. Warren, Elizabeth [D-MA]; Committees: Senate - Judiciary

H.R.6029 — To amend the Omnibus Crime Control and Safe Streets Act of 1968 to reauthorize the comprehensive opioid abuse grant program, and for other purposes; Sponsor: Rep. Rothfus, Keith J. [R-PA-12]; Committees: House - Judiciary

H.R.6042 — To amend title XIX of the Social Security Act to delay the reduction in Federal medical assistance percentage for Medicaid personal care services furnished without an electronic visit verification system, and for other purposes; Sponsor: Rep. Guthrie, Brett [R-KY-2]; Committees: House - Energy and Commerce

H.R.6043 — To amend the Controlled Substances Act to provide for a new rule regarding the application of the Act to marihuana, and for other purposes; Sponsor: Rep. Joyce, David P. [R-OH-14]; Committees: House - Judiciary, Energy and Commerce

H.R.6047 — To amend the Controlled Substances Act relating to controlled substance analogues; Sponsor: Rep. Thornberry, Mac [R-TX-13]; Committees: House - Energy and Commerce, Judiciary