



## Health Policy Briefing

August 6, 2018

### Senate Completes Work on Minibus Package, Adjourns for Abbreviated August Recess

The Senate passed a four-bill minibus appropriations package (H.R. 6147) last week which would fund the Food and Drug Administration (FDA) and the Agriculture, Transportation, Housing and Urban Development (HUD), and Interior departments for fiscal year (FY) 2019. The \$154.2 billion spending measure passed by a vote of 92-6, with Republicans Ted Cruz (Texas), Ron Johnson (Wis.), Mike Lee (Utah), Rand Paul (Ky.), Ben Sasse (Neb.) and Pat Toomey (Pa.) voting in opposition mainly out of concern about overall spending levels.

Given the Senate’s earlier passage of funding for Energy-Water, the Legislative Branch, and Military Construction-Veterans Affairs, the chamber has now passed seven of the 12 appropriations bills necessary to fund the federal government past the end of the fiscal year on September 30. Staff plan to work with their House counterparts to begin reconciling the bills with the House legislation over the August recess.

The Senate is expected to address funding for the Department of Defense and the Department of Health and Human Services when it reconvenes on August 15. But even if the Senate is successful in tying the two bills together and reaching a deal with the House on those measures, Congress will likely still have to approve a continuing resolution (CR) to fund the rest of the government past the September 30 deadline. Lawmakers are likely to push consideration of appropriations that touch upon the contentious issue of immigration – Homeland Security, State-Foreign Operations, and Commerce-Justice-Science – until after the November midterm elections. President Trump has threatened a government shutdown if Congress does not provide additional funding for a border wall.

Congress will have approximately six weeks to work between the time both chambers return to session after Labor Day and when lawmakers leave town to campaign. It is unclear whether the Senate will have time to address several remaining health care agenda items, including a response to the opioid crisis, reauthorization of federal

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pandemic and bioterrorism response programs, and consideration of measures to address the rising cost of prescription drugs, such as S. 974, the *Creating and Restoring Equal Access to Equivalent Samples (CREATES) Act* or legislation to ban gag orders at the pharmacy counter (S. 2554).

### ***Trump Administration to Expand Availability of Short-Term Health Plans***

The Trump administration has issued regulations that will allow individuals to purchase health care insurance plans that don't comply with the Affordable Care Act's (ACA) consumer protections. The final rule will allow the sale of short-term limited-duration plans for a 12-month coverage period, with the option of renewal for up to 36 months. The plans typically don't cover individuals with pre-existing conditions and do not have to cover the comprehensive benefits required by Obamacare. The administration argues that these plans will serve as affordable alternatives for people who don't qualify for subsidies in the ACA's individual market, and the move has been praised by Republican lawmakers as an alternative to the ACA's one-size-fits-all approach. Opponents of the rule believe that the short-term plans will attract healthier individuals and drive up costs for less healthy patients in the ACA-compliant market. Senate Democrats have stated that they plan to force a vote on a measure that would overturn the rule. Sen. Tammy Baldwin (D-Wis.) plans to introduce the resolution of disapproval. The measure would require 51 votes to pass, which means that a united Democratic caucus would need one Republican to vote in support of the proposal in the absence of Sen. John McCain (R-Ariz.).

### ***Trump Taps Science Advisor; OMB Issues R&D Memo***

President Trump announced last week that he has tapped Kelvin Droegemeier, an Oklahoma meteorologist, as his first director of the White House Office of Science and Technology Policy (OSTP). The post has been vacant since January 2017. Droegemeier previously served on the National Science Board under both Barack Obama and George W. Bush. OSTP shapes the federal government's overall R&D budget, and is involved in the formation of the science and technology agenda that spans all relevant federal agencies, such as the National Institutes of Health (NIH). The position requires Senate confirmation.

In related news, the Office of Management and Budget (OMB) released a [memo](#) last week outlining federal research and development priorities for fiscal year (FY) 2020. The memo is intended to assist agencies with their 2020 budget submissions. OMB specifically highlights the importance of basic medical research, particularly for personalized medicine, and urges NIH to continue such work that is already underway at the agency.

### ***E&C Requests Information on Opioid Crisis from Manufacturers***

Bipartisan leadership of the House Energy and Commerce Committee have written to three pharmaceutical companies regarding their role in the opioid epidemic. Chairman Greg Walden (R-Ore.), Ranking Member Frank Pallone (D-N.J.), Vice Ranking Member Kathy Castor (D-Fla.), Oversight Subcommittee Chairman Gregg Harper (R-Miss.), Oversight Ranking Member Diana DeGette (D-Colo.), and Oversight Vice Chairman Morgan Griffith (R-Va.) ask [Insys Therapeutics](#), [Mallinckrodt Pharmaceuticals](#), and [Perdue Pharma](#) questions about how they each marketed their opioid products and how they responded when they became aware of their products being abused. The lawmakers also request that the companies participate in a briefing with the committee. The letters request similar information and documents in addition to making requests that are unique to each manufacturer.

### ***E&C Republicans Continue Examination of 340B***

Republican leadership on the House Energy and Commerce Committee have **written** to nine contract pharmacies participating in the 340B Drug Pricing Program regarding the growth and oversight of 340B. The lawmakers request information on contracting practices, the distance between covered entities and contract pharmacies, to what degree contract pharmacies prevent duplicate discounts and diversion, and whether they ensure low-income patients do not experience high drug costs despite the program discount. The letter was signed by Chairman Greg Walden (R-Ore.), Health Subcommittee Chairman Michael Burgess (R-Texas), and Oversight Subcommittee Chairman Gregg Harper (R-Miss.). Responses are requested by August 15.

### ***Paul to Support Supreme Court Nominee; Kavanaugh Meets with Undecided Senate Democrats***

Sen. Rand Paul (R-Ky.) has announced that he will support Brett Kavanaugh, the President's nominee to the Supreme Court. Paul had previously expressed concerns about Kavanaugh's position on the right to privacy and the bulk collection of data.

Sen. Joe Manchin (D-W.V.) also met with Kavanaugh last week, making him the first Democrat to do so. Manchin was one of only three Democrats that voted last year to confirm Trump's other Supreme Court nominee, Neil Gorsuch. Manchin has repeatedly stated that maintaining protections for people with preexisting conditions is a priority for him as he evaluates Kavanaugh's record. He plans to wait until after Kavanaugh's Senate Judiciary Committee hearings before making a decision on the nomination. Sen. Joe Donnelly (D-Ind.), who also voted in favor of Gorsuch, plans to meet with Kavanaugh on August 15. Democrats do not have a means of blocking the nomination on their own, even with a unified caucus. If Sen. John McCain (R-Ariz.) is unable to make the vote, Democrats would need at least one Republican to vote no. The two most likely Republican targets, Sens. Susan Collins (Maine) and Lisa Murkowski (Alaska), remain undecided.

### ***Senate Passes Suicide Hotline, Animal Drug User Fee Legislation***

The Senate passed S. 1015, the *National Suicide Hotline Improvement Act*, by unanimous consent last week. The bill is aimed at making the U.S. suicide prevention hotline more user-friendly and accessible; it would direct the Federal Communications Commission (FCC), in consultation with the Substance Abuse and Mental Health Services Administration (SAMHSA), to study and report on the feasibility of designating an N11 dialing code to be used for a national suicide prevention and mental health crisis hotline system. The bill previously passed the House by a vote of 379-1, and will now be sent to the President for his signature. The Senate also passed the *Animal Drug and Animal Generic Drug User Fee Amendments of 2018* (H.R. 5554) by unanimous consent last week. The bill will reauthorize user fee programs relating to new animal drugs and new generic animal drugs. The House previously passed the bill by voice vote on July 16.

### ***Bipartisan Children's Hospice Bill Introduced***

A bipartisan group of lawmakers have introduced legislation aimed at addressing gaps in care for children in need of hospice and palliative services. H.R. 6560, the *Children's Program of All-Inclusive Coordinated Care Act*, would allow states to develop programs tailored to seriously ill Medicaid patients and their families. The programs would include palliative care, counseling, respite, expressive therapy, and bereavement benefits. The bill was introduced by Rep. Diana DeGette (D-Colo.) and is supported by the co-chairs of the Congressional Childhood Cancer Caucus, Reps. Michael McCaul (R-Texas), Mike Kelly (R-Pa.), and Jackie Speier (D-Calif.). The bill has been referred to the House Energy and Commerce Committee, where DeGette is a senior member.

**Recently Introduced Health Legislation**

*H.R.6639 — To amend title XVIII of the Social Security Act to provide for coverage under the Medicare program of digital retinal imaging with remote interpretation; Sponsor: Rep. Reed, Tom [R-NY-23]; Committees: House - Energy and Commerce, Ways and Means*

*H.R.6641 — To amend title XXVII of the Public Health Service Act and title XVIII of the Social Security Act to prohibit health insurance issuers, group health plans, Medicare Advantage organizations, and prescription drug plan sponsors from limiting drug price information a pharmacy may give to a consumer; Sponsor: Rep. Paulsen, Erik [R-MN-3]; Committees: House - Energy and Commerce, Ways and Means*

*H.R.6642 — To amend title XIX of the Social Security Act to sunset the limit on the maximum rebate amount for single source drugs and innovator multiple source drugs; Sponsor: Rep. Burgess, Michael C. [R-TX-26]; Committees: House - Energy and Commerce*

*H.R.6646 — To amend the Older Americans Act of 1965 to authorize services to be provided to individuals with Alzheimers disease or a related disorder with neurological and organic brain dysfunction who have not attained 60 years of age; Sponsor: Rep. Rice, Kathleen M. [D-NY-4]; Committees: House - Education and the Workforce*

*S.Res.600 — A resolution recognizing July 28, 2018, as “World Hepatitis Day”; Sponsor: Sen. Hirono, Mazie K. [D-HI]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.3302 — A bill to amend title 38, United States Code, to provide for the non-applicability of non-Department of Veterans Affairs covenants not to compete to the appointment of physicians in the Veterans Health Administration, and for other purposes; Sponsor: Sen. Boozman, John [R-AR]; Committees: Senate - Veterans’ Affairs*

*S.3305 — A bill to amend title XVIII of the Social Security Act to establish rules for payment for graduate medical education (GME) costs for hospitals that establish a new medical residency training program after hosting resident rotators for short durations; Sponsor: Sen. Menendez, Robert [D-NJ]; Committees: Senate - Finance*

*S.3313 — A bill to improve dental care provided to veterans by the Department of Veterans Affairs, and for other purposes; Sponsor: Sen. Sanders, Bernard [I-VT]; Committees: Senate - Veterans’ Affairs*

*S.3316 — A bill to amend title XVIII of the Social Security Act to improve the affordability and enrollment procedures of the Medicare program, and for other purposes; Sponsor: Sen. Nelson, Bill [D-FL]; Committees: Senate - Finance*

*S.3326 — A bill to amend the Internal Revenue Code of 1986 to ensure proper allocation of lump-sum payments of disability insurance benefits for determinations of modified adjusted gross income under the refundable tax credit for coverage under a qualified health plan; Sponsor: Sen. King, Angus S., Jr. [I-ME]; Committees: Senate - Finance*

*S.3327 — A bill to amend title XVIII of the Social Security Act to authorize the suspension of payments by Medicare prescription drug plans and MA-PD plans pending investigations of credible allegations of fraud by pharmacies; Sponsor: Sen. Cortez Masto, Catherine [D-NV]; Committees: Senate - Finance*

*S.3330 — A bill to protect the Medicare and Medicaid programs with respect to certain changes in reconciliation legislation; Sponsor: Sen. Hirono, Mazie K. [D-HI]; Committees: Senate - Budget*

*S.3337 — A bill to amend the Public Health Service Act to revise and extend projects relating to children and to provide access to school-based comprehensive mental health programs; Sponsor: Sen. Smith, Tina [D-MN]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.3338 — A bill to direct the Secretary of Health and Human Services to finalize certain proposed provisions relating to the Programs of All-Inclusive Care for the Elderly (PACE) under the Medicare and Medicaid programs; Sponsor: Sen. Carper, Thomas R. [D-DE]; Committees: Senate - Finance*