

This Week in Congress



Health Policy Briefing

September 10, 2018

The House of Representatives plans to vote on a package of bills this week that would retroactively lift the Affordable Care Act’s (ACA) employer mandate penalties and delay the “Cadillac tax” on high-cost employer health plans until 2023. H.R. 3798, the *Save American Workers Act*, would also change the definition of full-time employee from 30 hours to 40 hours per week for the purposes of mandatory employer health care coverage. Additionally, the House may vote on the conference report to H.R. 5895, the Energy-Water/Legislative Branch/Military Construction-Veterans Affairs appropriations bill, according to House Majority Leader Kevin McCarthy (R-Calif.).

The Senate plans to vote this week on a package of opioid-related measures. The bipartisan Senate substitute amendment to H.R. 6 includes over 70 proposals originating from four Senate committees. Any bill that passes the Senate will still need to be conferenced with the House’s opioid bill before going to the president for his signature. The completed conference bill is not expected to be voted on until after the midterm elections.

The Senate also plans to vote this week on S. 2554, legislation that would ban gag clauses for drug plans providing employee benefits and insurance coverage on the exchanges. The Senate passed S. 2553, which bans the use of gag clauses for Medicare beneficiaries, by unanimous consent last week, while the Energy and Commerce Health Subcommittee advanced the House version of the bill on Friday.

Congress will return to work on Wednesday following the Rosh Hashanah holiday.

Senate Passes Children’s Hospital GME Reauthorization

The Senate passed H.R. 5385, the *Dr. Benjy Frances Brooks Children’s Hospital GME Support Reauthorization Act of 2018* by unanimous consent last week.

The bill will reauthorize the Children’s Hospital Graduate Medical Education (CHGME) program for five years. The House of Representatives passed H.R. 5385 by voice vote in July. It will now be sent to the President’s desk for his signature.

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E&C Subcommittee Advances Six Health Bills

The House Energy and Commerce Health Subcommittee advanced six bipartisan health care bills last week. The Subcommittee held a legislative hearing on the legislation on Wednesday, and each of the bills was advanced by voice vote on Friday. H.R. 3891 would clarify the authority of State Medicaid fraud and abuse control units to investigate and prosecute cases of Medicaid patient abuse and neglect in non-institutional settings. H.R. 5306, the *Ensuring Medicaid Provides Opportunities for Widespread Equity, Resources (EMPOWER) and Care Act*, would extend the Money Follows the Person (MFP) demonstration program in Medicaid for an additional year. H.R. 3325, the *Advancing Care for Exceptional (ACE) Kids Act*, would provide enhanced federal matching for a limited period of time for care coordination services for children with complex medical conditions in Medicaid. The subcommittee also advanced three discussion drafts. The first would prohibit the use of gag clauses, which prevent pharmacists from informing patients when the cash price of their prescription costs less than their insurance cost-sharing arrangement in Medicare and private insurance plans. The *Strengthening the Health Care Fraud Prevention Task Force Act of 2018* would establish explicit authority for the Healthcare Fraud Prevention Partnership (HFPP) and its activities. The final discussion draft would provide the Medicare Payment Advisory Commission (MedPAC) and the Medicaid and CHIP Payment and Access Commission (MACPAC) with access to drug rebate information.

W&M Advances Four Bipartisan Health Bills

Last week, the House Ways and Means Committee advanced four bipartisan health bills to the full House of Representatives for consideration. The *Fighting Fraud to Protect Care for Seniors Act of 2018* (H.R. 6690) would test whether the use of smart cards in the Medicare program would deter fraud and abuse. The Committee also approved the *Local Coverage Determination Clarification Act of 2018* (H.R. 3635), which aims to improve the process by which Medicare administrative contractors (MACs) make local coverage determinations (LCDs). The *Comprehensive Care for Seniors Act of 2018* (H.R. 6561) would finalize proposed changes to the Program of All-Inclusive Care for the Elderly (PACE) meant to keep more seniors out of nursing homes. The *Empowering Seniors' Enrollment Decision Act of 2018* (H.R. 6662) would allow non-deemed Medicare Cost Plan enrollees additional time to choose their Medicare coverage.

W&Ms Leadership Push CMS for Regulatory Relief

Republican leadership of the House Ways and Means Committee have written to the Centers for Medicare and Medicaid Services (CMS) to ask the agency to do more to ease regulatory burdens for **hospitals, post-acute care providers, and physicians**. The three letters sent by Chairman Kevin Brady (R-Texas) and Health Subcommittee Chairman Peter Roskam (R-Ill.) are a part of the committee's "Medicare Red Tape Relief Project." The lawmakers ask CMS to streamline Medicare's conditions of participation for hospitals. To help physicians, they call for a reduction in unnecessary quality reporting. They also criticize the delays caused by prior authorization and the loss of Medicare durable medical equipment (DME) suppliers. The third letter outlines how the cost of federal requirements for post-acute care providers are ultimately passed on to Medicare beneficiaries.

Defense/Labor-HHS Conferees Named

Members of the conference committee charged with completing work on the fiscal year (FY) 2019 Defense/Labor-Health and Human Services/Education spending bill were announced last week. Republican conferees include Reps. Rodney Frelinghuysen (N.J.), Kay Granger (Texas), Tom Cole (Okla.), Ken Calvert (Calif.), Steve Womack (Ark.), Robert Aderholt (Ala.), Hal Rogers (Ky.), and Martha Roby (Ala.) and Sens. Richard Shelby (Ala.), Roy Blunt (Mo.), Lindsey Graham (S.C.), and Jerry Moran (Kan.). Democrat conferees include Reps. Nita Lowey (N.Y.), Pete Visclosky (Ind.), Rosa DeLauro (Conn.), Lucille Roybal-Allard (Calif.), and Betty McCollum (Minn.) and Sens. Patrick Leahy (Vt.), Patty Murray (Wash.), and Dick Durbin (Ill.). The conference committee will reconcile the differences between the House and Senate spending legislation. The lawmakers have agreed to use the funding levels contained in the Senate's Labor-HHS-Education spending bill, according to DeLauro. The Senate's version of the bill contained \$2 billion more than the House version, which kept spending at current levels. DeLauro stated that the Senate's bill is the basis for conference negotiations.

As lawmakers work to finalize appropriations measures before the end of the fiscal year on September 30, President Trump still appears undecided about whether or not to back the government funding legislation. House Speaker Paul Ryan (R-Wis.) and Senate Majority Leader Mitch McConnell (R-Ky.) met with the President last week, seeking to dissuade him from shutting down the government in an attempt to secure more money to build a wall along the U.S. border with Mexico.

Kyl Picked to Fill John McCain's Senate Seat

Jon Kyl was formally sworn in last week to fill the seat vacated by the death of John McCain. Kyl was selected by Arizona Governor Doug Ducey. He previously served as a Republican senator for the state of Arizona from 1995 to 2013. Since leaving the Senate, Kyl has worked for the law firm Covington & Burling. He has committed to serving in McCain's seat until at least the end of the 115th Congress. While Kyl is viewed as likely to vote with GOP leaders on health care reform – McCain's pivotal vote ultimately blocked repeal of the Affordable Care Act (ACA) in 2017 – Senate Majority Leader Mitch McConnell (R-Ky.) has indicated that there are no plans to return to the issue of health care before the end of the year. The Senate is instead focused on completing work on appropriations conference reports, funding the federal government, and confirming Brett Kavanaugh to the Supreme Court.

Kyl is expected to serve on the Senate Armed Services, Homeland Security, and Indian Affairs committees. Sen. James Inhofe (R-Okla.) has been officially selected to succeed McCain as chairman of the Armed Services Committee. Inhofe has been acting chairman of the committee since last year.

Senate Judiciary Completes Kavanaugh Hearings

Brett Kavanaugh has completed his week-long, often heated questioning before the Senate Judiciary Committee. Democrats pressed Kavanaugh on controversial issues such as abortion, women's health care, and executive power, but Kavanaugh repeatedly avoided direct responses by citing the need for judicial independence. He declined to answer questions specifically about pre-existing conditions, saying that he would not speculate on hypothetical cases or cases he could potentially rule on. The panel is expected to vote on his nomination before the end of the month. GOP leaders appear confident that Kavanaugh will be confirmed prior to the start of the Court's new term on October 1. Only a simple majority is required for confirmation. With Sen. Jon Kyl (R-Ariz.), who has served as Kavanaugh's guide on Capitol Hill throughout the nomination process, Democrats would need to convince two Republicans to vote against the nomination. While only a few Republicans remain undecided, all have spoken positively about Kavanaugh following meetings with the nominee. It also remains to be seen whether Democrats will be unified in their opposition to Kavanaugh, as several Democratic lawmakers also remain undecided on the nomination.

Upcoming Congressional Hearings and Markups

House Energy and Commerce Health Subcommittee hearing “Examining Barriers to Expanding Innovative, Value-Based Care in Medicare;” 1:15 p.m., 2322 Rayburn Bldg.; September 13

House Veterans’ Affairs Subcommittee on Technology Modernization hearing “The Role of the Interagency Program Office in VA Electronic Health Record Modernization;” 2:00 p.m., 334 Cannon Bldg.; September 13

House Energy and Commerce Health Subcommittee hearing “Better Data and Better Outcomes: Reducing Maternal Mortality in the U.S.;" 9:15 a.m., 2322 Rayburn Bldg.; September 14

Senate Health, Education, Labor, and Pensions Committee hearing “Reducing Health Care Costs: Examining How Transparency Can Lower Spending and Empower Patients;” a list of witnesses can be found [here](#); 10:00 a.m., 430 Dirksen Bldg.; September 18

House Committee on Veterans’ Affairs hearing “Veteran Suicide Prevention: Maximizing Effectiveness and Increasing Awareness;” 10:30 a.m., 334 Cannon Bldg.; September 27

Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights oversight hearing to examine the enforcement of the antitrust laws; 2:30 p.m., 226 Dirksen Bldg.; October 3

Recently Introduced Health Legislation

H.R.6698 — To support States in their work to end preventable morbidity and mortality in maternity care by using evidence-based quality improvement to protect the health of mothers during pregnancy, childbirth, and in the postpartum period and to reduce neonatal and infant mortality, to eliminate racial disparities in maternal health outcomes, and for other purposes; Rep. Adams, Alma S. [D-NC-12]; Committees: House - Energy and Commerce

H.R.6702 — 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; Sponsor: Rep. Bilirakis, Gus M. [R-FL-12]; Committees: House - Energy and Commerce, Judiciary

H.R.6703 — To allow individuals to choose to opt out of the Medicare part A benefit; Sponsor: Rep. Palmer, Gary J. [R-AL-6]; Committees: House - Ways and Means

H.R.6712 — To direct the Secretary of Defense to develop a strategy to recruit and retain mental health providers, to direct the Secretaries of the military departments to develop medication monitoring programs, and for other purposes; Sponsor: Rep. Smucker, Lloyd [R-PA-16]; Committees: House - Armed Services

S.3409 — A bill to allow veterans to use, possess, or transport medical marijuana and to discuss the use of medical marijuana with a physician of the Department of Veterans Affairs as authorized by State law, and for other purposes; Sponsor: Sen. Nelson, Bill [D-FL]; Committees: Senate - Judiciary

S.3411 — A bill to ensure medications are affordable; Sponsor: Sen. Smith, Tina [D-MN]; Committees: Senate - Finance

H.R.6717 — To amend the Federal Food, Drug, and Cosmetic Act to require that the label of drugs with an increased risk of suicide or depression present such increased risk prominently, and for other purposes; Sponsor: Rep. Rush, Bobby L. [D-IL-1]; Committees: House - Energy and Commerce

H.R.6718 — To amend the Internal Revenue Code of 1986 to provide that health insurance coverage statements are required to be provided to individuals only upon request; Sponsor: Rep. Kelly, Mike [R-PA-3]; Committees: House - Ways and Means

S.3417 — A bill to require the Secretary of Veterans Affairs to carry out a program to increase efficiency in the recruitment and hiring by the Department of Veterans Affairs of health care workers that are undergoing separation from the Armed Forces, to create uniform credentialing standards for certain health care professionals of the Department, and for other purposes; Sponsor: Sen. Merkley, Jeff [D-OR]; Committees: Senate - Veterans' Affairs

S.3420 — A bill to require the Food and Drug Administration to prioritize the promotional materials for drugs for serious, life-threatening diseases or conditions or substance use disorders, especially opioid drugs and drugs for medication-assisted treatment, in considering whether promotional materials are false or misleading; Sponsor: Sen. Harris, Kamala D. [D-CA]; Committees: Senate - Health, Education, Labor, and Pensions