



## Health Policy Briefing

September 24, 2018

### Appropriations Progress as FY19 Approaches

President Trump signed the first appropriations bill for fiscal year (FY) 2019 last week. H.R. 5895 will fund Military Construction and Veterans Affairs, Energy and Water Development, and the Legislative Branch.

The Senate voted to advance the conference report for its second minibuss package (H.R. 6157), which will fund the Departments of Defense, Labor, Health and Human Services, and Education, by a vote of 93-7. Six Republican senators – Jeff Flake (Ariz.), Mike Lee (Utah), Rand Paul (Ky.), David Perdue (Ga.), Ben Sasse (Neb.), and Pat Toomey (Pa.) – joined Sen. Bernie Sanders (I-Vt.) in opposing the legislation. The bill also includes a continuing resolution (CR) through December 7 to avert any partial government shutdown. The CR will extend funding for any appropriations measures not enacted before current funding expires at the end of the fiscal year on September 30. The House is expected to vote on the package on Wednesday, after which it will be sent to the President’s desk for his signature. President Trump has yet to say whether he will sign the bill into law and continues to attack the lack of funding for the construction of a border wall. With the CR through December 7, Congress hopes to postpone any debate over immigration until after the midterm elections.

Lawmakers had hoped to pass a third minibuss containing funds for Interior-Environment, Financial Services, Transportation-Housing and Urban Development, and Agriculture-Food and Drug Administration, but attempts to reconcile the differences between the House and Senate bills have stalled.

### *This Week’s Congressional Agenda*

The House will be back in session on September 25. The chamber plans to consider the following health-related pieces of legislation on Tuesday: H.R. 6378, the *Pandemic and All-Hazards Preparedness and Advancing Innovation Act of 2018*, S. 3479, the *Department of Veterans Affairs Expiring Authorities Act of 2018*, S. 2554, the *Patient Right to Know Drug Prices Act*, and S. 2553, the

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*Know the Lowest Price Act of 2018.*

The Senate returns today, with votes scheduled on executive nominations. The chamber has been wrapped up in negotiations on Judiciary Committee hearings with Supreme Court nominee Brett Kavanaugh and Christine Blasey Ford, who has accused Kavanaugh of sexual assault when they were teenagers. Ford is scheduled to testify before the Committee on Thursday, and a vote of Kavanaugh's nomination that had been scheduled for today has been cancelled. Although Republican senators Lisa Murkowski (Alaska), Susan Collins (Maine), Jeff Flake (Ariz.), and Bob Corker (Tenn.) remain undecided, other GOP lawmakers, alongside President Trump, remain supportive of the nominee. Sen. Claire McCaskill (D-Mo.) became the first of the undecided red-state Democrats to formally announce her opposition to Kavanaugh's nomination, citing concerns with his views on anonymous campaign donations.

### ***Senate Passes Its Opioid Package, Vote on Compromise Legislation Possible This Week***

The Senate passed a package of legislation (H.R. 6) to combat the opioid crisis by a vote of 99-1 last week. Sen. Mike Lee (R-Utah) was the only lawmaker to vote no. The *Opioid Crisis Response Act* includes dozens of proposals originating from five Senate committees. Compared to the House-passed *Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act*, the Senate's package does not include new spending and also proposes fewer changes to Medicare and Medicaid reimbursement rules and to the privacy of patient records.

House and Senate lawmakers have already begun negotiations on a compromise package with the goal to send a final bill to the President's desk before the midterm elections. Several outstanding issues remain to be reconciled. The House package would partially repeal the institutions for mental disease (IMD) exclusion for inpatient Medicaid payments. While the Senate version did not include any repeal, Sens. Rob Portman (R-Ohio) and Sherrod Brown (D-Ohio) have introduced legislation to lift the IMD exclusion and are pushing for its inclusion in the final opioid compromise. Some form of the provision is expected to be included in the final deal. The House bill would also allow doctors to more easily share patients' medical information. This provision is opposed by Senate Health, Education, Labor, and Pensions (HELP) Committee Ranking Member Patty Murray (D-Wash.). Negotiations on the measure continue; Murray supports improved care coordination if adequate patient privacy protections are put in place. Finally, pharmaceutical companies have requested that the bill contain language to reduce their financial liability for the Medicare Part D coverage gap, known as the 'donut hole.' Lawmakers cut the co-pays seniors have to pay as well as the liability of Medicare Part D insurers in the 2018 Bipartisan Budget Act earlier this year. Leading Democrats have signaled they won't include the policy change in the opioids package. The House could vote on a final deal as early as this week. The Senate would need to vote on any package the House passes in order for it to be signed into law.

### ***Senate Passes Gag Clause Legislation With Strong Bipartisan Support***

The Senate overwhelmingly passed S. 2554, the *Patient Right to Know Drug Prices Act*, by a vote of 98-2 last week. Sens. Rand Paul (R-Ky.) and Mike Lee (R-Utah) voted against the bill, which would make it easier for pharmacists to alert consumers when the retail price of a treatment would be less expensive than their insurance copay. The legislation would ban gag clauses imposed by pharmacy benefit managers (PBMs). Such clauses prevent pharmacists from telling customers about which payment method provides the most savings when purchasing medications. The bill would apply to most employer health plans and individual market plans. It accompanies legislation (S. 2553) previously passed by the Senate which prohibits gag clauses in the Medicare program. Both bipartisan Senate bills are included on the House suspension calendar for consideration Tuesday afternoon, and have strong support from the President and his administration.

### ***Bipartisan Draft Surprise Billing Legislation Unveiled***

A bipartisan group of lawmakers have released draft legislation that aims to stop the use of balanced billing for emergency treatment or treatment provided by an out-of-network provider at an in-network facility. The ***Protecting Patients from Surprise Medical Bills Act*** would prevent a health care provider that is outside of a patient's insurance network from charging additional costs for emergency services beyond the amount allowed under their insurance plan. The patient's insurer would be responsible for the payment of any additional charges, which are limited under the proposal. The draft legislation would also require providers to give written notification to patients who receive emergency care at an out-of-network facility before they receive follow-up non-emergency care. Additionally, patients could not be charged more for care from out-of-network doctors at an in-network hospital. The discussion draft also calls for a study and report to Congress on the impact of the bill on the prevalence of patient cost-sharing, access to care, quality of care, price of insurance premiums, change in overall health care costs, use of emergency rooms, access to innovative drugs and technology, and the adequacy of insurance networks. The bill is sponsored by Sens. Bill Cassidy (R-La.), Michael Bennet (D-Colo.), Chuck Grassley (R-Iowa), Tom Carper (D-Del.), Todd Young (R-Ind.), and Claire McCaskill (D-Mo.), who are all members of the Senate Health Care Price Transparency Working Group. Sen. Cassidy has said that he will work to refine the discussion draft before a final bill is formally introduced. He hopes to push for consideration of the bill at the beginning of the next Congress. According to the lawmakers, the working group also plans to put forward additional legislation to improve health care price transparency.

### ***HHS to Reallocate Health Funds to Refugee Resettlement***

Secretary of the U.S. Department of Health and Human Services (HHS) Alex Azar has notified Congress of his intent to reallocate funds to cover the cost of the unaccompanied alien children (UAC) program administered by his department. HHS will reallocate more than \$180 million from other programs within HHS to house the increased number of detained migrant children. Approximately \$13 million will be diverted from the National Cancer Institute; \$5.7 million will come from the Ryan White HIV/AIDS program; an additional \$9.8 million will be drawn from Medicare and Medicaid program operations. The National Institutes of Health (NIH) (\$87.3 million) and the Centers for Disease Control and Prevention (CDC) (\$16.7 million) will also be impacted.

### ***DelBene Urges CMS to Expand MIPS Participation***

Rep. Suzan DelBene (D-Wash.) is circulating a sign-on letter among her colleagues that would urge the Centers for Medicare and Medicaid Services (CMS) to move providers to value-based care. The letter argues that the current low-volume threshold for participation in the Merit-based Incentive Payment System (MIPS), which exempts 58 percent of providers, is hampering a meaningful movement from fee-for-services (FFS) to value-based care. The Congresswoman is requesting that other lawmakers join her in requesting that CMS adjust the low-volume threshold so as not to miss "a critical opportunity to reduce costs for Medicare and improve care for patients."

### ***Grassley Requests Information on Nursing Home Safety***

Senate Judiciary Committee Chairman Chuck Grassley (R-Iowa) is **asking** the Centers for Medicare and Medicaid Services (CMS) for more information on how the agency is tracking and preventing errors at nursing homes. His letter to CMS Administrator Seema Verma cites data indicating that one-third of Medicare beneficiaries experience harm during their nursing home stay, with the majority of events being preventable. Grassley requests details on what actions CMS has taken to improve the quality and timeliness of nursing home deficiency reporting. He requests a response from CMS by October 3.

## Upcoming Congressional Hearings and Markups

*Senate Health, Education, Labor, and Pensions Committee hearing “Health Care in Rural America: Examining Experiences and Costs;” 3:30 p.m., 430 Dirksen Bldg.; September 25*

*Senate Health, Education, Labor, and Pensions Committee hearing “Reducing Health Care Costs: Improving Affordability Through Innovation;” 10:00 a.m., 430 Dirksen Bldg.; September 27*

*House Energy and Commerce Health Subcommittee hearing “Better Data and Better Outcomes: Reducing Maternal Mortality in the U.S.,” 10:00 a.m., 2123 Rayburn Bldg.; September 27*

*House Foreign Affairs Committee markup of H.R. 6413, STOP Organ Trafficking Act and other legislation; 10:00 a.m., 2172 Rayburn Bldg.; September 27*

*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.6832 — To amend the Internal Revenue Code of 1986 to provide for a credit against tax for improving the safety of fuel systems in emergency medical rotorcraft; Sponsor: Rep. Polis, Jared [D-CO-2]; Committees: House - Ways and Means*

*H.R.6836 — To amend title XIX of the Social Security Act to promote access to life-saving therapies for Medicaid enrollees by ensuring coverage of routine patient costs for items and services furnished in connection with participation in qualifying clinical trials, and for other purposes; Sponsor: Rep. Bilirakis, Gus M. [R-FL-12]; Committees: House - Energy and Commerce*

*H.R.6837 — To establish the Commission on Sustaining Medicare and Social Security, and for other purposes; Sponsor: Rep. Bilirakis, Gus M. [R-FL-12]; Committees: House - Ways and Means, Energy and Commerce*

*S.3445 — A bill to amend title XIX of the Social Security Act to require States to suspend, rather than terminate, an individual’s eligibility for medical assistance under the State Medicaid plan while such individual is an inmate of a public institution; Sponsor: Sen. Markey, Edward J. [D-MA]; Committees: Senate - Finance*

*S.Res.636 — A resolution recognizing suicide as a serious public health problem and expressing support for the designation of September as “National Suicide Prevention Month”; Sponsor: Sen. Cassidy, Bill [R-LA]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.Res.638 — A resolution designating September 22, 2018, as “National Falls Prevention Awareness Day” to raise awareness and encourage the prevention of falls among older adults; Sponsor: Sen. Collins, Susan M. [R-ME]; Submitted in the Senate, considered, and agreed to without amendment and with a preamble by Unanimous Consent.*

*S.3458 — A bill to amend title XVIII of the Social Security Act to improve home health payment reforms under the Medicare program; Sponsor: Sen. Kennedy, John [R-LA]; Committees: Senate - Finance*

*S.3460 — A bill to amend section 520E of the Public Health Service Act to require States and their designees receiving grants for development and implementation of statewide suicide early intervention and prevention strategies to collaborate with each Federally recognized Indian tribe, tribal organization, urban Indian organization, and Native Hawaiian health care system in the State; Sponsor: Sen. Warren, Elizabeth [D-MA]; Committees: Senate - Health, Education, Labor, and Pensions*

S.3462 — *A bill to amend title XIX of the Social Security Act to provide States with the option to provide medical assistance for substance use disorder treatment services to individuals between the ages of 21 and 64 with substance use disorders, and for other purposes; Sponsor: Sen. Portman, Rob [R-OH]; Committees: Senate – Finance*

S.3463 — *A bill to gather information about the illicit production of illicit fentanyl in foreign countries and to withhold bilateral assistance from countries that do not have emergency scheduling procedures for new illicit drugs, cannot prosecute criminals for the manufacture or distribution of controlled substance analogues, or do not require the registration of tableting machines and encapsulating machines; Sponsor: Sen. Toomey, Pat [R-PA]; Committees: Senate - Foreign Relations*

S.3465 — *A bill to amend title XVIII of the Social Security Act to cover screening computed tomography colonography as a colorectal cancer screening test under the Medicare program; Sponsor: Sen. Inhofe, James M. [R-OK]; Committees: Senate – Finance*

S.3473 — *A bill to amend the Internal Revenue Code of 1986 to expand permissible distributions from an employee's health flexible spending account or health reimbursement arrangement to their health savings account; Sponsor: Sen. Sasse, Ben [R-NE]; Committees: Senate – Finance*

S.3476 — *A bill to extend certain authorities relating to United States efforts to combat HIV/AIDS, tuberculosis, and malaria globally, and for other purposes; Sponsor: Sen. Corker, Bob [R-TN]; Committees: Senate - Foreign Relations*

*H.Res.1072 - Expressing support for the designation of September 2018 as “Pulmonary Fibrosis Awareness Month”; Sponsor: Rep. Paulsen, Erik [R-MN-3]; Committees: House – Energy and Commerce*

*H.R.6848 — To direct the Secretary of Veterans Affairs to ensure that certain Department of Veterans Affairs medical centers have physical locations for the disposal of controlled substances medications; Sponsor: Rep. Bishop, Mike [R-MI-8]; Committees: House - Veterans' Affairs*

*H.R.6855 — To amend title XVIII of the Social Security Act to codify and permanently extend the Medicare hospital wage index imputed rural floor; Sponsor: Rep. MacArthur, Thomas [R-NJ-3]; Committees: House - Ways and Means*

*H.R.6856 — To extend certain authorities relating to United States efforts to combat HIV/AIDS, tuberculosis, and malaria globally, and for other purposes; Sponsor: Rep. McCollum, Betty [D-MN-4]; Committees: House - Foreign Affairs*