



Health Policy Briefing

July 15, 2019

E&C Health Subcommittee Advances 10 Health Bills

The House Energy and Commerce Subcommittee on Health advanced 10 pieces of bipartisan, health care related legislation to the full committee last week, including H.R. 3630, the **No Surprises Act**. H.R. 3630 aims to hold patients harmless from surprise insurance gaps and would require insurers to keep their provider directories up to date. It would tie out-of-network payment rates to the median in-network rate for the appropriate geographic area in cases of a billing dispute between an insurer and provider. Payment amounts would be tied to a base year of 2019 rates and be indexed over time according to the consumer price index (CPI). During the markup, Reps. Raul Ruiz (D-Calif.) and Larry Bucshon (R-Ind.) spoke in support of their own surprise billing legislation, which proposes a baseball-style arbitration process similar to what is in place in New York as a back-up process to resolve payment disputes. The physician lawmakers outlined the possible unintended consequences of the No Surprises Act, including the potential to exacerbate doctor shortages. While subcommittee Chairwoman Anna Eshoo (D-Calif.) expressed interest in adding an arbitration measure to the bill, full committee Chairman Frank Pallone (D-N.J.) appeared more hesitant. He cautioned against making significant changes to the bill as it currently stands, arguing that it is already bipartisan, bicameral and would not increase health care costs. He hopes that the bill will be considered on the House floor before the August recess.

The **FAIR Drug Pricing Act** (H.R. 2296) would require pharmaceutical manufacturers to alert the government about forthcoming price increases and to justify the price hikes. Drug makers would be fined if they fail to report the required information. The bill was amended to include additional transparency provisions. The **Community Health, Investment, Modernization and Excellence Act** (H.R. 2328) would reauthorize community health centers at \$4 billion annually and the National Health Service Corps (NHSC) at \$310 million annually through fiscal 2024. The bill would also delay disproportionate share hospital (DSH) cuts for fiscal 2020 and 2021 and decrease the cuts in fiscal 2022 from \$8 billion to \$4 billion. Lawmakers stated

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that this measure would give them additional time to improve the DSH formula. The *Territories Health Care Improvement Act* (H.R. 3361) would eliminate the federal spending cap on Medicaid assistance to territories and reset the percentage levels at which they receive assistance to align with local income levels. The subcommittee also approved legislation to reauthorize funding for newborn screenings, autism research and screening, Title VIII nursing workforce programs, lifespan respite care, the Emergency Medical Services for Children Program, and other public health programs. The bills were all favorably reported by voice vote.

Update on Congressional Drug Pricing Negotiations

Senate Finance Committee Chairman Chuck Grassley (R-Iowa) has stated he plans to unveil drug pricing legislation “very soon” alongside Ranking Member Ron Wyden (D-Ore.). His announcement followed the Trump administration’s withdrawal of its drug-rebate rule. U.S. Department of Health and Human Services (HHS) Secretary Alex Azar has stated that he will continue to work with Congress to address the issue of rising drug costs. While Senate Health, Education, Labor, and Pensions (HELP) Committee Chairman Lamar Alexander (R-Tenn.) does not believe the rebate proposal is likely to be taken up as legislation by the Senate due to its potential cost, Grassley has discussed the inclusion of a measure in the Finance package that would ask the Federal Trade Commission (FTC) to study pharmacy benefit managers (PBMs).

Finance Committee leadership are still in talks on a provision that would require manufacturers to pay back money to Medicare Part D if their prices rise faster than inflation. The lawmakers have stated that they are waiting for the Congressional Budget Office’s (CBO) analysis of their package, which could also include a cap on out-of-pocket costs for Part D seniors.

The administration will also continue to work with Sens. Grassley and Dick Durbin (D-Ill.) on the need for increased drug pricing transparency after a federal judge ruled against the White House’s push to require drug list price disclosure in television ads. The senators have introduced legislation (S. 1437) that would codify the administration’s regulation into law and could be added to a larger drug pricing and health care costs legislative package.

House to Vote on Cadillac Tax Repeal

The House of Representatives will vote this week on legislation to repeal the Cadillac tax on high-cost, employer-provided health insurance plans (H.R. 748) under suspension of the rules. The 40 percent tax on the cost of coverage that exceeds certain amounts was established by the Affordable Care Act (ACA). It has been repeatedly delayed and is currently scheduled to take effect in 2022. The CBO estimates that repeal of the tax would cost at least \$168 billion over 10 years. If the House proceeds to consider the bill under suspension of the rules, the measure could be passed without an offset. It remains unclear whether the Senate would take up the legislation.

Romney to Lead Senate Talks on ACA Replacement

Senate Republicans have begun discussions on a plan to replace the ACA in case the 2010 law is struck down in court. Sen. Mitt Romney (R-Utah) is reportedly taking the lead in negotiations, alongside Sen. Rick Scott (R-Fla.), HELP Committee Chairman Lamar Alexander (R-Tenn.), and Senate Judiciary Committee Chairman Lindsey Graham (R-S.C.). While it remains unclear what the latest Republican alternative to the ACA would look like, GOP lawmakers have consistently stressed their support for current protections for patients with pre-existing conditions in light of the ongoing lawsuit. Sen. Scott has said that the plan will also continue to allow young adults to stay on their parents’ health insurance plan until the age of 26.

21st Century Cures Duo to Work on Follow Up Legislation

Reps. Fred Upton (R-Mich.) and Diana DeGette (D-Colo.) issued a joint statement on the four year anniversary of the House's passage of the 21st Century Cures Act announcing that they are "beginning to work on new bipartisan legislation that will continue to build upon the progress we have made and help us take the next step toward finding even more life-saving cures." While the announcement did not mention any specific policies, both lawmakers continue to serve as senior members on the House Energy and Commerce Committee.

Stopgap Spending Bill Appears Increasingly Likely

Lawmakers have made little progress in negotiations with the White House to set topline spending limits for fiscal year (FY) 2020, increasing the likelihood of a continuing resolution (CR) being necessary to keep the government open after the end of FY 2019 on September 30. While the House of Representatives has passed 10 of the 12 annual appropriations bills, the Senate has yet to introduce a single spending measure. Senate Majority Leader Mitch McConnell (R-Ky.) will not allow his chamber to begin marking up and passing appropriations bills without a budget caps deal on total spending levels for defense and non-defense domestic programs. Spending cuts totaling \$126 billion known as sequestration will go into effect in January if Congress does not reach an agreement.

Senate Appropriations Committee Chairman Richard Shelby (R-Ala.) has stated that lawmakers will stay in Washington during the August recess if necessary to avoid a default on the federal debt. The deadline to increase or suspend the debt limit could fall as early as the beginning of September. The House is scheduled to leave town on July 26, while the Senate will adjourn on August 2. Lawmakers currently plan to return from August recess after Labor Day on September 9.

HHS Announces Quality Measurement Summit

HHHS announced that it will convene public health and health industry stakeholders to create a roadmap for streamlining the department's quality programs to increase health care transparency and move toward value-based care. The summit to improve quality measures across federal health programs and to better understand health system performance will be chaired by Deputy HHS Secretary Eric Hargan and University Hospitals Chief Clinical Transformation Officer Peter Pronovost. An [executive order](#) signed by the President on June 24 gave HHS, the Department of Defense, and the VA 180 days to create a quality roadmap that aligns and improves government health programs' data and quality measures.

HHS Personnel Update

Adam Boehler, Director of the Center for Medicare and Medicaid Innovation (CMMI), has been nominated by the President to serve as CEO of the United States International Development Finance Corporation. The move will require Boehler to leave his post at CMMI and his position as senior advisor for value-based care to HHS Secretary Alex Azar, where he has served since 2018.

JAMA Publishes New Study on Hep C Drug Pricing

New research, co-authored by Sean Dickson of the West Health Policy Center, examines the pricing for three Hepatitis C drugs. Specifically, the study highlights the potential interactions between list price reductions, manufacturer revenues, PBM rebates, and 340B discounts. Click [here](#) to access the full JAMA article.

Upcoming Congressional Hearings and Markups

House Energy and Commerce Subcommittee on Oversight and Investigations hearing "Oversight of Federal Efforts to Combat the Spread of Illicit Fentanyl;" 10:00 a.m., 2123 Rayburn Bldg.; July 16

Recently Introduced Health Legislation

H.R.3613 — *To amend title XIX of the Social Security Act to establish a methodology for determining State allotments for Medicaid disproportionate share hospital payments that is based on State poverty levels, to require States to prioritize disproportionate share hospital payments on the basis of Medicaid inpatient utilization and low-income utilization rates, and for other purposes; Sponsor: Rep. Bilirakis, Gus M. [R-FL-12]; Committees: House - Energy and Commerce*

H.Res.480 — *Acknowledging the racial disparities in diagnosing and treating mental health among youth in communities of color; Sponsor: Rep. Watson Coleman, Bonnie [D-NJ-12]; Committees: House - Energy and Commerce, Education and Labor*

H.R.3630 — *To amend title XXVII of the Public Health Service Act to protect health care consumers from surprise billing practices, and for other purposes; Sponsor: Rep. Pallone, Frank, Jr. [D-NJ-6]; Committees: House - Energy and Commerce, Education and Labor*

H.R.3631 — *To amend titles XI and XIX of the Social Security Act to provide for a temporary increase to the limit on Medicaid payments for territories of the United States and the Federal medical assistance percentage for such territories under the Medicaid program, and for other purposes; Sponsor: Rep. Soto, Darren [D-FL-9]; Committees: House - Energy and Commerce*

H.R.3634 — *To provide for greater transparency and information with respect to Federal expenditures under the Medicaid and CHIP programs in the territories of the United States, and for other purposes; Sponsor: Rep. Sablan, Gregorio Kilili Camacho [D-MP-At Large]; Committees: House - Energy and Commerce*

H.R.3636 — *To require the Secretary of Veterans Affairs to submit to Congress certain reports relating to the health care and treatment provided by the Department of Veterans Affairs to women veterans, and for other purposes; Sponsor: Rep. Underwood, Lauren [D-IL-14]; Committees: House - Veterans' Affairs*

H.R.3637 — *To amend title VII of the Public Health Service Act to authorize assistance for increasing workforce diversity in the professions of physical therapy, occupational therapy, audiology, and speech-language pathology, and for other purposes; Sponsor: Rep. Rush, Bobby L. [D-IL-1]; Committees: House - Energy and Commerce*

H.R.3644 — *To amend title XVIII of the Social Security Act to extend the Independence at Home medical practice demonstration program under the Medicare program; Sponsor: Rep. Burgess, Michael C. [R-TX-26]; Committees: House - Ways and Means, Energy and Commerce*

H.R.3649 — *To support the provision of treatment family care services, and for other purposes; Sponsor: Rep. DeLauro, Rosa L. [D-CT-3]; Committees: House - Ways and Means, Energy and Commerce*

H.R.3654 — *To amend title XVIII of the Social Security Act to provide Medicare coverage for all physicians' services furnished by doctors of chiropractic within the scope of their license, and for other purposes; Sponsor: Rep. Higgins, Brian [D-NY-26]; Committees: House - Energy and Commerce, Ways and Means*

H.R.3656 — *To improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system; Sponsor: Rep. Hudson, Richard [R-NC-8]; Committees: House - Judiciary, Energy and Commerce*

S.Res.273 — *A resolution expressing the sense of the Senate with respect to health care rights; Sponsor: Sen. Merkley, Jeff [D-OR]; Committees: Senate - Health, Education, Labor, and Pensions*

S.2063 — A bill to amend title XI of the Social Security Act with respect to organ procurement organizations; Sponsor: Sen. Young, Todd [R-IN]; Committees: Senate - Finance

H.R.3672 — To provide relief for small rural hospitals from inaccurate instructions provided by certain medicare administrative contractors; Sponsor: Rep. Brindisi, Anthony [D-NY-22]; Committees: House - Ways and Means

S.2067 — A bill to amend title XIX of the Social Security Act to encourage States to disregard parental income and assets when determining Medicaid eligibility for disabled children; Sponsor: Sen. Casey, Robert P., Jr. [D-PA]; Committees: Senate - Finance

S.2074 — A bill to amend section 303(g) of the Controlled Substances Act (21 U.S.C. 823(g)) to eliminate the separate registration requirement for dispensing narcotic drugs in schedule III, IV, or V, such as buprenorphine, for maintenance or detoxification treatment, and for other purposes; Sponsor: Sen. Hassan, Margaret Wood [D-NH]; Committees: Senate - Health, Education, Labor, and Pensions

S.2080 — A bill to amend the Public Health Service Act to increase the number of permanent faculty in palliative care at accredited allopathic and osteopathic medical schools, nursing schools, social work schools, and other programs, including physician assistant education programs, to promote education and research in palliative care and hospice, and to support the development of faculty careers in academic palliative medicine; Sponsor: Sen. Baldwin, Tammy [D-WI]; Committees: Senate - Health, Education, Labor, and Pensions

S.2081 — A bill to amend title XVIII of the Social Security Act to require drug manufacturers to provide rebates for drugs furnished under Medicare part B for which the growth in average sales price has exceeded inflation, and for other purposes; Sponsor: Sen. Peters, Gary C. [D-MI]; Committees: Senate - Finance

H.R.3695 — To amend titles XI and XIX of the Social Security Act to promote program integrity with respect to the enrollment of certain immigrants in State plans under Medicaid, and for other purposes; Sponsor: Rep. Flores, Bill [R-TX-17]; Committees: House - Energy and Commerce

H.R.3708 — To amend the Internal Revenue Code of 1986 to allow individuals with direct primary care service arrangements to remain eligible individuals for purposes of health savings accounts, and for other purposes; Sponsor: Rep. Blumenauer, Earl [D-OR-3]; Committees: House - Ways and Means

H.R.3709 — To amend the Internal Revenue Code of 1986 to permit high deductible health plans to provide chronic disease prevention services to plan enrollees prior to satisfying their plan deductible; Sponsor: Rep. Blumenauer, Earl [D-OR-3]; Committees: House - Ways and Means

H.R.3711 — To amend title XVIII of the Social Security Act to provide coverage of medical nutrition therapy services for individuals with eating disorders under the Medicare program; Sponsor: Rep. Chu, Judy [D-CA-27]; Committees: House - Energy and Commerce, Ways and Means

S.2089 — A bill to prohibit the labeling of certain opioid drugs recommending use for long-term chronic pain; Sponsor: Sen. Manchin, Joe, III [D-WV]; Committees: Senate - Health, Education, Labor, and Pensions

S.2102 — A bill to provide funding for programs and activities under the SUPPORT for Patients and Communities Act; Sponsor: Sen. Shaheen, Jeanne [D-NH]; Committees: Senate - Health, Education, Labor, and Pensions

S.2103 — A bill to improve access to affordable insulin; Sponsor: Sen. Durbin, Richard J. [D-IL]; Committees: Senate - Health, Education, Labor, and Pensions