



Health Policy Briefing

June 17, 2019

Senate Continues Budget Caps/Debt Ceiling Negotiations; House Makes Progress on Appropriations

Senate Republican leadership are still working with White House officials to reach a government budget and debt limit deal that could be presented to House Democrats in the hope of avoiding a government shutdown. Majority Leader Mitch McConnell (R-Ky.) and Senate Appropriations Chairman Richard Shelby (R-Ala.) met with Treasury Secretary Steven Mnuchin and Acting White House Chief of Staff Mick Mulvaney last week and stated that progress is being made on an agreement to include the debt ceiling fix with government funding legislation. The two-year agreement to lift the budget caps and avoid sequestration would also extend the nation’s \$22 trillion borrowing limit. Democrats are adhering to a principle of parity that any deal to raise defense spending caps be coupled with an increase in non-defense domestic discretionary spending.

The House of Representatives began consideration of its first package of spending measures last week. The chamber adjourned before voting on final passage, which is expected to take place early this week. The nearly \$1 trillion minibus (H.R. 2740) covers fiscal year (FY) 2020 appropriations for Defense, Labor-Health and Human Services-Education, State and Foreign Operations, and Energy and Water. The House Rules Committee approved 77 amendments to the Labor-HHS portion of the bill for consideration on the floor, most of which would result in relatively small changes to funding levels. Among the amendments added to the package are changes that would require that Affordable Care Act (ACA) open enrollment data be disaggregated by race, ethnicity, preferred language, age, and sex; strike a 20-year-old rider barring the U.S. Department of Health and Human Services (HHS) from creating a national patient identifier; prevent implementation of a White House rule to expand the availability of short-term health insurance plans;

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increase funding for food allergy research, and overturn a recent administration ban on using federal funds to conduct medical research that relies on fetal tissue from elective abortions. The White House has threatened to veto the House bill in its current form because of increases to domestic spending and because of the inclusion of Democratic priorities that undermine the President's agenda.

The House plans to begin consideration of a second package of spending bills this week. Beginning June 19, the chamber will take up H.R. 3055, which contains FY 2020 appropriations for Commerce-Justice-Science, Agriculture-Food and Drug Administration, Interior-Environment, Military Construction-Veterans Affairs, and Transportation-Housing and Urban Development. House leadership hopes to complete consideration of all 12 appropriations bills before the end of the month. The Senate has yet to begin debate on any of the 12 annual spending bills which must be passed before the end of the current fiscal year on Sept. 30. Senate appropriators are waiting for a deal to be reached on budget caps to set overall spending limits.

Update on Congressional Drug Pricing Negotiations

House Speaker Nancy Pelosi (D-Calif.) has reportedly made changes to her drug pricing plan in light of criticism from the Congressional Progressive Caucus (CPC). CPC chairs Mark Pocan (D-Wis.) and Pramila Jayapal (D-Wash.) had expressed concerns about the limited scope of the proposal from House leadership, which would require Medicare to negotiate prices on a minimum of 25 drugs per year. That number will now be increased to as many as 250 drugs, Rep. Pocan told reporters following a private meeting with the House Speaker last week. It is still unclear which drugs would be eligible for negotiation. Official legislation is not expected to be introduced before the Fourth of July recess.

Senate Judiciary Chairman Lindsey Graham (R-S.C.) has announced plans for his panel to markup drug pricing legislation this month. Graham stated that a bill from Sens. John Cornyn (R-Texas) and Richard Blumenthal (D-Conn.) to address the alleged gaming of the patent system and to enable the Federal Trade Commission (FTC) to take enforcement action against patent thickets used to delay competition would be included in the markup.

Update on Surprise Insurance Gap Legislative Efforts

The Senate Health, Education, Labor, and Pensions (HELP) Committee has scheduled a hearing on Wednesday to consider the Lower Health Care Costs Act. The discussion draft, which includes a title to address surprise insurance gaps, was released by Chairman Lamar Alexander (R-Tenn.) and Ranking Member Patty Murray (D-Wash.). The lawmakers have said they are working to add two additional bipartisan policies to the legislation, the ***Prescription Drug Rebates Reform Act of 2019***, which would require patient coinsurance obligations to be set as a percentage of net price rather than list price, and the ***Fair Accountability and Innovative Research Act***, which would increase transparency around pharmaceutical company decisions that increase drug prices by more than 10 percent in a single year.

The Congressional Budget Office's (CBO) preliminary assessment of proposed legislation from the Senate HELP Committee to address surprise insurance gaps finds that the bill could increase rates of hospital and provider consolidation. While the agency's report has not yet been made public, preliminary scores of the draft bill have been leaked prior to CBO's formal analysis. The package could save a combined \$54 billion over the next decade.

Following a hearing last week on the panel's own proposal to ban surprise insurance gaps, the House Energy and Commerce Health Subcommittee is working to revise its bipartisan draft bill to strengthen consumer protections provisions and consider what can be done about surprise bills from air ambulances.

Pelosi Names USMCA Negotiators

House Speaker Nancy Pelosi (D-Calif.) has named the designated Democratic lawmakers who will negotiate with U.S. Trade Representative Robert Lighthizer on the United States-Mexico-Canada Agreement (USMCA), the new North American trade deal. The group will be led by Rep. Richard Neal (D-Mass.). Reps. Earl Blumenauer (D-Ore.) and Jan Schakowsky (D-Ill.) will focus on the drug-pricing provisions.

E&C Requests Briefings on Fentanyl Threat

Bipartisan leadership of the House Energy and Commerce Committee have [written](#) to six federal agencies requesting additional information on the illicit flow of fentanyl into the country. The lawmakers request briefings from the Department of Homeland Security (DHS), Department of State, Drug Enforcement Administration (DEA), Food and Drug Administration (FDA), Office of National Drug Control Policy (ONDCP), and the United States Postal Service (USPS). The letters were signed by Chairman Frank Pallone (D-N.J.), Ranking Member Greg Walden (R-Ore.), Health Subcommittee Chairwoman Anna Eshoo (D-Calif.), Ranking Member Michael Burgess (R-Texas), Oversight and Investigations Chair Diana DeGette (D-Colo.), and Ranking Member Brett Guthrie (R-Ky.). Recent data from the Centers for Disease Control and Prevention (CDC) found that 28,000 overdose deaths in 2017 involved synthetic opioids such as fentanyl, a 47 percent increase over the previous year. The Government Accountability Office (GAO) is required to submit a report to Congress by June 30 outlining the progress made by the USPS and DHS in implementing the *Synthetics Trafficking and Overdose Prevention (STOP) Act*.

Verma Questions ACA Changes in Memo Released by House Dems

House lawmakers have released a 2018 internal memo from Centers for Medicare and Medicaid Services (CMS) Administrator Seema Verma stating that the administration's proposed changes to the Affordable Care Act (ACA) exchanges could result in more than one million people losing health insurance coverage. In a memo to U.S. Department of Health and Human Services (HHS) Secretary Alex Azar, Verma recommended against White House proposals that would allow insurers to raise premiums for silver-tier plans, end automatic re-enrollment, and make changes to the premium tax credit indexing methodology. She states that the policies could result in counties or states with no subsidized coverage available in 2019, coverage losses, premium increases, and market disruption. The administration has thus far only moved forward on changes to premium subsidies. The chairmen of the House Energy and Commerce, Ways and Means, and Education and Labor committees have [requested](#) that Secretary Azar release the full, unredacted memo and any analysis related to proposed health plan market changes, stating that "the fact that the Trump Administration would finalize policies despite these serious warnings from CMS is deeply troubling."

Grassley, Rubio Question Genomic Data Sharing and National Security Risks

Sens. Chuck Grassley (R-Iowa) and Marco Rubio (R-Fla.) have [written](#) to the HHS Office of the Inspector General (OIG) requesting oversight of potential payments to American entities by companies with connections to the Chinese government. The lawmakers cite a Feb. 2019 OIG report identifying China as a primary source of national security risks related to the sharing of genomic data. They express concerns that CMS may be paying for genetic testing or analysis by U.S. companies that have partnerships with organizations tied to Beijing. The letter asks for a review of payments to companies of concern and for recommendations on ways to mitigate national security risks related to Americans' genomic data and CMS payments. The letter requests a response from Acting Inspector General Joanne Chiedi no later than June 24.

Lawmakers Raise Concerns About Security, Identity Verification

A group of Democratic lawmakers is [urging](#) the administration to review its online identification verification systems following high-profile data breaches at Equifax Inc. and other companies. Sens. Elizabeth Warren (D-Mass.) and Ron Wyden (D-Ore.) and Rep. Elijah Cummings (D-Md.) have written to the Social Security Administration, CMS, the Department of Veterans Affairs, and USPS regarding the GAO's recommendation to develop a strategy to transition away from "outdated identity-proofing methods." The lawmakers released the GAO's [report](#) last week, which finds that current knowledge-based verification methods used when people apply for federal benefits and services put the public at increased risk of identity fraud. According to the GAO, the agencies have no specific or complete plans to eliminate knowledge-based verification and switch to other verification methods. The lawmakers request that the agencies "act quickly to address these concerns" and direct the Office of Management and Budget (OMB) to require them to report on progress made.

Relaunch of the House Aging Task Force

Several Democratic House lawmakers relaunched the Task Force on Aging and Families last week. The task force will focus on the needs of older Americans and their families. Reps. Jan Schakowsky (D-Ill.) and Doris Matsui (D-Calif.) will continue to serve as co-chairwomen of the group and are joined by Conor Lamb (D-Pa.) for the 116th Congress.

MedPAC, MACPAC Release June 2019 Reports

The Medicare Payment Advisory Commission (MedPAC) released its [June 2019 Report to Congress](#) last week. The publication considers beneficiary enrollment in Medicare: eligibility notification, enrollment process, and Part B late-enrollment penalties; restructuring Medicare Part D for the era of specialty drugs; Medicare payment strategies to improve price competition and value for Part B drugs; a mandated report on clinician payment in Medicare; issues in Medicare beneficiaries' access to primary care; assessing the Medicare Shared Savings Program's effect on Medicare spending; ensuring the accuracy and completeness of Medicare Advantage encounter data; redesigning the Medicare Advantage quality bonus program; payment issues in post-acute care; a mandated report on changes in post-acute and hospice care after implementation of the long-term care hospital dual payment-rate structure; options for slowing the growth of Medicare fee-for-service spending for emergency department services; and promoting integration in dual-eligible special needs plans.

The Medicaid and CHIP Payment and Access Commission (MACPAC) has also released its [June 2019 Report to Congress](#). The report contains chapters on Medicaid prescription drug policy, treatment of third-party payments in the definition of Medicaid shortfall, improving the effectiveness of Medicaid program integrity, therapeutic foster care, and the Medicaid program in Puerto Rico.

Brooks to Retire in 2020

Rep. Susan Brooks (R-Ind.) has announced her decision to not seek reelection in 2020 after four terms serving in the House of Representatives. Brooks is a member of the moderate Problem Solvers Caucus and currently sits on the Energy and Commerce Committee. She was a champion of the *Pandemic and All Hazards Preparedness and Advancing Innovation (PAHPAI) Act* recently passed by Congress.

Health Reimbursement Arrangement Final Rule Released

The Trump administration has issued a final rule that would expand the use of health reimbursement arrangements (HRAs) used to compensate employees for medical expenses. Under the rule from the departments of Health and Human Services, Treasury, and Labor, employers will be allowed to use individual coverage HRAs to provide employees with tax-exempt funds to pay for health insurance coverage purchased in the individual market. In the past, HRAs could only be used in combination with employer-sponsored group health plans. The regulation could potentially impact 800,000 employers and more than 11 million employees and their family members.

NIH Director Speaks Out Against “Manels”

Director of the National Institutes of Health (NIH) Francis Collins issued a statement calling for the end of all-male speaking panels in the field of science. Collins says that he will begin taking inclusiveness into consideration when reviewing speaking invitations. “Too often, women and members of other groups underrepresented in science are conspicuously missing in the marquee speaking slots at scientific meetings and other high-level conferences,” Francis said. He challenged other biomedical leaders to make the same commitment.

Trump Administration Personnel Updates

The President has selected Eric Ueland to replace Shahir Knight as Director of Legislative Affairs. Ueland currently holds the position of Deputy Assistant to the President for Domestic Policy. He previously served as Chief of Staff to former Republican Senate Majority Leader Bill Frist and was a senior adviser on the Senate Budget Committee. It has also been reported that Brian Blase, Special Assistant to the President for Economic Policy, is planning to leave his position at the White House in the coming weeks. Blase has been a key figure in the administration’s efforts to limit Medicaid expansion, expand the availability of short-term and association health plans, and investigate consolidation in the health care industry.

Upcoming Congressional Hearings and Markups

Senate Health, Education, Labor, and Pensions Committee hearing on the Lower Health Care Costs Act; 9:30 a.m., 430 Dirksen Bldg.; June 18

Senate Special Committee on Aging hearing to examine the complex web of prescription drug prices, focusing on examining agency efforts to further competition and increase affordability; 9:15 a.m., 562 Dirksen Bldg.; June 19

House Committee on Oversight and Reform hearing “Medical Experts: Inadequate Federal Approach to Opioid Treatment and the Need to Expand Care;” 10:00 a.m., 2154 Rayburn Bldg.; June 19

House Veterans’ Affairs Subcommittee on Health hearing “Mission Readiness: VA’s Emergency Response and Cache Program;” 2:00 p.m., 210 Capitol Bldg.; June 19

Senate Veterans’ Affairs Committee hearing to examine leveraging veteran networks to tackle suicide, focusing on harnessing the power of community; 2:30 p.m., 428A Russell Bldg.; June 19

House Committee on Science, Space, and Technology markup of H.R. 3153, the “Expanding Findings for Federal Opioid Research and Treatment Act;” 10:00 a.m., 2318 Rayburn Bldg.; June 20

House Education and Labor Subcommittee on Workforce Protections hearing “Breathless and Betrayed: What is MSHA Doing to Protect Miners from the Resurgence of Black Lung Disease?” 10:15 a.m., 2175 Rayburn Bldg.; June 20

House Energy and Commerce Subcommittee on Health hearing “Strengthening Health Care in the U.S. Territories for Today and Into the Future;” 10:30 a.m., 2322 Rayburn Bldg.; June 20

House Oversight and Reform Subcommittee on Government Operations hearing “Ensuring Quality Health Care for Our Veterans;” 2:00 p.m., 2154 Rayburn Bldg.; June 20

House Committee on Veterans’ Affairs legislative hearing on H.R. 2943; H.R. 2942; H.R. 2676; H.R. 2677; H.R. 712; H.R. 1647; H.R. 3083; H.R. 485; Discussion Draft, Specially Adaptive Housing, and Discussion Draft, Work Study; 2:05 p.m., 210 Capitol Bldg.; June 20

Recently Introduced Health Legislation

H.Con.Res.48 — Supporting National Men’s Health Week; Sponsor: Rep. Payne, Donald M., Jr. [D-NJ-10]; Committees: House - Oversight and Reform

H.R.3165 — To strengthen parity in mental health and substance use disorder benefits; Sponsor: Rep. Porter, Katie [D-CA-45]; Committees: House - Energy and Commerce, Ways and Means, Education and Labor

H.R.3171 — To amend the Comprehensive Addiction and Recovery Act of 2016 to authorize the Attorney General, in coordination with the Administrator of the Drug Enforcement Administration, the Secretary of Health and Human Services, and the Director of the Office of National Drug Control Policy, to award grants to covered entities to establish or maintain disposal sites for unwanted prescription medications, and for other purposes; Sponsor: Rep. Bonamici, Suzanne [D-OR-1]; Committees: House - Energy and Commerce

S.Res.242 — A resolution designating June 15, 2019, as “World Elder Abuse Awareness Day”; Sponsor: Sen. Grassley, Chuck [R-IA]; Committees: Senate - Judiciary

S.1754 — A bill to provide Medicaid assistance to individuals and families affected by a disaster or emergency, and for other purposes; Sponsor: Sen. Casey, Robert P., Jr. [D-PA]; Committees: Senate - Finance

S.1766 — A bill to implement policies to end preventable maternal, newborn, and child deaths globally; Sponsor: Sen. Collins, Susan M. [R-ME]; Committees: Senate - Foreign Relations

H.R.3192 — To add suicide prevention resources to school identification cards; Sponsor: Rep. Correa, J. Luis [D-CA-46]; Committees: House - Education and Labor

H.R.3199 — To amend title 35, United States Code, to prevent double patenting, and for other purposes; Sponsor: Rep. Jeffries, Hakeem S. [D-NY-8]; Committees: House - Judiciary

H.R.3215 — To provide Medicaid assistance to individuals and families affected by a disaster or emergency, and for other purposes; Sponsor: Rep. Shalala, Donna E. [D-FL-27]; Committees: House - Energy and Commerce, Ways and Means

S.Res.245 — A resolution designating July 17, 2019, as “Glioblastoma Awareness Day”; Sponsor: Sen. Graham, Lindsey [R-SC]; Latest Action: Submitted in the Senate, considered, and agreed to without amendment and with a preamble by Unanimous Consent.

S.1773 — A bill to amend titles XVIII and XIX of the Social Security Act to make improvements to the treatment of the United States territories under the Medicare and Medicaid programs, and for other purposes; Sponsor: Sen. Sanders, Bernard [I-VT]; Committees: Senate - Finance

S.1782 — A bill to add suicide prevention resources to school identification cards; Sponsor: Sen. Kennedy, John [R-LA]; Committees: Senate - Health, Education, Labor, and Pensions

S.1784 — A bill to provide for the issuance of a Stamp Out Elder Abuse Semipostal Stamp; Sponsor: Sen. Collins, Susan M. [R-ME]; Committees: Senate - Homeland Security and Governmental Affairs

S.1785 — A bill to amend title XIX of the Social Security Act to exclude authorized generic drugs from calculation of the average manufacturer price for purposes of the Medicaid drug rebate program, and for other purposes; Sponsor: Sen. Hassan, Margaret Wood [D-NH]; Committees: Senate - Finance

S.1793 — A bill to establish a grant program for the purpose of public health data system modernization; Sponsor: Sen. Kaine, Tim [D-VA]; Committees: Senate - Health, Education, Labor, and Pensions

S.1801 — A bill to ensure medications are affordable; Sponsor: Sen. Smith, Tina [D-MN]; Committees: Senate - Finance

S.1815 — A bill to establish an occupational safety and health standard to protect farmworkers from wildfire smoke, and for other purposes; Sponsor: Sen. Merkley, Jeff [D-OR]; Committees: Senate - Health, Education, Labor, and Pensions

H.R.3223 — To require the Comptroller General of the United States to study the role pharmacy benefit managers play in the pharmaceutical supply chain and to provide Congress with appropriate policy recommendations, and for other purposes; Sponsor: Rep. Marshall, Roger W. [R-KS-1]; Committees: House - Energy and Commerce

H.R.3224 — To amend title 38, United States Code, to provide for increased access to Department of Veterans Affairs medical care for women veterans; Sponsor: Rep. Brownley, Julia [D-CA-26]; Committees: House - Veterans' Affairs

H.R.3228 — To amend title 38, United States Code, to authorize health professional trainees to provide treatment via telemedicine, and for other purposes; Sponsor: Rep. Carter, Earl L. "Buddy" [R-GA-1]; Committees: House - Veterans' Affairs

H.R.3235 — To amend title XVIII of the Social Security Act to provide for expanded coverage of services furnished by genetic counselors under part B of the Medicare program, and for other purposes; Sponsor: Rep. Loebbeck, David [D-OA-2]; Committees: House - Energy and Commerce, Ways and Means

H.R.3253 — To provide for certain extensions with respect to the Medicaid program under title XIX of the Social Security Act, and for other purposes; Sponsor: Rep. Dingell, Debbie [D-MI-12]; Committees: House - Energy and Commerce

H.R.3272 — To amend the Public Health Service Act to establish a grant program to place in permanent supportive housing, and provide supportive services, to individuals who have physical or mental health conditions or substance use disorders and are chronically homeless or at risk of becoming chronically homeless, and for other purposes; Sponsor: Rep. Hastings, Alcee L. [D-FL-20]; Committees: House - Energy and Commerce

H.R.3276 — To amend title XIX of the Social Security Act to exclude authorized generic drugs from calculation of the average manufacturer price for purposes of the Medicaid drug rebate program, and for other purposes; Sponsor: Rep. Kennedy, Joseph P., III [D-MA-4]; Committees: House - Energy and Commerce

S.1842 — A bill to protect the personal health data of all Americans; Committees: Senate - Health, Education, Labor, and Pensions

S.1847 — A bill to require group health plans and group or individual health insurance coverage to provide coverage for over-the-counter contraceptives; Committees: Senate - Health, Education, Labor, and Pensions

S.1860 — A bill to require the Secretary of Defense to carry out a pilot program on the prediction and prevention of musculoskeletal injuries in members of the Armed Forces, and for other purposes; Committees: Senate - Armed Services

S.1861 — A bill to provide for the treatment of a pharmacy counter refusal as a coverage determination under Medicare part D; Committees: Senate - Finance

S.1868 — A bill to provide support to States to establish invisible high-risk pool or reinsurance programs; Committees: Senate - Finance

S.1872 — A bill to amend title XVIII of the Social Security Act to provide information regarding vaccines for seniors as part of the Medicare & You handbook and to ensure that the treatment of cost sharing for vaccines under Medicare part D is consistent with the treatment of vaccines under Medicare part B, and for other purposes; Committees: Senate – Finance