



## Health Policy Briefing

November 4, 2019

### House Passes Bipartisan Health, E-Cigarette Legislation

The House of Representatives passed a slate of bipartisan health bills under suspension of the rules last week, including:

- the ***Dignity in Aging Act*** (H.R. 4334), which would reauthorize the Older Americans Act through 2024;
- the ***Palliative Care and Hospice Education and Training Act*** (H.R. 674), which would increase the number of health providers trained in palliative care and hospice, intensify palliative care research at the National Institutes of Health (NIH), and disseminate educational materials for patients and their families on the benefits of palliative care;
- the ***EMPOWER for Health Act*** (H.R. 2781), which would reauthorize Title VII health professions education and training programs through FY 2024;
- the ***Title VIII Nursing Workforce Reauthorization Act*** of 2019 (H.R. 728), which would reauthorize Title VIII nursing workforce development programs through FY 2024.
- the ***Payment Commission Data Act of 2019*** (H.R. 1781), which would provide the Medicare Payment Advisory Commission (MedPAC) and the Medicaid and CHIP Payment and Access Commission (MACPAC) with access to Medicaid and Medicare parts B and D drug pricing and rebate data;
- the ***Public Disclosure of Drug Discounts Act*** (H.R. 2115), which would require the U.S. Department of Health and Human Services (HHS) to publicly report generic dispensing rates and aggregate drug rebate and price concession data from pharmacy benefit managers (PBMs), and would encourage the use of real time benefits tools; and
- the ***Preventing Online Sales of E-Cigarettes to Children Act*** (H.R. 3942), which would subject the home delivery of e-cigarettes to many of the same legal requirements as cigarettes – banning the purchase of vaping products to anyone under the legal age for purchasing combustible

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cigarettes. Online sellers would be required to verify the buyer's age and comply with state and local tobacco tax requirements. It would not apply to Food and Drug Administration (FDA)-approved devices that are marketed and sold for the purposes of tobacco cessation or other therapeutic reasons.

### ***Senate Passes Four Bill Spending Package***

The Senate passed its first package of fiscal year (FY) 2020 appropriations legislation last week. H.R. 3055, which included funding for Agriculture-Food and Drug Administration (FDA), Commerce-Justice-Science, Interior-Environment, and Transportation-Housing and Urban Development (HUD), passed by a vote of 84-9. The bill would require the FDA to take steps to address the recent uptick in lung illness associated with vaping products.

The chamber later rejected a vote to begin debate on a second spending package (H.R. 2740) that would cover Defense, Labor-Health and Human Services-Education, State-Foreign Operations, and Energy-Water. The procedural motion, which required 60 votes, failed 51-41. Democrats objected to starting debate on the package in protest of the total spending levels set by Senate Republicans. The Labor-Health and Human Services-Education legislation would include only a one percent increase over current spending levels. Top appropriators have indicated that a continuing resolution (CR) extending into next year will likely be necessary to fund the federal government past November 21, when the current stopgap spending measure expires. Congressional leadership continues to work toward their goal of completing appropriations work by December 31, but little progress has been made on reaching an agreement on top-line spending levels.

### ***HELP Advances Eight Health Measures***

The Senate Health, Education, Labor, and Pensions (HELP) Committee advanced eight pieces of health legislation by voice vote last week, including:

- the ***Ticks: Identify, Control, and Knockout (TICK) Act*** (S. 1657), to support efforts to combat Lyme disease and other tick-borne illnesses;
- the ***Healthy Start Reauthorization Act*** (S. 2619), to reauthorize the Healthy Start program, improve access to care and reduce infant mortality rates;
- the ***Title VIII Nursing Workforce Reauthorization Act*** (S. 1399), to reauthorize federal nursing workforce development programs;
- the ***Lifespan Respite Care Reauthorization Act*** (S. 995), to extend support for state respite care programs that aid Americans caring for family members with special needs;
- the ***Scarlett's Sunshine on Sudden Unexpected Death Act*** (S.1130), to improve the understanding of unexpected sudden death in children;
- the ***Promoting Physical Activity for Americans Act*** (S. 1608), to require the U.S. Department of Health and Human Services (HHS) to routinely update recommendations on exercise;
- the ***United States Public Health Service Modernization Act*** (S. 2629), to allow the creation of a reserve of public health professionals to respond to national or public health emergencies; and
- the ***Over-the-Counter Monograph Safety, Innovation, and Reform Act*** (S. 2740), to overhaul the regulation of over-the-counter drug, speed the FDA's review of such products and create new user fees to support improvements to this process.

### ***Senate Dems Fail to Overturn 1332 Waiver Guidance***

Senate Democrats were unsuccessful in their attempt last week to use the Congressional Review Act to overturn the October 2018 White House guidance that permits the use of federal subsidies to pay for health insurance plans that do not comply with all of the Affordable Care Act's (ACA) patient protections. S. J. Res. 52, the ***Overturn ACA Waiver Guidance***, failed by a vote of 43-52, with Sen. Susan Collins (R-Maine) breaking with her GOP colleagues in support of the resolution from Senate Minority Leader Chuck Schumer (D-N.Y.). The vote was a largely symbolic attempt by Democrats to put Republicans on the record regarding their position on protections for individuals with pre-existing conditions. The White House and GOP lawmakers argue that the guidance supports efforts to increase the number of affordable health insurance options available. No state has yet to apply for an expanded Section 1332 waiver with the U.S. Department of Health and Human Services (HHS) that would take advantage of the guidance.

### ***Cassidy, Hassan Pitch IDR Compromise in Push to Pass Surprising Billing Legislation***

Sens. Bill Cassidy (R-La.) and Maggie Hassan (D-N.H.) spoke about the possibility of including surprise billing legislation as a part of a year-end package during an event hosted by the Bipartisan Policy Center last week. Negotiations on a solution to protect patients from surprise medical bills have stalled amidst disagreements on how to resolve billing disputes between providers and payers. The legislation advanced by the Senate HELP Committee would base payments for out-of-network bills on the median rates for in-network providers, while the House Energy and Commerce Committee bill would allow an independent dispute resolution (IDR) process for claims above \$1,250. Sen. Cassidy, who is supportive of adding an IDR process to the HELP bill, noted that one possible compromise could be to allow physicians to combine small out-of-network bills in order to meet the threshold for initiating the IDR process. IDR decisions would then be based on commercially reasonable rates rather than billed charges, in an attempt to prevent the inflation of provider prices. Such a policy could also address stakeholder concerns about the potential administrative costs of IDR for the significant number of smaller medical bills. Staff for HELP Chairman Lamar Alexander (R-Tenn.) noted the chairman's concerns regarding the inflationary impact of IDR, as well as the importance of addressing air ambulance charges in the final surprise billing solution. Such a provision was not included in the House Energy and Commerce measure. Cassidy and Hassan, however, appeared optimistic about the chances of a surprise billing solution becoming law this year.

### ***Durbin, Kennedy Request Opioid Quota Reduction***

In a [letter](#) to the Drug Enforcement Administration (DEA), Sens. Dick Durbin (D-Ill.) and John Kennedy (R-La.) have requested that opioid quotas be meaningfully reduced from 2019 levels. The lawmakers argue that there is a "clear connection between the staggering volumes of painkillers approved for production and the current overdose epidemic." The ***SUPPORT for Patients and Communities Act*** (P.L. 115-271) included a provision to strengthen the DEA's statutory quota-setting authority. Durbin and Kennedy urge the agency to apply this new authority in order to prevent and limit opioid diversion.

### ***E&C, Finance Democrats Pressure HHS On Rates of Uninsured Children***

House Energy and Commerce Committee Chairman Frank Pallone (D-N.J.) and Senate Finance Committee Ranking Member Ron Wyden (D-Ore.) have [written](#) to HHS Secretary Alex Azar asking that the department take immediate action to reverse Medicaid and CHIP coverage declines amongst children. The lawmakers point to new data from the U.S. Census Bureau indicating an increase of 425,000 uninsured children between 2017 and 2018. They assert that "these historic coverage losses among children are the result of overly burdensome and faulty eligibility and renewal processes, diminished resources for outreach and enrollment assistance, and policies that instill fear and confusion among immigrant and mixed status families."

## ***Senators Request Update on Foreign Processing of American Genomic Data***

Senate Finance Committee Chairman Chuck Grassley (R-Iowa) and Sen. Marco Rubio (R-Fla.) have [written](#) to HHS and the Centers for Medicare and Medicaid Services (CMS) requesting an update on the circumstances in which the agency may be funding entities that process Americans' genomic data in China or Russia. They express concerns that CMS is providing payments for genetic testing or analysis to U.S. companies with ties to the Chinese government. The letter requests a response no later than November 14.

## ***Top E&C Republican to Retire***

Ranking Member of the House Energy and Commerce Committee Greg Walden (R-Ore.) announced that he will not seek reelection in 2020, stating his decision to "close the public service chapter" of his life. Walden was first elected to the House of Representatives in 1998. The state's 2nd congressional district is expected to be retained by the GOP. During his time as chair of powerful Energy and Commerce Committee, Walden oversaw efforts to repeal and replace the Affordable Care Act (ACA) and also spearheaded the panel's passage of comprehensive legislation to address the opioid epidemic. Walden is the 17th House Republican to announce his retirement plans in advance of the 2020 elections. In response to the announcement, Rep. John Shimkus (R-Ill.), a senior member of the committee, stated that he is reconsidering his decision to retire now that the top Energy and Commerce Committee spot will be available.

## ***Stephen Hahn, MD Formally Nominated as FDA Commissioner***

President Trump announced his decision to nominate radiation oncologist Stephen Hahn, M.D., chief medical executive at M.D. Anderson Cancer Center, as Commissioner of Food and Drugs. Dr. Sharpless, the previous Acting Director, has returned to his role as director of the National Cancer Institute (NCI) and Admiral Brett Giroir, Assistant Secretary for Health, will serve as Acting Commissioner until Hahn's Senate confirmation. Senate HELP Committee Chairman Lamar Alexander (R-Tenn.) plans to schedule a hearing to consider the nomination, while HELP Ranking Member Patty Murray (D-Wash.) stated that she will vet Dr. Hahn on his plans to prioritize science, uphold the FDA's gold standard for product safety and efficacy, and to meaningfully address youth tobacco use.

## ***Former Sen. Kay Hagan Dies at 66***

Former Senator Kay Hagan (D-N.C.) passed away last week at the age of 66. Hagan served a single term in the Senate – defeating Sen. Elizabeth Dole in 2008 but losing to Thom Tillis (R) in 2014. She passed away due to complications from a 2016 diagnosis with the tick-borne Powassan virus, a type of encephalitis. During the Senate HELP Committee consideration of S. 1657, the bill was renamed the ***Kay Hagan TICK Act*** in her honor. She previously served on the Senate HELP Committee.

## **Upcoming Congressional Hearings and Markups**

***Senate HELP Committee hearing "Examining the Response to Lung Illnesses and Rising Youth Electronic Cigarette Use;"***  
***10:00 a.m., 430 Dirksen Bldg.; November 13***

**Recently Introduced Health Legislation**

*H.R.4861 — To amend the Public Health Service Act to establish a program to improve the identification, assessment, and treatment of patients in the emergency department who are at risk of suicide, and for other purposes; Sponsor: Rep. Bilirakis, Gus M. [R-FL-12]; Committees: House - Energy and Commerce*

*H.R.4866 — To amend the 21st Century Cures Act to provide for designation of institutions of higher education that provide research, data, and leadership on continuous manufacturing as National Centers of Excellence in Continuous Pharmaceutical Manufacturing, and for other purposes; Sponsor: Rep. Pallone, Frank, Jr. [D-NJ-6]; Committees: House - Energy and Commerce*

*H.R.4870 — To amend the Public Health Service Act with respect to the Public Health Service Corps; Sponsor: Rep. Burgess, Michael C. [R-TX-26]; Committees: House - Energy and Commerce*

*H.R.4882 — To authorize the Attorney General to make grants to provide training to improve police responses for people with mental illness and intellectual and developmental disabilities, to increase the authorization of appropriations for mental health awareness training grants, and for other purposes; Sponsor: Rep. McCaul, Michael T. [R-TX-10]; Committees: House - Energy and Commerce; Judiciary*

*S.2721 — A bill to reduce violence and health disparities by addressing social determinants of health, enhancing health care recruitment, and improving the delivery of quality, coordinated care services, and for other purposes; Sponsor: Sen. Durbin, Richard J. [D-IL]; Committees: Senate - Health, Education, Labor, and Pensions*

*H.R.4898 — To amend the Public Health Service Act to establish a rural health center innovation awards program and a rural health department enhancement program, and for other purposes; Sponsor: Rep. Kustoff, David [R-TN-8]; Committees: House - Energy and Commerce*

*H.R.4899 — To amend the Public Health Service Act to establish the National Health Service Corps Rural Provider Loan Repayment Program, and for other purposes; Sponsor: Rep. Roe, David P. [R-TN-1]; Committees: House - Energy and Commerce*

*H.R.4900 — To amend the Public Health Service Act to establish a national telehealth program, and for other purposes; Sponsor: Rep. Roe, David P. [R-TN-1]; Committees: House - Energy and Commerce; Ways and Means*

*H.R.4906 — To provide patient protections with respect to the cost of insulin; Sponsor: Rep. DeGette, Diana [D-CO-1]; Committees: House - Energy and Commerce; Ways and Means*

*H.R.4908 — To amend title 38, United States Code, to prohibit the collection of a health care copayment by the Secretary of Veterans Affairs from a veteran who is a member of an Indian tribe; Sponsor: Rep. Gallego, Ruben [D-AZ-7]; Committees: House - Veterans' Affairs*

*S.2723 — A bill to amend the Federal Food, Drug, and Cosmetic Act to reduce drug shortages, and for other purposes; Sponsor: Sen. Collins, Susan M. [R-ME]; Committees: Senate - Health, Education, Labor, and Pensions*

*H.R.4913 — To amend title XVIII of the Social Security Act to require PDP sponsors of a prescription drug plan under part D of the Medicare program that use a formulary to include certain generic drugs and biosimilar biological products on such formulary, and for other purposes; Sponsor: Rep. McKinley, David B. [R-WV-1]; Committees: House - Energy and Commerce; Ways and Means*

*H.R.4914 — To provide for the issuance of the Diabetes Prevention Semipostal Stamp, and for other purposes; Sponsor: Rep. Rush, Bobby L. [D-IL-1]; Committees: House - Oversight and Reform; Energy and Commerce*

*H.R.4925 — To require the Secretary of Health and Human Services to award grants to support community-based coverage entities to carry out a coverage program that provides to qualifying individuals health coverage and educational and occupational training, and for other purposes; Sponsor: Rep. Huizenga, Bill [R-MI-2]; Committees: House - Energy and Commerce; Education and Labor*

*H.R.4932 — To amend title XVIII of the Social Security Act to expand access to telehealth services, and for other purposes; Sponsor: Rep. Thompson, Mike [D-CA-5]; Committees: House - Energy and Commerce; Ways and Means*

*S.2740 — A bill to amend the Federal Food, Drug, and Cosmetic Act to clarify the regulatory framework with respect to certain nonprescription drugs that are marketed without an approved new drug application, and for other purposes; Sponsor: Sen. Isakson, Johnny [R-GA]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.2741 — A bill to amend title XVIII of the Social Security Act to expand access to telehealth services, and for other purposes; Sponsor: Sen. Schatz, Brian [D-HI]; Committees: Senate - Finance*

*S.2747 — A bill 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: Sen. Casey, Robert P., Jr. [D-PA]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.2751 — A bill to amend title XVIII of the Social Security Act to improve access to innovative new medical devices furnished to individuals with end stage renal disease under part B of the Medicare program by establishing a new device add-on payment adjustment under such part; Sponsor: Sen. Cornyn, John [R-TX]; Committees: Senate - Finance*

*H.R.4938 — To amend title XVIII to strengthen ambulance services furnished under part B of the Medicare program; Sponsor: Rep. Sewell, Terri A. [D-AL-7]; Committees: House - Energy and Commerce; Ways and Means*

*H.R.4945 — To amend title XVIII of the Social Security Act to exclude ventilators from competitive acquisition programs under the Medicare program for 5 years, and for other purposes; Sponsor: Rep. Griffith, H. Morgan [R-VA-9]; Committees: House - Energy and Commerce; Ways and Means*

*H.R.4946 — To amend title XVIII of the Social Security Act to ensure equal access of Medicare beneficiaries to community pharmacies in underserved areas as network pharmacies under Medicare prescription drug coverage, and for other purposes; Sponsor: Rep. Welch, Peter [D-VT-At Large]; Committees: House - Energy and Commerce; Ways and Means*

*H.R.4949 — To direct the Secretary of Veterans Affairs to establish qualifications for the human resources positions within the Veterans Health Administration of the Department of Veterans Affairs, and for other purposes; Sponsor: Rep. Bost, Mike [R-IL-12]; Committees: House - Veterans' Affairs*

*H.R.4955 — To amend the Federal Food, Drug, and Cosmetic Act to clarify the meaning of a new chemical entity; Sponsor: Rep. Engel, Eliot L. [D-NY-16]; Committees: House - Energy and Commerce*

*H.R.4963 — To amend the Controlled Substances Act to clarify how controlled substance analogues that are imported or offered for import are to be regulated, and for other purposes; Sponsor: Rep. Katko, John [R-NY-24]; Committees: House - Energy and Commerce; Judiciary*

*S.Res.396 — A resolution designating October 2019 as "National Health Literacy Month"; Sponsor: Sen. Murphy, Christopher [D-CT]; Committees: Senate - Judiciary*

*S.Res.405 — A resolution expressing support for the designation of October as “Brain Health Awareness Month”; Sponsor: Sen. Grassley, Chuck [R-IA]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.2764 — A bill to amend the Controlled Substances Act to clarify how controlled substance analogues that are imported or offered for import are to be regulated, and for other purposes; Sponsor: Sen. Grassley, Chuck [R-IA]; Committees: Senate - Judiciary*