



Health Policy Briefing

October 9, 2017

CHIP Funding Advances in House and Senate

The House Energy and Commerce Committee advanced legislation to address expired funding for the Children's Health Insurance Program (CHIP) and community health centers last week. H.R. 3921, the Helping Ensure Access for Little ones, Toddlers, and Hopeful Youth by Keeping Insurance Delivery Stable (HEALTHY KIDS) Act, would fund CHIP through 2022 and phase out the 23 percent funding increase created by the Affordable Care Act (ACA) after two years. It also makes changes to the law's maintenance of effort requirements that prevented states from reducing eligibility for the program, and modifies reductions in Medicaid disproportionate share hospital (DSH) payments. The HEALTHY KIDS Act would be funded through cuts to Obamacare's Public Health and Prevention Fund, by increasing Medicare payments for high-income beneficiaries, excluding lottery winners from receiving Medicaid, making adjustments to Medicaid third-party liability, and reducing the grace period for individuals purchasing ACA coverage who fail to pay their premiums on time. H.R. 3921 was advanced out of Committee in a party-line vote. During the proceedings, Democrats called for renewed negotiations on offsets for the legislation in order to make the pay-fors bipartisan.

The Senate Finance Committee advanced a bipartisan CHIP reauthorization bill (S. 1827) on Wednesday, without any details on how the measure would be paid for. Members agreed not to offer any amendments to the legislation, which Chairman Orrin Hatch (R-Utah) expects to receive a strong bipartisan vote on the Senate floor. Sen. Toomey (R-Pa.) was the only Committee member to oppose the bill. He raised concerns that CHIP had become a slush fund, citing data that only 58 percent of allocated funding had gone to the program itself since 2009. Chairman Orrin Hatch (R-Utah) said that the Committee's new health care priority will now be passage of Medicare and Medicaid extenders.

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House CHIP Bill Includes Aid for Puerto Rico

The Children's Health Insurance Program (CHIP) reauthorization bill advanced by the House Energy and Commerce Committee last week also included \$1 billion in Medicaid funds for Puerto Rico and the U.S. Virgin Islands in the aftermath of Hurricane Maria. While Committee Democrats argued that the provision was inadequate, Republicans noted that the measure was written in consultation with Jenniffer González-Colón (R), Puerto Rico's nonvoting representative. Congressional Democrats are demanding a disaster aid package, which has yet to be proposed by the Trump Administration.

FDA Commissioner Questioned on Puerto Rico Strategy

Commissioner of Food and Drugs Scott Gottlieb was on the Hill last week to testify on several matters under his Agency's jurisdiction, but also spent time fielding questions regarding the aftermath of Hurricane Maria in Puerto Rico. The island is home to numerous pharmaceutical-manufacturing facilities, many of which could be without commercial power for months. Plants that experienced only minor damage are currently operating on generator power, and workers are facing transportation difficulties in getting to work. Questions also remain about how to import supplies and export drugs off the island. The Food and Drug Administration (FDA) says that it has been in touch with all the pharmaceutical firms affected by the storm, and is working with individual companies to troubleshoot and develop a contingency plan. The agency has also compiled a list of 40 products for which a potential shortage could have a substantial impact on public health, including 13 drugs produced only in Puerto Rico. Some injectable medicines, biologics, and treatments for HIV and cancer could be affected.

House Passes Bill Expanding Treatment for Babies with Hearing Loss

The House of Representatives passed S. 652, the Early Hearing Detection and Intervention Act, by voice vote last week. The legislation will expand access to resources for deaf and hard-of-hearing newborns and young children. It will also increase training for health care professionals to treat these patients and educate their family members.

House Passes FY18 Budget Resolution

The House of Representatives passed a fiscal year (FY) 2018 budget resolution in a 219-206 vote, with 18 Republicans joining the Democratic caucus in voting against the measure. In keeping with the FY18 spending bills already passed by the House, the resolution increases defense spending by \$72 billion while cutting nondefense spending by \$5 billion. The budget resolution also includes reconciliation instructions for the Republican tax reform plan.

IPAB Advances in the House, Senate Budget

The House Ways and Means Committee approved H.R. 849, the Protecting Seniors' Access to Medicare Act of 2017, last week. The bill would repeal the Independent Payment Advisory Board (IPAB) and was passed by a vote of 24-13. Chairman Kevin Brady (R-Texas) has said that House Republicans are working to attach IPAB repeal to funding for the Children's Health Insurance Program (CHIP). This move, however, could complicate reauthorization of CHIP, a program that generally has broad bipartisan support. The Energy and Commerce Committee had planned to vote on the IPAB legislation during its markup of CHIP reauthorization and nine other health bills, but at the end of a marathon markup ended up skipping the vote, citing the fact that the Ways and Means Committee had already approved the bill earlier in the day.

The Senate Budget Committee also approved by voice vote an amendment from Sen. Cory Gardner (R-Colo.) to the Senate fiscal year (FY) 2018 budget resolution that would repeal IPAB. The budget was advanced out of Committee, but must still be passed by the full Senate. A conference committee would then be convened to address the differences between the House- and Senate-passed budget resolutions.

Energy and Commerce Advances Nine Public Health Bills

During a lengthy markup in which H.R. 3921, the HEALTHY KIDS Act reauthorizing the Children's Health Insurance Program (CHIP) and H.R. 3922, the Community Health and Medical Professionals Improve Our Nation (CHAMPION) Act reauthorizing community health centers funding were considered, the House Energy and Commerce Committee also advanced seven additional public health bills. The Committee passed the following bills by voice vote:

- H.R. 1148, the Furthering Access to Stroke Telemedicine Act of 2017, to expand the ability of patients presenting at hospitals or at mobile stroke units to receive a Medicare reimbursed neurological consult via telemedicine.
- H.R. 2465, the Steve Gleason Enduring Voices Act of 2017, to make coverage of speech generating devices under "routinely purchased durable medical equipment" permanent under the Medicare program.
- H.R. 2557, the Prostate Cancer Misdiagnosis Elimination Act of 2017, to provide for coverage of DNA Specimen Provenance Assay (DPSA) testing for prostate cancer.
- H.R. 3120, to reduce the volume of future electronic health record-related significant hardship requests, would amend the Health Information Technology for Economic and Clinical Health (HITECH) Act to remove the mandate that meaningful use standards become more stringent over time and allows the U.S. Department of Health and Human Services (HHS) to be more deliberative in such evaluations.
- H.R. 3245, the Medicare Civil and Criminal Penalties Act, to update both penalties within the Medicare program, many of which have not been updated in 20 years.
- H.R. 3263, to extend the Medicare Independence at home Medical Practice Demonstration program, would provide a home-based primary care benefit to high-need Medicare beneficiaries with multiple chronic conditions, ideally allowing them to avoid unnecessary hospitalizations, ER visits, and nursing home use, for two additional years.
- H.R. 3271, the Protecting Access to Diabetes Supplies Act of 2017, would address several issues beneficiaries have reported facing under the competitive bidding program regarding Diabetes Test Strips (DTS). Among them include: providing enhanced reporting that will aid Congress and the Centers for Medicare and Medicaid Services (CMS) in ensuring beneficiaries are receiving the diabetic testing supplies they need to manage their condition.

Congressman Tim Murphy to Resign

Rep. Tim Murphy (R-Pa.) announced plans to resign from Congress effective October 21. Murphy, a pro-life Republican, faces allegations that he asked the woman with whom he had an affair to terminate a pregnancy. Murphy is a member of the House Energy and Commerce Committee and Chairman of the Oversight and Investigations Subcommittee.

Senate Confirms Deputy HHS Secretary

The Senate has confirmed Eric Hargan to be Deputy Secretary of Health and Human Services (HHS) by a vote of 57-38. Sens. Carper (D-Del.), Coons (D-Del.), Donnelly (D-Ind.), Durbin (D-Ill.), Heitkamp (D-N.D.), King (I-Maine), Manchin (D-W.V.), and McCaskill (D-Mo.) voted in support of his confirmation. Hargan now holds the highest-level confirmed position in the Department following Secretary Price's resignation. Hargan previously worked as Deputy General Counsel, Principal Associate Deputy Secretary, and Acting Deputy Secretary at HHS between 2003-2007. He more recently served on the President's transition team. Hargan could end up named as acting secretary until a replacement for Price is confirmed.

Patterson to Serve as Acting DEA Administrator

Robert Patterson has been named Acting Administrator of the Drug Enforcement Administration (DEA). In his statement announcing the decision, Attorney General Jeff Sessions noted the important role Patterson will play in stemming the opioid abuse epidemic. Patterson began his career with DEA in 1988, and has served in a variety of positions within the agency including Principal Deputy Administrator, Chief Inspector, and Assistant Special Agent in Charge. He replaces Chuck Rosenberg, who resigned at the end of last month.

Senate Finance Makes Opioid Fraud Scheme Inquiry

Republicans on the Senate Finance Committee have **written** to the U.S. Department of Health and Human Services (HHS) requesting additional information on the health care fraud takedown that resulted in the identification of \$1.3 billion in false billings and 412 charges of participation in fraud schemes related to improper opioid related diversion and abuse. The lawmakers also ask for details on what the Department is doing to combat opioid fraud and abuse in the Medicare Part D program. They request that the Department engage with the Committee on policy options to review Medicare and Medicaid payment initiatives related to the treatment of pain and addiction.

GAO Releases NAS Report

The Government Accountability Office (GAO) released a new **report** on neonatal abstinence syndrome (NAS) last week. The report was mandated as part of the Comprehensive Addiction and Recovery Act (CARA). The number of babies born with NAS has increased nearly five-fold between 2000 and 2012 as a result of the opioid epidemic. The GAO examined efforts to treat NAS babies and their mothers under the Medicaid program, citing data that more than 80 percent of NAS cases are paid for through the Medicaid program. The report includes the best clinical practices used to care for infants with NAS and the available data on outcomes. The U.S. Department of Health and Human Services (HHS) released a plan in May of this year to address NAS, and the GAO recommends that the Department develop a more concrete timeline for implementing the HHS strategy. HHS agreed but cited that adequate funding is necessary to implement the recommendations. In related news, the National Institutes of Health (NIH) announced that it would be funding a new study on how best to treat and manage babies born with opioid withdrawal syndrome. The study will be conducted by the Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD) in collaboration with the NIH's Environmental Influences on Child Health Outcomes Program.

Upcoming Congressional Hearings and Meetings

House Energy and Commerce Oversight and Investigations Subcommittee hearing on “Examining How Covered Entities Utilize the 340B Pricing Program;” 10:00 a.m., 2123 Rayburn Bldg.; October 11

House Energy and Commerce Health Subcommittee “Member Day” on Effort to Combat the Opioid Crisis; 10:15 a.m., 2322 Rayburn Bldg.; October 11

Senate Health, Education, Labor, and Pensions Committee hearing “The Cost of Prescription Drugs: How the Drug Delivery System Affects What Patients Pay, Part II;” 10:00 a.m., 430 Dirksen Bldg.; October 17

Recently Introduced Health Legislation

S.1905 (introduced by Sen. Debbie Stabenow): A bill to increase the number of States that may conduct Medicaid demonstration programs to improve access to community mental health services; Finance

H.R.3919 (introduced by Rep. Diane Black): To streamline the employer reporting process and strengthen the eligibility verification process for the premium assistance tax credit and cost-sharing subsidy; Ways and Means, Energy and Commerce

H.R.3920 (introduced by Rep. Jackie Walorski): To establish a Medicare demonstration program on the use of third-party interest-free payment arrangements to reduce Medicare hospital part A bad debt claims; Ways and Means, Energy and Commerce

H.R.3921 (introduced by Rep. Michael C. Burgess): To extend funding for the Children's Health Insurance Program, and for other purposes; Energy and Commerce, Ways and Means

H.R.3922 (introduced by Rep. Greg Walden): To extend funding for certain public health programs, and for other purposes; Energy and Commerce, Ways and Means

H.R.3924 (introduced by Rep. Susan W. Brooks): To amend the Public Health Service Act to extend funding for the special diabetes program for type I diabetes; Energy and Commerce

H.R.3926 (introduced by Rep. Gus M. Bilirakis): To provide for an extension for community health centers, and for other purposes; Energy and Commerce

H.R.3927 (introduced by Rep. Gus M. Bilirakis): To amend title XXI to allow for the blending of risk pools of children's health insurance buy-in programs with the risk pools of State child health plans under such title, and for other purposes; Energy and Commerce, Ways and Means

H.R.3928 (introduced by Rep. Larry Bucshon): To ensure that patients receive accurate health care information by prohibiting misleading and deceptive advertising or representation in the provision of health care services, to require the identification of the license of health care professionals, and for other purposes; Energy and Commerce

H.R.3931 (introduced by Rep. Leonard Lance): To increase the number of States that may conduct Medicaid demonstration programs to improve access to community mental health services; Energy and Commerce

H.R.3932 (introduced by Rep. Leonard Lance): To amend title XI of the Social Security Act to provide for increased Puerto Rico Medicaid payments, and for other purposes; Energy and Commerce

H.R.3933 (introduced by Rep. James B. Renacci): To establish and reinstate certain reporting requirements regarding efforts to recruit, hire, and retain health care professionals for the Veterans Health Administration; Veterans' Affairs

H.R.3935 (introduced by Rep. John Shimkus): To provide for an extension of funding for the National Health Service Corps; Energy and Commerce

H.Res.553 (introduced by Rep. Rob Woodall): Providing for consideration of the concurrent resolution (H. Con. Res. 71) establishing the congressional budget for the United States Government for fiscal year 2018 and setting forth the appropriate budgetary levels for fiscal years 2019 through 2027; Rules

S.1908 (introduced by Sen. Mark R. Warner): A bill to streamline the employer reporting process and strengthen the eligibility verification process for the premium assistance tax credit and cost-sharing subsidy; Finance

S.1909 (introduced by Sen. Robert P. Casey, Jr.): A bill to amend title XVIII of the Social Security Act to establish a system to educate individuals approaching Medicare eligibility, to simplify and modernize the eligibility enrollment process, and for other purposes; Finance

S.Res.280 (introduced by Sen. Debbie Stabenow): A resolution designating the week of October 2 through October 6, 2017, as "National Health Information Technology Week" to recognize the value of health information technology in transforming and improving the healthcare system for all people in the United States; Judiciary

H.R.3938 (introduced by Rep. Stephen F. Lynch): To direct the Administrator of the Federal Aviation Administration to enter into appropriate arrangements with the National Academies of Sciences, Engineering, and Medicine to provide for a report on the health impacts of air traffic noise and pollution, and for other purposes; Transportation and Infrastructure

S.1914 (introduced by Sen. Mark R. Warner): A bill to amend title XVIII of the Social Security Act in order to strengthen rules in case of competition for diabetic testing strips, and for other purposes; Finance

H.Res.558 (introduced by Rep. Brendan F. Boyle): Recognizing October 7th as National Trigeminal Neuralgia Awareness Day; Energy and Commerce

H.R.3964 (introduced by Rep. David P. Roe): To amend the Controlled Substances Act to establish additional registration requirements for prescribers of opioids, and for other purposes; Energy and Commerce, Judiciary

H.R.3976 (introduced by Rep. Kevin Cramer): To amend the Patient Protection and Affordable Care Act to allow for certain third party payments; Energy and Commerce

H.R.3985 (introduced by Rep. David A. Trott): To establish a working group of public and private entities led by the Food and Drug Administration to recommend voluntary frameworks and guidelines to increase the security and resilience of Internet of Medical Things devices, and for other purposes; Energy and Commerce