

6.26.17 – 6.30.17 Health Wrap Up

Please find below a summary of the latest major health policy events in Washington this week. Please let us know if you have any questions.

Scheduling note: both chambers are on recess next week for the 4th of July holiday. Unless activity warrants, we will send the next wrap up on July 14th.

ACA REPEAL & REPLACE

On Tuesday, Senate leaders announced they were delaying a vote on their repeal and replace discussion bill, the [Better Care Reconciliation Act of 2017](#) (BCRA), until after the July 4th recess to allow time for further negotiations on the package. The announcement came as a surprise even with several senators including Collins (R-ME), Heller (R-NV), Johnson (R-WI), and Paul (R-KY) having said that they would vote “no” on the motion to proceed. Just hours before the announcement, Sen. Cornyn (R-TX) said a procedural vote was likely on Wednesday and the Senate needed to act this week. Moreover, the phrase being repeated around Washington was, “Don’t bet against Mitch McConnell.”

Following the announcement that a vote would not take place this week, even more Senators including Portman (R-OH), Capito (R-WV) and Moran (R-KS) issued statements saying they were no votes on the bill as currently drafted. Additionally, governors jumped on the opposition bandwagon with New Hampshire Governor Sununu (R-NH) stating, “the current version of the BCRA goes beyond addressing Obamacare’s flaws. This is not an approach I can support, and I am opposed to the BCRA as currently written.”

After delaying the vote, Senate leaders said they had a goal of working with Senators over the next 72 hours to reach an agreement prior to the 4th of July recess so the Congressional Budget Office (CBO) could score a new bill over the break, which could then be voted on when Senators returned to Washington. However, when asked if a deal could come together before the end of the week, Sen. John McCain (R-AZ) said, “pigs could fly.”

We understand leadership hopes to send broad outlines of a package to the CBO this afternoon. Senate staff indicated on Thursday that discussions are still at the conceptual level and negotiations may be hampered next week by Senators being back home. They anticipated leadership might put together some options for Senators to review when they get back on July 10th and said that CBO scoring of a new bill should not take too long since most of the options under consideration have already been discussed. The new (old) goal for passing a package is now the August recess and, if an agreement can be reached quickly, the new potential date for a Senate vote would likely be around the week of July 17th.

As we reported last week, the discussion draft appeared to be crafted in such a way as to allow for changes that could give senators on the fence a “win.” Moreover, CBO scored an extra \$200 billion in savings in the BCRA beyond what McConnell actually needs to match the House bill’s savings – which clearly gives him room to negotiate.

However, it is unclear if minor changes will be enough to bring Senators on board; for example, Sen. Collins (R-ME) told reporters “Tinkering around the edges is not going to be sufficient to win my support.” Collins added, “I never underestimate the creativity of Mitch McConnell, but I can’t see it. Maybe we do portions of the bill. Maybe we do a bill to stabilize the markets. That might be a narrow bill that would get bipartisan support.”

The situation remains very fluid and, similar to the struggle House leaders faced, any significant change that appeals to moderates will likely lose a conservative’s vote and vice versa. In describing the legislative challenges of getting moderates and conservatives to agree on a bill,

Sen. Roberts (R-KS) told reporters, "Once in Glacier National Park I saw two porcupines making love. I'm assuming they produced smaller porcupines. They produced something. It has to be done carefully. That's what we're doing now."

Some of the key issues under debate and discussion include:

Medicaid

The changes to the Medicaid program, including the phase out of the enhanced match for the Medicaid expansion population and changing the financing of the system to a per capita or block grant system, continue to be sticking points. In the [joint statement](#) from Senators Portman and Capito expressing opposition to the BCRA as drafted, they pointed to Medicaid's coverage of treatment for substance use disorders as one of their primary concerns with the bill. However, on the other side of the debate, Sen. Toomey (R-PA) said that keeping the changes to Medicaid are "very, very important to me."

Funding to Address the Opioid Misuse and Overdose Epidemic

Wednesday evening it was announced \$45 billion to address the opioid misuse and overdose epidemic would be added to the package; as you know, Portman and Capito have been pushing for this funding. However, whether or not the additional funds would be enough to bring the Senators on board remains unclear. As referenced above, both Senators have stressed that they remain concerned with the changes to Medicaid and they do not want to be perceived as being "bought off" with just the funds for opioid use disorder treatment and recovery support services. Portman told reporters the funding is "progress" but "there are also a lot of missing parts" and Sen. Capito said the money needs to be paired with more generous Medicaid coverage.

Tax Cuts

Maintaining some or all of the Affordable Care Act's taxes in the bill is now under discussion. For example, one change to the bill that Sens Collins and Rounds (R-SD) are floating is removing the repeal of the ACA's surtax on net investment income from the BCRA.

BUDGET & APPROPRIATIONS

The House Budget Committee did not mark up their FY18 budget resolution this week due to internal Republican disputes over mandatory spending cuts, and a markup will not take place until July at the earliest due to the upcoming July 4th recess. House Budget Chairwoman Diane Black (R-TN) said Tuesday she is still trying to build support for a budget among Republicans on the panel and continuing to negotiate budget numbers with authorizing committees that would receive reconciliation instructions to cut mandatory spending programs.

Discretionary spending levels for defense and nondefense programs have largely been settled in the House, but questions remain over how much to demand in mandatory spending cuts in the budget reconciliation instructions and the plans for a tax overhaul that would be funneled through reconciliation. Committee members last week discussed issuing reconciliation instructions calling for a minimum of \$150 billion in cuts to mandatory spending programs over 10 years, and then mulled raising the floor to \$200 billion after conservatives said \$150 billion wasn't enough.

The Senate remains even further behind as senators focus their efforts on passing a health care bill, and Senate Majority Whip John Cornyn (R-TX) said this week that a Senate budget resolution may have to wait until September.

Even without a budget in place, House appropriators raced ahead with spending bills this week approving four bills in subcommittee (Agriculture; Commerce, Justice, Science; Financial Services; and Energy and Water) and two bills in full committee (Defense and Legislative Branch). The fast pace is anticipated to continue in the House and we understand from a source

involved in the negotiations that the House will attempt to schedule a markup of their Labor-HHS bill the week of July 10, although no markup has been officially announced yet.

Even though GOP leaders have begun approving spending bills on a piecemeal basis due to the lack of agreed upon spending limits, House Appropriations Chairman Rodney Frelinghuysen (R-NJ) said on Tuesday that all of the subcommittee chairmen have their allocations for a topline of \$511 billion for nondefense discretionary and \$621 billion for defense discretionary – the numbers that have tentatively been agreed to by the House GOP Conference. As you know, Congress would need a bipartisan budget agreement to actually lift the spending cap for defense above the \$549 billion set in law and Senate Democrats have said they want parity between any increases in defense and nondefense discretionary spending levels for FY18, meaning any agreement would likely need to include lifting the nondefense cap above the \$516 billion also set in law.

MEDICAL LIABILITY REFORM

On Wednesday, by a vote of 218 to 210 the House passed legislation, the *Protecting Access to Care Act*, that caps medical malpractice lawsuits by limiting plaintiff damages to \$250,000. The bill is part of the House Republican's effort to work on additional health reform bills outside of the reconciliation process; the bill is considered unlikely to pass the Senate.

TRUMP ADMINISTRATION

Yesterday, President Trump announced the nomination of [Dr. Jerome Adams](#), an Indiana health official, to be the next Surgeon General. If confirmed, Dr. Adams would replace Dr. Vivek Murthy, who was abruptly fired in April.

SUBSTANCE USE DISORDERS

House Judiciary Subcommittee Hearing on Synthetic Analogues Bill

On Tuesday morning the House Judiciary Subcommittee on Crime, Terrorism, Homeland Security, and Investigations held a hearing on H.R. 2851, Stop the Importation and Trafficking of Synthetic Analogues (SITSA) Act. A webcast of the hearing and opening statements can be found [here](#).

Witnesses included:

- Rep. John Katko (R-NY)
- Demetra Ashley, Acting Assistant Administrator, US Drug Enforcement Administration
- Robert Perez, Acting Executive Assistant Commissioner, U.S. Customs and Border Protection
- Marcia Lee Taylor, President & CEO, Partnership for Drug-Free Kids
- Reta Newman, Special Advisor to Drug Free America Foundation, Chief Chemist and Laboratory Director of the Pinellas County Forensic Laboratory
- Angela Pacheco, Former District Attorney, First Judicial District of Santa Fe, NM

While several questions focused on the sentencing provisions in the bill, a few members brought up the need to make sure the legislation does not negatively impact research.

Full Committee Ranking Member John Conyers (D-MI) said he thought H.R. 2851 was well-intentioned, but that it is a flawed bill. He noted that it was broad in the authorities it grants to the Attorney General and eliminates the processes undertaken by HHS and FDA. He said that the Department of Justice, HHS and FDA should have a cooperative role for scheduling synthetic analogues.

In responding to a question by Conyers about the 8-factor analysis, Ms. Ashley indicated that DEA and HHS work together and that HHS is a great partner. She reiterated this a few minutes later and said that HHS and DEA are communicating daily and looking at the same substances.

Subcommittee Ranking Member Sheila Jackson Lee (D-TX) said a one sized approach is not the answer and that the Attorney General should not have sole power over scheduling synthetics.

Rep. Gohmert (R-TX) asked if under this bill kratom would be listed as a scheduled A drug. Ms. Ashley responded that this is not the track that Kratom is on right now. DEA took action to schedule kratom in August 2016 and subsequently withdrew that action due to concern from stakeholders, Congress and the public. She said that DEA decided to take a more prudent approach and right now kratom is on the path of an 8-factor analysis through FDA and they are currently waiting on action and FDA's recommendation. Rep. Gohmert next asked if marijuana would be a schedule A substance. Ms. Ashley said no because it is already permanently scheduled in schedule I so there would be no need to backtrack and place it into a temporary environment.

Full Committee Chairman Robert Goodlatte (R-VA) wanted to know how many synthetic drugs in the scope of this bill are being researched right now and how many registrants are authorized to research synthetic drugs. Ms. Ashley said that a little over 400 DEA registrants are registered to handle schedule 1 controlled substances. She also said that the issue is complex because the UN reported approximately 700 additional ones, so there could be more that are not tracked and accounted for.

During the second panel Marcia Lee Taylor commented about the importance of making sure that when crafting final legislation that steps are taken to ensure researchers are able to study schedule A substances for future medical use without the restrictions that come with studying a schedule I substance. She said the balance between scheduling dangerous substances and allowing research on them for medical purposes is hard to get exactly right, but it is critical to protect public health and safety.

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