

7.24.17 – 7.28.17 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: the House began their August recess today.

ACA REPEAL & REPLACE

Early this morning, in a dramatic vote, 3 Republican Senators – Collins (R-ME), McCain (R-AZ) and Murkowski (R-AK) – joined with all Democrats in voting against legislation repealing the *Affordable Care Act* (ACA). The final vote was 49 – 51.

To recap the week leading up to this morning's vote in brief:

On Tuesday, in another high-drama vote, the Senate approved the Motion to Proceed to debate; while McCain voted “yes” on that vote, Murkowski and Collins voted in opposition with the Democrats, which forced Vice President Pence to break the tie

- On Tuesday night and Wednesday the Senate considered amendments to “repeal and delay” the ACA (without a replacement) and repeal and replace the health reform law (the *Better Care Reconciliation Act* (BCRA)); both amendments failed to garner the votes needed for passage

With it clear the Senate lacked the votes on “clean repeal” and “repeal and replace,” the focus shifted to a much smaller repeal bill, the so-called “skinny bill,” in the hopes it could garner the 51 votes needed for passage. Last night, just a couple of hours before the vote, Senate leaders released the “skinny bill” text. The bill would have:

- Repealed the individual mandate
- Repealed the employer mandate for 8 years
- Repealed the medical device tax for 3 years
- Defunded Planned Parenthood for 1 year
- Allowed states to waive some of the ACA's requirements including the essential health benefits

Leadership pitched to Senators that they should vote for the slimmed down bill so the Senate could go to a conference with the House. However, some Senators expressed concerns about voting for the bill, which could crater the marketplace, on only a reassurance that the House would not pass it. At a press conference late yesterday, Senators Graham (R-SC), Johnson (R-WI), McCain and Cassidy (R-LA) said they would only vote for the “skinny bill” if they had a commitment

from Speaker Ryan (R-WI) that the House would proceed to a conference and not quickly pass the bill over the weekend. Graham stated, "I'm not going to vote for a bill that is terrible policy and horrible politics just because we have to get something done." The Senators said they became alarmed that the House was teeing up swift passage of the bill based on a call from House Freedom Caucus Member Meadows (R-NC). Ryan later released a [statement](#) where he said "If moving forward requires a conference committee, that is something the House is willing to do." Not sufficiently reassured by the statement, the Senators had a conference call with Ryan last night where all but McCain said they felt confident enough that there would be a committee that they would vote for the bill.

While repeal and replace has looked dead only to come back again multiple times over the last 6 months, last night Senate Majority Leader McConnell (R-KY) said he wants to "move on." Additionally, in a [statement](#) this morning, Speaker Ryan said they "should not give up" but also pivoted to tax reform, stating that the House would continue to "focus on issues that are important" and that "at the top of that list is cutting taxes for middle class families and fixing our broken tax code."

As you will recall, Senate Health, Education, Labor and Pensions (HELP) Committee Chair Alexander (R-TN) had said that if the Senate failed to pass repeal and replace legislation, his Committee will look at stabilization legislation. While bringing a bipartisan bill over the finish line may be a tall order, especially in time for this year's open enrollment cycle, there is an expectation that the Committee will at least hold hearings. There is speculation that some provisions and/or maybe funding for the cost-sharing reduction payments, which the Administration has been paying on a month-by-month basis, could get included on a moving vehicle this fall; both CHIP reauthorization and a continuing resolution to keep the federal government open will need to be enacted by September 30th and could provide a vehicle.

Off Capitol Hill, the Administration may also take steps to undermine the law. Senator Cassidy told reporters, "The wildcard is what the president does." For example, Trump could end the cost-sharing payments, stop enforcing the individual mandate and discontinue advertising to promote sign ups. The Administration already pulled \$5 million in ads during the last open enrollment period. Additionally, the ACA gives wide discretion to HHS and the Administration could also use the regulatory process to change how the law is being implemented.

BUDGET & APPROPRIATIONS

Fiscal 2018 Budget Resolution

Republican Study Committee Chairman Mark Walker (R-NC) on Wednesday said he has struck a deal with House Speaker Paul Ryan to revive the FY18 budget

resolution, in exchange for dropping demands for a full GOP omnibus this week. Speaker Ryan committed to allowing a vote on the budget resolution the first week the House returns from August recess. In return, Chairman Mark Walker said he would stand down on his push for the House to take up a trillion-dollar fiscal 2018 omnibus this week, rather than the current plan to advance a four-bill package. The budget resolution directs Congress to make substantial changes to many health programs. Among the nonbinding recommendations are:

- To provide long-term financial viability of Medicare, the budget proposes to means-test the program, gradually delay the eligibility age past 65, incorporate greater use of private sector plans, streamline support for graduate medical education, reform medical liability insurance, and establishing an uncompensated care fund.
- To improve Medicaid, the budget adopts many of the provisions included in the House-passed American Health Care Act. This includes repealing Medicaid Expansion, revising the Medicaid the FMAP formula to provide greater parity between states, allow for state Medicaid block grants, implement a work-requirement for able bodied adults for Medicaid benefits, and defund Planned Parenthood.
- On medical research and innovation, the budget resolutions recommends Congress reduce regulatory burdens and expedite review for drug and device makers applying for FDA approval. It further asks Congress to increase oversight of medical research grantees to avoid “wasteful” grants. It also promotes further investments in treating the opioid epidemic.

Fiscal 2018 Appropriations

On Thursday, the House passed 235-192 the security minibus made up of the Defense, Energy-Water, Military Construction-VA, and Legislative Branch measures. The minibus also includes \$1.57 billion to begin construction of a wall on the U.S.-Mexico border. The bill funds key healthcare programs in the Departments of Defense and Veterans Affairs. Here are some of the highlights:

- Under the Department of Defense
 - Defense Health Programs medical services for military personnel \$33.9 billion
 - Peer-reviewed alcohol and substance abuse disorders research: \$4 million
 - Peer-reviewed Alzheimer research \$7.5 million
 - Peer-reviewed autism research \$15 million
 - Peer-reviewed bone marrow failure disease research \$7.5 million
 - Peer-reviewed breast cancer research \$120 million

○ Peer-reviewed cancer research	\$30 million
○ Peer-reviewed Duchenne muscular dystrophy research	\$3.2 million
○ Peer-reviewed Gulf War illness research	\$20 million
○ Peer-reviewed hearing restoration research	\$10 million
○ Peer-reviewed kidney cancer research	\$10 million
○ Peer-reviewed lung cancer research	\$12 million
○ Peer-reviewed lupus cancer research	\$5 million
○ Peer-reviewed multiple sclerosis research	\$6 million
○ Peer-reviewed Neurofibromatosis research	\$15 million
○ Peer-reviewed orthopedic research	\$30 million
○ Peer-reviewed ovarian cancer research	\$20 million
○ Peer-reviewed prostate cancer research	\$90 million
○ Peer-reviewed spinal cord research	\$30 million
○ Peer-reviewed reconstructive transplant research	\$12 million
○ Peer-reviewed tick-borne disease research	\$5 million
○ Peer-reviewed traumatic brain injury/psychological health research	\$125 million
○ Peer-reviewed tuberous sclerosis complex research	\$6 million
○ Peer-reviewed vision research	\$15 million
○ Global HIV/AIDS prevention	\$20.9 million
○ Joint Warfighter medical research	\$12.9 million
○ Trauma clinical research program	\$10 million
• Under the Department of Veterans Affairs	
○ VA medical services	\$49.2 billion
○ VA mental health	\$8.3 billion
○ Opioid treatment and prevention	\$55.8 million
○ VA medical community care	\$9.4 billion
○ VA medical support and compliance	\$6.6 billion
○ VA medical facilities	\$5.4 billion
○ Prosthetics research	\$698 million

Just five Democrats backed the bill and five Republicans opposed it. Six members did not vote. Democrats were broadly opposed to the legislation because it would trigger a sequester since it exceeds the FY18 defense cap set in law, and because it includes funding for the border wall.

The next steps for the legislation are unclear. In the Senate, Democrats have the power to block appropriations bills they don't like due to Senate filibuster rules, and the wall funding will almost certainly draw fierce opposition. In addition,

Senate appropriators are eyeing entirely different fiscal 2018 spending levels than their House counterparts. One option would be for the House to hang onto the minibus and later this year attempt to attach the eight remaining fiscal 2018 spending bills to it.

The Senate Appropriations Committee this week moved forward on three more FY18 spending bills, the Commerce-Justice-Science, Transportation-HUD, and Legislative Branch bills. Democrats supported the bills, but made clear the measures stood no chance of passing without a bipartisan budget deal.

MENTAL HEALTH & SUBSTANCE USE

Senate HELP Nominations Hearing

On Tuesday, the Senate HELP Committee will hold a [hearing](#) on several nominations including Dr. Elinore McCance-Katz to be Assistant Secretary for Mental Health and Substance Use and Dr. Jerome Adams to be Surgeon General. It is unclear if the Senate will be in session long enough in August for the Committee to hold a vote on the nominations before the recess.

ONDCP Reauthorization Hearing

On Wednesday, the House Oversight and Government Reform Committee held a hearing on reauthorization of the White House Office of National Drug Control Policy (ONDCP).

Witnesses included:

- Richard Baum, ONDCP Acting Director
- Diana Maurer, Director of Justice and Law Enforcement Issues at the Government Accountability Office (GAO)
- Dr. Keith Humphreys, Professor of Psychiatry at Stanford University
- Don Flattery, Policy Director at the Fed Up! Coalition

Full witness testimony is available [here](#).

In his opening remarks, Chairman Gowdy (R-SC) was critical of the Administration, noting that no formal drug strategy or drug control budget have been released and both were due by February 1. Ranking Member Connolly (D-VA) was also critical and said that despite campaign promises there is a lack of urgency from the Administration about addressing the opioid misuse and overdose epidemic and he is concerned that ONDCP lacks a permanent director.

ONDCP Acting Director Baum testified that ONDCP was last reauthorized in 2006 during the Bush Administration. He said the agency looks forward to

working with the Committee on a new authorization. In her testimony, Ms. Maurer with GAO noted that ONDCP is currently updating the drug control strategy. She also noted that the federal government achieved none of the 7 goals outlined in the 2010 strategy. During the question and answer period following witness statements, Rep. Connolly asked if ONDCP has submitted a draft reauthorization bill to Congress and Director Baum said they had not. Connolly asked when a draft might be available and Baum did not commit. In response to a follow up question from Connolly about when a strategy might be submitted, Baum said they are developing a comprehensive strategy right now. Baum it will be released early next year; he said the deadline for submitting it is February 1, but they have to wait for the President's budget to come out first. Connolly asked about when a director might be appointed and Baum did not commit, stating "as soon as we have something to report, you will be the first to know."

In his testimony, Dr. Humphreys said ONDCP's most important job is to "herd the cats," meaning the federal agencies under its purview. Humphreys also urged Congress to urge the Administration to restore the ONCDP director to a cabinet-level position as a strong message on the importance of the role. Rep. Lynch (D-MA) later asked Director Baum about what it would mean if the Director was restored as a cabinet-level position; Baum said he saw in previous administrations that having a cabinet level position was helpful. Baum also said there is strong support for ONDCP in the Trump Administration.

Rep. Russell (R-OK) asked what legislative solutions the witnesses would propose to address the opioid misuse and overdose epidemic. Director Baum asked for tighter restrictions on opioids, resources for prevention and treatment including Medication Assisted Treatment (MAT), and encouraging individuals to seek treatment in the first place. Ms. Maurer said providers need additional education and prescription drug monitoring programs and law enforcement are important. There appeared to be agreement among Members and witnesses that prescribers need more education, however, Gowdy seemed less willing to give physicians the benefit of the doubt stating that there is a lot of money to be made in this area.

Mr. Flattery testified about losing his son to an overdose. Flattery was critical of residential treatment programs based on his son's experience, which he said was a "outrageously expensive 28-day abstinence only residential program." Later in the hearing in response to a question from Rep. Demings (D-FL) asking him to elaborate, Flattery said he believes the treatment system is broken due to barriers that include lack of access, cost issues, stigma around MAT, prescribers who only take cash, and manufacturers of alternative MAT lobbying in state capitols and making negative statements about other products. He said some treatment centers are treating people like "customers and not patients" and "releasing them into the wild" after 30 days.

Marijuana was also a topic of conversation during the hearing. Chairman Gowdy said he wanted to be clear that he does not support legalization but he asked Baum if there was interest in researching if marijuana should be removed from Schedule I as he was not sure that is appropriate. Gowdy noted that cocaine is schedule II, which is lower than marijuana, and he would encourage the Agencies to explore if marijuana is scheduled appropriately.

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