11.6.17 – 11.10.17 Health Wrap Up

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

TAXES, BUDGET, AND APPROPRIATIONS

Tax Reform

On Monday, the Ways and Means Committee began markup of the Tax Cuts and Jobs Act (HR 1). As reported last week, the bill as introduced made a number of changes to the Internal Revenue Code which affect healthcare. The bill:

- Reduces the top corporate rate from 35% to 20%
- Repeals the medical care tax deduction which allows a taxpayer to deduct out-of-pocket expenses if those costs exceed 10% of a taxpayer's adjusted gross income.
- Repeals the orphan drug tax credit which allows a company to deduct 50% of the clinical testing expenses for drugs which treat rare diseases.
- Repeals the Americans with Disabilities Act building accessibility deduction which covers 50% of the costs to comply with ADA.
- Repeals the tax deduction for Private Activity Bonds which have been used by local governments to help build hospitals and other key civil projects.

- Repeals the deduction for contributions to Medical Savings Accounts
- Imposes a 20% excise tax on nonprofit hospital executives whose compensation exceeds $1 million
- Substantially limits the deduction on interest on debt financing for most corporations and nonprofits, including in the medical field.
- Increases the standard deduction for families from $12,000 to $24,000. This will likely result in less charitable contributions to medical advocacy nonprofits, medical research institutions, and nonprofit hospitals. The charitable contribution provision itself, however, is generally unchanged.

During the markup, Democrats offered amendments to preserve the medical care tax deduction and the deductibility of private activity bonds, which were defeated along party lines. The bill as amended was approved on a party line vote of 24-16. The bill now advances to the House floor, where consideration is expected next week. It is very likely a Rules Committee print will be necessary to make further revisions to the bill. Republican leaders seem confident in their vote count, despite some of their members publicly opposing the bill.

Meanwhile, the Senate Finance Committee introduced its own tax reform legislation. The Senate bill, much like the House bill, would result in slightly under $1.5 trillion in additional deficits of the next ten years. It includes similar contours as the House bill, but does not include several health-related provision. Here are some of the Senate bill highlights in healthcare:

- Reduces the top corporate rate from 35% to 20% (including for companies in the health field)
- Repeals the orphan drug tax credit which allows a company to deduct 50% of the clinical testing expenses for drugs which treat rare diseases.
- Repeals the tax deduction for Private Activity Bonds which have been used by local governments to help build hospitals and other key civil projects.
- Imposes a 20% excise tax on nonprofit hospital executives whose compensation exceeds $1 million.
- Substantially limits the deduction on interest on debt financing for most corporations and nonprofits, including in the medical field.
- Increases the standard deduction for families from $12,000 to $24,000. This will likely result in less charitable contributions to medical advocacy nonprofits, medical research institutions, and nonprofit hospitals. The charitable contribution provision itself, however, is generally unchanged.

The Senate Finance Committee will begin markup next week. Republican leader have not ruled out the inclusion of the repeal of the Affordable Care Act's individual mandate, which would save roughly $338 billion, in the tax bill. If all goes according to plan, they will proceed to floor consideration when they return from Thanksgiving recess.

Appropriations

On Wednesday, Rep. Tom Cole (R-OK) said that GOP leaders told him not to expect topline spending levels until after the Thanksgiving, leaving little hope of passing a comprehensive appropriations bill before government funding runs out on December 8. Leaders in both chambers have spent weeks negotiating FY18 spend levels for military and domestic programs, but with the GOP's tax overhaul plans taking center stage, a deal on the overarching funding levels isn't expected to be unveiled until late November at the earliest, putting the federal government on track for a stopgap spending bill that could last until February. Most subcommittee leaders say they haven't been able to start internal negotiations at all without knowing their top line spending level and the Senate Appropriations Committee has yet to introduce or mark up four of their 12 annual spending bills.

SUBSTANCE USE AND MENTAL HEALTH

Education and Workforce Committee Hearing

On November 8th, two of the House Education and Workforce Committee's Subcommittees – Subcommittee on Early Childhood, Elementary and Secondary Education and Higher Education and Workforce Development – held a hearing on how opioids are impacting communities. A summary of the hearing is attached.

MEDICARE

Energy and Commerce Hearing

On November 8th, the House Energy and Commerce Health Subcommittee held a hearing entitled, "MACRA and Alternative Payment Models: Developing Options for Value-Based Care." A summary of the hearing is attached.

NATIONAL DEFENSE AUTHORIZATION ACT

The National Defense Authorization Act (NDAA) conference report was finalized this week and the provisions included in the Senate NDAA bill restricting medical research at the Department of Defense have been stripped from the final bill. The conferees did agree to include some report language on medical research at DOD (below), but this language carries no force of law and should not restrict operations of the CDMRP programs.

Report Language:

> The conferees are concerned with the amount of congressional funding for medical research in the Department of Defense's (DOD) Congressionally Directed Medical Research Program (CDMRP), and the pressure these increased funds inadvertently place on other defense priorities as a result of budget caps. Since 1992, Congress has appropriated over $11.7 billion for medical research administered by the CDMRP — 4,000 percent growth since 1992 — but not all of that medical research is directly relevant to military service. Annual funding for CDMRP has more than doubled since 2013, when budget caps mandated by the Budget Control Act of 2011 (Public Law 112-25) took effect. This funding, neither authorized by Congress nor requested by DOD, is increasing at a time when other vital programs critical to the nation's defense are dangerously underfunded. As long as the budget caps remain in place under the Budget Control Act, additional funds placed in the CDRMP will directly compete with other budget priorities in the Department. While the conferees agree that DOD has a proper and vital role to play in medical research related to combat readiness, especially in areas like prosthetics, traumatic brain injury, and spinal cord injury, additional funding for medical research unrelated to unique military needs should be allocated elsewhere in the federal government. Therefore, the conferees encourage funding only those medical research and development projects that protect and enhance military readiness or restore the health and safety of members of the Armed Forces. Furthermore, the conferees encourage the Department to develop a strategic plan for all medical research to ensure synergy and efficiency across the military departments as well as other federal agencies.

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