11.13.17 – 11.17.17 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.

Scheduling note: both chambers will be on recess next week for Thanksgiving. Unless activity warrants, we will send the next wrap up on December 1st.

TAXES, BUDGET, AND APPROPRIATIONS

Tax Reform

Thursday was a busy day for Republican leaders in both chambers of Congress on Tax Reform. The House passed the Tax Cuts and Jobs Act (HR 1) by a vote of 227-205. All Democrats and 13 Republicans against the bill. The bill makes many changes to the Internal Revenue Code which affect the healthcare industry. 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 organizations (including hospitals and medical advocacy organizations) 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.

Though many amendments were offered, the House did not make any in order.

Late Thursday night the Senate Finance Committee concluded a four-day markup of its own tax bill. The Senate bill, much like the House bill, would result in slightly under $1.5 trillion in additional deficits over the next ten years. It includes similar contours as the House bill. 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.
- 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 most notable change in the Senate tax bill, however, was the inclusion of the repeal of the Affordable Care Act's individual mandate, which would save roughly $338 billion. With the additional savings, Republican leaders reduced marginal rates for individuals even further.

If all goes according to plan, the Senate will proceed to floor consideration when they return from Thanksgiving recess. As of this report, one Republican senator--Ron Johnson of Wisconsin-- has come out against the bill. However, Senator Lisa Murkowski (R-AK) suggested on Thursday that her vote on the current version of the tax overhaul is contingent on passing a separate bill, a proposal developed by Senators Alexander (R-TN) and Murray (D-WA), to stabilize the individual health insurance market.

Supposing the Senate passes its bill, the next steps are uncertain. The prevailing sentiment among lawmakers is the House will simply adopt the Senate bill, as the Senate is the more challenging chamber. Other options are still being discussed as well, but ultimately they will pass whatever bill can get 50 votes in the Senate and 218 in the House.

Complicating the political and policy outlook, earlier in the week the Congressional Budget Office notified Congress that if the tax bill is passed with $1.5 trillion in additional deficits, the Office of Management and Budget would trigger automatic sequestration cuts. The cuts would be $136 billion for each of the next 10 fiscal years. Among the programs directly affected are Medicare, which would incur a 4% cut to all programs. Medicaid, however, is exempt from sequester cuts. Congress could avoid these cuts if they waive statutory pay-as-you-go laws, but that would require 60 votes in the Senate, and Democrats have warned that they will not support that effort.

FY18 Appropriations

On Thursday it was reported that Congressional leaders and the White House are moving toward a two-year budget deal that would raise statutory spending caps by $182 billion, and likely would not include immigration legislation sought by Democrats or border wall money sought by President Trump. While no final agreement has been reached, under the GOP proposal defense caps would increase by $54 billion and nondefense funds by $37 billion in both fiscal 2018 and 2019. The increase would reportedly only be partially offset. Democrats, however, are continuing to insist on an equal increase in defense and nondefense spending, and have rejected the Republican offer and negotiations are still ongoing. Senate Majority Leader Mitch McConnell (R-KY) said this week that a budget deal should be reached by the end of this month and some lawmakers have said an agreement could be announced as early as next week, though a delay is still possible.

Without a budget deal for fiscal 2018, the statutory spending caps would fall from $551 billion for defense and $519 billion for nondefense in fiscal 2017, to $549 billion for defense and $516 billion for nondefense. If negotiators were to agree on the $54 billion increase in defense and $37 billion increase in nondefense for 2018, the agreement would return the caps to the $603 billion for defense and $553 billion for nondefense where they were set before the sequester took effect.

Conservatives are pushing for offsets to the package, but some are willing to consider a cap raising deal that would not be totally offset. One possible element of the partial offset is an extension into 2026 and 2027 of a two percent cut in Medicare provider payments. The offset was initiated in 2011 and has been extended in subsequent spending deals. The Congressional Budget Office estimates the extension could save $28 billion. Negotiators also have looked at proposals in the Trump budget to save billions of dollars through changes to student loan programs and the Social Security disability insurance program, among other ideas.

It was also announced on Thursday that the Senate Appropriations Committee will next week release details on the four FY18 spending bills they have not yet marked up, which includes the Defense, Interior-Environment, Homeland Security and Financial Services bills. The bills will not be marked up in full committee and details are expected to be posted on the committee's website. In a statement, Appropriations Committee Chairman Thad Cochran (R-MS) expressed hope that releasing the four remaining appropriations bills will help lawmakers reach final agreement on FY18 spending levels and pass an omnibus before the end of the year.

As you know, the current CR expires on December 8th. Both parties have signaled the need for another short-term continuing resolution, although several members, including House Speaker Paul Ryan, have indicated that a second CR will not go into next year.

MEDICARE

On Wednesday, House Ways and Means Committee leaders announced an agreement on a package of Medicare payment adjustment extensions. The group of fixes addresses certain therapy services, Medicare geographic and ambulance payments and other adjustments. Senate Finance Committee leaders also reached a tentative deal (draft bill and summary attached). The entire package of extensions will likely be compiled and attached to a final year-end spending bill package.

340B DRUG PRICING PROGRAM

Bipartisan legislation (H.R. 4392) was introduced this week that would reverse a fiercely contested CMS rule that cuts $1.6 billion from hospitals through the 340B drug discount program. The bill comes just two days after hospital groups sued the Trump administration in D.C. federal court, hoping to block the cuts of more than 28 percent from starting January 1.

SUBSTANCE USE AND MENTAL HEALTH

We are aware of several upcoming hearings being planned at House and Senate Committees in the coming weeks that may touch on substance use and mental health, among other health policy issues. They include:

- November 29 – Senate Appropriations Committee Labor-HHS Subcommittee hearing on opioids (NIH Director Collins is reportedly testifying)
- November 30 – House Energy and Commerce Committee hearing on 21st Century Cures implementation (we have heard Dr. Collins is testifying at this hearing as well)
- November 30 – Senate Health, Education, Labor and Pensions (HELP) Committee hearing on opioids
- December 6 – House Heroin Taskforce will be a holding a roundtable (Dr. Collins and NIDA Director Volkow will be presenting)
- December 7 - Senate HELP hearing on 21st Century Cures Act implementation
- December 13 – Senate HELP hearing on the mental health title of the 21st Century Cures Act

As of press time, only the November 30th hearing at the Senate HELP Committee has been noticed and full witness lists are not yet available.

TRUMP ADMINISTRATION

This week the Administration formally nominated Alex Azar to serve as Secretary of the Department of Health and Human Services (HHS). Azar was a former president of Eli Lilly and Deputy HHS Secretary under President Bush. The HELP Committee has scheduled a hearing on the nomination for November 29th. As of press time, the Senate Finance Committee has not indicated when they might hold a hearing as well.

CONGRESSIONAL HEALTH POLICY LEADERSHIP

Rep. Gene Green (D-TX) announced this week that he will not seek re-election. Green's departure will open up on the top Democratic slot at the House Energy and Commerce Committee Health Subcommittee where he currently serves as Ranking Member.

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