

1.15.18 – 1.19.18 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: the House is scheduled to be on recess next week.

BUDGET AND APPROPRIATIONS

On Tuesday, House Republican leaders introduced another continuing resolution (CR) intended to keep the federal government operating through February 16. Text of the legislation is available [here](#) and a section-by-section summary is posted [here](#).

The measure extends the current continuing resolution past midnight tonight when the current CR expires. The measure also provides a six-year extension of the Children's Health Insurance Program (CHIP) and seeks to defer health industry taxes initiated by the 2010 health care law. The bill, however, does not include extensions for community health centers and related public health programs or the annual renewal of Medicare payment adjustments.

On Thursday, the House voted, 230-197, to approve the continuing resolution. Shortly after, the Senate voted, 97-2, to bring the House-passed measure to the Senate floor, but senators were unable to move forward with the legislation. Future procedural votes will require 60 votes for passage, but numerous Democrats and a few Republican Senators have expressed their intention to vote against the bill.

Senate Minority Leader Chuck Schumer (D-NY) joined some other senators, including Senator Jerry Moran (R-KS), in advocating for a very short-term spending measure that would provide funding for only a few days or a week to allow negotiators additional time to finalize negotiations on issues that are not included in the House-passed CR, such as immigration and revised discretionary spending caps. House members dismissed that idea earlier yesterday, but the possibility appears to remain in play. While the House is scheduled to be in recess starting tonight, House leaders have told Members to stay close in the event further votes will be taken.

This afternoon, at the invitation of the President, Schumer met with President Trump at the White House. While in a statement after the meeting Schumer said talks are ongoing and progress was made, no agreement has yet been reached that would stave off a shutdown.

Without any stopgap, the government will shut down at midnight tonight when all current funding expires. If funding were to lapse, it would be the first government shutdown in the modern budgeting era — dating back to the 1970s — that's overseen by a party that controls the House, Senate and White House.

Earmarks

On Wednesday and Thursday, the House Rules Committee held two hearings regarding the possible reinstatement of congressionally directed spending, commonly called "earmarks". As previously reported, House Republican leaders promised rank-and-file members in November 2016 that they would hold hearings on the matter in order to stave off an amendment to reintroduce them during the 2016 lame duck session.

The first hearing was comprised of member testimony. Most witnesses testified in favor of reinstating earmarks. They acknowledged that the Congress has a constitutional duty to appropriate and direct spending. Frequently, members stated that elected representatives know their districts better than bureaucrats in Washington, and elected officials know the infrastructure projects, research projects, and economic development issues which are most critical to their communities. There was agreement that the earmarking process was abused in the 2000s, and changes made to the process in 2007 and 2009 were critical steps to add transparency and

accountability. The few opponents expressed their beliefs that earmarks create a quid-pro-quo environment which is “toxic for government.”

The second hearing was comprised of think tank officials who have studied earmarks for years. The witnesses included:

- **James Bass**; Executive Director of Texas Department of Transportation
- **Steve Ellis**: Vice President of Taxpayers for Common Sense
- **Jason Grumet**: President of the Bipartisan Policy Center
- **Thomas Schatz**: President of Citizens Against Government Waste
- **Michael Quinn Sullivan**: President of Empower Texans

These witnesses provided more historical context of the earmark debate. It was described how the process evolved, culminating in their ban in 2011. Many witnesses described earmark projects which were unpopular to outside observers. Most of the focus was on how the process was used by senior members of Congress to control votes. The lone advocate for earmarks, Mr. Grumet, described how reforms in 2007 and 2009 tried to reform the process, and suggested more reforms could be taken to mitigate the concerns from earmark opponents.

Though the hearings were well received, insiders are skeptical that Republican leadership would make such a major political change at this time.

Public Health Pandemics

On Wednesday, the Senate HELP Committee held a hearing on public health pandemic preparedness. The hearing was the first in what is planned to be a two-part series preparing the committee for reauthorization of the Pandemic and All Hazards Preparedness Act (PAPA). The witnesses included:

- **Dr. Robert Kadlec**: HHS Assistant Secretary for Preparedness and Response
- **Dr. Scott Gottlieb**: Commissioner of the Food and Drug Administration
- **Dr. Stephen Redd**: Director of the Office of Public Health Preparedness and Response, CDC

Committee leaders stressed that PAPA is a bipartisan national security priority for the committee. They believe the 2006 and 2013 PAPA laws made the nation more prepared and nimble by providing resources and structure for pandemic response. However, they also believe there is much left to do. Republicans spoke extensively about improving the development and innovation of medical countermeasures for the National Strategic Stockpile. They want to help FDA and other agencies break down barriers to improve MCMs. This issue was of particular concern since often times there is no market for a MCM except the Stockpile, which effectively keeps manufacturers away from research, development, and other capital investments. Democrats focused more on improving hospital preparedness. They believe hospitals require additional surge capacity and training and telemedicine will play key roles in future pandemics. They were also very critical of the federal response to the hurricane in Puerto Rico and the Virgin Islands.

A second hearing is scheduled for January 23rd, and committee leaders hope to reauthorize PAPA in spring 2018.

TRUMP ADMINISTRATION

HHS Secretary

On Wednesday, the Senate Finance Committee approved the nomination of Alex Azar to be Secretary of the Department of Health and Human Services (HHS). Azar's nomination was

approved by a vote of 15 – 12 and now heads to the Senate floor. Sen. Carper (D-DE) was the only Democrat to vote with all of the Committee’s Republicans in favor of the nomination.

ONDCP

The Administration is being criticized this week for its reported handling of the White House Office of National Drug Control Policy (ONDCP).

Over the weekend the *Washington Post* [reported](#) that a 24-year old Trump campaign worker is heading ONDCP. This report drew a swift response from Senate Democrats (see attached letter), who noted in their letter that permanent heads for ONDCP and the Drug Enforcement Administration (DEA) have not been nominated. As the letter notes, former Congressman Tom Marino (R-PA) was nominated to lead ONDCP but had to withdraw following the *60 Minutes* and *Washington Post* reports on legislation enacted last year, which Marino spearheaded, which has limited DEA’s enforcement authority over opioid distributors.

This morning, there was a new report that the White House is planning to dramatically cut ONDCP’s budget in the Administration’s upcoming budget request to Congress. Specifically, the White House may recommend moving ONDCP’s two main grant programs – the High Intensity Drug Trafficking Areas (HIDTA) grant and Drug Free Communities – to the Departments of Justice and HHS. Such a change would reduce ONDCP’s budget by about \$340 million or 95%.

A similar proposal was circulated last year prior to the release of the budget, but was not included in the budget request after significant pushback from Congress and the advocacy community. Senators Capito (R-WV) and Portman (R-OH) told *Politico* they would again oppose such a move. Some insiders have suggested that the Administration may tactically float very large cuts so that smaller reductions in the budget request comparatively do not look as severe.

DOD/FDA Partnership

On Tuesday, the Food and Drug Administration and the Department of Defense announced a joint program to expedite the delivery of medical products to deployed military personnel. The program identifies areas of medical need for the military as it pertains to life-threatening injuries and illnesses. It then gives FDA authority to expedite the development, manufacture, and deployment of medical products to warfighters. The program management will host at least one workshop in 2018 to hear from scientists, doctors, and the military on how best to structure this program.

SUBSTANCE USE AND MENTAL HEALTH

Way and Means Committee Oversight Subcommittee Hearing

On Wednesday, the House Ways and Means Committee, Subcommittee on Oversight held a hearing titled, “The Opioid Crisis: The Current Landscape and CMS Actions to Prevent Opioid Misuse.”

For a webcast of the hearing, see [here](#). For a copy of the hearing advisory and witness testimony, see [here](#). A detailed summary of the hearing is attached.

Witnesses at the hearing included:

- **Gary L. Cantrell**, Deputy Inspector General for Investigations, Office of the Inspector General, Department of Health and Human Services (HHS)
- **Elizabeth H. Curda**, Director, Health Care, Government Accountability Office (GAO)
- **Ms. Kimberly Brandt**, Principal Deputy Administrator for Operations, Centers for Medicare and Medicaid Services (CMS)

The hearing focused on efforts by the Centers for Medicare and Medicaid Services (CMS) to utilize data to identify individuals in the Medicare Part D program who are at risk of opioid misuse

and examined the extent of the problem as well as the tools CMS has available to prevent individuals from receiving unnecessary opioids. At the hearing, House lawmakers called for additional treatment options and prescribing restrictions designed to curb opioid abuse under the Medicare program. Rep. David Schweikert (R-AZ) expressed a desire to have the Oversight Subcommittee introduce a legislative package aimed to address the opioid epidemic, and others mentioned individual bills that could be included in such a package.

Senate Homeland Security and Governmental Affairs Committee

On January 17th, the Senate Homeland Security and Governmental Affairs Committee held a hearing on “Unintended Consequences: Medicaid and the Opioid Epidemic.” Witnesses included:

- **Sam Adolphsen**, former COO of the State of Maine's Department of Health and Human Services, and vice president of Rockwood Solutions
- **Emmanuel Tyndall**, inspector general of the state of Tennessee
- **J. Otto Schalk**, Harrison, Ind. County prosecutor
- **David Hyman**, professor of law in the Georgetown University Law Center
- **Andrew Kolodny**, senior scientist and co-director of opioid policy research in Brandeis University's Heller School for Social Policy and Management, and executive director of Physicians for Responsible Opioid Prescribing

Full witness testimony is available [here](#). A detailed summary of the hearing is attached.

At the hearing, Chairman Johnson (R-WI) announced the release of a report conducted by his staff entitled, “Drugs for Dollars: How Medicaid Helps Fuel the Opioid Epidemic.” A letter accompanying the report addressed to Acting HHS Secretary Hargan and Centers for Medicare and Medicaid Services (CMS) Administrator Verma asks for information such as how much Medicare and Medicaid have spent on prescription opioids over the last 10 years and the Department’s efforts to address “Medicaid’s role in contributing to the opioid epidemic.” Johnson requested a response from HHS/CMS by January 31st. A press release, the report and the letter are available [here](#).

Whether or not Medicaid and particularly Medicaid expansion is fueling the opioid misuse and overdose epidemic was obviously a significant point of discussion during the hearing. While Mr. Adolphsen, former COO of the State of Maine's Department of Health and Human Services, and Vice President of Rockwood Solutions, and Mr. Schalk, Harrison, Indiana County prosecutor, testified that Medicaid is contributing to the epidemic, Dr. Hyman from Georgetown University was reluctant to say that the relationship is causal and Dr. Kolodny with Brandeis University's Heller School for Social Policy and Management and Executive Director of Physicians for Responsible Opioid Prescribing stated that Medicaid is not fueling the increase in overdose deaths.

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