1.29.18 – 2.2.18 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: both chambers were on recess for the remainder of the week following the State of Union address for the Republican retreat.

BUDGET AND APPROPRIATIONS

FY18 Appropriations

With current federal funding scheduled to expire on February 8th, Congress is looking to pass a fifth continuing resolution to provide additional time to negotiate a government-wide omnibus spending bill. After forcing a three-day government shutdown over the Dreamers program earlier this month, Senate Democrats are now taking a more conciliatory approach as the next funding deadline approaches and say they will consider supporting a fifth stopgap measure to avoid a shutdown next week if there's progress on immigration negotiations, even without a final deal in place. The continuing resolution scheduled to be debated and passed by Congress next week will go until March 23rd, though the expiration date may change. The House hopes to pass the bill early next week, with the Senate following suit shortly thereafter.

The two biggest challenges now are immigration issues and increasing spending caps set as a result of the Budget Control Act. On spending caps, Republicans, particularly defense hawks, want to increase the defense spending caps only. However, Democrats are insistent that any increase in caps for the military result in a commensurate increase for non-defense spending. Because Republican defense hawks are hearing regularly from Pentagon leaders who describe the impact that short-term spending agreements have on all military functions, they have threatened to oppose the next CR. To allay their concerns, this week the House passed a full-year Defense Appropriations bill, though all parties involved are aware this was generally a symbolic measure.

Republican negotiators reportedly have proposed an increase in discretionary spending by $286 billion over two years, with the defense cap going up by $80 billion each year and the nondefense cap rising by $63 billion each year. Democrats, however, are still seeking additional increases for opioid funding and other nondefense spending. Republicans have also suggested alternative options with less nondefense funding or new infrastructure spending. Lawmakers are also considering adding to the next CR an extension for the community health centers program and several short-term Medicare extenders provisions that need to be renewed by Congress.

Regarding immigration, the topic is more complicated. President Trump set a deadline of March 5th for Congress to fix the program providing work authorization and security from deportation for immigrants brought to the United States illegally as children. However, with the White House developing its own DACA framework, Republican negotiators are torn between continuing the discussions underway with Democratic lawmakers and entering into negotiations with the White House. As a result, it is unlikely the next CR will have a DACA fix.

STATE OF THE UNION

On Tuesday, President Trump gave his first official State of the Union speech before a joint session of Congress. In the speech, he identified some of his healthcare accomplishments and laid out some goals for the coming year:

- He claimed the FDA approved more drugs and devices than ever before and expanded "right to try" trials for terminally ill patients.
- Citing the high cost of prescription drugs in the US compared to other nations, he instructed his Administration to continue to take actions to reduce drug costs.

- To combat the opioid misuse and overdose epidemic, he referenced immigration reform and stressed the need to increase criminal penalties for drug dealers, as well as provide treatment to those who need it.
- He praised the repeal of the Affordable Care Act's individual mandate.
- He mentioned the passage of the VA Accountability Act, which was designed to improve operations within the Veterans Health Administration.

TRUMP ADMINISTRATION

CDC Administrator

On Wednesday, the Centers for Disease Control and Prevention (CDC) Director Brenda Fitzgerald announced she is resigning. Fitzgerald's resignation follows the release of a Politico article on her purchase of tobacco stocks after she became CDC Director. Dr. Anne Schuchat, who previously served as acting CDC director from January through July 2017, is again serving in that capacity until a new director is selected.

CONGRESSIONAL LEADERSHIP

House Appropriations Committee Chairmanship

This week House Appropriations Committee Chair Frelinghuysen (R-NJ) announced he would not seek re-election. His retirement has set off a race for the top Republican Committee slot between Reps. Aderholt (R-AL), Cole (R-OK), and Granger (R-TX). Aderholt and Granger are the most senior Republicans on the Committee after former Chairman Hal Rogers (R-KY), who had to give up his gavel due to term limits. Cole is currently 8th in seniority and chairs the Labor-H Subcommittee.

Congressional Republican Agenda

House and Senate Republicans held their annual legislative conference this week in West Virginia where they discussed legislative goals for 2018. According to various members in attendance, Congressional Republicans agreed not to attempt to repeal the Affordable Care Act. They will instead focus on market stabilization legislation, though the exact form in which it will happen is unclear.

In another important development from the Republican conference, newly appointed House Budget Committee Chairman Steve Womack (R-AR) is not going to pass a Congressional Budget Resolution unless Senate Republicans commit to pass one of their own. Womack and House Republican leaders are not willing to expose their members to difficult votes if the Senate does not share that plan. Evidently, Senate Republicans have not definitively answered, but most signals indicate the Senate will not push a budget resolution.

Speaker Paul Ryan (R-WI) had hoped to use 2018 as the year to reform entitlement programs by making structural reforms to Medicaid, TANF, housing assistance, food assistance, and other entitlement programs. Major changes to the programs would have necessitated the use of the powerful reconciliation process in the Congressional Budget Resolution. With prospects dimming, Ryan is exploring new ways to achieve some changes. Reportedly, Speaker Ryan is repackaging the "entitlement reform" package as a "workforce development" package which would institute work requirements for a number of federal programs.

SUBSTANCE USE AND MENTAL HEALTH

House Ways and Means Committee

The House Ways and Means Committee Health Subcommittee will hold a hearing on February 6th entitled, " The Opioid Crisis: Removing Barriers to Prevent and Treat Opioid Abuse and Dependence in Medicare." As of press time the witness list has not been announced.

Senate HELP Committee hearing on Opioids

On February 8th, the Senate Health, Education, Labor and Pensions (HELP) Committee will hold a hearing on the impact of the opioid misuse and overdose epidemic on children and families. Staff have indicated that this may be the last hearing on opioids at the Committee before work shifts to "CARA 2.0," the upcoming legislative package of authorizing bills to address the epidemic. Witnesses at the hearing are expected to include:

- Becky Savage, Co-Founder of the 525 Foundation
- Stephen Patrick, Assistant Professor of Pediatrics and Health Policy in the Division of Neonatology at Vanderbilt University Medical Center
- William Bell, President and CEO of Casey Family Programs

House Energy and Commerce Committee

The House Energy and Commerce Committee will begin holding hearings on legislative proposals, the "CARA 2.0" package, to address the opioid misuse and overdose epidemic the week of February 26th. While the specific legislation that may be considered has not been announced, the Committee may focus on bills that were previously under discussion during the hearings last fall. For example, some of the issues raised at the Committee's Member Day in October included fraud and abuse issues, access to Medication Assisted Treatment and allowing patients to include their substance use disorder treatment history as part of their medical record, among others. The specific date(s) for the hearings and witnesses have not been released.

MEDICARE

On Thursday, the Centers for Medicare and Medicaid Services (CMS) released Part II of the 2019 Advance Notice and Draft Call Letter. CMS is proposing to increase payments to Medicare Advantage plans by an average of 1.84% in 2019.

Final payment rates for Part D and Medicare Advantage plans will be announced on April 2.

Additionally, CMS included some new proposals to address the opioid misuse and overdose epidemic in the Part D program. Some of the proposals include:

- Implementing a supply limit for initial fills of prescription opioids (e.g., 7 days) for the treatment of acute pain with or without a daily dose maximum (e.g., 50 MME).
- For non-acute pain, plans will have to implement a formulary limit of 90 morphine milligram equivalents of opioids per day with a 7-day supply limit. Plan sponsors will be able to override this.
- Enhancing the overutilization monitoring system (OMS) so that it will identify high risk beneficiaries who use "potentiator" drugs (such as gabapentin and pregabalin) in combination with prescription opioids to ensure that plans provide appropriate case management. CMS noted that potentiators are drugs that when taken with an opioid increase the risk of an adverse event and that OMS already flags concurrent benzodiazepine use by plan enrollees.
- CMS is also seeking comments on whether it should adopt a new pharmacy quality measure to evaluate Part D plans' progress in preventing the combination of opioids with benzodiazepines. The measure would assess the percentage of individuals 18 and older with concurrent use of opioids and benzodiazepines.

Comments are due by March 5th and the final 2019 Rate Announcement and Call Letter will be published by April 2, 2018.

HEALTH INSURANCE MARKETPLACE

On Tuesday, the Senate Health, Education, Labor and Pensions Committee, Subcommittee on Primary Health held a roundtable hearing on small business health plans.

For a webcast of the hearing and witness testimonies, see here.

Witnesses at the roundtable included:

- Mike Sturm, Principal And Consulting Actuary, Milliman, Milwaukee, WI
- Brad Johnson, Representing The Casper Area Chamber Of Commerce And The Wyoming Chamber Health Benefits Plan, Casper, WY
- Chris Condeluci, CC Law & Policy, Washington, DC
- Jennifer Kimmich, Co-Owner Of The Alchemist Brewery, Stowe, VT
- Tess Stack Kuenning, CNS, MS, RN, President And Chief Executive Officer, Bi-State Primary Care Association, Montpelier, VT

The roundtable focused on the proposed rule from the Department of Labor that would make regulatory changes to the Employee Retirement Income Security Act (ERISA) to allow workers to join together to receive health insurance. The rule was published in the Federal Register on January 5, 2018 is in response to President Trump's executive order intended to allow people to buy lower-cost health insurance that can circumvent some of the mandates created under the Affordable Care Act (ACA). Comments are due on or before March 6, 2018.
The proposed regulation would change the definition of "employer" by allowing individual workers or small groups of people who are engaged in the same kinds of trade or business to join together in order to be considered one large employer for the purpose of providing coverage, but there was disagreement during the discussion about what effect the rules would have.

HELP Chairman Lamar Alexander (R-TN) commented the proposed rule "could lower the cost of health insurance premiums and finally make affordable health insurance available to the 11 million American small business men and women and their employees or those who work for themselves—like farmers, or songwriters—who today are priced out of our health insurance system." For Sen. Alexander's full prepared statement, see here.

Mike Sturm with Milliman said many factors need to be considered when thinking about whether Association Health Plans (AHPs) will achieve the administration's goals of creating stable risk pools for small employers and the ability for consumers to purchase policies at prices similar to the large group market without adversely impacting the current healthcare market. Some of these factors include: How rating rules for AHPs vary from current rating rules; different rating rules create the possibility of risk pool segregation between more expensive and less expensive members in a given market. Sturm noted the proposed rule as written appears to allow AHPs to vary rates differently than allowed in the current healthcare market. When asked what could be done to improve the rule, Sturm suggested additional consumer protections, citing the inability to underwrite for health status as a potential harm of the proposed rule; risk based capital requirements; and adding essential health benefits (EHB) requirements for all plans.

Subcommittee Ranking Member Bernie Sanders (I-VT) said the administration's proposal was headed in the "wrong direction," warning that the plans would not be required to offer essential health benefits provided by ACA, like treatment for substance use disorders, maternity care and mental health treatment, and would not protect people with pre-existing illnesses such as cancer or diabetes.

Chris Condeluci said a particular plan cannot vary based on the health condition, and people with pre-existing conditions cannot be denied coverage. However, some medical benefits may not be required for all association health plans. Condeluci suggested the rule could be improved by adding guard rails around age ratings for AHPs.

Witnesses Jennifer Kimmich and Tess Kuenning suggested the government's focus should be on fixing ACA, saying they would be concerned by the proposed rule's impact on network adequacy, consumer protections and the state's authority to regulate. Kuenning said that funding for the National Health Service Corps and Community Health Centers (CHCs) ended on September 30,

2017 and without this funding, CHCs are without 70% of grant funds which provide necessary primary care services, as well as dental services, access to mental health and addiction treatment services, including medication assisted treatment (MAT) for opioid use disorders, noting in her testimony that many health plans do not cover MAT.

During the question and answer segment, Kuenning noted that currently, large employer health plans are not required to provide EHBs and this could be a loophole association plans could take advantage of. She said individual and small group plans are required to provide mental health and substance use disorder services, which is vital given the opioid epidemic. Senator Alexander asked, "doesn't the federal mental health parity law cover individuals with plans without EHBs?" To which Condeluci responded that parity does apply if a plan is offering mental health services, but if the plan does not offer those services, then that aspect of the law does not apply.

Subcommittee Chairman Mike Enzi (R-WY) indicated he supported association plans overall referencing the success of the Wyoming Chamber Health Benefits Plan, which has kept premiums at the same rate for four years. Brad Johnson testified on behalf of the Wyoming Chamber plan, which represents a range of workers. Enzi said he would make sure that what the administration is planning isn't going to interfere with what he is already successfully doing. He added that he also supported the creation of invisible high-risk pools, which has been tried in some states, allows the government to reimburse insurers for taking care of sicker patients so that premiums don't rise for all beneficiaries.

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