



Health Policy Briefing

October 28, 2019

Ways and Means Advances Drug Pricing, Vaping Legislation

The House Ways and Means Committee advanced Speaker Nancy Pelosi's (D-Calif.) legislation to reduce drug prices (H.R. 3) following a lengthy markup last week. The **Lower Drug Costs Now Act** was approved by the committee along a party-line vote. The bill would allow the Secretary of the U.S. Department of Health and Human Services (HHS) to negotiate the prices of certain of the most expensive medications that currently face little or no competition, capping costs relative to the prices paid in six other nations. During the 12-hour markup, lawmakers voted down nearly every amendment offered by both Democrats and Republicans, only agreeing to a change that would rename the legislation after the late Rep. Elijah Cummings (D-Md.). H.R. 3 must now be reconciled with the two slightly different versions of the bill that have already been reported out of the other two committees of jurisdiction. According to House Rules Chairman Jim McGovern (D-Mass.), Democrats plan to bring the legislation to the floor for a vote in mid-November. Because of a week-long recess beginning November 4, the earliest the measure could be considered would be the week of November 11. Leadership had previously planned to vote on the measure before the end of this month, but members are still awaiting a full score from the Congressional Budget Office (CBO).

During its markup of H.R. 3, the committee also considered three bills that would direct savings from government drug pricing negotiations to create dental (H.R. 4650), vision (H.R. 4665), and hearing (H.R. 4618) coverage in Medicare and legislation to create opportunities for low-income individuals to enter health professions (H.R. 3398). The measures may be attached to the final drug pricing bill when it comes to the House floor for a vote.

During a separate markup last week, the House Ways and Means Committee advanced bipartisan legislation (H.R. 4742) to bring the taxation of the nicotine contained in vaping

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products in line with the rate at which nicotine in traditional cigarettes is taxed. The legislation, which was approved in a 24-15 vote, would place an excise tax on tobacco alternatives equivalent to the \$1.01 federal levy per pack of cigarettes. A similar bill has been introduced by Democrats in the Senate, and Finance Committee Chairman Chuck Grassley (R-Iowa) has also expressed interest in considering legislation to address the problem of underage vaping. The Joint Committee on Taxation (JCT) estimates that the bill would produce \$10 billion in revenue over the next decade. This money would be used to offset the other bills passed by the panel during the markup, which would require health savings accounts (HSAs) qualified insurance plans to cover the cost of inhalers before the deductible is met (H.R. 4716), allow the purchase of certain over-the-counter (OTC) and menstrual-care products as qualified medical expenses through tax-advantaged accounts (HSAs, Flexible Spending Accounts, and Health Reimbursement Arrangements) without a prescription (H.R. 1922), and permit people with direct primary care arrangements to remain eligible individuals for purposes of HSAs (H.R. 3708).

Cassidy, Hassan Convene Surprise Billing Roundtable

A group of 10 bipartisan senators led by Bill Cassidy (R-La.) and Maggie Hassan (D-N.H.) convened a roundtable with health care stakeholders on the issue of surprise insurance gaps. More than a dozen provider, insurer, and business groups were in attendance. Negotiations on a solution to protect patients from surprise medical bills have stalled amid disagreements on how to resolve payment disputes between physicians and payers. The lawmakers who attended the meeting were all supporters of Sen. Cassidy's surprise billing legislation and are pushing for the addition of an independent dispute resolution (IDR) process to the bill advanced by the Senate Health, Education, Labor, and Pensions (HELP) Committee. The panel's current legislation would set a benchmark payment rate based on local charges for out-of-network services. The lawmakers reportedly requested input from attendees on potential compromises they could support, but the roundtable did not result in any new breakthroughs.

House Oversight to Continue Health Investigations Under Acting Chair Carolyn Maloney

Acting Chair of the House Oversight Committee Carolyn Maloney (D-N.Y.) has vowed to continue the panel's investigations into a number of health issues that were launched by the late Chairman Elijah Cummings (D-Md.). During the 116th Congress, Chairman Cummings opened probes into the high cost of prescription drugs, the treatment of migrants at the nation's borders, the White House's decision to not defend the Affordable Care Act (ACA) in court, and changes made by HHS to federal family planning programs. Rep. Maloney plans to seek the top panel spot on a permanent basis, but several other committee members are also expected to launch bids to succeed Cummings as chair. Candidates for the gavel will make their case before the Democratic Steering and Policy Committee, which will make a recommendation to the full House Democratic caucus.

Senate Begins Consideration of Appropriations Legislation

This week, the Senate will continue work this week on a package of four fiscal year (FY) 2020 spending bills (H.R. 3055). The legislation would fund Agriculture-Food and Drug Administration (FDA), Commerce-Justice-Science, Interior-Environment, and Transportation-Housing and Urban Development (HUD). Lawmakers are optimistic that the package, which contains relatively noncontroversial measures, will pass, making it the first appropriations legislation to be passed by the Senate for FY 2020. The current continuing resolution (CR) expires on November 21.

Lawmakers Continue Work on Cures 2.0

According to remarks from several lawmakers last week, follow-up legislation to the **21st Century Cures Act** could be unveiled before the end of the year. Staff for Cures author Fred Upton (R-Mich.) confirmed that their office, along with the office of Rep. Diana DeGette (D-Colo.), are following the same process used to draft the 2016 biomedical innovation law, and that they hope to introduce **Cures 2.0** in the coming months. The lawmakers are scheduled to speak about their new legislation at a Milken Institute event this week. Such remarks about the timeline for the next version of Cures were also echoed by Energy and Commerce Health Subcommittee Ranking Member Michael Burgess (R-Texas) last week.

Lawmakers Push for SUPPORT Grant Flexibility

During a meeting with White House officials and First Lady Melania Trump last week, Republican lawmakers asked the administration to increase flexibility for states to use the opioid response grants created by the **SUPPORT Act** (P.L. 115-271), which was signed into law one year ago, for programs that address addiction to a range of other drugs, such as methamphetamine. According to Sen. Shelley Moore Capito (R-W.V.), lawmakers also asked the White House to strengthen efforts to halt shipments of fentanyl originating in China.

MACPAC Releases Report on MAT and Utilization Management

The Medicaid and CHIP Payment and Access Commission (MACPAC) released a [report](#) to Congress last week examining Medicaid utilization management policies for medication-assisted treatment (MAT). The commission found wide variance in the use of practices such as preferred status, prior authorization, step therapy, prescription limits, quantity/dose limits, and lifetime limits across the country and their impact on access to addiction treatment. The **Report to Congress: Utilization Management of Medication-Assisted Treatment in Medicaid** was mandated by the SUPPORT Act (P.L. 115-271). The report focuses on access to MAT in Arkansas, Illinois, Maine, Missouri, Tennessee, Utah, Washington, and West Virginia, finding that states employ utilization management practices for medications more frequently than for counseling. Additionally, while there is currently a trend among states to eliminate the use of prior authorization for MAT, states are also increasing their use of quantity and dosing limits.

President to Tap Stephen Hahn as FDA Commissioner

President Trump announced plans to nominate radiation oncologist Stephen Hahn, M.D., chief medical executive at M.D. Anderson Cancer Center, as Commissioner of Food and Drugs. If confirmed by the Senate, Dr. Hahn would replace acting commissioner Norman Sharpless. An official nomination is expected to be announced this week.

D-H Medical Center, West Health to Open New Geriatric ED

Dartmouth-Hitchcock (D-H) Medical Center has announced plans to partner with nonprofit West Health to establish a new geriatric emergency department aimed at making emergency department (ED) visits easier for individuals over the age of 65 and reducing the need for subsequent hospital admissions. Staff will be trained to better screen the social and medical needs of older patients to improve the management of chronic conditions and health at home. As a rural academic medical center, the D-H initiative will also involve the expanded use of telemedicine and serve as a hub for rural hospitals to connect with geriatric specialists.

Upcoming Congressional Hearings and Markups

House Veterans' Affairs Committee markup of pending legislation including H.R. 3495, the Improve Well-Being for Veterans Act and H.R. 3530, Improving Confidence in Veterans Care Act; 10:00 a.m., 210 Capitol; October 29

House Energy and Commerce Subcommittee on Health hearing "Safeguarding Pharmaceutical Supply Chains in a Global Economy;" 10:00 a.m., 2123 Rayburn Bldg.; October 30

House Veterans' Affairs Subcommittee on Health hearing "Native Veterans' Access to Healthcare;" 10:00 a.m., 210 Capitol Bldg.; October 30

Senate Finance Subcommittee on Health Care hearing "Medicaid: Compliance with Eligibility Requirements;" 2:00 p.m., 215 Dirksen Bldg.; October 30

Senate Homeland Security and Governmental Affairs Committee hearing to examine supply chain security, global competitiveness, and 5G; 9:30 a.m., 342 Dirksen Bldg.; October 31

Senate Committee on Health, Education, Labor, and Pensions (HELP) markup of S. 1657, Ticks: Identify, Control, and Knockout Act; S. 2619, Healthy Start Reauthorization Act of 2019; S. 1399, Title VIII Nursing Workforce Reauthorization Act of 2019; S. 995, Lifespan Respite Care Reauthorization Act of 2019; S. 1130, Scarlett's Sunshine on Sudden Unexpected Death Act; S. 1608, Promoting Physical Activity for Americans Act; S. 2629, United States Public Health Service Modernization Act of 2019; and S. __, Over-the-Counter Drug Safety, Innovation, and Reform Act of 2019; 10:00 a.m., 430 Dirksen Bldg.; October 31

Recently Introduced Health Legislation

H.R.4764 — To reauthorize the Stem Cell Therapeutic and Research Act of 2005, and for other purposes. Sponsor: Rep. Matsui, Doris O. [D-CA-6]; Cosponsors: (2); Committees: House - Energy and Commerce

H.R.4763 — 116th Congress (2019-2020) To extend the limited wraparound coverage pilot program for an additional 5 years, and for other purposes. Sponsor: Rep. Kaptur, Marcy [D-OH-9] (Introduced 10/18/2019) Cosponsors: (7) Committees: House - Energy and Commerce Latest Action: House - 10/18/2019 Referred to the House Committee on Energy and Commerce. (All Actions) Tracker:

H.R.4758 — To require the Secretary of Health and Human Services to establish a national sexual assault care and treatment task force; and for other purposes. Sponsor: Rep. Griffith, H. Morgan [R-VA-9]; Cosponsors: (0); Committees: House - Energy and Commerce

H.R.4757 — To prioritize funding for an expanded and sustained national investment in basic science research. Sponsor: Rep. Foster, Bill [D-IL-11]; Cosponsors: (5); Committees: House - Budget; Science, Space, and Technology; Armed Services

H.R.4755 — To establish the Food Safety Administration to protect the public health by preventing foodborne illness, ensuring the safety of food, improving research on contaminants leading to foodborne illness and the chronic health outcomes associated with foodborne illnesses, improving the surveillance of foodborne pathogens (including foodborne pathogens identified as antibiotic resistant), and improving security of food from intentional contamination, and for other purposes. Sponsor: Rep. DeLauro, Rosa L. [D-CT-3]; Cosponsors: (1); Committees: House - Energy and Commerce

H.R.4745 — To amend the Internal Revenue Code of 1986 to allow refunds of Federal motor fuel excise taxes on fuels used in mobile mammography vehicles. Sponsor: Rep. Luetkemeyer, Blaine [R-MO-3]; Cosponsors: (2); Committees: House - Ways and Means

H.R.4742 — To amend the Internal Revenue Code of 1986 to impose a tax on nicotine used in vaping, etc. Sponsor: Rep. Suozzi, Thomas R. [D-NY-3]; Cosponsors: (1); Committees: House - Ways and Means

H.Res.643 — Recognizing women's cardiovascular health as a critical health care priority that affects every State and contributes to increased health care costs, and promoting the necessity of increased awareness of and education on the symptoms for heart disease among women, gender-specific cardiovascular disease research, and policy action to alleviate the risks of heart disease among women. Sponsor: Rep. Herrera Beutler, Jaime [R-WA-3]; Cosponsors: (1); Committees: House - Energy and Commerce

H.R.4769 — To amend part D of title XVIII of the Social Security Act to deliver a meaningful benefit and lower prescription drug prices under the Medicare program. Sponsor: Rep. Schakowsky, Janice D. [D-IL-9]; Cosponsors: (0); Committees: House - Energy and Commerce; Ways and Means

H.R.4768 — To amend section 511 of the Social Security Act to reduce maternal mortality by continuing to invest in evidence-based home visiting models that are addressing the social determinants of maternal health and morbidity. Sponsor: Rep. Davis, Danny K. [D-IL-7]; Cosponsors: (17); Committees: House - Ways and Means; Energy and Commerce

S.2650 — A bill to amend part D of title XVIII of the Social Security Act to deliver a meaningful benefit and lower prescription drug prices under the Medicare program. Sponsor: Sen. Durbin, Richard J. [D-IL]; Cosponsors: (1); Committees: Senate - Finance

S.2648 — A bill to amend title XVIII of the Social Security Act to improve the benchmarking process for the Medicare Shared Savings Program. Sponsor: Sen. Cortez Masto, Catherine [D-NV]; Cosponsors: (1); Committees: Senate - Finance

S.Res.366 — A resolution supporting the goals and ideals of Red Ribbon Week during the period of October 23 through October 31, 2019. Sponsor: Sen. Cornyn, John [R-TX]; Cosponsors: (3); Committees: Senate - Health, Education, Labor, and Pensions

H.R.4800 — To amend title IV of the Public Health Service Act to prohibit sale or transactions relating to human fetal tissue. Sponsor: Rep. Watkins, Steve [R-KS-2]; Cosponsors: (0); Committees: House - Energy and Commerce

H.R.4793 — To amend the Internal Revenue Code of 1986 to establish a stewardship fee on the production and importation of opioid pain relievers. Sponsor: Rep. Norcross, Donald [D-NJ-1]; Cosponsors: (1); Committees: House - Energy and Commerce; Ways and Means

S.2661 — A bill to amend the Communications Act of 1934 to designate 9-8-8 as the universal telephone number for the purpose of the national suicide prevention and mental health crisis hotline system operating through the National Suicide Prevention Lifeline and through the Veterans Crisis Line. Sponsor: Sen. Gardner, Cory [R-CO]; Cosponsors: (3); Committees: Senate - Commerce, Science, and Transportation

S.Res.373 — A resolution expressing support for the designation of September 2019 as "Sickle Cell Disease Awareness Month" in order to educate communities across the United States about sickle cell disease and the need for research, early detection methods, effective treatments, and preventative care programs with respect to complications from sickle cell disease and conditions related to sickle cell disease. Sponsor: Sen. Scott, Tim [R-SC]; Cosponsors: (11); Latest Action: Senate - 10/22/2019 Submitted in the Senate, considered, and agreed to without amendment and with a preamble by Unanimous Consent.

H.R.4801 — To amend the Public Health Service Act to reauthorize the Healthy Start program; Sponsor: Rep. Ryan, Tim [D-OH-13]; Committees: House - Energy and Commerce

H.R.4810 — To facilitate responsible, informed dispensing of controlled substances and other prescribed medications, and for other purposes; Sponsor: Rep. Davis, Rodney [R-IL-13]; Committees: House - Energy and Commerce

H.R.4811 — To amend title XXVII of the Public Health Service Act to provide for a definition of short-term limited duration insurance, and for other purposes; Sponsor: Rep. Biggs, Andy [R-AZ-5]; Committees: House - Energy and Commerce

H.R.4812 — To amend the Controlled Substances Act to provide for the modification, transfer, and termination of a registration to manufacture, distribute, or dispense controlled substances or list I chemicals, and for other purposes; Sponsor: Rep. Griffith, H. Morgan [R-VA-9]; Committees: House - Energy and Commerce; Judiciary

H.R.4814 — To improve reporting of the distribution of controlled substances, and for other purposes; Sponsor: Rep. Matsui, Doris O. [D-CA-6]; Committees: House - Energy and Commerce; Judiciary

H.R.4817 — To direct the Secretary of Veterans Affairs to ensure that certain Department of Veterans Affairs medical facilities have physical locations for the disposal of controlled substances medications; Sponsor: Rep. Baird, James R. [R-IN-4]; Committees: House - Veterans' Affairs

H.R.4821 — To amend title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to restore Medicaid coverage for citizens of the Freely Associated States lawfully residing in the United States under the Compacts of Free Association between the Government of the United States and the Governments of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau; Sponsor: Rep. Cardenas, Tony [D-CA-29]; Committees: House - Energy and Commerce

H.R.4827 — To amend the Older Americans Act of 1965 to enhance age-friendly communities for older individuals; Sponsor: Rep. Crist, Charlie [D-FL-13]; Committees: House - Education and Labor

H.R.4830 — To provide payment for patient navigator services under title XIX of the Social Security Act, and for other purposes; Sponsor: Rep. DeSaulnier, Mark [D-CA-11]; Committees: House - Energy and Commerce

H.R.4833 — 116th Congress (2019-2020) To amend the Older Americans Act of 1965 to establish a grant program for multigenerational collaboration; Sponsor: Rep. Golden, Jared F. [D-ME-2]; Committees: House - Education and Labor

H.R.4834 — To amend title XVIII of the Social Security Act to provide for an exception to the definition of an off-campus outpatient department of a provider under the Medicare program for certain departments of a provider if such provider was forced to relocate its campus; Sponsor: Rep. Gottheimer, Josh [D-NJ-5]; Committees: House - Energy and Commerce; Ways and Means

H.R.4835 — To provide grants to improve trauma support services and mental health care for children and youth in educational settings, and for other purposes; Sponsor: Rep. Hayes, Jahana [D-CT-5]; Committees: House - Education and Labor

H.R.4838 — To amend title XVIII of the Social Security Act to allow payments under the Medicare program for certain items and services furnished by off-campus outpatient departments of a provider to be determined under the prospective payment system for hospital outpatient department services, and for other purposes; Sponsor: Rep. McGovern, James P. [D-MA-2]; Committees: House - Energy and Commerce; Ways and Means

H.R.4846 — 116th Congress (2019-2020) To amend the Older Americans Act of 1965 to provide priority for the senior community service employment program; Sponsor: Rep. Scanlon, Mary Gay [D-PA-5]; Committees: House - Education and Labor

H.R.4850 — To provide for certain additional requirements with respect to patent disclosures; Sponsor: Rep. Spanberger, Abigail Davis [D-VA-7]; Committees: House - Energy and Commerce; Judiciary

H.R.4853 — To amend the Older Americans Act of 1965 to eliminate the percentage cap on funding available to carry out the program to provide support services to older caregivers; Sponsor: Rep. Trahan, Lori [D-MA-3]; Committees: House - Education and Labor

S.2675 — A bill to authorize the Secretary of Health and Human Services to carry out activities relating to neglected diseases of poverty; Sponsor: Sen. Booker, Cory A. [D-NJ]; Committees: Senate - Health, Education, Labor, and Pensions

S.2677 — A bill to amend the Older Americans Act of 1965 to address social isolation and loneliness, and for other purposes; Sponsor: Sen. Smith, Tina [D-MN]; Committees: Senate - Health, Education, Labor, and Pensions

S.2686 — A bill to improve reporting of the distribution of controlled substances, and for other purposes; Sponsor: Sen. Gardner, Cory [R-CO]; Committees: Senate - Judiciary

S.2690 — A bill to reduce mass violence, strengthen mental health collaboration in communities, improve school safety, and for other purposes; Sponsor: Sen. Cornyn, John [R-TX]; Committees: Senate - Judiciary

H.R.4858 — To require the Secretary of Veterans Affairs to enter into a contract or other agreement with a third party to review appointees in the Veterans Health Administration who had a license terminated for cause by a State licensing board for care or services rendered at a non-Veterans Health Administration facility and to provide individuals treated by such an appointee with notice if it is determined that an episode of care or services to which they received was below the standard of care, and for other purposes; Sponsor: Rep. Norman, Ralph [R-SC-5]; Committees: House - Veterans' Affairs

H.R.4859 — To amend the Older Americans Act of 1965 to reduce social isolation among older individuals; Sponsor: Rep. Trone, David J. [D-MD-6]; Committees: House - Education and Labor

S.Res.379 — A resolution supporting the designation of September 2019 as “National Alcohol and Drug Addiction Recovery Month”; Sponsor: Sen. King, Angus S., Jr. [I-ME]; Submitted in the Senate, considered, and agreed to without amendment and with a preamble by Voice Vote.

S.2696 — A bill to amend the Older Americans Act of 1965 to expand supportive services for Native American aging programs, and for other purposes; Sponsor: Sen. Smith, Tina [D-MN]; Committees: Senate - Health, Education, Labor, and Pensions

S.2698 — A bill to establish a United States Global Health Commission and a United States Global Health Attache Program, and for other purposes; Sponsor: Sen. Markey, Edward J. [D-MA]; Committees: Senate - Foreign Relations

S.2701 — A bill to amend the Controlled Substances Act to list fentanyl-related substances as schedule I controlled substances; Sponsor: Sen. Portman, Rob [R-OH]; Committees: Senate - Judiciary