



Health Policy Briefing

January 6, 2020

Health on the Hill in 2020

Impeachment proceedings are expected to dominate the U.S. Senate the first weeks of this new year, which already faces a compressed legislative calendar due to the November 2020 presidential elections. While lawmakers left for holiday recess without a deal on the parameters for impeachment, senators have said that they expect the trial will begin this month. Once the impeachment proceedings begin, all other legislative business will be put on hold until the trial is completed. The trial proceedings are expected to be held six days a week. Senate Majority Leader McConnell has said he expects the trial to last approximately two to three weeks

Nevertheless, lawmakers have several health care priorities on their agendas for 2020. House Democrats plan to renew efforts to pass legislation to lower drug prices. Speaker Nancy Pelosi (D-Calif.) stated in a Dear Colleague letter last week that she will push for the **Lower Drug Costs Now Act** (H.R. 3) to be included in a reauthorization package of health care programs set to expire May 22. The drug pricing bill passed the House in December, but Majority Leader Mitch McConnell (R-Ky.) has said that he will not take it up for a vote in the Senate.

There is also bipartisan interest in pursuing a solution to end the practice of surprise medical billing. The fiscal year (FY) 2020 funding package included a short-term extension of several federal health programs through May 22. This reauthorization deadline was intended to force an agreement on the issues of surprise billing, drug pricing, and lowering health care costs more broadly.

The Senate Finance Committee is scheduled to meet in Executive Session to consider the U.S.-Mexico-Canada-Agreement (USMCA) on Tuesday. The

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trade deal, which only requires a simple majority to pass, is ultimately expected to be advanced by the Senate early this year. The deal removes a provision that would have guaranteed 10 years of data protection for biologic drugs.

The second session of the 116th Congress begins at noon today. The Senate will convene today while the House of Representatives is scheduled to reconvene on Tuesday.

Sasse, Loeffler to Fill Senate Vacancies

Given Sen. Johnny Isakson's (R-Ga.) retirement at the end of 2019, it was announced that the resulting vacancies on the Senate Finance Committee and the Senate Committee on Health, Education, Labor, and Pensions (HELP) will be filled by Sen. Ben Sasse (R-Neb.) and Sen. Kelly Loeffler (R-Ga.), respectively. Loeffler was appointed by Georgia Gov. Brian Kemp (R) to Isakson's seat through 2020 and is expected to run in a November special election for the remainder of his term – through 2022. Ms. Loeffler will be sworn in by Vice President Pence later today.

FDA to Temporarily Ban Certain Flavored Vaping Products

The Food and Drug Administration (FDA) has announced its decision to temporarily ban some flavored vaping products in response to the increasing rate of e-cigarette use by children and young adults. The agency will restrict sales of all pre-packaged flavored vaping pods other than tobacco and menthol; the regulation will not apply to open-tank vaping systems. Companies that do not stop manufacturing, distributing, or selling such unauthorized flavored, cartridge-based products within 30 days of the publication of the guidance risk enforcement actions by the FDA. The policy aims to target the products that are most responsible for putting teens at risk of e-cigarette use while maintaining access to the products for adults to aid in combustible tobacco cessation efforts. The banned pod flavors represent approximately 80 percent of retail-store e-cigarette sales in 2019, according to the Department of Justice (DOJ). The guidance is less restrictive than the comprehensive vaping ban previewed by the President last September. House Energy and Commerce Committee Chairman Frank Pallone (D-N.J.) has argued that the FDA guidance does not go far enough. Pallone supports legislation (H.R. 2339, the ***Reversing the Youth Tobacco Epidemic Act***) that would ban all flavored tobacco products. No. 2 Senate Democrat Dick Durbin (D-Ill.), Senate Health, Education, Labor, and Pensions (HELP) Committee Ranking Member Patty Murray (D-Wash.), and Sen. Mitt Romney (R-Utah) also issued statements calling for more to be done to address the youth vaping epidemic.

EE&C Schedules Health Legislative Hearing For This Week

The House Energy and Commerce Subcommittee on Health announced that it will hold a legislative hearing this week to consider several bills that aim to improve Americans' health care coverage and outcomes. During Wednesday's hearing, the panel will consider the following legislation:

- H.R.2271, the "Scarlett's Sunshine on Sudden Unexpected Death Act"
- H.R.2468, the "School-Based Allergies and Asthma Management Program Act"
- H.R.4801, the "Healthy Start Reauthorization Act"
- H.R.1379, the "Ensuring Lasting Smiles Act"
- H.R.2477, the "BENES Act"
- H.R.3935, the "Protecting Patients Transportation to Care Act"
- H.R. 5534, the "Comprehensive Immunosuppressive Drug Coverage for Kidney Transplant Patients Act"

Democratic States Appeal to Supreme Court in ACA Case

Democratic-led states have filed two appeals urging the Supreme Court to schedule a fast-track review of the current legal challenge to the Affordable Care Act (ACA). The group of state officials and lawmakers ask the high court to issue a definitive ruling upholding the 2010 health care law during its current term, which runs through June. A federal appeals court struck down the ACA's individual mandate last month, while skirting the question of the law's overall constitutionality. The decision keeps the ACA in effect for the time being, while remanding the case back to a federal judge in Texas to determine how much of the rest of the law, if any, is also unconstitutional.

Upcoming Congressional Hearings and Markups

Senate Finance Committee business meeting to consider H.R.5430, to implement the Agreement between the United States of America, the United Mexican States, and Canada attached as an Annex to the Protocol Replacing the North American Free Trade Agreement; 9:30 a.m., 215 Dirksen Bldg.; January 7

House Energy and Commerce Subcommittee on Health hearing on "Legislation to Improve Americans' Health Care Coverage and Outcomes;" 10:00 a.m., 2322 Rayburn Bldg.; January 8