



Health Policy Briefing

April 1, 2019

DOJ Decides Not to Defend the ACA, Reviving Congressional Replacement Discussions

The Department of Justice (DOJ) announced its decision last week to side with the district court's December ruling declaring the entire Affordable Care Act (ACA) unconstitutional. This was a reversal of the Department's previous position, which was that only a portion of the law should be struck down. The DOJ will file a brief supporting the decision with the U.S. Court of Appeals for the Fifth Circuit. The Fifth Circuit's decision is likely to be appealed to the Supreme Court, regardless of the outcome.

Shortly after DOJ's announcement, President Trump tweeted that Republicans should be the "party of health care," and an aide to Vice President Pence promised that the administration would work to present a health care plan to Congress. But according to Rep. Mark Meadows (R-N.C.), White House officials told him that Congress should lead the effort to formulate a replacement for the ACA and that he is in discussions about a replacement plan with his Republican colleagues in both chambers. President Trump also stated that he has tapped John Barrasso (R-Wyo.), Bill Cassidy (R-La.), and Rick Scott (R-Fla.) to develop an ACA replacement plan that includes protections for preexisting conditions. The President's acting chief of staff Mick Mulvaney announced over the weekend that the White House plans to send a short summary of its health care principles to Congress to guide any potential legislation.

Other lawmakers, like Ranking Member of the Energy and Commerce Committee Greg Walden (R-Ore.), instead expressed support for working on health care legislation for which there may be common ground with Democrats, like on drug-pricing or insurance improvements. Sen. Susan Collins (R-Maine) stated that she would be writing to Attorney General Barr to urge him to reconsider the administration's approach to the ACA lawsuit.

House Speaker Nancy Pelosi

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(D-Calif.) announced that the House will vote this Tuesday on a resolution condemning the administration's efforts to repeal the ACA. The resolution is led by Rep. Colin Allred (D-Texas). Senate Democrat leader Chuck Schumer (D-N.Y.) plans to offer an amendment to an unrelated disaster relief bill (H.R. 268) that would prevent the administration from spending money to litigate against the ACA in court. If Republican leadership allow the amendment to come up for a vote, it could force lawmakers to go on the record about the administration's position on the law.

House Passes Medicaid Legislation

The House of Representatives passed by voice vote H.R. 1839, the ***Medicaid Services Investment and Accountability Act of 2019***, last week. The legislation would extend the Excellence in Mental Health demonstration and the Money Follows the Person Program through September. It includes a provision establishing civil monetary penalties for the misclassification of covered outpatient drugs in the Medicaid drug rebate program. The bill also incorporates the provisions of the ***ACE Kids Act*** and would allow state Medicaid programs to establish health homes for children with medically complex conditions.

Energy and Commerce Health Subcommittee Advance 12 Health Care Bills

The House Energy and Commerce Health Subcommittee advanced a package of bills to strengthen the ACA and its protections for individuals with pre-existing conditions and to reduce the cost of health care and prescription drugs. Many of the bills were passed by voice vote but are largely backed by Democrats, lessening the chance of their passage in the GOP-controlled Senate. Republican panel members expressed opposition to many of the bills, stating that they would reduce access to affordable health insurance options and reduce state flexibility. The bills will now be considered by the full committee and are likely to be voted on by the full House as a part of the Democratic response to what lawmakers characterize as the administration's efforts to undermine the ACA. Energy and Commerce Chairman Frank Pallone (D-N.J.) hopes the bills will be considered on the House floor before the end of April.

House Democrats Unveil "Sweeping" Health Bill

On Tuesday, House Democratic leaders unveiled legislation aimed at making health care coverage more affordable and protecting individuals with pre-existing conditions. The ***Protecting Pre-Existing Conditions & Making Health Care More Affordable Act of 2019*** was introduced today by Energy and Commerce Chairman Frank Pallone, Jr. (D-N.J.), Ways and Means Chairman Richard Neal (D-Mass.), and Education and Labor Chairman Bobby Scott (D-Va.) -- the three chairmen whose committees have jurisdiction over health care. The bill would expand the eligibility for premium tax credits beyond 400 percent of the federal poverty line and increase the size of tax credits for all income brackets. The bill also reverses recent administrative decisions to increase the access to association health plans and short-term, limited duration policies and curtail state waiver processes related to pre-existing conditions and essential benefits. The bill would require plans to cover benefits in each of the essential health benefit categories and would prohibit substitution across categories. Prescription drug coverage would be required to include access to a wide variety of drug classes and include an exceptions process for medically necessary drugs not included in a plan's formulary. It would also require HHS to offer a standard benefit plan to better enable customers to compare their options. The bill would create a \$10 billion reinsurance program and provide \$200 million in grants for states to set up their own insurance exchanges if they do not already have one. The grants could be awarded through the end of 2022 and would last for two years. The bill also includes \$200 million annually from FY 2020-2022 for state grants to pursue the expansion of health coverage, and \$100 million annually for state grants to provide health insurance assistance to consumers. It would provide \$100 million annually for the ACA's navigators program, and an additional \$100 million annually for HHS to carry out outreach and educational activities related to enrollment in ACA-compliant plans on the federal exchange. HHS would be required to report to Congress on how it spends user fees collected from participating insurers. The timing of the introduction coincided with the ninth anniversary of the ACA being signed into law, and the legislation addresses what Democrats characterize as the Trump administration's sabotage of the law. Given the bill's focus on shoring up the ACA, they do not include provisions related to ***Medicare for All***. The legislation is expected to be included in a package of measures to strengthen the 2010 health care law that the House plans to vote on this year. It is unlikely to attract much support from Republican lawmakers or the administration, and the bill's prospects in the Senate are unclear.

Drug Pricing Provision Added to Senate Budget Resolution

The Senate Budget Committee included a provision in its fiscal year (FY) 2020 budget resolution calling for legislation to make drugs more affordable and to hold the pharmaceutical industry accountable for high drug prices. The provision was offered by Sen. Chris Van Hollen (D-Md.) and was adopted by a vote of 14-6, with Republican Sens. Mike Braun (Ind.), Rick Scott (Fla.), John Kennedy (La.), Kevin Cramer (R-N.D.) and Chairman Mike Enzi (Wyo.) voting in support of the measure. The budget resolution was advanced on a party-line 11-9 vote.

Finance Opens Investigation in Potential Pharmaceutical Kickback Schemes

The Senate Finance Committee has opened a bipartisan inquiry into pharmaceutical companies that use charities for their own financial gain. Chairman Chuck Grassley (R-Iowa) and Ranking Member Ron Wyden (D-Ore.) have [written](#) to the HHS Office of the Inspector General (OIG) requesting details regarding “potential illegal kickback schemes” in which companies donate money to patient assistance programs and then steer patients toward their company’s product. It is legal for drug companies to donate to charities that help patients cover their out-of-pocket costs, but the charities must be independent of the drug companies.

Lawmakers Push for Inclusion of Migraine Research in Appropriations Language

A group of bipartisan lawmakers has [written](#) to the leadership of House Appropriations Labor-HHS-Education Subcommittee requesting that the panel include language in their FY 2020 appropriations bill addressing the National Institutes of Health’s (NIH) policy deficiencies, specifically in the area of headache disorders. The lawmakers argue that the NIH has largely neglected research on migraines, which impact one in seven Americans.

GAO Report Details 2017 Improper Payments in Medicare, Medicaid

A new [report](#) from the Government Accountability Office (GAO) indicates that the Medicare program spent \$23.2 billion on improper payments in 2017 due to insufficient documentation. The GAO found that Medicaid made \$4.3 billion in erroneous payments that same year. These amounts total 6 percent of Medicare claims and 1.3 percent of Medicaid claims. The agency makes four recommendations for CMS to strengthen its oversight of provider claims and to ensure that Medicaid medical reviews effectively address the causes of improper payments and result in corrective actions. CMS did not concur with all of the GAO’s recommendations, raising concerns about increasing the burden on state Medicaid agencies. The issue of Medicare and Medicaid improper payments is the subject of a probe from Senate Finance Committee Chairman Chuck Grassley (R-Iowa). Grassley has stated that he is still waiting to hear from CMS Administrator Seema Verma in response to a letter regarding additional data on improper Medicaid payments.

Court Strikes Down WH Expansion of Association Health Plans

U.S. District Court Judge John Bates ruled last week that the administration’s efforts to expand the availability of association health plans is a deliberate and illegal “end run” around the ACA. Association health plans allow businesses and individuals to band together to create less expensive group plans that are not subject to the coverage requirements of the 2010 health care law. The White House and Republican lawmakers argue that such plans offer a more affordable options for people, who have been priced out of the individual market. The Labor Department’s rule to expand the availability of association health plans was issued to comply with the President’s October 2017 executive order. It was challenged in court by 11 Democratic-led states and the District of Columbia, who argued that the regulation violated federal law. It is not clear if the administration plans to appeal the court’s decision.

There's still time to register for West Health's April 2 Healthcare Cost Crisis Summit

Don't miss West Health's free healthcare costs summit tomorrow at the Ronald Reagan Building and International Trade Center. The day-long event, which will be livestreamed, brings together healthcare and business leaders, patient advocates and policy experts to explore the impact of high healthcare costs on individuals, businesses, the economy and the state of public health. Participants will discuss current and proposed policies to curb costs and map out immediate and long-term actions that can meaningfully and sustainably improve healthcare quality and lower costs. "High Costs, Broken Promises: West Health's 2019 Healthcare Costs Innovation Summit," will feature the unveiling of results from a new national survey from Gallup and West Health on how skyrocketing healthcare costs are impacting the daily lives of Americans. West Health is a nonpartisan, nonprofit organization dedicated to lowering healthcare costs to enable successful aging. Learn more and register at hcidc.org.

Upcoming Congressional Hearings and Meetings

Senate Special Committee on Aging hearing to examine Alzheimer's, focusing on new directions in biomedical research and caregiving; 9:30 a.m., 106 Dirksen Bldg.; April 2

House Energy and Commerce Oversight Subcommittee hearing "Priced Out of a Lifesaving Drug: The Human Impact of Rising Insulin Costs;" 10:30 a.m., 2322 Rayburn Bldg.; April 2

House Education and Labor Subcommittee on Health, Employment, Labor, and Pensions hearing "Examining Surprise Billing: Protecting Patients from Financial Pain;" 10:15 a.m., 2175 Rayburn Bldg.; April 2

House Appropriations Labor, Health and Human Services, Education, and Related Agencies Subcommittee hearing on the National Institutes of Health Budget Request for FY 2020; 10:30 a.m., 2358-C Rayburn Bldg.; April 2

House Appropriations Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies hearing "Food and Drug Administration Budget Request for FY 2020;" 9:00 a.m., 2362-A Rayburn Bldg.; April 3

House Appropriations Subcommittee on Defense hearing "Defense Health Programs;" 3:00 p.m., 2359 Rayburn Bldg.; April 3

Senate Appropriations Labor, Health and Human Services, Education, and Related Agencies Subcommittee hearing to review the Fiscal Year 2020 funding request and budget justification for the U.S. Department of Health and Human Services; 10:00 a.m., 124 Dirksen Bldg.; April 4

Senate Finance Committee hearing on drug pricing with pharmacy benefit managers invited to testify; time and place TBD; April 9

House Appropriations Labor, Health and Human Services, Education, and Related Agencies Subcommittee Public Witness Hearing; 2:00 p.m., 2358-C Rayburn Bldg.; April 9

Recently Introduced Health Legislation

H.Res.242 — Affirming the importance of the Orphan Drug Act, celebrating the over 750 new orphan therapies approved since its creation, and recognizing the need to continue supporting research and development for rare diseases; Sponsor: Rep. Butterfield, G. K. [D-NC-1]; Committees: House - Energy and Commerce

H.R.1812 — To amend title 38, United States Code, to furnish Vet Center readjustment counseling and related mental health services to certain individuals; Sponsor: Rep. Roe, David P. [R-TN-1]; Committees: House - Veterans' Affairs

H.R.1816 — To amend the Federal Food, Drug, and Cosmetic Act to require that children's cosmetics containing talc include an appropriate warning unless the cosmetics are demonstrated to be asbestos-free, and for other purposes; Sponsor: Rep. Dingell, Debbie [D-MI-12]; Committees: House - Energy and Commerce

H.R.1823 — To provide opioid receptor antagonists, including naloxone, to first responders for personal use, and for other purposes; Sponsor: Rep. Gibbs, Bob [R-OH-7]; Committees: House - Judiciary, Science, Space, and Technology

H.R.1824 — To amend the Public Health Service Act to provide for the establishment of a mesothelioma patient registry, and for other purposes; Sponsor: Rep. Katko, John [R-NY-24]; Committees: House - Energy and Commerce

H.R.1834 — To direct the Secretary of Commerce to issue regulations prohibiting the use of sunscreen containing oxybenzone or octinoxate in a National Marine Sanctuary in which coral is present, and for other purposes; Sponsor: Rep. Rooney, Francis [R-FL-19]; Committees: House - Natural Resources

H.R.1835 — To amend the Public Health Service Act to ensure the consensual donation and respectful disposition of human bodies and human body parts donated or transferred for education, research, or the advancement of medical, dental, or mortuary science and not for use in human transplantation, and for other purposes; Sponsor: Rep. Rush, Bobby L. [D-IL-1]; Committees: House - Energy and Commerce

H.Res.251 — Expressing support for designation of September as "National Brain Aneurysm Awareness Month"; Sponsor: Rep. Lynch, Stephen F. [D-MA-8]; Committees: House - Energy and Commerce

H.R.1839 — To amend title XIX to extend protection for Medicaid recipients of home and community-based services against spousal impoverishment, establish a State Medicaid option to provide coordinated care to children with complex medical conditions through health homes, prevent the misclassification of drugs for purposes of the Medicaid drug rebate program, and for other purposes; Sponsor: Rep. Ruiz, Raul [D-CA-36]; Committees: House - Energy and Commerce

H.R.1840 — To amend title XVIII of the Social Security Act to improve access to diabetes outpatient self-management training services, and for other purposes; Sponsor: Rep. Reed, Tom [R-NY-23]; Committees: House - Energy and Commerce, Ways and Means

H.R.1841 — To amend the Public Health Service Act with respect to the designation of general surgery shortage areas, and for other purposes; Sponsor: Rep. Bera, Ami [D-CA-7]; Committees: House - Energy and Commerce

H.R.1845 — To provide for the establishment of the Prescription Safety Alert System with respect to covered drug products, and for other purposes; Sponsor: Rep. Kuster, Ann M. [D-NH-2]; Committees: House - Energy and Commerce

H.R.1846 — To amend the Public Health Service Act to address the increased burden that maintaining the health and hygiene of infants and toddlers places on families in need, the resultant adverse health effects on children and families, and the limited child care options available for infants and toddlers who lack sufficient diapers, and for other purposes; Sponsor: Rep. Lee, Barbara [D-CA-13]; Committees: House - Energy and Commerce, Ways and Means

S.863 — A bill to amend title 38, United States Code, to clarify the grade and pay of podiatrists of the Department of Veterans Affairs; Sponsor: Sen. Cassidy, Bill [R-LA]; Introduced in the Senate, read twice, considered, read the third time, and passed without amendment by Unanimous Consent.

S.864 — A bill to provide for further comprehensive research at the National Institute of Neurological Disorders and Stroke on unruptured intracranial aneurysms; Sponsor: Sen. Blumenthal, Richard [D-CT]; Committees: Senate - Health, Education, Labor, and Pensions

H.R.1868 — To amend the Internal Revenue Code of 1986 to improve affordability and reduce premium costs of health insurance for consumers; Sponsor: Rep. Underwood, Lauren [D-IL-14]; Committees: House - Ways and Means

H.R.1870 — To amend the Internal Revenue Code of 1986 to expand affordability of health insurance for working families; Sponsor: Rep. Wild, Susan [D-PA-7]; Committees: House - Ways and Means

H.R.1873 — To provide outreach and reporting on comprehensive Alzheimer's disease care planning services furnished under the Medicare program; Sponsor: Rep. Tonko, Paul [D-NY-20]; Committees: House - Ways and Means, Energy and Commerce

H.R.1879 — To amend titles XIX and XXI of the Social Security Act to provide for 12-month continuous enrollment of individuals under the Medicaid program and Children's Health Insurance Program, and for other purposes; Sponsor: Rep. Kennedy, Joseph P., III [D-MA-4]; Committees: House - Energy and Commerce

H.R.1884 — To amend the Patient Protection and Affordable Care Act to improve affordability of, undo sabotage with respect to, and increase access to health insurance coverage, and for other purposes; Sponsor: Rep. Pallone, Frank, Jr. [D-NJ-6]; Committees: House - Energy and Commerce, Ways and Means, Education and Labor

H.R.1887 — To establish a National Institute of Nutrition within the National Institutes of Health, and for other purposes; Sponsor: Rep. Ryan, Tim [D-OH-13]; Committees: House - Energy and Commerce

S.873 — A bill to amend titles XIX and XXI of the Social Security Act to provide for 12-month continuous enrollment under Medicaid and the Children's Health Insurance Program, and for other purposes; Sponsor: Sen. Brown, Sherrod [D-OH]; Committees: Senate - Finance

S.880 — A bill to provide outreach and reporting on comprehensive Alzheimer's disease care planning services furnished under the Medicare program; Sponsor: Sen. Stabenow, Debbie [D-MI]; Committees: Senate - Finance

H.R.1897 — To improve Federal efforts with respect to the prevention of maternal mortality, and for other purposes; Sponsor: Rep. Kelly, Robin L. [D-IL-2]; Committees: House - Energy and Commerce, Ways and Means, Education and Labor

H.R.1901 — To amend title XVIII of the Social Security Act to preserve access to rehabilitation innovation centers under the Medicare program; Sponsor: Rep. Olson, Pete [R-TX-22]; Committees: House - Ways and Means, Energy and Commerce

H.R.1903 — To amend the Older Americans Act of 1965 to support individuals with younger onset Alzheimer's disease; Sponsor: Rep. Rice, Kathleen M. [D-NY-4]; Committees: House - Education and Labor

H.R.1920 — To amend title XIX of the Social Security Act to provide a higher Federal matching rate for increased expenditures under Medicaid for mental and behavioral health services, and for other purposes; Sponsor: Rep. Kennedy, Joseph P., III [D-MA-4]; Committees: House - Energy and Commerce

H.R.1922 — To amend the Internal Revenue Code of 1986 to include certain over-the-counter medical products as qualified medical expenses; Sponsor: Rep. Kind, Ron [D-WI-3]; Committees: House - Ways and Means

H.R.1939 — To amend the Internal Revenue Code of 1986 to extend the health coverage tax credit; Sponsor: Rep. Turner, Michael R. [R-OH-10]; Committees: House - Ways and Means

S.895 — A bill to provide for a permanent extension of the enforcement instruction on supervision requirements for outpatient therapeutic services in critical access and small rural hospitals; Sponsor: Sen. Thune, John [R-SD]; Committees: Senate - Finance

S.901 — A bill to amend the Older Americans Act of 1965 to support individuals with younger onset Alzheimer's disease; Sponsor: Sen. Collins, Susan M. [R-ME]; Committees: Senate - Health, Education, Labor, and Pensions

S.902 — A bill to amend title 38, United States Code, to provide for the non-applicability of non-Department of Veterans Affairs covenants not to compete to the appointment of physicians in the Veterans Health Administration, and for other purposes; Sponsor: Sen. Boozman, John [R-AR]; Committees: Senate - Veterans' Affairs

S.913 — A bill to require group health plans and health insurance issuers offering health insurance coverage to disclose cost information to enrollees in such plans or coverage; Sponsor: Sen. Braun, Mike [R-IN]; Committees: Senate - Health, Education, Labor, and Pensions

S.916 — A bill to improve Federal efforts with respect to the prevention of maternal mortality, and for other purposes; Sponsor: Sen. Durbin, Richard J. [D-IL]; Committees: Senate - Finance

H.Res.267 — Supporting the designation of March 2019 as National Kidney Month; Sponsor: Rep. Clarke, Yvette D. [D-NY-9]; Committees: House - Oversight and Reform

H.R.1943 — To provide funding for Federally qualified health centers and the National Health Service Corps; Sponsor: Rep. Clyburn, James E. [D-SC-6]; Committees: House - Energy and Commerce

H.R.1948 — To amend title XVIII of the Social Security Act to provide for Medicare coverage of certain lymphedema compression treatment items as items of durable medical equipment; Sponsor: Rep. Schakowsky, Janice D. [D-IL-9]; Committees: House - Energy and Commerce, Ways and Means

H.R.1955 — To require the Administrator of the Centers for Medicare & Medicaid Services to conduct a study on antipsychotic prescribing practices in nonnursing home settings under the Medicare program, and for other purposes; Sponsor: Rep. Kuster, Ann M. [D-NH-2]; Committees: House - Ways and Means, Energy and Commerce

H.R.1959 — To amend the Federal Food, Drug, and Cosmetic Act with respect to compounding pharmacies, and for other purposes; Sponsor: Rep. Griffith, H. Morgan [R-VA-9]; Committees: House - Energy and Commerce

H.R.1962 — To direct the Secretary of Veterans Affairs to use on-site regulated medical waste treatment systems at certain Department of Veterans Affairs facilities, and for other purposes; Sponsor: Rep. Bost, Mike [R-IL-12]; Committees: House - Veterans' Affairs

H.R.1963 — To expand the research and education on and delivery of complementary and integrative medicine to veterans, and for other purposes; Sponsor: Rep. Brownley, Julia [D-CA-26]; Committees: House - Veterans' Affairs

H.R.1966 — To direct the Comptroller General of the United States to complete a study on barriers to participation in federally funded cancer clinical trials by populations that have been traditionally underrepresented in such trials; Sponsor: Rep. Cummings, Elijah E. [D-MD-7]; Committees: House - Energy and Commerce, Armed Services, Veterans' Affairs

H.R.1969 — To amend title XVIII of the Social Security Act to cover screening computed tomography colonography as a colorectal cancer screening test under the Medicare program; Sponsor: Rep. Davis, Danny K. [D-IL-7]; Committees: House - Energy and Commerce, Ways and Means

H.R.1970 — To amend title XVIII of the Social Security Act to provide for payment for services of radiologist assistants under the Medicare program, and for other purposes; Sponsor: Rep. Doyle, Michael F. [D-PA-18]; Committees: House - Energy and Commerce, Ways and Means

H.R.1973 — To amend the Internal Revenue Code of 1986 to provide authority to add additional vaccines to the list of taxable vaccines; Sponsor: Rep. Higgins, Brian [D-NY-26]; Committees: House - Ways and Means

H.R.1978 — To fight homelessness in the United States by authorizing a grant program within the Health Resources and Services Administration for housing programs that offer comprehensive services and intensive case management for homeless individuals and families; Sponsor: Rep. Lieu, Ted [D-CA-33]; Committees: House - Financial Services

H.R.1983 — To reauthorize and extend funding for community health centers and the National Health Service Corps; Sponsor: Rep. O'Halleran, Tom [D-AZ-1]; Committees: House - Appropriations

S.Res.130 — A resolution recognizing the significance of endometriosis as an unmet chronic disease for women and designating March 2019 as "Endometriosis Awareness Month"; Sponsor: Sen. Duckworth, Tammy [D-IL]; Committees: Senate - Judiciary

S.923 — A bill to fight homelessness in the United States by authorizing a grant program within the Health Resources and Services Administration for housing programs that offer comprehensive services and intensive case management for homeless individuals and families; Sponsor: Sen. Feinstein, Dianne [D-CA]; Committees: Senate - Health, Education, Labor, and Pensions

S.930 — A bill to allow women greater access to safe and effective contraception; Sponsor: Sen. Ernst, Joni [R-IA]; Committees: Senate - Finance

S.946 — A bill to direct the Comptroller General of the United States to complete a study on barriers to participation in federally funded cancer clinical trials by populations that have been traditionally underrepresented in such trials; Sponsor: Sen. Van Hollen, Chris [D-MD]; Committees: Senate - Health, Education, Labor, and Pensions

S.948 — A bill to provide incentives to physicians to practice in rural and medically underserved communities, and for other purposes; Sponsor: Sen. Klobuchar, Amy [D-MN]; Committees: Senate - Judiciary