



Capitol Hill Healthcare Update

[Blog](#) Health Law Update

USA | October 9 2017

CHIP Renewal Triggers Partisan Clash Over Offsets

Although the Children's Health Insurance Program (CHIP) enjoys broad bipartisan support on Capitol Hill, lawmakers last week sharply disagreed over how to pay for its renewal – signaling that a final vote could be delayed for months.

The House Energy and Commerce Committee and the Senate Finance Committee last week approved separate versions of bills to renew federal CHIP funding. The Senate process has so far been bipartisan though committee Chairman Orrin Hatch (R-Utah) and the panel's top Democrat, Sen. Ron Wyden (D-Ore.) have not spelled out how they would pay for their bill.

The House's CHIP bill won committee approval on a party-line vote as Democrats balked at most of the Republicans' proposed offsets, including one that would tap the Affordable Care Act's (ACA's) prevention fund. Other GOP-backed offsets included requiring Americans with incomes above \$500,000 to pay higher Medicare premiums and effectively banning lottery winners from being eligible for Medicaid.

Federal CHIP funding expired September 30 though states have funding to administer the program through December.

Ryan Hints at Medicaid Reform Effort in 2018

Speaker Paul Ryan last week said the House is unlikely to consider any new legislative effort to repeal or replace the ACA, but is targeting sweeping Medicaid reform next year.

Ryan said the House would only debate new ACA legislation if there is a clear indication it could pass the Senate, which has twice flubbed efforts to repeal the law this year.

The Speaker said in 2018 he wanted to push welfare and Medicaid reforms, including either block grants or per-capita caps that he said enjoy widespread support among House Republicans. Ryan said Republicans intend to use fast-track legislation known as reconciliation for Medicaid changes. A reconciliation bill can win Senate approval on a party-line vote, not the usual 60 votes needed for passage.

Some Republicans Unconcerned by Trump's Outreach to Democrats

Some congressional Republicans reacted with shrugged shoulders to reports that President Trump last week called Senate Democratic Leader Chuck Schumer (D-N.Y.) to discuss a potential bipartisan agreement on healthcare.

While there was some concern about Trump's unilateral outreach to Schumer, other Republicans saw the effort as an attempt to prod the GOP on healthcare – and as Trump trying to separate himself from Congress' inability to repeal the ACA.

Last month, the president did work with Schumer and House Democratic Leader Nancy Pelosi (D-Calif.) on a stopgap budget plan that delayed a partisan showdown on government funding and the debt ceiling. Still, the policy and political gulfs between Trump and congressional Democrats on healthcare are far wider than what separates Republicans.

Allergan-Tribe Patent Inquiry Becomes Bipartisan

While Democrats have sharply criticized Allergan for effectively blocking federal challenges of its Restasis treatment for chronic dry eye by selling the drug's patents to a Native American tribe, a key congressional Republican last week also questioned the move.

House Oversight and Government Reform Committee Chairman Trey Gowdy (R-S.C.) said the Allergan agreement with the Saint Regis Mohawk Tribe in upstate New York could hurt competition by thwarting cheaper generic alternatives. Gowdy and the panel's top Democrat, Rep. Elijah Cummings (D-Md.), sent a letter last week to CEO Brent Saunders with a series of questions, including some seeking internal company analyses on Restasis' projected market share following the deal with the tribe.

Separately, Sen. Claire McCaskill (D-Mo.) last week introduced legislation that would block tribes from using sovereign immunity to evade federal challenges to pharmaceutical patents.

McCaskill's legislation is the latest attempt by Democrats to focus attention on Allergan. Earlier this month, four Democrats – Sens. Maggie Hassan (D-N.H.), Sherrod Brown (D-Ohio), Robert Casey (D-Pa.) and Richard Blumenthal (D-Conn.) – called on the Judiciary Committee to investigate what the senators said was Allergan's "blatantly anti-competitive" effort to skirt federal law.

Senate Panel to Hold Hearing on Drug Costs

The Senate HELP Committee on Oct. 17 will hold its second hearing this year on prescription drug costs, focusing on how the drug delivery system affects what patients pay.

Witnesses will include Lori Reilly of PhRMA and Chip Davis of the Association for Accessible Medicines, formerly GPhA. Other witnesses include Elizabeth Gallenagh of the Healthcare Distribution Alliance, Mark Merritt of the Pharmaceutical Care Management Association and Thomas Menighan of the American Pharmacists Association.

The Senate HELP Committee in June held its first hearing on drug prices, which quickly dissolved into a partisan clash over Republicans' effort to repeal the ACA. At the time, Committee Chairman Lamar Alexander (R-Tenn.) questioned the value of the hearing and speculated on whether additional hearings on drug prices would be meaningful.

Senate GOP Panel Questions HHS on Opioid Fraud

Eleven Republicans on the Senate Finance Committee last week sought information on steps the U.S. Department of Health and Human Services (HHS) is taking to prevent opioid abuse by Medicare Part D providers and beneficiaries.

A report last summer by HHS's inspector general expressed concern about the number of opioids prescribed within Part D and potential problems faced by at-risk beneficiaries as well as pharmacists and providers. The report identified 500,000 beneficiaries in the Medicare Part D program who received high amounts of opioids and more than 400 prescribers who had questionable opioid prescribing patterns.

In a letter to HHS Acting Secretary Don Wright, the senators asked what the department is doing to investigate those 400 prescribers and whether HHS is considering additional safeguards to ensure Medicare does not reimburse for opioids that are being abused or diverted.

Committee Chairman Orrin Hatch (R-Utah) led the letter.

Senate Confirms HHS Deputy Who Will Serve as Acting Secretary

The Senate last week confirmed Eric Hargan to fill the No. 2 position at HHS, but because of former Secretary Tom Price's resignation Hargan will serve as the department's acting secretary for at least several months.

Hargan won Senate confirmation 57-38, picking up support from eight Senate Democrats, though some Democrats sharply criticized Hargan as unlikely to deviate from Price's efforts to dismantle the ACA via department regulations.

He previously served at HHS during the Bush administration, including as deputy general counsel. Hargan, who was part of President Trump's HHS transition team last year, will fill the top job at HHS until Trump chooses and the Senate confirms Price's successor.

House, Senate Move in IPAB Repeal

Few portions of the ACA are as legitimate bipartisan targets for repeal as the controversial Independent Payment Advisory Board (IPAB), and House and Senate Republicans last week took steps to repeal the Medicare cost-cutting panel.

House lawmakers are working to include IPAB repeal in legislation to renew CHIP. Meanwhile, the Senate Budget Committee last week approved an amendment to the fiscal 2018 budget resolution that would allow for IPAB repeal.

Created in 2010 as a cost-containment tool, IPAB has virtually limitless power to change Medicare spending, which worries not only conservative Republicans but also liberal Democrats. Stand-alone IPAB repeal legislation in the House has 264 co-sponsors, including 43 Democrats – though many more Democrats have expressed reservations about the board.

Although currently dormant, IPAB would spring to life if Medicare spending exceeded certain thresholds. IPAB could propose wholesale changes to Medicare reimbursement that could only be blocked by votes of super-majorities in Congress, and lawmakers say IPAB effectively usurps congressional authority to make changes to Medicare.

Baker & Hostetler LLP - Michael A. Ferguson, Christian B. Jones, Adam J. Higgins and Tyler M. Thompson

Powered by

LEXOLOGY.

