HALL RENDER'S THIS WEEK IN WASHINGTON – NOVEMBER 16, 2018

DEMOCRATS SET TO CONTROL KEY HEALTH COMMITTEES IN NEXT SESSION OF CONGRESS

The Democratic takeover of the House of Representatives following the recent midterm elections will significantly change the political landscape for health care issues when lawmakers return for the 116th Session of Congress next year. Overall, the election results will mean divided government and a return to the era when little is accomplished legislatively. Lawmakers are expected to go from one "fiscal cliff" to another as they struggle to pass funding bills that will keep the government open.

The main focus of House Democrats is expected to be oversight of the Trump administration's implementation of health policies but could extend to the idea of "Medicare-for-all" or other programs that would move the country towards universal health care.

Shoring up the Affordable Care Act ("ACA"), drug pricing and surprise medical bills are also anticipated to be some of the major health care issues tackled during the new Congress. After Republicans' unsuccessful efforts to repeal and replace the ACA, House Democrats will be looking to pass legislation bolstering the ACA's insurance markets and cementing the law's provisions on pre-existing conditions. They will also look to fixing the cost-sharing reimbursement issue, which saw some bipartisan support in the Senate last year and could be one of the few pieces of legislation that makes it to the president's desk. By contrast, the Senate, which will remain under Republican control, is expected to focus more broadly on health care.

Both parties are in alignment as to the necessity of lowering drug pricing. House Democrats will try to reign in pharma by making drug pricing one of their top issues. Incoming House Energy and Commerce Health Subcommittee Chairman Anna Eshoo (D-CA) said she wants to hold hearings before developing her prescription drug policy priorities. Meanwhile, Energy and Commerce leadership staff have signaled that 340B drug pricing program reform will no longer be a high priority for the committee. While some health care lobbyists believe Congress could reverse the site-neutral payment reforms included in the most recent OPPS payment rule, such a proposal is likely to face stiff opposition from the White House. In addition, House Democrats are expected to conduct oversight of issues such as Medicaid work requirements and the Justice Department's decision to back anti-ACA lawsuits.

At the committee level, Rep. Richard Neal (D-MA) will become the chairman of the full House Ways and Means Committee, which is expected to add at least found new Democratic members. On the Ways and Means Health Subcommittee, Chairman Peter Roskam (R-IL) and Health Subcommittee member Erik Paulsen (R-MN) both lost their races for reelection. With the retirement of Reps. Sam Johnson (R-TX), Lynn Jenkins (R-KS) and Diane Black (R-TN), Republicans will see very large changes in their membership on this subcommittee. Since Republicans currently hold an 11-7 majority on the subcommittee, these losses and retirements should mean no Republican will be removed from the subcommittee and one will be added. As for who will take the gavel as the subcommittee's next chairman, Rep. Lloyd Doggett (D-TX) is currently expected to get the nod over Rep. Mike Thompson (D-CA) because he has more overall seniority in Congress.

At the House Energy and Commerce Committee, Rep. Frank Pallone (D-NJ) will become the full committee chairman and Rep. Greg Walden (R-OR) will become the Ranking Minority Member. Pallone has a reputation for "doing deals" across the aisle, which could make additional opioid funding a possibility. The change in control of the House means Rep. Michael Burgess (R-TX) will become the Energy and Commerce Health Subcommittee's Ranking Minority Member once Rep. Eshoo takes the gavel. In addition to drug pricing, Eshoo's agenda is expected to include coverage of pre-existing conditions and investment in biomedical research and development.

On the Senate side, drug pricing and additional opioid legislation could make some progress, but little else is expected to happen on the health care front. Senate Republicans, such as Bill Cassidy (R-LA), will continue to push for 340B reform, but any 340B legislation that passes the Senate should die in the Democratically controlled House. At the committee level, the Health Education Labor and Pensions Committee will see no lose in its membership. Sen. Lamar Alexander (R-TN) will remain chairman and Sen. Patty Murray (D-WA) will remain the Ranking Member.

At the Senate Finance Committee, Sen. Chuck Grassley (R-IA) is expected to become the next chairman. Sen. Grassley says he wants to work "on improving the affordability, quality and accessibility of health care, including in rural America." Sen. Ron Wyden (D-OR) will remain

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the committee's Ranking Member. Losses by Sen. Claire McCaskill (D-MO) and Sen. Dean Heller (R-NV) open up one seat on the Democratic side of the committee aisle and one on the Republican, which are expected to be filled before lawmakers return for the 116th Session of Congress in January.

CMS TO EXPAND MEDICAID COVERED MENTAL HEALTH TREATMENT

On November 14, the Centers for Medicare & Medicaid Services ("CMS") announced that states can soon begin applying for waivers to expand treatment capacity for serious mental health issues. Health and Human Services Secretary Alex Azar highlighted the effectiveness of waivers for substance abuse treatment citing Virginia as an example. Virginia received approval for a waiver in 2016 and subsequently saw a 39 percent decrease in opioid-related emergency room visits.

Waivers will allow states to lift the "IMD exclusion." The IMD exclusion prohibits the use of federal Medicaid funds to pay for substance use disorder treatment for patients age 21-64 at inpatient mental health treatment facilities that have more than 16 beds. It also prohibits Medicaid beneficiaries who are receiving treatment at IMDs from receiving additional Medicaid-covered care elsewhere. Many experts state the IMD exclusion is a large hindrance to treatment for low income people.

HEALTH-RELATED BILLS INTRODUCED THIS WEEK

Sen. Bill Cassidy (R-LA) introduced S. 3619 to amend Title XVIII of the Social Security Act to restructure the payment adjustment for non-emergency ESRD ambulance transports under the Medicare program.

Rep. Erik Paulsen (R-MN) introduced H.R. 7122 to amend Title III of the Public Health Service Act and Titles XI and XVIII of the Social Security Act to accelerate the adoption of value-based payment and delivery arrangements among health care stakeholders intended to coordinate care, improve patient outcomes, share accountability or lower costs.

Sen. Rand Paul (R-KY) introduced S. 3610, known as the Medicare Patient Empowerment Act of 2018, to amend Title XVIII of the Social Security Act to establish a Medicare payment option for patients and eligible professionals to freely contract, without penalty, for Medicare fee-for-service items and services while allowing Medicare beneficiaries to use their Medicare benefits.

NEXT WEEK IN WASHINGTON

Congress is out next week for Thanksgiving. The House and Senate return the week of November 26 and will have a number of items to deal with before Congress adjourns. Lawmakers will have to focus on funding the government, which expires on December 7, 2018.

THIS WEEK IN WASHINGTON IN HISTORY

1902, 116 years ago this week: A cartoon appears in the Washington Star, prompting the "teddy bear craze," after President Teddy Roosevelt refused to kill a captive bear tied up for him to shoot during a hunting trip to Mississippi.

1969, 49 years ago this week: Anti-war protesters stage a symbolic March Against Death in Washington, D.C. The march drew over 45,000 participants, beginning at Arlington National Cemetery and continuing past the White House, and lasted for two days and nights.

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