October 17, 2017

NC Rural Center's

Dispatches from DC

Health Care

Affordable Care Act (ACA)

ACA Open Enrollment for 2018 is from November 1 - December 15, 2017. The NC Navigator Consortium led by Legal Aid of North Carolina is working statewide to enroll individual participants. North Carolina has about 150 navigators who have completed a 40-hour training program to help enrollees sign up on the federal website, since there is not a North Carolina state exchange. The deadline is fast approaching since the signup season has been reduced to 45 days from three months in previous years.

On October 12, the White House announced they would not make the cost-sharing reduction (CSR) payments to the insurance companies to offset the cost of reducing out-of-pocket expenses like deductibles and co-payments for low-income customers, not qualifying for Medicaid. Insurance companies were told to absorb more of the patient's bill and they would be repaid with the CSR payments. The next monthly installment is due October 18. A lower federal court ruled that the payments were unconstitutional and should come through the annual federal appropriations process and not an automatic payment from the White House. To date, both the Obama and Trump Administrations have been making the payments. Because insurers had to submit their rate agreements to state and federal insurance officials in September, those in 34 states have 2018 contracts that can be terminated based on the White House ending the payments. The ACA law requires insurers to continue offering the lower deductibles and copays, even if the government does not provide the funding. So, insurance companies will have little choice but to implement higher premiums rates on everyone else, while the federal government will have to pick up a larger portion of the costs through the tax credits. Reports indicate that more than 300,000 ACA customers in North Carolina have policies that qualify for the cost-sharing reductions.

Importantly, focus turns to Senators Lamar Alexander (R-TN) and Patty Murray (D-WA) and the Senate Health, Education, Labor and Pensions Committee that is drafting a bipartisan bill that will stabilize the individual health insurance marketplace by including the cost-sharing reduction payments for the insurance companies, expanded state flexibility for innovation waivers, and reauthorization of the federal reinsurance program that expired in 2016. The action by the White House to end the CSR payments is pushing the Senators to complete their negotiations and the Congress to act before the end of October. In late September, the Senate leadership did not have enough votes to move the Graham-Cassidy plan to block grant ACA funding to the states.

Of particular concern is whether the essential benefits package requirement will be altered, whether the prohibition on lifetime spending caps or discrimination based on pre-existing conditions will be changed, and whether the Navigator program will be continued and funded. If there are an increasing number of counties with no ACA exchange insurance provider, then committee members warned they would have no choice but to consider a public option such as allowing people to buy into Medicare.

In early October, President Trump also signed an executive order that stopped requiring many employers to offer birth-control coverage, exempting companies that might object to providing birth control on moral or religious grounds. The order allows employers to choose which contraceptive methods they will not cover. Lawsuits have been filed to oppose the order. The ACA required employers to cover birth control and an array of other preventive health services with no out-of-pocket costs.

Another October executive order instructs the Department of Health and Human Services to promulgate rules allowing association health plans to be sold across state lines, without meeting each state's regulations. The association plans wouldn't require coverage for pre-existing conditions or the 10 essential benefits set forth in ACA such as pregnancy and new born care, hospitalization, mental health and substance abuse services, and rehabilitation. The order also would allow short-term insurance plans to be sold; these are currently prohibited by ACA. Experts predict that healthier people would buy these less expensive plans, which would drive up insurance costs for those remaining in ACA exchanges.

The only way to counter these executive orders is for Congress to act to settle these issues and fix the Affordable Care Act. The Trump White House is forcing them in that direction. Meanwhile, some states, including North Carolina, have sued to stop the White House move not to pay the cost-sharing reduction payments and many insurance companies will seek an estimated 20 percent increase in premium rates to participate in the ACA exchanges.

Children's Health insurance

The **Children's Health Insurance Program (CHIP)** authorization expired September 30 and this must-pass bill may give lawmakers the legislative vehicle they need to make changes to the Affordable Care Act and approve other health care program reauthorizations that also have expired.

On October 4, the Senate Finance Committee approved the Keeping Kids' Insurance Dependable and Secure (KIDS) Act, S. 1827, a bipartisan bill to ensure stability for vulnerable children by extending funding for the Children's Health Insurance Program (CHIP) through FY 2022. Sponsored by Senators Orrin Hatch (R-UT) and Ron Wyden (D-OR), the bill also includes state flexibility and will move the program's funding closer to its original federal-state partnership.

While the Senate plan would continue CHIP funding for the next five years, the federal government's contribution to the formula would change. The KIDS Act proposes to phase out a higher match that was added onto CHIP under the Affordable Care Act and maintained in its last approval, the Medicare Access and CHIP Reauthorization Act. The CHIP match was boosted by 23 percent in federal funding through 2019. That jump increased the federal contribution to about 93 percent, according to the Centers for Medicare & Medicaid Services.

The Senate Finance bill would leave that match rate intact until 2019, as the ACA required, but would scale it back to an 11.5 percent increased match for fiscal 2020 and move to the traditional federal-state share in fiscal 2021 and 2022. Traditionally, the federal government pays on average 71 percent nationally for CHIP, according to the CMS, higher than Medicaid to try to encourage states to expand children's coverage.

The House Energy and Commerce Committee also approved its bill on October 4, but the vote was very partisan because Democrats objected to the offsets to pay for the program. House Republican leaders have agreed to delay bringing the bill to the floor in order to work with Democrats to seek an agreement on offsets. States will start exhausting existing funds by December and be out of funds by March so the reauthorization needs to happen.

Rural Hospitals

340B Program: The House Energy & Commerce Committee is investigating the 340B program and has warned the Centers for Medicare & Medicaid Services (CMS) to postpone cuts in the Medicare program that allows hospitals to obtain discounted drugs. The program requires pharmaceutical manufactures to provide outpatient drugs to eligible health care organizations at significantly reduced prices. A proposed rule issued July 20 cut outpatient reimbursement for hospitals that use the 340B program to obtain discounted medications for outpatient care; it is set to go into effect January 1. The 340B program has been a very important part of the funding formula for rural hospitals providing services to low-income and rural patients.

Telehealth: The 21st Century Cures Act approved in 2016 requires the Medicare Payment Advisory Commission to report by March 2018 on the extent to which Medicare fee-for-service and commercial plans cover telehealth services. The most commonly covered services are mental health services and basic evaluation and management.

Uncompensated Care: Lawmakers anticipated that the Affordable Care Act would result in a major reduction in uncompensated care since more Americans would have health insurance and be proactive with prevention health care rather than waiting until things got bad and going to the emergency department for treatment. So, they planned to progressively reduce federal Medicaid disproportionate share hospital (DSH) allocation payments. Instead Congress has delayed these DSH cuts; the first year of implementation would be FY 2018 where hospitals would face a $2 billion cut. Hospitals that serve large numbers of poor and uninsured patients receive about $12 billion each year in funds under the current allotment to offset uncompensated care costs. We expect Congress to delay the FY 2018 implementation as well.

Opioids

The Senate Health, Education, Labor, and Pensions Committee held a hearing on October 5 to review the federal response to the opioid crisis. The director of the National Institutes of Health (NIH) urged the development of alternative ways to address pain and reported a new interagency partnership focusing on managing pain for veterans and service members without prescription drugs. The collaboration between NIH, Defense, and Veterans will invest $81 million over six years to develop, implement, and test nondrug alternatives. Review the testimony and hearing on the committee's website.

Community Health Centers

The House Energy & Commerce Committee has approved a bill to reauthorize the community health center program. Although the program has enjoyed bipartisan support in the past, Democrats opposed the bill because of the funding offsets. The program expired September 30. House leaders are seeking a bipartisan compromise before bringing the bill to the floor.

Tax Reform

Congress has taken its first steps toward a $1.5 trillion tax reform package. On October 5, the House of Representatives adopted its FY 2018 budget resolution, on a partisan vote. The Senate will consider its budget resolution the week of October 16. Once a House-Senate budget resolution conference report is adopted by Congress, the stage will be set for tax reform to be considered by Congress by a simple majority in both chambers. The Senate will only require 51 votes rather than 60, to avoid a Democratic filibuster.

During Senate Budget Committee deliberations, an amendment was offered by Senator Tim Kaine (D-VA) and adopted by a vote of 12-11 to prevent cutting Medicare, Medicaid, or Social Security to help pay for tax cuts.

FY 2018 Federal Appropriations

Hurricane Recovery

The House of Representatives approved another emergency supplement of $36.5 billion on October 12 by a vote of 353-69. H.R. 2266 provides hurricane recovery funding for Texas, Florida, Georgia, Puerto Rico, and the U.S. Virgin Islands. The measure will provide funding for FEMA, the National Flood Insurance Program, wildfire relief, and give Puerto Rico access to a $4.9 billion low interest Treasury loan to prevent their government from shutting down on October 30.

The package passed, but did receive some opposition. Some critics opposed the package because it did not include HUD CDBG funds for rebuilding. These were not included because the White House says the agency has not yet allocated its funds from the supplemental spending bill approved September 8. Others opposed the measure because the bill did not require funding offsets so it added to the federal deficit, and/or it did not contain reforms to the national flood insurance program that is on a short-term extension until December 8.

North Carolina Representatives Ted Budd, Virginia Foxx, George Holding, Richard Hudson, Walter Jones, Mark Meadows, Robert Pittenger, David Rouzer, and Mark Walker were among the 69 members who voted against the bill. It will come before the Senate the week of October 16.

FY 2018 Annual Appropriations

The House and Senate appropriations leaders are in discussions on how to complete the FY 2018 appropriations process before the December 8 deadline when the current Continuing Resolution expires.

Offshore Drilling

The House Natural Resources Committee held a hearing on October 11 to discuss draft legislation that would amend the Outer Continental Shelf Lands Act to distribute revenues from oil and gas leasing to the coastal states.