Federal Legislative Update
October 17, 2017

As Congress continues to work though the fall months, the path forward on many of the health and human services legislation remains very unclear. Health care continues to be prominent. Below are short updates on key Trump administrative actions and the status of a few key health and human services issues.

As widely reported, the Administration moved last week on two provisions related to the *Affordable Care Act*. A high-level summary of those actions follow first.

Association Health Plans

The order itself is subject to the drafting of implementing regulations and will likely be subject to future state lawsuits.

Under current law, an association of small businesses (such as a group of law firms, or any other group representing a particular group of employees) can band together and market insurance to members. Currently, association health plans must abide by all the consumer protections of the *Affordable Care Act*. They are also subject to the insurance laws and rules of the state in which they are sold.

Under the executive order, depending on what the final regulations say, an association could exempt itself from numerous ACA requirements (such as essential health benefits, no pre-existing condition exclusions), and choose any state to be its regulator, regardless of where its members reside.

Under this arrangement, health care coverage within association plans could be bare-bones and the association could shop for a state that doesn't require coverage of prescription drugs or cancer treatments or other types of coverage mandated by the ACA. These plans would be more 'affordable' because they would not have the range of benefits or protections of the ACA.

When the pending regulations are drafted and implemented, some state insurance commissioners and attorneys general will likely argue that they have lost the ability to regulate insurance products within their state.

Cost Sharing Reduction Payments

The Administration has immediately stopped funding the monthly Cost Sharing Reduction (CSR) payments to insurers. Those payments help their low- to moderate income subscribers pay their co-pays and deductibles.

The $7 billion annual program has been challenged in the courts. Insurers have stated that the loss of the CSRs will greatly disrupt the individual marketplace and will lead to double-digit increases in premiums. Ironically, given the interaction between increased premiums and marketplace subsidies to pay for them, the Congressional Budget Office has estimated that it will indeed cost the federal government more to help lower-income subscribers (between 250%-400% of poverty) pay their premiums (an estimated 20% increase for 2018 in individual market plans) than paying for the co-pays and deductibles under the CSRs. More moderate income individuals will likely see their premiums skyrocket and insurers may indeed pull out of some states due to the tremendous uncertainty of the federal commitment to them and their subscribers.

The Senate Health, Education, Labor and Pensions Committee has been working on a bipartisan approach to fund the CSRs. It was derailed during the Cassidy-Graham ACA repeal effort, but it has been revived. Given the intense politics surrounding the issue and the GOP's assertion that CSR relief must be accompanied by increased state administrative flexibility under the ACA, it is unclear if a CSR fix will pass the full Senate (the bill has not been released). It is even less clear if the House will adopt such a measure because it would be an immediate and very visible cost to the federal government. ACA opponents see the defunding of CSRs as another way to dismantle the ACA.

Children's Health Insurance Program

With GOP congressional leaders devoting much time and attention to ACA repeal efforts, the House and Senate have been slow to act on a reauthorization of the Children's Health Insurance Program (CHIP). While program funding technically ended on September 30, the U.S. Department of Health and Human Services projects that states generally have sufficient CHIP funds to continue their programs through at least the first quarter of federal fiscal year (FFY) 2018.

In the meantime, the House Energy and Commerce Committee and the Senate Finance Committee have adopted five-year CHIP renewal bills that would gradually phase out the ACA's higher federal contribution for CHIP coverage. Under the legislation, the current two-year, 23 percentage point boost in the federal contribution for each state would continue as planned though fiscal year 2019. The bills would then give states a one-year transition by providing an 11.5-percentage-point increase in the matching rate in 2020, before returning the matching rate to its basic 65% federal match in 2021.

While the policies in the legislation are very similar, the Senate and House have yet to agree on how to pay for CHIP. Given the bipartisan nature of the program, it is expected that those negotiations will lead to a reauthorization later this year.

Home Visiting Program Reauthorization

At the same time the House and Senate began working on CHIP, they turned their attention to reauthorizing the home visiting program, known federally as the Maternal, Infant, and Early Childhood Home Visiting (MIECHV) program. Currently authorized at $400 million annually, the House Ways and Means Committee marked up and passed the *Increasing Opportunity and Success for Children and Parents Though Evidence-Based Home Visiting Act* (H.R. 2824) on September 21 and then sent it to the House floor where it passed by a vote of 214-209 on September 26. Unlike previous reauthorizations, both votes were partisan, given that the legislation would require for the first time a 30 percent state or local match beginning in federal fiscal year 2020 that could be cash or in-kind. The match would increase to 50/50 in fiscal year 2022. The bill would be funded by eliminating Social Security or Supplemental Security Income (SSI) benefits to individuals subject to an arrest warrant for an alleged parole violation.

The Senate's version does not have the matching requirement nor the denial of Social Security or SSI benefits. The *Strong Families Act* (S. 1829) is bipartisan, with 16 Senators as cosponsors. The Senate Finance Committee has not yet acted on the bill.

Community Health Center Program Funded by Terminating Public Health Grants

Seventy percent of the funding received by the Community Health Center (CHC) program expired on September 30. Congress has always been bipartisan in supporting its funding. While the spend out patterns are allowing CHC's to continue to operate in the short term, at Least $3.6 billion annually is necessary to continue services. The House Energy and Commerce Committee has passed on a partisan vote the *Community Health And Medical Professionals Improve Our Nation Act of 2017* (CHAMPION Act; H.R.3922), but has used as the main funding source all funds currently used for the Prevention and Public Health Fund which supports state and local health departments and other entities to improve their communities' health.

The bill has not gone to the House floor. The bipartisan Senate counterpart – the *Community Health Investment, Modernization, and Excellence (CHIME) Act* does not yet identify a funding source.

Child Welfare Reform

The House not acted on the *Family First Prevention Services Act* (FFPSA, HR 253). The measure is unchanged from last year and was introduced as a placeholder for future action. Under the legislation, a new federal financial match would be provided for a limited set of prevention services aimed at keeping at-risk children with their families instead of placing them in foster care. The measure also would place new stringent requirements on group homes and other congregate care facilities in order to reduce their use.

There are reports that there are discussions between Speaker Paul Ryan's (R-WI) office and Minority Leader Nancy Pelosi's staff about reviving the measure as introduced. Groups such as the state, counties and advocates in California and entities in other states have weighed in to urge, once again, that Congress adopt a series of improvements to the measure to address identified concerns with the bill.

A companion FFPSA bill has not yet been introduced in the Senate.

Federal Funding for Discretionary Programs

The current continuing resolution funding the federal government operations and discretionary programs expires December 8. It is not clear how Congress will find a path forward at this stage. Some Democrats are beginning to consider not approving a spending bill, given their deep concerns about the Trump administration's recent executive efforts to undermine the ACA. Given the deficit hawks within the GOP ranks who opposed the current continuing resolution which does not contain deep cuts and more moderate Republicans who balk at such a move, there may be the likelihood of a shutdown before the holidays if Democrats do not join moderate Republicans in continuing funding.