

Health Care Update Fall 2017

While there remains significant uncertainty in the fate of **ACA repeal and replace**, the Senate Finance Committee, the Senate HELP Committee and the House Energy and Commerce Committee had a productive fall with several bipartisan hearings. This was a major shift from the past several years where bipartisan work on healthcare was largely stagnant.

Of special interest, on October 11, the House Energy and Commerce Committee held a hearing to examine how entities utilize the **340B Drug Pricing Program**. The purpose of the hearing was to investigate if the 340B Program needs more reporting requirements to demonstrate where the savings from the program are spent. Many committee members, particularly in the majority, believe the statute is silent on how to report the savings and how the money is earmarked and spent. The consensus of the committee was that 340B is a worthy program, but the majority raised concern that it may be a profit stream that is not regulated, and it may be driving up costs for all patients.

In addition to the oversight hearing, CMS issued its final rule on November 1 announcing that it is cutting Medicare Part B reimbursement for 340B drugs by \$1.6 billion. What this means is it will finalize the proposed rule changes to reduce Medicare Part B reimbursement for 340B drugs paid to hospitals and ambulatory surgical centers. The rule is scheduled to go in effect January 1, 2018.

The Finance Committee met on September 7 to discuss **CHIP funding reauthorization** and again on September 12 to examine the growing costs of health care. Additionally, the Senate HELP Committee held several hearings on stabilizing the individual market.

The House Energy and Commerce Committee and The Senate Finance Committee then both marked up the Children's Health Insurance Program (CHIP) extension through 2022 along with Community Health Centers and other "extenders". While the language in the House and Senate are identical regarding CHIP funding, the House efforts have broken down due to partisan disagreement regarding offsets. At this point, December is the most likely month for these bills to move in a larger package.

The Senate HELP Committee also held bipartisan hearings focusing on **stabilizing the individual markets**. The issues the committee focused on were narrow in scope and included Congressional approval of continued temporary funding for CSRs and giving states more flexibility through Section 1332 reforms to

give states the flexibility and the authority to offer more choice.

After a pause during debate over the Graham-Cassidy-Heller-Johnson bill, Senators Lamar Alexander (R-TN) and Senator Patty Murray (D-WA) resumed negotiations on ways to shore up the market and limit premium increases. They struck a deal following President Trump's executive order to end the **CSRs**. Their legislation seems to have bipartisan support, but it is not entirely clear where President Trump stands on signing the bill. He seems most interested in pursuing a deal on repeal and replace. Action in the Senate is unlikely without his support and it is unclear how the majority might move forward on ACA repeal and replace. Relatedly, Senate Republicans are now including the repeal of ACA individual mandate in their tax-reform bill.

Senator Orrin Hatch (R-UT) and Congressman Kevin Brady (R-TX) recently introduced a similar stabilization bill to the Alexander/Murray deal which extends CSRs but also eliminates the individual and employer mandate and strengthens HSAs.

Three ACA "**tax extenders**" provisions need to be addressed by the end of the year: a fee on health care providers, a tax on the sale of medical devices which take effect in 2018, and the 40 percent excise tax the "Cadillac tax" in 2020. Congress has already delayed the three provisions since the Affordable Care Act was enacted. Delays to these provisions could be tacked on to a tax extenders bill or added on an omnibus/CR that is expected at the end of the year.