

HALL RENDER'S THE WEEK IN WASHINGTON - JANUARY 13, 2020

Welcome to the new The Week in Washington! This newsletter will publish on Monday to review the past week's news for Congress and the administration, as well as provide a preview for the upcoming week.

HEALTH CARE ON THE HILL - WHAT TO EXPECT IN 2020

Since 2020 is an election year, Congress traditionally does not take up much in the way of controversial legislation. However, with health care polling as a top issue among voters, lawmakers are feeling political pressure to deliver legislative action on some health care issues. There is a looming health care to-do list, yet a very narrow window to make progress. Last year's spending deal extended several health programs, known as Medicare extenders, through May 22, 2020. This May deadline was intentionally created to pressure Congress for a Memorial Day deal on a comprehensive health care package that includes items such as the aforementioned Medicare extenders, prescription drug pricing and surprise medical billing.

For surprise billing, the two House committees working on the issue did not make progress over the holiday break and continue to appear on opposite ends of the issue. In December, Senate Health, Education, Labor, and Pensions ("HELP") Chairman Lamar Alexander (R-TN) and the House Energy & Commerce Committee negotiated a surprise billing fix. The measure would set benchmark payment rates and create a baseball-style arbitration process that would allow providers to appeal claims over \$750. However, despite this bipartisan, bicameral agreement, the legislation was not put in the year-end spending package because lawmakers could not come to a consensus on the proper mechanism to address the problem.

Furthermore, other committees with jurisdiction over health care have also become engaged in the debate. The House Ways and Means Committee leadership is still developing a proposal but has indicated the approach will be different from the HELP/Energy and Commerce package. Ways and Means Ranking member Kevin Brady (R-TX) said he and Chairman Richie Neal (D-MA) want their own bill to avoid "government rate-setting" and to build broad agreement on the issue. While there is not currently an agreed-upon mechanism, supporters still hope that something can be passed this year. Many congressional leaders, such as Chairman Alexander and House Speaker Nancy Pelosi (D-CA), have stressed that surprise billing is the top 2020 priority and that they will find a way to get it done. However, many stakeholders are skeptical that House and Senate leadership will want to force their members to vote on legislation that divides powerful industries in the middle of a campaign season.

Prescription drug pricing legislation has an even lower probability of passing than surprise billing. Neither the prescription drug bill from the House majority nor the bipartisan proposal in the Senate Finance Committee has a path forward in a divided Congress. However, provisions in the measures will provide starting points for negotiations on drug pricing. The House majority is insisting that any major drug price deal authorize the government to directly negotiate drug prices, which is a non-starter for many Senate Republicans. Come May, Congress is likely to pass another Medicare extenders packaged and table surprise billing and prescription drug pricing until after the election.

NEW VERTICAL MERGER GUIDELINES RELEASED BY THE DOJ AND THE FTC

Last Friday, the Department of Justice and Federal Trade Commission issued a proposal for new guidelines governing vertical mergers, or combinations of companies that aren't in direct competition but are in the same supply chain. The proposed new guidelines cover topics including how vertical mergers can harm competition and how those harms will be analyzed, as well as the competitive benefits attributed to such tie-ups. Comments on the draft guidelines can be emailed to verticalmergerguidelines@ftc.gov and verticalmergerguidelines@usdoj.gov and must be received no later than February 11, 2020.

Hall Render's antitrust team will be releasing a more comprehensive analysis on this proposal soon.

HEALTH-RELATED BILLS INTRODUCED THIS WEEK

Rep. Gregory Murphy (R-NC) introduced [H.R. 5582](#) to amend Titles XIX and XXI of the Social Security Act to require hospitals and certain other participating providers under Medicaid or the Children's Health Insurance Program to disclose the provider's policy on parental consent for the provision, withdrawal or denial of life-sustaining treatment for minors.

Rep. Lauren Underwood (D-IL) introduced **H.R. 5575**, the Primary and Behavioral Health Care Access Act.

Sen. Cory Booker (D-NJ) introduced **S. 3169** to direct the Secretary of Health and Human Services to carry out a Health in All Policies Demonstration Project.

Sen. Elizabeth Warren (D-MA) introduced **S. 3163** to authorize the collection of supplemental payments to increase congressional investments in medical research.

THE WEEK AHEAD

- On Tuesday, the House Energy and Commerce Oversight and Investigations subcommittee holds a hearing on "A Public Health Emergency: State Efforts to Curb the Opioid Crisis."
- On Wednesday, the House Energy and Commerce Health subcommittee holds a hearing on "Cannabis Policies for the New Decade." The hearing will consider a half-dozen marijuana bills, ranging from medical research proposals to comprehensive legalization blueprints.
- Starting today, the 38th Annual J.P. Morgan Healthcare Conference will gather health care officials, investors, executives and more than 9,000 other attendees in San Francisco to discuss a wide variety of health care priorities such as innovative technology, data privacy and security, price transparency and data sharing.

CONGRESSIONAL FUN FACT: HILL OF BEANS

Since 1904, the House of Representatives cafeterias have served bean soup on a daily basis with one exception. Upon finding that it had been eliminated from the menu on one hot day, Rep. Joseph Cannon (R-IL), who served as Speaker from 1903 to 1911, declared that bean soup should be served every day regardless of the weather... and it still is.

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