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Federal and National Issues

Legislative Issues

House Panel Looks at Bills to Improve the Individual Market

On Wednesday, the House Energy and Commerce Subcommittee on Health held the second [hearing](#) of a three-part series, "Strengthening our Health Care System: Legislation to Lower Consumer Costs and Expand Access."

The focus of the hearing was three bills aimed at improving the individual market by funding state-based reinsurance programs and state-based exchanges as well as reinstating navigator requirements and grant funding.

Why this matters: if the partisan divisions on the ACA can be set aside – **a big if** – a deal to stabilize the ACA that includes additional federal funding for subsidies in exchange for more state flexibility could emerge.

The bills examined Wednesday included:

- The “**State Health Care Premium Reduction Act**” ([H.R. 1425](#)) would provide \$10 billion annually to support state reinsurance programs and other approaches to making health care more affordable.

- The “**Expand Navigators’ Resources for Outreach, Learning, and Longevity Act**” ([H.R. 1386](#)) would provide \$100 million annually for the Navigator Program to support outreach and education activities focusing on the annual ACA Open Enrollment Period.
- The “**State Allowance for a Variety of Exchanges Act**” ([H.R. 1385](#)) would provide \$200 million to support the planning and establishment of state-based Health Insurance Exchanges in states that currently are participating in the federally-facilitated Exchange

Senate, House Committees Continue Examination of Drug Prices

Last week two Congressional committees held hearings into prescription drug pricing, exploring solutions to address a top concern for many Americans.

The **Senate Aging Committee** held a two-day series of hearings focused on personal stories from patients and possible solutions that would make prescriptions more affordable for Medicare beneficiaries as well as all Americans.

- The first [hearing](#) on highlighted **challenges faced in paying out-of-pocket costs** for prescriptions, especially for life-threatening conditions. Witnesses also expressed their support for reforms such as the CREATES Act, allowing Medicare to negotiate drug prices, allowing safe importation of drugs from other countries and placing a monthly dollar amount cap on out of pocket drug costs.
- The second [hearing](#) featured policy and academic experts who outlined a variety of **factors that go into rising drug prices** as well as evidence-based perspectives on increasing transparency. Topics highlighted include increasing price transparency for patients, real-time benefit checks, moving to a value-based pricing system, eliminating PBM rebates, reforming patent law and importation of drugs from other countries.

Meanwhile, the **House Ways and Means Subcommittee on Health** held a [hearing](#) examining ways to lower prescription drug prices and reduce out-of-pocket costs paid by Medicare beneficiaries by increasing competition.

- Committee members heard from patient advocates as well as policy and academic experts in the field of pharmaceutical pricing, who touched on a variety of issues, including patents, rebates, direct-to-consumer (DTC) advertising, and the role of pharmacy benefit managers (PBMs) in the supply chain. Solutions proposed by panelists included giving Medicare the power to negotiate prices and incentivizing innovation by paying more for drugs that provide greater value.

Highmark joins [AHIP](#) and [BCBSA](#) in working with the [Campaign for Sustainable Rx Pricing](#), to promote bipartisan, market-based solutions to lower drug prices.

Senators Introduce Bipartisan Bill to Repeal Cadillac Tax

On Wednesday, Senators Martin Heinrich (D-NM) and Mike Rounds (R-SD) announced the introduction of bipartisan legislation ([S. 684](#)) to repeal the ACA Cadillac Tax on employer-provided health coverage.

Why this matters: 180 million Americans get their coverage through [employer-sponsored coverage](#).

- **The issue has lots of support:** the bill was introduced in the Senate with more than 20 original cosponsors. A [companion bill](#) introduced in the House in January, has been

cosponsored by more than half of all House members. Last week a diverse group of more than 500 organizations sent a [letter](#) to members of Congress urging them to support the repeal of this tax.

Highmark, through [AHIP](#) and [BCBSA](#), and the [U.S. Chamber of Commerce](#), supports repeal of the Cadillac Tax via a coalition called the [“Alliance to Fight the 40”](#), which has launched a grassroots campaign supporting repeal.

Judiciary Committee Examines Health Consolidation and Competition

The House Judiciary Subcommittee on Antitrust, Commercial and Administrative Law held a [hearing](#) Thursday, examining the **negative impact of consolidation in health care markets**, particularly in the hospital industry, and monopoly pricing by pharmaceutical companies.

- **Martin Gaynor, professor of economics and health policy at Carnegie Mellon University**, testified that there have been nearly 1,600 hospital mergers in the past twenty years, including more than 450 since 2012. He expressed concern that, due to this consolidation, a majority of local areas are now dominated by one large, powerful health system, resulting in higher prices.
- “While various forms of affiliation are being pursued, mergers and acquisitions can be an effective means for making progress toward meeting the aims of value-based population health,” the **American Hospital Association (AHA)** said in a [statement](#) submitted for the hearing. The AHA also cited finding of studies that show hospital mergers do not lead to a spike in revenues that some claim are the sole motivation for mergers.
- Subcommittee **Chairman David Cicilline (D-RI) voiced concern about the monopoly power of drug makers and the impact of consolidation, in both the hospital and health insurance markets**, on the quality and affordability of care. **Full Committee Chairman Jerrold Nadler (D-NY)** raised concerns about anti-competitive practices in the pharmaceutical industry.
- Meanwhile, **Ranking Member Doug Collins (R-GA) expressed concern that rural communities have been hurt the most by hospital consolidation**, sometimes resulting in full or partial closures, limiting access to care, and increasing travel times. Collins also suggested that pharmacy benefit managers (PBMs) hold “a great deal of power” and that this is harmful to community pharmacists.
 - All three legislators expressed **support for the CREATES Act**, stating that effective antitrust enforcement takes too long to provide relief to consumers from the anti-competitive behavior of drug makers.

Why this matters

- In a variety of industries, the Federal Trade Commission advocates for policies that promote competition. Competition typically improves consumer welfare through lower prices, expanded output, better service and more innovation.
- There continues to be extensive disagreement and debate on whether health care markets are different than other markets. Some claim that to achieve better outcomes and lower costs, health care markets need more cooperation, not more competition.
- The debate will continue to find appropriate mechanisms for determining whether consolidation or collaboration, on balance, is more likely to result in higher costs without corresponding improvements in quality of care.

Regulatory Issues

CMS Seeks Comment on Purchasing Health Insurance Across State Lines

Last week the Centers for Medicare & Medicaid Services (CMS) released a [request for information \(RFI\)](#) soliciting recommendations on how to eliminate barriers to and enhance health insurance issuers' ability to sell individual health insurance coverage across state lines, primarily pursuant to section 1333 of the Affordable Care Act (ACA) regarding Health Care Choice Compacts.

Background

- This ACA provision allows two or more states to enter into a Health Care Choice Compact to facilitate the sale of **individual market** qualified health plans in each other's states, as long as the plans adhere to specific rules.
- To date, no regulations have been issued and no state has expressed an interest in creating a Health Care Choice Compact. Five states have enacted separate legislation authorizing the sale of out-of-state insurance; however, no out-of-state insurers have entered into these states.
- Historically, there have been **many barriers to achieving interstate sales of individual insurance plans**, including:
 - The complex and time intensive process of **building a provider network**;
 - The possible **segmentation of the risk pool**, resulting in higher costs and premiums in certain markets; and
 - State regulators' **reluctance to have standards enforced by regulators in another state** and concern that allowing interstate plans would result in a **"race to the bottom,"** with insurers constructing plans in the state with the fewest regulations.

Why this matters

The RFI is being issued in response to President Trump's executive order from October 2017, which led to new rules regarding the expansion of short-term plans, association health plans, and health reimbursement arrangements. **As such, this RFI is likely the first step toward proposed regulations.**

Comments are due by May 5, 2019.

State Issues

Delaware

Regulatory

Department of Insurance Proposes a Non Discrimination Reimbursement Regulation for Physical Therapists

The Delaware Department of Insurance (DOI) has issued a proposed regulation which would:

- Require insurers to provide reimbursement for any covered services that are provided by physical therapists within the scope of their license;
- Prohibit the imposition of limits on physical therapy visits, specifically, for the treatment of back pain; and
- Consider any provision that classifies physical therapy as "maintenance" or "medically unnecessary" as an unreasonable and discriminatory barrier to physical therapy services and care.

The proposed regulation, if it becomes final, will become effective on March 9, 2019, although comments are not due until April 1, 2019.

West Virginia

Legislative

West Virginia Regular Legislative Session Draws to a Close; Budget, Education Issues Require Special Session

The West Virginia Legislature concluded its 2019 regular session at midnight on March 10. However, a special session is already in the works since the Legislature passed an incomplete draft budget and further discussions are required to consider education funding and pay raise reform for teachers and school service personnel.

Prior Authorization, PBM Bills Signed by Governor Jim Justice, Other Legislation Pending

Governor Jim Justice signed House Bill 2351 into law on March 1. However, the bill was made effective from passage, so technically it was law in West Virginia as of February 20, the date on which legislative action was completed. Here is the [link](#) to the final Enrolled version of House Bill 2351.

Summary of House Bill 2315

- Places restrictions on payers' – including Medicaid Managed Care Organizations (MCOs) and the West Virginia Public Employees Insurance Association (PEIA) – ability to use prior authorization.

Key provisions:

- Requires payers to issue a prior authorization for all services related to a specific medical condition or episode of care;
- Requires a response from a carrier within two-days for emergent conditions and a response within seven-days for standard prior authorization requests;
- Prohibits prior authorizations for prescriptions written at discharge and for three days or less, provided the cost of the medication does not exceed \$5,000 per day;
- Requires payers to exempt providers from prior authorization for specific procedures or services for a period of six months if a provider has a 100% approval rating (an average of 30 procedures) over a six month period (Gold Card); and
- Requires insurers currently performing electronic prior authorizations to implement these policies by January 1, 2020 and to make available a comprehensive list of all procedures, devices, services, etc. subject to prior authorization disclosed on their forms.

Why this matters

The new law will restrict a health insurers' ability to conduct utilization management via prior authorization, which could lead to higher health care costs for consumers and unnecessary care.

Senate Bill 489, PBM Regulations, Pharmacy Audit Integrity Act

- **Summary** – Proposes to require the licensure and regulation of Pharmaceutical Benefit Managers (PBMs) to occur under the auspices of the Office of the Insurance Commissioner, limit the abilities of PBMs to audit pharmacies and to prohibit PBMs from discriminating in price against 340(b) pharmacies.
- **Status** – Signed on March 1, however became effective upon passage – completed February 20.

Why this matters

Senate Bill 489 would require the licensure and regulation of PBMs to occur under the auspices of the Office of the Insurance Commissioner, limit the abilities of PBMs to audit pharmacies and to prohibit PBMs from discriminating in price against 340(b) pharmacies.

Here is the [link](#) to the final Enrolled version of Senate Bill 489.

The following bills are pending for signing by Governor Justice:

Senate Bill 310, Dental Non-Covered Services Restrictions

- **Summary** – Would prohibit dental plans from requiring discounts on non-covered services, which negatively impacts consumers.
- **Status** – Pending signing by Governor Justice.

Why this matters

Under Senate Bill 310, consumers are not afforded any benefits and would end up paying more for services. United Concordia Dental complies with similar laws passed in other states, however, our participating provider agreements with dentists have allowed for the voluntary acceptance or opt-in of the discounted rates for such services.

Highmark West Virginia has secured a commitment from the West Virginia Dental Association (WVDA) to issue a letter indicating that the intent of the legislation is to not impact voluntary agreements between health plans and dentists for the provision of non-covered services on a discounted basis. The WVDA is only seeking to prohibit mandatory contractual provisions requiring dentists to provide discounts for services not covered by a patient's plan in exchange for their inclusion in a health or dental plan's network.

Here is the [link](#) to the final Enrolled version of Senate Bill 310.

At press time the West Virginia Legislature was completing Final Enrolled (final copy) of legislation as well as bill signing. The Highmark Government Affairs staff will provide descriptions and links to these measures in next week's edition of the Weekly Capitol Hill Report:

Senate Bill 318, Medicaid Fraud Unit to Attorney General

- **Summary** – Proposes to transfer the authority for Medicaid Fraud investigation and control from the Department of Health and Human Resources to the Office of the Attorney General.

Senate Bill 369, Generic Rx Code Correction

- **Summary** – Proposes a change to the Pharmacy Practice Act to correct an anomaly in Code requiring pharmacies to share generic prescription savings with patients. The original law was enacted in 1978 and is antiquated to the business of 2019 but a former Attorney General sued a number of chain drug stores over the 1978 law and forced many multimillion dollar settlements. The chains have been seeking a correction in this statute for nearly a decade.

Senate Bill 546, Tax on Certain Acute Care Hospitals

- **Summary** – This new provider tax is dependent on it being authorized by CMS as an approved matching mechanism for Medicaid.

Senate Bill 593, Hospitals to Become Community Outpatient Medical Centers

- **Summary** – Contingent on a favorable determination from CMS but proposes to allow certain critical access hospitals to maintain that designation if they drop emergency department services.

Senate Bill 668, Physician Assistants Scope of Practice

- **Summary** – Proposes to expand the scope of practice for Physicians Assistants in in-patient hospital settings only. This bill represents an agreement between the Physician

Assistants Association, the Board of Medicine and the Hospital Association to ease the in-hospital rights of PAs in an effort to more effectively coordinate care and utilize personnel.

House Bill 2405, Medicaid MCO Tax

- **Summary** – Proposes to create a new tax on Medicaid MCOs for the purpose of generating funds for the program. Modeled after programs already approved by CMS, the MCO tax is anticipated to generate approximately \$40 million annually.

House Bill 2524, Permits Pharmacist Conversions of Certain Refills

- **Summary** – Would permit a pharmacist to dispense emergency prescriptions and to convert others based on dosage.

House Bill 2525, Standing Rx for Smoking Cessation Therapy

- **Summary** – Proposes to authorize the state's Public Health Officer to issue a standing statewide prescription so that individuals may have access to purchase any prescription tobacco cessation therapy they desire directly from a pharmacist.

House Bill 2770, Discount Prescription Cards

- **Summary** – Proposes to limit the abilities of health plans and PBMs to restrict the use of manufacturer discount cards as a means to offset patient co-insurance/deductible costs.

State

The Pennsylvania House of Representatives are in session the week of March 11.

The Delaware General Assembly is in session the week of March 12-14.

The West Virginia Legislature is in session January 9-March 9.

Congress

The U.S. Congress is in session March 11–14 and the U.S. Senate is in session March 15.

Interested in reviewing a copy of a bill(s)? Access the following web sites:

Delaware State Legislation: <http://legis.delaware.gov/>.

Pennsylvania Legislation: www.legis.state.pa.us.

West Virginia Legislation: <http://www.legis.state.wv.us/>

For copies of congressional bills, access the Thomas website – <http://thomas.loc.gov/>.