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Congress Approves Stop-gap Funding Bill; Fate of CSR Funding Unclear
On April 28, Congress approved a one-week continuing resolution (CR) to fund the federal government through May 5. The extension will give Congressional negotiators time to complete an omnibus spending bill to cover the remainder of FY2017. One of the most prominent unresolved issues in the spending debate is funding for the Affordable Care Act’s Cost Sharing Reduction (CSR) subsidies.

Amid concerns that CSR funding will not be included in the final spending bill, the Affordable Coverage Coalition that includes BCBSA, AHIP, the American Academy of Family Physicians, the American Benefits Council, the American Hospital Association, the American Medical Association, the Federation of American Hospitals, and the U.S. Chamber of Commerce, released a statement on Thursday to urge CSR funding for 2017 and 2018 to protect consumers. In addition, the National Governors Association sent a letter to congressional leaders, urging them to “fully fund the cost sharing reductions (CSRs) for FY 2017 through the upcoming continuing resolution and fund CSRs for FY 2018.”

The coalition letter cautions: “Already, many states have seen significant reductions in insurer participation in their individual insurance markets in addition to large increases in unsubsidized premiums. Currently, insurers across the country are developing their rates and deciding whether to participate in the individual marketplaces in 2018. Congress must act immediately to stabilize the marketplaces by providing insurers with the certainty of continued CSR payments.” The Coalition statement responds to concerns about President Trump and others characterizing CSRs as an “insurance company bailout” and indications that Congress may not appropriate funding for CSRs in the final spending bill.

When asked about the appropriations process and funding for cost-sharing reduction (CSR) payments this week, Speaker Ryan stated: “Obviously, CSRs, we’re not doing that. That is not in an appropriation bill. That’s something separate that the Administration does. We’re very, very close on everything else.” Also this week, Politico reported that the Administration has been informing lawmakers that they intend to continue CSR payments. However, Representative Mark Walker (R-NC), Chairman of the Republican Study Committee, later issued a statement suggesting that the administration “making these payments without congressional approval is both clearly illegal and unconstitutional.”

Democrats have indicated that funding CSRs in the bill is their top priority, which is important because the funding bill will have to be bipartisan to pass. However, it is unclear which side will blink if the issue is pushed to the brink of a government shutdown.

Freedom Caucus Endorses Revised Version of AHCA
On Wednesday, April 26 the House Freedom Caucus, a group of conservative House members, issued a statement expressing support for the American Health Care Act (AHCA) as revised by a new amendment developed by Representative Tom MacArthur (R-NJ).

The Freedom Caucus states: “The MacArthur amendment will grant states the ability to repeal cost driving aspects of Obamacare left in place under the original AHCA. While the revised version still does not fully repeal Obamacare, we are prepared to support it to keep our promise to the American people to lower healthcare costs.”
Despite the endorsement, many members of an influential group of moderate House Republicans, the Tuesday Group, have indicated they are opposed to the new language and it remains unclear whether it will produce enough votes to pass. Despite urging from the White House, no vote has been scheduled and House leaders have indicated they will not do so until they are certain they have the votes for passage. Throughout the ACA repeal and replace debates, strong differences between moderate Republicans and conservative Republicans have complicated efforts to reach a compromise that would be supported by a majority of House members.

If the leadership decides they are ready to vote at some point, however, a House floor vote could occur on very short notice. In preparation for a possible House floor vote, House leaders have posted legislative language and a summary of the MacArthur amendment, which would create an option for states to obtain limited waivers from certain ACA standards, including the EHB requirements and certain community rating rules. In addition, language was posted for a new amendment, by Representative Martha McSally (R-AZ), providing that members of Congress and congressional staff would not be exempt from the impact of state waivers proposed by the MacArthur amendment.

Specifically, the MacArthur amendment revises Section 2701 of the Public Health Service Act, regarding the current prohibitions on discriminatory premium rates, to add a new section that would allow states to apply for specific waivers to:

1. Increase the state’s age band ratio on or after the 2018 plan year;
2. Specify its own EHB package for individual or small group markets beginning on or after the 2020 plan year; or
3. Permit the state to vary premiums by health status for policyholders that do not maintain continuous coverage, subject to certain limitations in how the Patient and State Stability funds are used (Section 132 of AHCA) or if a state participates in the invisible risk-sharing program, previously added to the bill. This section appears to begin in the 2018 plan year.

After a state applies for a waiver, the HHS Secretary has 60 days to approve or deny the application; any application that is not denied after 60 days will be deemed approved. An application must specify how the approval of the application will provide for one or more of the following: (1) reducing average premiums for health insurance coverage in the state; (2) increasing enrollment in health insurance coverage; (3) stabilizing the market for health insurance coverage; (4) stabilizing premiums for individuals with pre-existing conditions; and (5) increasing the choice of health plans in the state.

**White House Announces Principles for Tax Reform**

Treasury Secretary Steve Mnuchin and National Economic Council Director Gary Cohn participated in a White House briefing on April 26 to discuss the broad themes of the Administration’s plan for comprehensive tax reform.

The Administration’s plan focuses on four goals: (1) expanding the economy and creating jobs; (2) simplifying the tax code; (3) providing tax relief to American families; and (4) lowering the business tax rate. Key elements of the plan include reducing the business tax rate to 15 percent, establishing three tax brackets for individual income taxes (10%, 25% and 35%), doubling the standard tax deduction, repealing the ACA’s 3.8 percent tax on unearned income, imposing a new “one-time tax on trillions of dollars held overseas,” repealing both the alternative minimum tax and the estate tax, and eliminating tax breaks for unspecified “special interests.”

Following today’s announcement, House Speaker Paul Ryan (R-WI), Senate Majority Leader Mitch McConnell (R-KY), House Ways and Means Committee Chairman Kevin Brady (R-TX), and Senate Finance Committee Chairman Orrin Hatch (R-UT) issued a joint statement describing the Administration’s principles as “critical guideposts for Congress and the Administration as we work
together to overhaul the American tax system and ensure middle-class families and job creators are better positioned for the 21st century economy.”

**Lawmakers Reintroduce Bipartisan Bill To Promote Access to Generic Drugs**

On Thursday, April 27, senior members of the Senate and House Judiciary Committees introduced bipartisan legislation that addresses the tactics sometimes used by brand-name drug manufacturers to delay the entry of generic drugs into the marketplace. Various organizations representing consumers, physicians, pharmacists, hospitals, and insurers have expressed support for this legislation.

The “CREATES Act” would allow eligible product developers (i.e., potential generic competitors) to bring a civil action against a license holder for a covered product for declining to provide sufficient quantities of the covered product to the eligible product developer “on commercially reasonable, market-based terms.” The bill also would give the Food and Drug Administration (FDA) more discretion to approve alternative safety protocols, rather than require parties to develop shared safety protocols for distribution of the covered product.

**Senate Committee Approves Gottlieb Nomination**

On Thursday, April 27, by a vote of 14 to 9, the Senate HELP Committee approved the nomination of Dr. Scott Gottlieb to serve as Commissioner of the Food and Drug Administration (FDA). Two Democratic senators, Michael Bennet (D-CO) and Sheldon Whitehouse (D-RI), joined 12 Republicans in voting “yes.” The full Senate still needs to vote to confirm Dr. Gottlieb before he can take office as FDA Commissioner.

**Regulatory Issues**

**CMS Issues Medicare Inpatient Rehab Facilities, Skilled Nursing Facilities and Hospice Proposed Rules for 2018**

The Centers for Medicare & Medicaid Services issued proposed rules for inpatient rehabilitation facilities (IRF), skilled nursing facilities (SNF) and hospice providers for fiscal year 2018. In accordance with the Medicare Access and CHIP Reauthorization Act of 2015, IRF, SNF and hospice payments will increase by 1.0% relative to FY 2017. For IRFs, this represents an $80 million increase, SNFs will receive an increase of $390 million and aggregate payments to hospice providers will increase by $180 million.

In addition, CMS has issued a separate advance notice of proposed rulemaking that seeks comments on potential options the agency may consider for revising the existing SNF payment system, including the possibility of replacing the existing payment classifications, known as RUGs, with a new model. CMS also proposes the addition of standardized patient assessment data to the IRF and SNF quality reporting programs, as well as added and removed measures for the hospice quality reporting program. The proposed rule also provides estimated performance standards and timelines for the FY 2020 program year of the SNF value-based purchasing program, among other policies.

CMS is accepting comments on the proposed rules and the SNF advance notice through June 26.

**CMS Notifying Clinicians of MIPS Participation Status**

Medicare Administrative Contractors will be notifying practices through May which clinicians associated with their taxpayer identification number must participate this year in the Merit-based Incentive Payment System, one of two new payment pathways for clinicians under the Medicare Access and CHIP Reauthorization Act of 2015, the Centers for Medicare & Medicaid Services announced.
Physicians, physician assistants, nurse practitioners, clinical nurse specialists and certified registered nurse anesthetists should participate in MIPS for the 2017 transition year if they annually bill more than $30,000 in Medicare Part B allowed charges and provide care for more than 100 Part B-enrolled Medicare beneficiaries.

**CDC Updates Pre-pandemic Planning Guidance**
On April 28, the Centers for Disease Control and Prevention issued [updated guidance](https://www.cdc.gov/flu/pandemic预先/planning/guidance.html) on using non-pharmaceutical interventions to control disease and exposure during a flu pandemic. The guidance incorporates the latest scientific evidence and lessons learned from the 2009 H1N1 flu pandemic, new and updated pandemic assessment and planning tools, and links to pre-pandemic planning guides for different community settings.

Categories of non-pharmaceutical interventions include personal protective measures for everyday use, such as voluntary home isolation of ill persons, respiratory etiquette and hand hygiene; personal protective measures reserved for flu pandemics, such as quarantine of exposed household members and use of face masks in community settings when ill; community measures aimed at increasing social distancing, such as school closures; and environmental measures, such as routine cleaning of frequently touched surfaces.

**CMS Posts Public Health, Registry EHR Readiness Data**
The Centers for Medicare & Medicaid Services has [posted](https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ElectronicHealthRecords/052014-EHRReadinessTool.html) a “centralized repository” of public health agencies and registries ready to electronically receive public health data from hospitals and eligible professionals. To satisfy Stage 2 meaningful use requirements under the Medicare and Medicaid Electronic Health Record Incentive Programs, hospitals must determine the readiness of local public health agencies and registries to receive electronic submissions of public health data, and send data electronically to those agencies and registries that are ready.

According to CMS, the absence of an entry in its centralized repository is not sufficient documentation for claiming an exclusion to the public health reporting requirement. “Providers must check with the jurisdictional public health agencies or specialty societies to which they belong and document that information to satisfy Medicare or Medicaid reporting,” the agency said.


**CDC Issues Recommendations for Managing Suspected Shigella Infections**
The Centers for Disease Control and Prevention has issued recommendations for diagnosing and managing patients who may be infected with a Shigella strain less susceptible to the antibiotic Ciprofloxacin. Shigella bacteria can cause Shigellosis, a diarrheal disease that should be reported to local health departments.

**FDA Restricts Use of Codeine and Tramadol Medicines in Children**
The Food and Drug Administration has [announced](https://www.fda.gov/Drugs/DrugSafety/ucm528141.htm) that it is restricting the use of codeine and tramadol medicines in children, as well as recommending against using them in breastfeeding mothers due to possible harm to their infants. The FDA is requiring several changes to the labels of all prescription medicines containing these drugs.

These new actions further limit the use of these medicines beyond FDA’s 2013 restriction of codeine use in children under 18 years old to treat pain after surgery to remove the tonsils and/or adenoids.

**Molina Raises Concerns about Lack of Clarity for CSR Payments**
On Thursday April 27, Mario Molina CEO of Molina Healthcare threatened to leave the ACA exchanges if federal CSR payments to insurers are not funded. “If the [subsidies are] not funded, we will have no choice but to send a notice of default informing the government that we are
dropping our contracts for their failure to pay premiums and seek to withdraw from the marketplace immediately,” he wrote in a letter to Congress. According to Molina, the insurer’s departure from the ACA exchanges would cause 650,000 to 700,000 people to lose insurance coverage this year, and the company would not participate in the exchanges next year, which would result in 1 million people losing coverage.

Insurers generally are concerned about losing the cost-sharing reduction (CSR) subsidies because of a lawsuit saying they were distributed illegally. That lawsuit began under the Obama administration and has now been delayed. Though the funds continue to be allocated, insurers are quickly approaching a deadline to file rates for next year, and those premiums will depend in large part on whether the money continues to flow from the government to insurers. They have said that the lack of a final decision creates greater uncertainty for their business, which factors in the $7 billion expected in subsidies this year and $10 billion next year.

State Issues

Pennsylvania

Legislative

Senate Banking and Insurance Committee Postpones Vote on Prescription Drug Transparency Bill
On Tuesday, April 25, the Senate Banking and Insurance Committee postponed its consideration of Senate Bill 637, which would establish transparency requirements for pharmaceutical drugs. Another provision in the bill states that insurers or pharmacy benefit managers would not have to pay for any prescription exceeding 20 percent of the cost of the drug. Committee Chairman Don White (R–Indiana) and Chairman Sharif Street (D–Philadelphia) said the bill will likely be voted following further consultation with stakeholders.

Regulatory

Wolf Administration Unveils Agency Unification Website, Seeks Public Feedback
The Wolf administration unveiled a new website detailing the proposed consolidation of four state government agencies to comprise a Department of Health and Human Services. The proposal to combine the Department of Aging, Department of Health, Department of Human Services, and the Department of Secretary of Drug and Alcohol Programs is part of Governor Wolf’s proposed budget.

The administration estimates consolidation will provide approximately $90 million in savings. The administration notes that many constituents receive services from all four agencies with multiple touch points, and creating the unified Department of Health and Human Services will “provide an easier way for citizens to interact with the commonwealth and obtain the services they need.”

The site includes detailed organizational charts depicting the proposed chain of command and consolidation of offices and departments. The administration has proposed ten offices where programs will be housed. These include:

- The Office of Administration
- The Office of Aging and Adult Community Living
- The Office of Child Development and Early Learning
- The Office of Children, Youth, and Families
- The Office of Developmental Programs
- The Office of Eligibility and Self-Sufficiency
- The Office of Health Quality and Licensure
The site also includes a section dedicated to public comment.

While the legislature continues to hold hearings to fully understand the implications of unification, the enabling legislation will be introduced by Representative Stephen Bloom (R-Cumberland) and Senator Judy Schwank (D-Berks).

**Pennsylvania Insurance Department Clarifies Comment Period on Matters Related to Highmark**

The Insurance Department (Department) published Notice 2017-04 at 47 Pa.B. 2161 (April 8, 2017) requesting public comment on a filing made by Highmark Health (Highmark) on March 27, 2017. In Notice 2017-04, the Department indicated that written comments would be accepted until April 24, 2017. In a press release related to the bulletin notice and on the PID’s website, the PID noted that the comment period ended May 8, 2017.

In the Pa. Bulletin published on April 22, 2017, the Department clarified that the comment period ends on May 8, 2017. Persons wishing to comment on the filing, on the grounds of public or private interest, are invited to submit a written statement to the Department on or before May 8, 2017. Each written statement must include the name, address and telephone number of the interested party; and a concise statement with sufficient detail and relevant facts to inform the Department of the exact basis of the statement. Written statements should be directed to Joseph DiMemmo, Deputy Insurance Commissioner, Office of Corporate and Financial Regulation, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557, ra-comment@pa.gov. Comments received will be part of the public record regarding this filing, which will be made available on the Department's web site at www.insurance.pa.gov. Additionally, copies of the comments received will be forwarded to Highmark for appropriate response. Highmark's responses will also be made available on the Department's web site.

**West Virginia**

**Legislative**

**Gov. Jim Justice Announces Special Session to Address Budget**

Governor Jim Justice will convene a special session of the West Virginia legislature beginning May 4 to address the state’s 2017-18 budget bill. Prior to the end of the regular session, Governor Justice and Senate Republicans had reached an agreement to increase by 1% the state’s consumer sales tax and add a new business tax. The budget plan also gave the state the ability to lower income tax rates by as much as 20 percent however, on April 13 Governor Justice vetoed the budget bill due to continued disagreement with the House of Delegates.

**Governor Justice Vetoes Two Bills of Interest to Highmark**

Governor Justice has vetoed two measures that would have indirectly impacted Highmark West Virginia.

Senate Bill 239 proposed to impede the ability of labor unions to utilize employer payroll deductions to collect dues and political action contributions. The bill was written in a manner that widely applied to all types of employer payroll deductions, including those for charity and employee benefits.
Senate Bill 441 proposed to extend the state’s “home rule” powers to every municipality, which would have been an expansion of a limited pilot project. Senate Bill 441 would have empowered even the smallest of municipalities to impose local consumer sales taxes of up to 1 percent and created a number of other local regulatory powers for all municipalities.

The Legislature will be unable to override these vetoes because the 2017 legislative session for regular business came to a close on April 8. The legislature can only consider budget legislation during the special session that will begin on May 4.

**Industry Trends**

**Insurance / Market Trends**

**Federal Appeals Court Affirms Decision Blocking Anthem Acquisition of Cigna**

The U.S. Court of Appeals for the District of Columbia Circuit has affirmed a district court decision blocking Anthem’s proposed acquisition of Cigna. “Having considered the totality of circumstances..., we hold that the district court reasonably determined Anthem failed to show the kind of ‘extraordinary efficiencies’ that would be needed to constrain likely price increases in this highly concentrated market, and to mitigate the threatened loss of innovation,” wrote Judge Judith Rogers in the opinion for the court. “…Finally, the assumption that the prices paid by Anthem’s customers – whatever the quality of the resulting product – are the sole focus of antitrust law sits at the center of Anthem’s and the dissenting opinion’s contentions. But antitrust law is not so monocular. Rather, product variety, quality, innovation, and efficient market allocation – all increased through competition – are equally protected forms of consumer welfare.”

The Department of Justice, 11 states and the District of Columbia last year sued to stop the proposed merger, the largest in the history of the health insurance industry, saying it would “substantially lessen competition, harming millions of American consumers, as well as doctors and hospitals.”

**State**

The Pennsylvania General Assembly is in recess the week of May 1.

The Delaware General Assembly is in session May 2-4.

The West Virginia Legislature has adjourned for the year, but will return for a Special Session on May 4 to address the state’s 2017-2018 budget.

**Congress**

The U.S. Congress is in session the week of May 1.

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

**Delaware State Legislation:** [http://legis.delaware.gov/](http://legis.delaware.gov/)

**Pennsylvania Legislation:** [www.legis.state.pa.us](http://www.legis.state.pa.us)

**West Virginia Legislation:** [http://www.legis.state.wv.us](http://www.legis.state.wv.us)

For copies of congressional bills, access the Thomas website – [http://thomas.loc.gov/](http://thomas.loc.gov/)