

LEGISLATIVE DIVISION UPDATE

Week of May 24, 2019

Congress

The week started with the President appearing to be on board with Congressional leadership's desire to reach a deal on budget caps in order to avoid deep spending reductions in order to avoid sequestration under the Budget Control Act (BCA). However, that might have come to an end on Wednesday when the President announced his refusal to negotiate with Democrats on anything until they stop investigating him and his Administration.

The House Appropriations Committee reported out its Defense spending bill on Tuesday. Once again, Rep. Lee's (D-CA) amendment to repeal the current Authorization for the Use of Military Force (AUMF) was adopted (less surprising now than when the Republicans were in the majority). The fact that global military operations are occurring under the auspices of the 2001 AUMF have taken on a new urgency given the latest tensions between the White House and Iran. A Republican effort to incorporate an abortion-related amendment into the spending bill turned (as could be expected) rancorous. It failed with the argument that it involved authorization language, which does not belong in an appropriations bill, which trumps political arguments.

Sen. Grassley (R-IA) says he will continue to work with Democrats on his Senate Finance Committee on drug pricing legislation. "We're aggressively pursuing" various options, he told reporters following the President's threat to end all negotiations with the other Party.

It's National Defense Authorization Act (NDAA) season

The Senate Armed Services Committee completed its markup on Wednesday behind closed doors. While the committee says they follow this practice for security concerns, it also eliminates committee members' efforts to bring up issues only to put the opposing Party "on the record" in the hopes of embarrassing them. There may be something to this argument, given that the committee concluded its business by mid-afternoon (the House Armed Services Committee (HASC) routinely goes for more than 12 hours, live-streamed on its website and C-Span). While some details were released by the committee on Thursday, staff will spend the next week perfecting the bill and report. The documents will not be officially filed until after the Senate returns on June 3.

The HASC is scheduled to start its subcommittee markups as soon as they come back to town, on June 4. The full committee markup will take place on June 12. Committee ranking member Rep. Roe (R-TN) has already started releasing details on the further acquisition reforms he intends to

include in the NDAA. These include some elements of following up on previously passed reforms as well as new initiatives. Stay tuned to *Synopsis* on Twitter (@CongSynopsis) for highlights on health and personnel issues.

House appropriators on Defense Health Program (DHP) transformation

As required by Congress, the Defense Health Agency (DHA) has started taking over management of military treatment facilities (MTFs) and assuming more responsibility for keeping military personnel and their families healthy. In their report, however, House appropriators expressed concern that the new structure splits service member medical readiness from the larger health care benefit. The appropriators also indicated outright displeasure over the prospect of MTFs closing or being downsized, and openly chastised DoD for its plans to eliminate 18,000 uniformed medical billets within the Services by 2020.

The appropriators are requiring DoD, the Services, and DHA to provide additional budget justification and planning information in future budget requests. The lawmakers are frustrated that the transformation is moving ahead with no clear plan in place (or no plan being shared with Congress).

The appropriators were particularly “displeased” that “medical readiness appears to have been the only consideration” in eliminating the medical billets. They point out that requests for a mitigation plan to account for the impacts on lowered availability of care for beneficiaries have gone unanswered. Thus, the committee denied the Pentagon’s requested \$250 million increase for in-house care, but noted that they are “willing to continue the dialogue” once DoD and DHA complete their analysis of the issues involved.

Interestingly, the SASC NDAA also contains language “clarifying” the medical readiness and health care responsibilities of the DHA and the Services, according to committee staff.

Speaking at the Defense Health Board on Monday, DHA Director RADML Bono said that a third of the billets to be eliminated are already empty. She added that the DHA is already working with managed care contractors to ensure their networks can pick up resulting gaps in patient need.

Health reform legislation

Thursday afternoon, the Senate Health, Education, Labor and Pensions (HELP) Committee requested public comment on draft legislation covering a wide range of health care issues. The nearly three dozen bipartisan provisions address surprise medical billing, drug prices, and insurance contracts with providers, maternal mortality, improving the digital exchange of health information, and increasing vaccination rates. Comments are due June 5, with the committee intent on getting final legislation to the Senate floor by July. Committee chair Sen. Alexander (R-TN) says he is also hoping to include the Prescription Drug Rebates Reform Act of 2019, by Sen. Romney (R-UT) and Sen. Braun (R-IN), and the Fair Accountability and Innovative Research (FAIR) Act, by Sen. Baldwin (D-WI), Sen. Braun, Sen. Smith (D-MN), and Sen. Murkowski (R-AK).

The draft legislation would prohibit several kinds of contract clauses that the committee deems to be anticompetitive:

- Restrictions preventing plans from directing patients to providers that are cheaper and provide higher quality care;
- Requirements that the insurer accept either all or none of the providers in a particular health care system;
- Requirements that an insurer always be given the most favorable price in a given market; and
- Gag clauses that prevent enrollees, plan sponsors or other providers from seeing cost and quality data on providers.

A new non-governmental entity would be created to compile de-identified health care claims data across the US health care system to enable greater understanding of the cost and quality of care. The data would be made available to researchers, employers, and employee organizations seeking to use the information to lower health care costs.

The draft legislation would also expand on the Medicare Blue Button Initiative by requiring commercial health insurance companies to make claims data, practitioner networks, and expected out of pocket cost information readily available as people select insurance coverage. Several provisions address the need to encourage providers to engage in better cyber security for their health data, while also protecting them from inadvertent disclosures despite best efforts.

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