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The Headlines:

- **Congressional Panels Deliver Good News…and Bad**
- **The Road Ahead**
- **21st Century Cures Has Some Hurdles to Clear**
- **King v. Burwell in a Nutshell**
- **Representative McDermott Reintroduces RUC Reform Bill**

Congressional Panels Deliver Good News…and Bad

Before leaving town for the July 4th holiday, the House and Senate appropriations committees both managed to adopt a set of funding recommendations for federal public health and education programs, the so-called Labor-HHS-Education appropriations bill for fiscal year 2016.

On the 'good news' front, the House appropriations panel voted a $1.1 billion increase in funding for the National Institutes of Health (NIH). But that increase was achieved by abolishing the Agency for Healthcare Research and Quality

(AHRQ) and blocking any funding for the Affordable Care Act (ACA) and family planning grants.

The panel's Senate counterpart took a similarly troubling path. The Senate appropriations committee voted to cut *$4 billion* below current spending levels for a wide range of social programs. The only bright spot: The Senate panel boosted NIH by $2 billion, or what is said to be the agency's biggest year-to-year increase since 2003. But, here again, the added funding came at the expense of other critically important health and education programs.

For example, on the same day that the Supreme Court ruled broadly in favor of the current implementation of ACA, the Senate panel voted to block CMS from using any federal funds to support the operational costs of state-based exchanges.

Elsewhere, the Senate panel cut AHRQ's appropriated funds by 35 percent, down to $236 million, and reduced health professions and nurse training programs by 7 percent, including a cut in primary care training and termination of the health careers opportunity program (HCOP). The Senate legislation also would rescind $300 million already appropriated for Pell grants.

The Road Ahead

Despite some initial success moving spending bills, a new phase of gridlock and uncertainty almost undoubtedly will set in over the next month once lawmakers return from the July 4th recess.

With just a handful of bills left to mark up, both the House and Senate appropriations panels are on par to finish their work by mid-July. If they are successful in pushing all 12 of the annual spending measures through their respective committees, it would mark the first time both sides have achieved that milestone in six years.

While a significant milestone, it will have little practical effect in the weeks ahead because of Democrats' threat to filibuster all Republican-written spending bills. Indeed, work in the Senate is likely to grind to a halt as Democrats say they will block any spending bill until Republicans agree to convene budget talks aimed at lifting current spending caps on discretionary programs and eliminating the threat of across-the-board budget cuts.

21st Century Cures Has Some Hurdles to Clear

Sponsors of a bipartisan package to speed new medical cures are hoping to put the 21st Century Cures legislation back on a fast track. As we reported in the last HPC Update, Energy and Commerce Chairman Fred Upton (R-MI) had hoped to have the measure on the House floor in June after the package was unanimously advanced by his panel in May. But efforts have stalled amid protests over a provision that would have paid for $5 billion to $7 billion of the measure's cost by adjusting the timing of Medicare payments to Part D prescription drug sponsors so that the government keeps interest revenue instead of insurers.

A Congressional Budget Office (CBO) estimate has also raised concerns among biomedical research advocates that the bill's wording would not make NIH and FDA funding mandatory, i.e. not separate from the annual appropriations process, as originally advertised.

“This proposed budgetary change would result in increased Part D costs that would ultimately be passed on to the Medicare Trust Fund and its beneficiaries,” a bipartisan group of more than 40 lawmakers wrote in a letter to House leaders last week. “This change is effectively a tax on America’s seniors.”

After weeks of negotiations, advocates say that bill sponsors signaled that they would remove the offset and are now close to finalizing revised language while keeping their alternatives close to the vest.

The latest hiccup for lawmakers is the bill’s cost. The CBO estimates that the bill would cost $106.4 billion over five years, a number higher than expected because it includes the entire NIH budget that would be reauthorized under the measure. The estimate also includes a separate $10 billion fund for NIH and a $550 million fund for FDA, implying that such money would still be subject to appropriations and thus require future action from Congress.

The committee-passed legislation would increase annual funding authorizations for NIH and was intended to grant the agency $10 billion in mandatory funding, spread over a five-year period, for an NIH Innovation Fund. The bill also would offer student loan forgiveness for some young emerging scientists and capstone awards for outstanding researchers.

King v Burwell in a Nutshell

On June 25, the Supreme Court released its decision in *King v. Burwell*, the latest case challenging the Affordable Care Act (ACA). At issue was whether subsidies can be extended to low-income people who live in the 34 states that have federally-facilitated rather than state-based marketplaces. The plaintiffs argued that Congress wrote the ACA in a way that only people who live in states with state-based marketplaces should receive subsidies, which would have jeopardized assistance for more than 6 million Americans currently receiving subsidies. In a 6-3 ruling drafted by Chief Justice Roberts, the Court upheld the subsidies and kept the ACA intact. People who live in states using www.healthcare.gov for their marketplace can continue to receive subsidies.

Besides answering the immediate question about subsidies, the decision more broadly defends the current implementation of the ACA and will make it more difficult for other cases to successfully challenge the law. This is because the decision says that ambiguous aspects of the ACA must be interpreted through the lens of Congress' intent for the ACA to improve the health insurance market. The decision even makes it more difficult for future administrations to remove subsidies from these states. The decision concludes with this remarkable statement: "Congress passed the Affordable Care Act to improve health insurance markets, not to destroy them. If at all possible, we must interpret the Act in a way that is consistent with the former, and avoids the latter."

Policymakers in Washington and state houses across the country have been drafting various contingency plans anticipating that subsidies may be struck down. Many plans would have traded extended subsidies for other reforms to the ACA, such as elimination of the individual mandate or other insurance policies. While Congress is likely to continue to consider bills to repeal part or all of the ACA and state policymakers will continue to influence ACA implementation in their states, the June 25 decision means that the ACA is likely to continue as-is for the near future.

Representative McDermott Reintroduces RUC Reform Bill

In response to the recently released Government Accountability Office (GAO) report on the RUC, Representative Jim McDermott (D-WA) reintroduced the *Accuracy in Medicare Physician Payment Act of 2015.*

The legislation, first introduced by Representative McDermott last Congress, reforms the Centers for Medicare and Medicare Service's (CMS) reliance on the RUC in determining the relative values of physician services. It strives to improve the oversight, transparency, and accountability of the process of valuing physician services.

CMS would be required to establish an independent panel of experts who would help Medicare develop evidence-based updates for services. The panel's work would be transparent and subject to the *Federal Advisory Committee Act* (FACA). FACA requires advisory committees to hold open meetings and publish their minutes.

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