Health Care in Motion

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Birthday Bugaboos: Eight Years and Nine Lives of the ACA

Happy Birthday to the ACA!

Birthday parties for eight year olds normally involve treasure hunts, cake and ice cream. But with today's eighth anniversary of the passage of the Affordable Care Act, all we're getting is posturing over a government shutdown, a highly compromised omnibus spending package, bipartisan bickering over a "market stabilization bill," and a continued administrative undermining of the Medicaid program that lays at the center of the ACA's coverage expansion. In this edition of Health Care in Motion, we'll summarize these recent developments and more with an eye toward its effect on people living with chronic illness and their advocates.

Federal Spending Deal

Today not only marks eight years since the passage of the Affordable Care Act, it is also the deadline for the federal government to avert yet another shutdown. The brief government shutdown that occurred last month was resolved with a Continuing Resolution funding the government only through today. In an effort to reach a more comprehensive budget deal, congressional leadership released a 2,232 page bill on March 21 that lays out a $1.3 trillion spending package. With only two days to review before the deadline, the bill generated objections about the process being used in Congress to rush its passage. Nevertheless, the bill passed the House of Representatives on March 22 and, just after midnight on March 23, was shepherded to passage in the Senate by Majority Leader Mitch McConnell. The President cast a pall over the proceedings on Friday with an unorthodox and unsurprising use of his twitter account. But the afternoon brought a different tune, and the bill was signed before the evening commute.

With that in mind, it makes sense to take a look at what the new budget deal includes–and what it omits–with respect to the health care of chronically ill populations. The bill provides for an $88 billion appropriation for the Department of Health and Human Services over the next two years. Included in that funding are allotments that support health care in rural settings and a boost for tele-health initiatives that are often used to de-monopolize health care expertise from academic centers in metropolitan areas. The package also includes various budget items targeted at the opioid crisis, mostly for treatment and prevention. The National Institutes of Health receives a funding boost. In the department of surprising developments, the bill also includes very modest gun regulation measures and a rare loss for the pharmaceutical industry, which saw its bid to be relieved of a portion of the costs for Medicare enrollees who enter into the dreaded "donut hole" rejected.

Just as important, the spending package leaves several important policy measures on the cutting room floor. The Republican-led effort to extend abortion restrictions to Marketplace plans fell short, repeating a battle and outcome from the original ACA passage. This battle overlapped with a broader fight regarding the restoration of ACA cost-sharing reduction subsidies (also known as "CSR" payments). Longtime readers of Health Care in Motion will remember the Trump Administration's decision to discontinue these ACA subsidies in October 2017. This move was rightfully viewed as a determined effort to undermine the stability of ACA marketplaces. But late last year, clever state regulators and insurers created an alternative workaround (known as "silver loading," or, more informally the "silver switcheroo") that compensated for the cost-sharing reduction hole by taking greater advantage of ACA premium subsidies. We described this development in detail at the time. Now that insurance markets have compensated, cost-sharing reduction payments have been revived by the Trump Administration and, once again, emerged as a political football. This time, some advocates for access to care have opposed CSR funding, with the argument that to reverse course now from the adjusted market would represent a significant step backward from the status quo. Whatever effect these cost-sharing reduction payments would have, we will all have to wait for another day to determine their fate, as this funding was removed from the omnibus spending bill and separated into a standalone "market stabilization" proposal.

Market Stabilization Bills

All of this isn't to say that the fierce debate over the future of cost-sharing reduction payments is over and done with. "Market stabilization" has now been segregated into standalone bills encompassing the debate over funding of cost-sharing reduction payments. Both Senator Lamar Alexander (R-TN) and Senator Patty Murray (D-WA) have released competing proposals in a flurry of activity this week. As with many things surrounding the ACA, the only certainty is more uncertainty. And you can be sure that insurers–now staring down the barrel of 2019 plan and rate deadlines–will be sure to build the cost of that uncertainty into their new plan proposals. Health care consumers will once more be asked to bear the burden of our fractured system.

Miscellaneous Updates

New CDC Chief Named

In a move this week that was closely watched by HIV advocates, Dr. Robert Redfield was named to head the Centers for Disease Control and Prevention. Dr. Redfield is a national figure in HIV research. Questions have arisen about the appointment in connection with Dr. Redfield's research on a failed HIV vaccine twenty years ago while working with the United States Army. A whistleblower familiar with the work was quoted this week as saying Dr. Redfield "was egregiously sloppy with data or it was fabricated." The Army cleared Dr. Redfield of wrongdoing.

Arkansas Work Requirements

Since last we wrote, another state has been approved by the Centers for Medicaid and Medicare Services to impose a work requirement as a condition of receiving Medicaid benefits. In this case, CMS Administrator Seema Verma traveled to Little Rock, Arkansas to hand deliver the approval to Governor Asa Hutchinson. Verma took the opportunity to speak publicly and reiterated her encouragement of other states to take similar steps. We have written previously about the potential harm that accompanies such measures, and the efforts of advocates to challenge them as fundamentally undermining the purpose of Medicaid. If there is a silver lining to Verma's Arkansas announcement, it is that CMS has rejected–at least temporarily–the state's request to roll back the eligibility rules associated with its Medicaid expansion.

Dueling 340B Reports

As Congress continues to turn its attention to the fate of the 340B drug program, health care advocates released a report concluding that safety net providers within the program's purview provide "significantly more care for low-income patients than other hospitals, including uncompensated care and unreimbursed care." Unsurprisingly, the pharmaceutical industry's primary trade group released a countervailing report arguing that the program drove up drug costs for patients.

Thanks for reading Health Care in Motion! Please get in touch with us with any questions of concerns by contacting Maryanne Tomazic at mtomazic@law.harvard.edu.

Health Care in Motion is written by:

Robert Greenwald, Faculty Director;
Kevin Costello, Litigation Director and Associate Director;
Caitlin McCormick-Brault, Associate Director;
Phil Waters, Clinical Fellow; and
Maryanne Tomazic, Clinical Fellow.

For further questions or inquiries please contact us at chlpi@law.harvard.edu.

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