

September 5, 2018

TO: Members, Subcommittee on Health
FROM: Committee Majority Staff
RE: Subcommittee Markup

I. INTRODUCTION

The Subcommittee on Health will meet in open markup session on Friday September 7, 2018, at 9:00 a.m. in 2123 Rayburn House Office Building to consider the following:

- H.R. 3325, Advancing Care for Exceptional (ACE) Kids Act;
- H.R. 3891, To amend title XIX of the Social Security Act to clarify the authority of State Medicaid fraud and abuse control units to investigate and prosecute cases of Medicaid patient abuse and neglect in any setting, and for other purposes;
- H.R. 5306, Ensuring Medicaid Provides Opportunities for Widespread Equity, Resources, and (EMPOWER) Care Act;
- H.R. ___, Strengthening the Health Care Fraud Prevention Task Force Act of 2018;
- H.R. ___, To amend title XXVII of the Public Health Service Act and title XVIII of the Social Security Act to prohibit group health plans, health insurance issuers, prescription drug plan sponsors, and Medicare Advantage organizations from limiting certain information on drug prices;
- H.R. ___, To amend title XIX of the Social Security Act to provide the Medicare Payment Advisory Commission with access to certain drug rebate information.

In keeping with Chairman Walden's announced policy, Members must submit any amendments they may have two hours before they are offered during this markup. Members may submit amendments by email to peter.kielty@mail.house.gov. Any information with respect to an amendment's parliamentary standing (e.g., its germaneness) should be submitted at this time as well.

II. EXPLANATION OF LEGISLATION

A. H.R. 3325, Advancing Care for Exceptional (ACE) Kids Act

H.R. 3325 was introduced by Rep. Barton (R-TX) and Rep. Castor (D-FL) to improve the delivery of care for children with complex medical conditions under Medicaid. The bill seeks to

achieve three primary goals: (1) to improve coordination of care for children served in Medicaid; (2) to address problems with potentially fragmented or uncoordinated care children may access, and (3) to gather data on conditions to help researchers improve services and treatments for children with complex medical conditions.

The Subcommittee anticipates that a bipartisan amendment in the nature of a substitute (AINS) will be filed, which incorporates the bipartisan language of the discussion draft discussed in the Subcommittee on Health's hearing, "Opportunities to Improve Health Care," held on September 5, 2018. The AINS will create a new option for state Medicaid programs by allowing states to utilize a Health Home model to coordinate care for children with medically complex conditions. Allowing states to utilize a Health Home model to coordinate care for children with medically complex conditions helps address at least in part a barrier to care previously identified by states.

B. H.R. 3891, To amend title XIX of the Social Security Act to clarify the authority of State Medicaid fraud and abuse control units to investigate and prosecute cases of Medicaid patient abuse and neglect in any setting, and for other purposes.

H.R. 3891 was introduced by Rep. Walberg (R-MI) and Rep. Welch (D-VT) to improve the authority of Medicaid Fraud Control Units (MFCUs) that investigate and prosecute Medicaid provider fraud as well as patient abuse or neglect in health care facilities and board and care facilities. Currently, MFCUs are only allowed to investigate cases of provider fraud and patient abuse in health care facilities or board and care facilities. This legislation would broaden the authority of these units to investigate and prosecute abuse and neglect of Medicaid beneficiaries in non-institutional or other settings. The bipartisan bill was the one of the subjects discussed in the Subcommittee on Health's hearing, "Opportunities to Improve Health Care" held on September 5, 2018.

C. H.R. 5306, Ensuring Medicaid Provides Opportunities for Widespread Equity, Resources, and (EMPOWER) Care Act

H.R. 5306 was introduced by Rep. Guthrie (R-KY) and Rep. Dingell (D-MI) to extend funding for the Money Follows the Person Demonstration Program (MFP demonstration) in Medicaid for an additional five years. The MFP demonstration provides additional resources for state Medicaid programs to help ensure Medicaid patients needing long term care are served in their communities.¹ The bipartisan bill was the one of the subjects discussed in the

¹ In Medicaid, the long-term care benefit is known as Long-Term Services and Supports (LTSS), and refers to a broad range of services and supports that are needed by individuals over an extended period of time. LTSS may include some health care services, but also non-health care services. The need for LTSS is generally measured by limitations in an individual's ability to perform daily personal care activities (i.e., eating, bathing, dressing, and walking), or activities that allow individuals to live independently in the community (i.e., shopping, housework, and meal preparation). The probability of needing LTSS increases with age. However, younger persons with disabilities may also find themselves in need of medical and supportive care offered through LTSS, which can allow them to live longer, more productive lives. In recent years, the Committee has examined opportunities to improve Medicaid long-term care, including at a hearing on March 1, 2016. More information is available at: <https://energycommerce.house.gov/hearings/examining-financing-and-delivery-long-term-care-us/>

Subcommittee on Health's hearing, "Opportunities to Improve Health Care" held on September 5, 2018.

D. H.R. __, Strengthening the Health Care Fraud Prevention Task Force Act of 2018

The Subcommittee will consider a Discussion Draft that codifies the Healthcare Fraud Prevention Partnership (HFPP) – a voluntary public-private partnership between the federal government, state agencies, law enforcement, private health insurance plans, and health care anti-fraud associations. The HFPP is currently operated by the Centers for Medicare and Medicaid Services (CMS) to detect and prevent health care fraud through public-private information sharing, streamlining analytical tools and data, and providing a forum for government and industry experts to exchange successful anti-fraud practices. The bipartisan bill was the one of the subjects discussed in the Subcommittee on Health's hearing, "Opportunities to Improve Health Care" held on September 5, 2018.

E. H.R. __, To amend title XXVII of the Public Health Service Act and title XVIII of the Social Security Act to prohibit group health plans, health insurance issuers, prescription drug plan sponsors, and Medicare Advantage organizations from limiting certain information on drug prices;

It has been widely reported that some health insurance contracts prevent pharmacists from informing patients when the cash price for their prescription costs less than their insurance cost-sharing arrangement unless the individual directly asks. As a result, consumers may be paying more for their prescriptions than is warranted. The Committee will consider a Discussion Draft that prohibits group health plans offered by employers and individual health insurance plans—as well as Medicare Advantage and Medicare Part D Plans—from restricting a pharmacy's ability to inform a customer about the lower cost, out-of-pocket price for their prescription. The bipartisan bill was the one of the subjects discussed in the Subcommittee on Health's hearing, "Opportunities to Improve Health Care" on September 5, 2018.

F. H.R. __, To amend title XIX of the Social Security Act to provide the Medicare Payment Advisory Commission with access to certain drug rebate information

The Subcommittee will consider a bipartisan Discussion Draft that would make a technical update to the statute regarding information CMS may provide to the Medicare Payment Advisory Commission (MedPAC) and the Medicaid and CHIP Payment Advisory Commission (MACPAC). The commissions already have received a wide swath of data from CMS regarding the Medicare, Medicaid, and CHIP programs, including proprietary information, such as that relating to plan bids under Medicare Advantage. In letters to the Committee, the commissions have been advised by CMS that due to current statute, the commissions cannot access drug rebate data. Since the commissions can still provide recommendations on these issues to Congress, the bill would provide the commissions access to this data, so that any such

recommendations for Medicare and Medicaid beneficiaries are informed by factual data.² The rules regarding the sharing of such information from CMS with the commissions would be held to the same confidentiality standards under which similar data is treated.

III. STAFF CONTACTS

If you have any questions regarding this hearing, please contact James “JP” Paluskiewicz, Adam “Buck” Buckalew, Caleb Graff, or Josh Trent of the Committee staff at (202) 225-2927.

² MACPAC already receives a range of Medicare data and plays a critically important role in advising Congress on Medicaid policy, including policy related to individuals dually-eligible for Medicaid and Medicare.