HEALTHCARE

MEDICARE EXTENDERS AND CHIP. There are some immediate healthcare issues Congress will need to address, beginning with the expiration of the Medicare tax extenders and the Childrens' Health Insurance Program (CHIP). While neither issue was able to be resolved before the end of last year, we believe some progress has been made to form bipartisan consensus on both fronts.

The deadline for action on Medicare extenders is effectively the end of January to avoid having to make payments retroactively. Most providers can hold back their bills until they know whether the additional payment from the extenders will be made. Delaying the payment is far more preferable than trying to receive retroactive payments. There will be a strong push to include Medicare extenders in the next appropriations vehicle to move through Congress.

CHIP has a little more time as the last continuing resolution (CR) provided for payments through the end of March. There seems to be bipartisan agreement on the policy behind reauthorization. However, disagreements remain on how to pay for the bill, but hope remains that there will be sufficient time to identify acceptable off-sets.

AFFORDABLE CARE ACT. A commitment was made to Senator Collins (R-ME) to pass several health care bills in exchange for repealing the individual mandate in the tax bill. Senator Collins wanted to see passed the bipartisan Alexander-Murray bill to stabilize the individual insurance market and grant states some more flexibility under the Affordable Care Act (ACA). Specifically, the bill authorizes the payments for the cost-sharing reduction (CSR) payments and grants states more flexibility and predictability for waivers allowed under the ACA. The other bill Senator Collins wanted to see pass is one she authored with Senator Nelson (D-FL) to provide grants to states to create invisible high-risk pools and reinsurance programs to help lower the cost of premiums. While the Senate Leadership made a commitment to Senator Collins that was backed up by the White House, it is not clear whether these bills will be voted on in the House. There is intense opposition in the House to any bill viewed as propping up the ACA.

The big news recently was the release of the proposed rule from the Department of Labor on association health plans (AHPs). The proposed rule redefines who an "employer" is under the Employee Retirement Income Security Act (ERISA) for the purposes of offering health insurance. The definition of employer under the rule has a two-pronged test. The first test is whether they are in the same trade, industry, line of business, or profession. The second test is whether they have a principal place of business within a region that does not exceed the boundaries of a state or metropolitan area. Since the second prong includes metropolitan areas, you can have businesses grouping together across state lines such as in the Greater New York City Area which comprises areas in New York, New Jersey and Connecticut.

With this redefinition of employer, these businesses could offer plans that do not have to satisfy the essential health benefits under the Affordable Care Act. The Trump Administration is trumpeting this proposal as offering small businesses more options and the ability to offer lower cost health plans. Opponents are concerned this will leave older sicker people in that market with higher cost plans and fewer options.

The proposed rule only has a sixty-day comment period, which is short considering how ambitious the proposal is. And if the final rule is close to the proposed rule, we expect it will be challenged in the courts.

DRUG PRICING. The 340B Drug Program was the topic of hearings in the House Energy & Commerce Committee and CMS cuts in 2017. In November, CMS issued a rule calling for a $1.6 billion reduction in 340B hospitals' Medicare Part B drug reimbursements. Several hospital groups filed a lawsuit to block the reductions but that lawsuit was dismissed in late December. The hospital groups have indicated that they plan to continue to pursue the lawsuit. Also, legislative efforts to block these cuts are being discussed. We anticipate an effort to be made to add to the next government funding package some 340B provisions that may help improve the program and lessen the impact on safety net providers. At this point, it is safe to assume that the 340B program will continue to be a topic of debate and consideration in 2018.

OPIOIDS. There is also a lot of interest in Congress on taking measures to address the opioid crisis. There is bipartisan interest in seeking additional funding for states to use in their programs to combat the epidemic. There is also talk of the Energy and Commerce Committee writing the next version of the Comprehensive Addiction and Recovery Act (CARA). Details have yet to emerge on how much further this next CARA bill will go.

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