

## Federal Health Policy Report for CalPERS January 2017

### I. PRESCRIPTION DRUG PRICE/COST DEVELOPMENTS OF RELEVANCE TO CalPERS:

- A. President Trump Criticizes Drug Companies and Doubles Down on “bidding” for Medicare:** On January 11<sup>th</sup>, then President-Elect Trump held a news conference and stated that the drug industry was “getting away with murder” and pointed the finger at the power of Pharma’s lobby in avoiding cost containment. He then said that the US was going to start bidding for drugs and that the country would save “billions of dollars over a period of time.” Industries from PhRMA to defense contractors have been put on notice by Trump’s statements and tweets since his election, though it remains to be seen what actions the administration will take on such issues and how Congress will respond. Some in the industry are making price constraint commitments but its uncertain whether this will be enough to avert policy interventions.
- B. High Cost Drugs Driving Medicare Part D “Catastrophic” Coverage Spending:** The HHS Inspector General released a report on January 5<sup>th</sup> showing that significant increases in Part D’s catastrophic coverage spending, which kick in after a person hits \$4,950 out-of-pocket spending, were driven by the use of high cost specialty drugs. Spending on catastrophic protections was \$33 billion in 2015, or three times what was spent in 2010. Two thirds of this was driven by drugs costing \$1,000 per month and 1/3<sup>rd</sup> of it was caused by just 10 drugs. Harvoni, Gilead’s hepatitis C drug, cost \$6.3 billion alone. The report stated that Centers for Medicare and Medicaid Services (CMS) will need additional tools to deal with this rapidly increasing spending including providing incentives to lower costs, increasing transparency, promoting value based payment schemes, and allowing the government to negotiate on certain drugs.
- C. Cigna Pushes back on EpiPen’s Cost:** On January 11<sup>th</sup>, Cigna announced that it would no longer cover Mylan’s EpiPen, which is used for treating severe allergic reactions, but would instead include California-based Impax Laboratories therapeutic equivalent, Adrenaclick for plan members. Adrenaclick is about \$300 cheaper than EpiPen. Shortly after Cigna’s announcement CVS stated that they would begin to carry Adrenaclick. This episode further demonstrates the importance of payers having alternatives to high cost drugs to constrain costs.
- D. Abbvie Joins Others in Limiting Price increases:** AbbVie, maker of Humira, the world’s top selling drug in terms of revenue, announced that it was joining other companies including Allergan and NovoNordisk in holding drug price increases to 10 percent per year. Unlike the other companies, however, this commitment was limited to 2017 only. Critics were quick to point this out as well as note that Humira has already tripled in list price since 2008.
- E. PhRMA Unveils First Run of Ad Campaign:** As it is facing increased scrutiny, PhRMA has dedicated \$100 million per year to repair its image, focusing on the benefits on their investment in R&D and innovation for new treatments and cures, rather than on their products’ costs. It remains to be determined whether great products that people cannot

access because of their lack of affordability is sufficiently compelling to the public and purchasers.

- F. **Merck Releases Data on Net Price Increases:** On January 27<sup>th</sup>, Merck became the first large pharmaceutical manufacturer to release details on their pricing. The data released showed that net price increases (after rebates) since 2010 was between 3.4% and 6.2%, or about half of the list price increases. Merck stated that their average annual discount rate has been increasing since 2010, though it is unclear that these discounts have been passed onto consumers. Indeed, a CMS drug report released January 18<sup>th</sup> stated that while costs for private insurers in Medicare Part D have been lowered by higher discount rates, they have largely not been passed down to consumers. The release did not contain data on specific products. The announcement comes amid increasing calls for transparency for the drug industry.
- G. **President Trump Meets with Drug Makers.** On January 31<sup>st</sup>, President Trump met with the CEO of PhRMA as well as several PhRMA board members at the White House. At the meeting, the President pledged to expedite drug approvals and force foreign nations to pay their fair share for drugs manufactured in the U.S. saying, “We’re gonna be changing a lot of the rules. We’re going to be ending global free loading”. President Trump added that “it’s very unfair to this country” and promised an America-first trade policy. He added that his administration would also focus on getting the FDA to speed up drug approvals. Pharmaceutical manufacturer stock prices rose on news of the meeting.

**CalPERS Implications:** Several of these developments point to the pharmaceutical industry slowly coming around to attempt to address consumers’ and payers’ frustration about increasing drug prices. Nevertheless, very serious pricing issues remain for both public and private payers and the consumers they serve. President Trump’s tough rhetoric about the drug industry could potentially yield helpful policies for CalPERS in constraining drug costs if he can develop, pass, and/or implement meaningful administrative or legislative reforms.

**Recommended Positioning and Actions for CalPERS:** In an environment where President Trump and a broad array of consumer, business, labor, health plan, and provider stakeholders are raising consistently loud and public criticisms of the pricing practices of the pharmaceutical industry, CalPERS is liberated to be even more aggressive than usual in publicly embracing and advocating for policies that it believes will provide positive impact and relief. This includes direct engagement with stakeholder partners as well as individual advocacy by CalPERS with the new incoming Administration and the Congress on policies that will expand competition, eliminate barriers to competition, or use the government’s leverage to lower costs. In addition to direct lobbying/advocacy, CalPERS can and should proactively engage and advance priority positions in the various coalitions in which it is a member as well as co-sign or author coalition and/or stand-alone letters, hearing testimony, and op-eds that clearly convey and promote progress in this area. Finally, CalPERS should collect and release data of relevance on drug spending that highlight cost drivers to the system.

## II. CADILLAC TAX UPDATE

### A. **Urban Institute Research Report Makes Recommendations for Cadillac Tax**

**Improvement:** In a report Released January 4<sup>th</sup>, the Urban Institute concluded that a modified Cadillac Tax could still provide revenues and incentives for cost containment while addressing many of the legitimate criticisms aimed at the underlying policy. Their suggestions included allowing for variation across geography, employer size and other variables, index the threshold with GDP, and utilizing some of the revenue raised to help cover out-of-pocket expenses for low and middle income individuals.

Urban also indicated that a thoughtfully designed cap on the exclusion may be preferable to the Cadillac tax. While employers and labor have consistently opposed the Cadillac tax or a cap on the tax exclusion, health economists continue to point to what they see as the benefits of such a provision in constraining health care cost growth.

Because of Speaker Ryan's desire to replace the Cadillac Tax with a health care tax exclusion cap, this issue will continue to get a great deal of attention prior to the 2020 implementation date for the Cadillac tax.

### B. **The ERISA Industry Committee (ERIC) Sends Letter in Support of Cadillac Tax Repeal:**

On January 6<sup>th</sup>, ERIC submitted a letter in support of the "Middle Class Health Benefits Tax Repeal Act of 2017." This legislation, originally introduced by Representative Mike Kelly (R-PA) in the House and Senator Dean Heller (R-NV) in the Senate would repeal the Cadillac Tax at the end of 2017. It is unlikely that a stand-alone bill like this would pass while Republicans are debating whole-sale changes to the ACA, but these bills and their bipartisan co-sponsors show continued interest in repealing the Cadillac Tax across the aisle.

**CalPERS Implications:** Because of bipartisan and broadly based purchaser opposition to the Cadillac tax, most Congressional watchers expect that this tax will be repealed, reformed, or at least delayed beyond the current 2020 effective date. It remains to be seen if it will be replaced by an exclusion cap that could potentially be even more harmful to CalPERS. Speaker Ryan, other Republicans, and many health economists continue to advocate for such a policy, and are looking at the expected tax reform bill as a legislative vehicle to achieve their objective. What remains outstanding, however, is whether the lack of a consensus around the specific alternative to the Cadillac tax (either repeal altogether all the way to substituting a new tax cap) can be bridged or whether disagreements will lead to the retention of current law.

**Recommended Positioning and Actions for CalPERS:** CalPERS has consistently and strongly objected to the enactment and implementation of the Cadillac tax. Recognizing that health care tax incentives will be front and center in both the ACA repeal/"repair" and tax reform debates, CalPERS should continue to advocate against limits on federal tax incentives for health coverage that create inordinate pressure on employers to excessively reduce benefits and/or increase cost sharing. This position can be conveyed individually or collectively

through labor/business coalitions as well as other creative communication mechanisms such as op-eds or hearing testimony.

### III. DELIVERY REFORM DEVELOPMENTS:

- A. **HHS Secretary Nominee Representative Tom Price on Delivery Reform:** During Representative Price's hearings and in follow-up answers to questions with the Senate's HELP and Finance Committees, he indicated that he supported delivery system innovation and supported innovations in particular that did not reduce the quality of care. He also indicated that while Accountable Care Organizations' (ACOs) successes have been "modest to date," they are an important tool and he backs moving forward with them. However, as he has in the past, he stated that he is opposed to requiring mandatory participation in experimental programs. Representative Price, a surgeon, has been wary of innovations that increase government requirements for physicians. Broadly, however, it appears at this point that the Center for Medicare and Medicaid Innovation (CMMI) will remain for the foreseeable future.
- B. **CMS Announces Number of Providers Participating in Alternative Payment Models (APMs):** On January 17<sup>th</sup>, the Centers for Medicare and Medicaid Services announced that over 359,000 providers were participating in APMs for 2017 including the Medicare Shared Savings Program, the Next Generation ACO Model, Comprehensive End-Stage Renal Disease Models and the Comprehensive Primary Care Plus model. These providers serve 12.3 million Medicare and Medicaid beneficiaries.
- C. **Health Care Group Send Letter Advocating for Continued Value-Based Payment Transition:** A letter signed by dozens of health care organizations and associations including the National Coalition for Health Care and the Public Sector Health Care Roundtable of which CalPERS is a member, sent a letter to the incoming Administration and Congressional leadership encouraging them to continue the move toward value-based care. The letter highlighted the bipartisan nature of this work particularly the Medicare Access and CHIP Reauthorization Act (MACRA), and noted quality and cost savings potential in the area.

**CalPERS Implications:** While delivery reforms will likely be more targeted and voluntary in the Trump Administration than they were in the Obama Administration, it appears that they will continue. It will be important to monitor changes happening to the ACA for potential changes to delivery reform efforts such as CMMI.

**Recommended Positioning and Actions for CalPERS:** Because of CalPERS ongoing leadership and interest in delivery reforms that accelerate the health system's movement away from fee for service to "value purchasing," it is advisable for the System to promote continued progress. To that end, CalPERS can and should proactively engage and advance priority positions in the various coalitions in which it is a member as well as co-sign or author coalition and/or stand-alone letters, hearing testimony, and op-eds where possible and when aligned with CalPERS' position. To further encourage progress, CalPERS should also collect and release data on the successes of its more aggressive delivery reforms in an

attempt to not only highlight the best practices of the System but encourage more aggressive action from the federal government.

#### IV. ADDITIONAL UPDATES

##### A. Updates Around Affordable Care Act (ACA) Changes/Repeal/Replace

###### i. **House and Senate Pass 2017 Budget Resolution, First Step to Repealing The ACA:**

On January 12<sup>th</sup> and 13<sup>th</sup>, the Senate and House respectively passed the fiscal year 2017 budget resolution, the first step to repealing the ACA. Both votes were largely along party lines. During the Senate's voting process, a so-called "vote-a-rama" was held with various amendments being offered. The amendment gaining the most interest was one to allow the US to import drugs from Canada and other developed nations. It failed 46-52 with 12 Republicans voting in favor and 13 Democrats voting against.

###### ii. **Multiple and Conflicting Replacement Plans Continue to be Offered:**

In an attempt to produce an ACA replacement plan that could garner bipartisan support, Senators Collins (R-ME) and Cassidy (R-LA) released a plan on January 23<sup>rd</sup> to replace the ACA by allowing states to choose one of three paths: 1. Keep ACA 2. Replace ACA with high deductible plans and HSAs while keeping several of the market reforms of the ACA 3. Design their own health plan.

Counter to the plan's purpose, it frustrated conservatives who said that it would cost too much and indirectly validated the ACA, as well as Democrats who felt that it would result in too significant of benefit cuts. Senator Rand Paul (R-KY) also released a significantly more conservative replacement plan, which does away with tax credits replacing them by allowing individuals to deduct the cost of their premium and use HSAs to pay their premiums. This plan is likely to be dismissed by almost all Democrats out of hand as taking away benefits for too many, though would placate more conservative Republicans.

###### iii. **Internal Disagreement Around Strategy and Messaging for Changes to ACA:**

Although Republicans continue to by and large state that they intend to repeal and replace the ACA, their language has, in some cases, begun to change to use phrases such as "repair" or "rescue." This has frustrated some in the base of the Republican Party, in particular the "Freedom Caucus" of the House who want to move quickly to repeal certain core elements and to achieve significant federal savings in so doing. During their retreat in Philadelphia in the last full week of January, leaked audio showed that many in the party are concerned about political fallout of hastily taken action to dismantle the law. Indeed, the stakes moving forward were heightened this month after the Congressional Budget Office estimated that 32 million Americans could lose health insurance if Republicans were to only pass their reconciliation bill without sufficient transition and replacement. Speaker Ryan on January 25<sup>th</sup> stated that he wanted to repeal the ACA by March or April and follow that up with administrative actions to stabilize the market finally followed by replacement that will require Democrats help to reach the 60 vote threshold.

- iv. **President Trump Issues Executive Order on ACA:** On January 20<sup>th</sup>, the day President Trump was inaugurated, he released an executive order ordering HHS to use all authority to grant exemptions from the ACA, provide greater flexibility to states, and encourage sales of insurance across state lines. Opponents of the order said that it was “more flash than substance” but still portrayed it as potentially weakening the individual market. The Administration on the other hand, said it was evidence that they were getting to work on day one on their campaign promise to dismantle the law. Rep. Chris Collins (R-NY), President Trump’s liaison with members of Congress said that more executive orders on the ACA are expected.
- B. **ACA Enrollment Up:** On January 10<sup>th</sup>, HHS released a report that 11.5 million individuals had enrolled in ACA plans as of December 24<sup>th</sup>, an increase of 286,000 over the previous year. However, on January 27<sup>th</sup> it was reported that some advertisements for open enrollment would be reduced, sparking an initial backlash after it appeared to be a total stop on all advertisements and sign-up emails. It remains to be seen how all of the uncertainty will impact the market this year and next.
- C. **Speaker Ryan Pushes Significant Changes to Entitlements, President Trump Appears Resistant:** Paul Ryan, who has long pushed for significant changes in entitlements including Medicare once again pushed for moving to the so-called premium support system in a CNN town hall on January 3<sup>rd</sup>. The premium support model favors giving seniors a set amount to spend on Medicare or private plans. Advocates of such a plan say that it is necessary to avoid bankrupting the system while opponents say that it would significantly cut benefits for beneficiaries. President Trump throughout his campaign pushed back against the Republican orthodoxy on this, but some of his nominees, including those for HHS Secretary and OMB have shown mixed views on the subject. With this in mind, AARP announced a major new campaign on January 30<sup>th</sup> to oppose any major Medicare reform, highlighting specifically then Candidate Trump’s commitment to protect Medicare. Senate Republican Leader McConnell has also indicated a hesitancy to take on the Medicare issue, however, all elements of the Republican Party do seem committed to major Medicaid restructuring reforms.

**CalPERS Implications:** The ACA replace/“repair” debate offers a vehicle for opportunities and challenges for CalPERS. On the positive side, it may offer a vehicle to repeal reform or delay the Cadillac tax and engage in a possibly positive discussion around delivery system reform. On the other hand, the primary challenge related to the ongoing debate relates to the issue of cost shifting to states, public/private purchasers and consumers through the imposition of a new employer tax exclusion cap, excessively deep cuts to Medicare/Medicaid and/or significant declines in the number of insured Americans.

**Recommended Positioning and Actions for CalPERS:** Because the debate of issues surrounding the ACA can be so political, it is advisable for CalPERS to stay focused on the changes to the underlying law that could directly impact the System. To this end, it is recommended that CalPERS focus its engagement on embracing policies that could reduce the System’s cost or cost exposure (such as limiting or repealing the Cadillac tax) and opposing policies with potential to shift cost burdens to CalPERS (such as Medicare,

# AVENUE SOLUTIONS

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Medicaid, and coverage loss cost shifting) through direct advocacy and strategic individual or coalition letters/communications.