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Federal Health Policy Report for CalPERS
March 2017

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

A. Prescription Drug User Fee Reauthorization: The Senate Health, Education, Labor and Pensions Committee held a hearing on March 21st to kick off a fast-track effort to reauthorize the Prescription Drug User Fee Act (PDUFA, P.L. 112-144)), which provides industry assessed fees to supplement financing support for the Food and Drug Administration's review and approval of Rx drug applications. This legislation needs to be reauthorized by September 30, 2017 or its authorization expires. It is critically important to pass this legislation (which has not yet been introduced) to ensure there is continued and even improved success at getting high priority medications approved. Failure to do so could mean that prescription drug manufacturers that have medications with little or no competition will continue to be able to excessively price and inflate their products with some degree of impunity.

B. Drug Reimportation Update: Following a close bipartisan, but failed vote in January on a budget amendment to allow reimportation, Senators Casey and Booker, (two Democrats from states with significant drug manufacturer presence who voted against the amendment), joined Senator Bernie Sanders in introducing modified legislation to allow prescripton drug reimportation, the Affordable and Safe Prescription Drug Importation Act (S.469). In response, a group of 75 drug manufactuers including PhRMA, BIO, and the Association for Accessible Medicines (the recently renamed generic drug trade group) called the Partnership for Safe Medicines began a $1.5 million ad campaign aimed at senators likely to be swing votes on the issue of drug reimportation. Bolstering their position was a March 17th letter from four former FDA Commissioners from Democratic and Republican Administrations who said that reimportation was the wrong answer to prescription drug prices and that it could result in harm to patients due to counterfit or contaminated drugs.

C. Exchange Health Plans Drug Spending Increases Faster than Others: According to a report from pharmacy benefit manager Express Scripts, drug spending in the exchanges rose 14 percent after accounting for rebates and discounts. The increase was caused by a 7.8 percent increase in drug prices and 6.8 percent increase in utilization. In comparison, Medicare increased 4.1 percent, Medicaid by 5.5 percent and employer sponsored by 3.8 percent. Express scripts noted that much of the increase was due to chronic conditions and specialty drug spending.

D. Elijah Cummings Meets with President Trump and HHS Secretary Price: Representative Elijah Cummings (D-MD) met with President Trump and HHS Secretary Tom Price on March 7th to discuss drug prices and particularly legislation allowing Medicare to directly negotiate drug prices, as well as move dually eligible beneficiaries in Medicare and Medicaid to the Medicaid drug program. The meeting was called productive by both sides. It is unclear what the next steps are, but bipartisan interest and public outrage over rising drug prices continues to make action on this a strong possibility.

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E. Prescription Benefit Managers (PBMs) Face Scrutiny: On March 16th Senator Ron Wyden (D-OR), ranking member on the Senate Finance Committee, introduced the Creating Transparency to Have Drug Rebates Unlocked (C-THRU) Act of 2017 (S. 637). This bill would require disclosure of rebates provided to drug manufacturers to pharmacy benefit managers (PBMs) and transparency around how much of those rebates are passed on to plans. PBMs argue that certain transparency provisions are counter-productive because they undermine and/or reduce the level of rebates and discounts they can secure for their purchaser clients (including, of course, CalPERS) from both manufacturers and pharmacy networks respectively.

CalPERS Implications: Continued public pressure and President Trump's tough rhetoric about the drug industry could yield helpful policies for CalPERS in constraining drug costs if he can develop, pass, and/or implement meaningful administrative or legislative reforms. It is a certainty that drug manufacturers will push back strongly against almost any significant attempts to constrain costs.

Recommended Positioning and Actions for CalPERS: In an environment where President Trump and an array of consumer, business, labor, health plan, and provider stakeholders are raising consistently loud, public criticisms on 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 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 and in particular may wish to analyze the potential impact that drug reimportation or transparerncy initiatives would have on costs and quality for the system to determine any action in supporting or opposing any legislation. CalPERS is commencing to do such analyses.

II. CADILLAC TAX UPDATE

A. The Withdrawn ACA Repeal/Repalce Bill Would Have Delayed Cadillac Tax: The final draft of the American Health Care Act (AHCA) included a delay of the Cadillac tax from 2020 to potentially 2026. Earlier drafts of the Republican plan indicated that it was possible that the Cadillac Tax would be replaced with a cap on the tax deductability of employer sponsored health insurance. The latest failed repeal/ replace legislative vehicle, however, did not include any such health care tax exclusion cap.

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CalPERS Implications: The apparent removal of the employer sponsored insurance tax deductability cap was an encouraging development for CalPERS as was the decision to further delay the Cadillac tax to potentially 2026. Howerer, unless the House Republicans bring some form of the AHCA back up in a second attempt to pass their repeal/replace legislation, the current law effective date for the imposition of the Cadillac tax remains 2020. **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 and will 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 will 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. Centers for Medicare and Medicaid Services Continues ACO Program: On March 3rd, CMS released a request for applications and letters of intent for organizations interested in participating in the Next Generation Accountable Care Organization (ACO) Model in 2018. Though recent research had shown cost savings without a drop in quality from ACOs, there was some question whether the Trump administration would continue this program. This solicitation is the first indication that it will indeed continue.

B. Delays for CMS Bundled Payments Demonstration: On March 20th, CMS posted an interim final rule to delay the Advancing Care Coordination Through Episode Payment Models rule to May 20th. This is the second delay for this program designed to bundle cardiac and orthopedic care model which was originally to take effect February 18th but was delayed to March 21st by the President's regulatory hold. The potential implementation date has been delayed from July 1st to October 1st and CMS is seeking comment as to whether it should be further delayed until 2018.

CalPERS Implications: These mixed developments regarding delivery reform continue to demonstrate that while delivery reforms will likely be more targeted and voluntary in the Trump Administration than they were in the Obama Administration, 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

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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 Repeal and Replace Bill Ends in No Vote:** After six weeks of attempting to develop compromise legislation to repeal and replace the ACA, House Speaker Paul Ryan pulled their replacement bill, the American Health Care Act on March 24th. Ryan stated that the decision came as they did not have enough votes to pass the legislation and did not want to risk defeat on the House floor. Media whip counts showed that Ryan had lost both vulnerable/moderate Republicans who found opposition from consumer/patient and provider groups as well as a CBO score that showed 24 million people losing coverage from the plan too much to swallow. Conversely, conservative "Freedom Caucus"members were frustrated that the bill did not go far enough in repealing the ACA's insurance regulations and reducing federal spending. Public polling on the plan also showed that the public was not sold on the plan with one showing that the plan had only 17 percent approval. Since pulling the bill the White House and members of Congress have given mixed signals as to whether the effort will be revived in earnest in the coming weeks and months. Immediately after pulling the bill, both President Trump and Speaker Ryan indicated that they were moving on to tax reform and other priorities, but the following week there were reports that quiet discussions had begun to take back up the push. Regardless, there are still a multitude of regulatory actions that the Trump administration can take to make changes to the law.

ii. **Three Separate Bills Introduced:** Three bills separate from the Republican Repeal/Replace bill, but still part of the overall Republican health care strategy, passed the House Education and Workforce Committee. Of most interest to CalPERS is the Preserving Employee Wellness Programs Act (H.R. 1313). This bill would increase employers' ability to utilize wellness programs by pre-empting Equal Employment Opportunity Commission (EEOC) regulations of employee wellness programs under the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA). Programs would be exempt from the ADA and GINA which restrict employers to require employee health information and the disclosure of it and instead use ACA wellness requirements which do not include these prohibitions. Advocates of this say that it will give the employers the certainty they need to operate wellness plans and lower costs. However, critics, including many Democrats, point out that the benefit of such plans are unclear and these rules would potentially increase discrimination. The other two bills are related to allowing small employers to group together, (H.R. 1101 Small Business Health Fairness Act of 2017) to offer health insurance and pre-empting certain self insured plans, (H.R. 1304 Self-Insurance Protection Act) from regulation. It is unclear what will happen to these three bills now that ACA repeal and replace has stalled.

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B. **Seema Verma Confirmed as CMS Administrator:** Nominee for CMS Administrator, Seema Verma was confirmed by a 55-43 vote, largely along party lines on March 13th. In her work running SVC Inc. her health policy consulting firm, Verma worked with several states on Medicaid reform. She has agreed to divest in her health policy consulting firm, and to receive permission from the HHS Ethics division before engaging with issues related to states she has worked for including Arkansas, Indiana, Iowa, Kentucky, Michigan, Ohio, Tennessee, South Carolina, and Virginia.
C. **HHS Budget Cuts Included in President Trump's Budget Blueprint:** In his first budget blueprint, released on March 16th, President Trump included significant discretionary budget cuts including an 18 percent cut to HHS funding and 20 percent National Institutes of Health (NIH) funding cut. As this blueprint is just a broad outline, it is unclear exactly what programs are targeted by these cuts, but the NIH cuts have in particular sparked a bipartisan backlash from some. The details of the full budget released later this year will be closely watched.

CalPERS Implications: In the aftermath of the House failure on the ACA repeal/replace bill, any subsequent ACA "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. Although the legislation appears to be stalled for now, it is a rapidly evolving dynamic that could quickly change. Furthermore, the Trump administration is still likely to take administrative action in making changes to the law.

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, both legislative and administrative, 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, Medicaid, and coverage loss cost shifting) through direct advocacy and strategic individual or coalition letters/communications. As noted above, the situation is rapidly evolving and, as such, consultants and CalPERS staff should and will continue to monitor developments and possible positioning around any changes.