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Federal Health Policy Report for CalPERS
May 2017

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

A. **HELP Committee Advances Prescription Drug User Fee Legislation:** On May 11th, by a vote of 21-2, the Senate HELP committee passed the latest iteration of the Prescription Drug User Fee Authorization (officially called the FDA Reauthorization Act of 2017, S. 934) to extend FDA's ability to collect fees from drug and device manufacturers to pay for drug approvals. The two dissenting votes were from Senators' Paul and Sanders, the latter of whom wanted to see language about importing prescription drugs from other countries included. The House has yet to act, but is expected to meet and pass out their version of this legislation this summer.

B. **Senate Committee to Hold Hearing on Drug Prices.** In response to a bipartisan letter on May 8th from 10 Senators, Senator Alexander, Chairman of the Health Education Labor and Pensions (HELP) Committee, agreed to hold a hearing in June on prescription drug spending and trends in the United States. It is expected that there will be additional future hearings on this topic.

C. **Campaign for Sustainable Rx Pricing Ad Campaign:** In May, the Campaign for Sustainable Drug Pricing run by the National Coalition on Health Care (of which CalPERS is a Member) began a multi-million-dollar ad campaign aimed at highlighting pricing practices and tactics used by pharmaceutical companies. The ads will run in the Washington D.C. area as well as key members' districts.

D. **Public Overwhelmingly Supports Medicare Direct Negotiation (and other prescription drug cost constraint interventions):** According to the May Kaiser Family Foundation tracking poll, 92 percent of voters said they supported direct negotiation on drug prices by Medicare. This is a 10 percent increase from when the question was asked in September and is yet another data point showing that the public increasingly demands action on drug prices. The poll also had lower but still very significant support for transparency provisions on pricing (86 percent favor), limiting costs on high cost drugs (78 percent favor), and (72 percent) favoring importing prescription drugs from Canada.

E. **Sanofi Announces Limits to Drug Price Increases and Transparency Measures:** On May 9th, Sanofi announced that they would keep their drug price hikes limited to the medical inflation rate, which has averaged 5.6 percent over the last decade. They also said they would release gross and annual aggregate net price increases for all of its products as well as providing an assessment of a drug's value at its launch. Other companies have announced somewhat similar measures, though Sanofi's seem to be the most aggressive as other companies have pledged to keep their price increases under 10 percent.

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CalPERS Implications: Public polling continues to validate CalPERS focus on prescription drug pricing as a serious issue worthy of attention. It also continues to drive lawmakers to look into pricing practices to determine root causes and develop fixes. It is questionable, however given the partisan atmosphere around health care and the influence of pharmaceutical stakeholders in opposition, whether any "game-changing" legislative fixes are possible in the near term. It is a certainty that drug manufacturers will push back strongly against almost any significant attempts to constrain costs, though the ongoing public pressure as well as threats for action by lawmakers and the Trump Administration seem to be pushing some manufacturers to at least be temporarily more judicious in their pricing behavior. It is unclear how much these voluntary actions will ultimately bring down prices for consumers and purchasers such as CalPERS.

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/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 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, participate in hearing testimony, and in authorizing op-eds that clearly convey and promote progress in this area. Finally, CalPERS should collect and release data of relevance on prescription drug spending that highlight cost drivers to the system and in particular may wish to analyze the potential impact that drug reimportation or transparency initiatives would have on costs and quality for the system to determine any action in supporting or opposing any legislation.

II. CADILLAC TAX UPDATE

A. **AHCA As Passed by House Delays Cadillac Tax:** In the American Health Care Act passed by the House on May 4th (additional details below) the Cadillac tax would be delayed from 2020 to 2025. With the bill now headed to the Senate and significant changes expected it remains to be seen whether this policy will make it into the next version.

CalPERS Implications: With the passage of the AHCA in the House, the prospects for delay, repeal or reform of the Cadillac Tax have improved through that vehicle. However, there are of course portions of the AHCA which would likely increase costs for CalPERS through cost shifting. It was helpful for CalPERS to take the opportunity to comment to Chairman Hatch (details below) and Ranking Member Wyden about the AHCA as the Senate begins its process of altering the House-passed version to lay out areas of improvement for the AHCA overall as well as reiterate its opposition to the Cadillac Tax.

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 has been and will continue to 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. **CHRONIC Care Act Advances**: On May 18th, the Senate Finance Committee passed the CHRONIC Care Act (S.870) unanimously. This bill, which aligns well with ongoing practices and policy of CalPERS, extends the Independence at Home program and team based care as well as provides Medicare and Medicare Advantage additional flexibility to pay for telemedicine services. Chairman Hatch has expressed his desire to keep ACA related provisions out of the bill as it moves to the Senate floor, though with the ongoing debate over health care, it is unclear if that will be possible. CalPERS team member Gretchen Zeagler and federal representative Yvette Fontenot met with Senate Finance Committee staff to discuss CHRONIC and reiterated CalPERS' experience with chronic care management and offered technical assistance.

B. **More Providers Exempt from MACRA's Merit Based Incentive Payment System Than Previously Estimated:** The Merit-Based Incentive Payment System (MIPS) requires providers to report quality measures and utilize electronic health records to determine part of their payment as a way to continue to move the health care system toward value. CMS has sent letters informing over 800,000 providers that they would be exempt from MIPS requirements up from the estimated 780,000 when the rule was published last year. Only about 419,000 physicians are now slated to MIPS data down from the expected 642,000. CMS says this is due to an updated formula in calculating which providers must participate in the program.

C. **Bundled Payments Rule Further Delayed:** On May 17th, CMS announced that the "Advancing Care Coordination through Episode Payment Models" rule finalized during the Obama administration was further delayed from July 1, 2017 to January 1, 2018. This rule would update the Comprehensive Care for Joint Replacement Model as well as introduce additional mandatory bundled payment models for cardiac and orthopedic care. Secretary Price has been a critic of mandatory delivery reform models.

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CalPERS Implications: The Trump Administration continues to submit pursue more targeted and voluntary delivery system reforms. However, it will be important to monitor any potential changes to the delivery system reform effort that delay physician movement to value-based payment models as well as potential Centers for Medicare and Medicaid Innovation demonstrations on fundamental Republican Medicare reform ideas such as premium support.

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, in particular in support of the CHRONIC Care Act. To that end, CalPERS can 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. **<u>ADDITIONAL UPDATES</u>**

A. **Updates Around Affordable Care Act (ACA) Changes/Repeal/Replace:** May 4th, the House of Representatives passed the American Health Care Act (AHCA) by a vote of 217-213. According to a Congressional Budget Office score released on May 24th, after the passage of the bill this legislation is estimated to increase the uninsured by 23 million by 2026 but reduce the deficit by $119 billion between 2017-2026. Democrats seized on this score as evidence of the bill's flaws while some Republicans questioned the accuracy of the score and others including Speaker Paul Ryan touted the deficit and spending reductions of the bill and pointed to continuing plan pull-outs from the exchanges in the ACA as evidence that repealing the law is the only viable alternative. This legislation now heads to the Senate, which has indicated there are likely to be significant changes to the bill and will likely moderate some of the extensive Medicaid cuts as well as some of the tax breaks. As in the House, Senate Republicans working on crafting the legislation have the difficult balancing act of losing more conservative members such as Senators Paul, Cruz, and Lee while also keeping more moderate members like Senators Collins and Cassidy. Majority Leader McConnell has indeed stated on May 24th "I don't know how we get to 50 [votes] at the moment." Senate Democrats have urged a more bipartisan process and some meetings have been ongoing between moderate Republicans and Democrats to see if a compromise can be struck. It is unclear how much real progress has been made in those meetings.

a. **Hatch Seeks Comments on AHCA:** On May 12th Senator Hatch, Chairman of the Senate Finance Committee, sent out a letter seeking input from a wide variety of stakeholders (including CalPERS) on the Senate's version of the AHCA. As Chairman of the Finance

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Committee Senator Hatch will play a critical role in any action the Senate takes regarding the ACA. In response to his request, CalPERS CEO Marcie Frost submitted CalPERS views about high priorities for the system including serious objections to the flawed Cadillac Tax policy, the cost shifting of over 20 million newly uninsured, the lack of prescription drug cost containment provisions and the elimination of the Prevention and Public Health Fund and its impact on prevention programs. The letter also praised the Chairman's leadership in his development and passage of the CHRONIC Care Act. It also thanked the Chairman for the opportunity to comment on ACA reforms as well as offered continued desire for open dialogue. The letter was shared with the Ranking Member of the Senate Finance Committee as well as the two California Senate offices.

B. **President Trump's Budget Cuts HHS Budgets Significantly:** On May 23rd, President Trump laid out his spending priorities for FY 2018 which included significant cuts for HHS programs. The NIH budget would see a nearly $6 billion cut to $25.8 billion for 2018, and the CDC would receive $5 billion, down $1.3 billion from this year. The budget assumes $610 billion in Medicaid savings through per-capita caps and block grants. Most, though not all of this amount, would be added on to the estimated $800 billion in Medicaid savings in the AHCA. CHIP would be extended through 2019, but the enhanced federal match rate would be eliminated which would ultimately decrease to 250percent of poverty the amount that states could receive federal matching dollars. The budget assumes this would save $16.7 billion. Medicare is not directly cut but the Independent Payment Advisory Board, which was established during the ACA to control Medicare costs if they rise too quickly, would be abolished. The Health Care Fraud and Abuse Control Program would receive an infusion of $8.7 billion to overhaul the program.

CalPERS Implications: The ongoing discuss over ACA repeal/replace bill continues to offer opportunities and challenges for CalPERS. On the positive side, it may offer a vehicle to repeal, reform, or delay the Cadillac tax. 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 surrounding the ACA is 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

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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.