

Holland & Knight

800 17th Street N.W., Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564
Holland & Knight LLP | www.hklaw.com

Memorandum

Date: May 25, 2017

To: Interested Clients

From: Holland & Knight Healthcare & Life Sciences Team

Re: Trump Administration FY 2018 Budget and Healthcare Programs

The Trump Administration released on May 23, 2017, its full Fiscal Year (FY) 2018 budget request, titled "[A New Foundation for American Greatness](#)." President Donald Trump's request builds off of the administration's March 16 budget blueprint, or "skinny budget," entitled "[America First: A Budget Blueprint to Make America Great Again](#)." Although the President's budget does not carry with it the force of law, the document has historically served as an important signal to Congress of the administration's policy and funding intentions for each fiscal year, and thus typically includes fairly detailed descriptions of funding goals for some of the federal government's most crucial health-related programs.

The Trump Administration's budget request provides fairly extensive, line-by-line details on a \$1.167 trillion proposed discretionary spending plan for FY 2018. As mentioned in the skinny budget, the budget request creates several discretionary cap adjustments that would reverse sequestration for defense – increasing the defense discretionary cap in FY 2018 from \$529 billion to \$607 billion – and pay for the increase by reducing non-defense spending by a total of \$54 billion in FY 2018. In addition to reducing non-defense spending in FY 2018, the request also outlines a strategy to balance the budget by 2027 through additional annual 2 percent cuts to non-defense discretionary programs. These cuts amount to a total of \$3.6 trillion in spending reductions and cuts publicly held debt to 60 percent of gross domestic product (GDP).

Many of the major non-defense domestic programs see extensive funding reductions, and healthcare is no exception. Overall, the budget would implement Medicaid reforms that would reduce spending by nearly \$610 billion from projected levels over the next decade, the first cut of its kind to the mandatory healthcare program for low-income and disabled individuals. This comes on top of nearly \$850 billion in estimated reductions to the Medicaid program under the American Health Care Act (AHCA), the legislation passed by the U.S. House of Representatives to repeal and replace the Affordable Care Act (ACA), and assumes many of the programmatic changes offered by the legislation. The budget would also institute several major policy and

programmatic changes to mandatory and discretionary programs as well as alter funding for many health-related agencies and their individual programs.

Overall, members of Congress on both sides of the aisle have expressed apprehension at the nature and size of some funding reductions and programmatic changes included in the budget request. Further, several members have sent clear messages that some of these changes, such as a sizable reduction in funding for the National Institutes of Health (NIH) discussed below, are politically challenging and are not likely to be adopted during the regular appropriations process.

Programmatic Changes

Medicaid

The budget echoes legislative proposals made in the House-passed AHCA by allowing states to choose between establishing a per-capita-cap program or a block grant program beginning in 2020. These options' limits on funding on a per-beneficiary or per-state basis, combined with the loss of insurance under Medicaid for many current enrollees, would result in the aforementioned extensive funding cuts to the Medicaid program.

Children's Health Insurance Program (CHIP)

The FY 2018 budget proposes to extend funding for CHIP through FY 2019. Current funding for the program will expire at the end of FY 2017 (Sept. 30, 2017) unless extended through congressional action. However, the extension of CHIP funding is tied to several programmatic proposals that would have adverse effects on funding for children's health services that could impact coverage levels. The budget would not extend the 23-percentage-point increase in the federal CHIP matching rate that took effect in 2015 and will expire at the end of FY 2017. Repealing this match would result in many states losing billions of dollars in federal support for their CHIP programs. Further, the budget proposes to repeal CHIP's maintenance of effort requirement, which would give states the flexibility to reduce benefits for children within their CHIP programs or allow states to dismantle their CHIP programs entirely. The budget also creates a federal cap on CHIP coverage to those under 250 percent of the federal poverty level, which is lower than the eligibility level used by more than half of states, and would allow states the ability to move children from ages 6 to 18 with incomes between 100 and 133 percent of the federal poverty level from Medicaid into CHIP, reducing their Medicaid rolls while putting additional stress on CHIP programs that may see weakened funding due to these and other legislative proposals.

Medicare

The budget does not propose any direct cuts or major reforms to the Medicare trust funds or oversight. However, it does make several proposed changes to the process for appealing Medicare claims decisions, including providing \$1.3 billion in mandatory funding to the U.S. Department of Health and Human Services (HHS) to invest in addressing the appeals backlog, remanding appeals to the first level of appeal when new evidence is submitted at higher appeals levels, increasing and indexing the minimum amount in controversy required for

adjudication, and reducing overhead costs at the Office of Medicare Hearings and Appeals (OMHA) by allowing the office to issue decisions without a corresponding hearing if there is no material fact in dispute.

Medical Liability Reform

The budget proposes changes to the nation's medical liability system, including a cap on non-economic damage awards starting at \$250,000 and indexed for inflation, a three-year statute of limitations on malpractice claims, flexibility for courts to modify attorneys' fee arrangements, creation of a safe harbor for clinicians following evidence-based clinical practice guidelines and the ability for states to create expert panels to review medical liability cases, among others. These reforms are estimated to create \$55 billion in savings over 10 years.

Temporary Assistance for Needy Families (TANF)

The budget proposes a 10 percent cut to the TANF block grant, aligning with the elimination of the social services block grant program, and would eliminate the TANF contingency fund, a supplemental fund that allows states additional relief during times of economic downturn. These programmatic changes would result in a \$21 billion cut to the program over 10 years. The budget justifies the cuts in order to streamline the program and reduce waste.

Supplemental Nutrition Assistance Program (SNAP)

Of the welfare programs addressed in the FY 2018 budget request, SNAP would see one of the largest funding and resource reductions. The budget proposes several legislative changes that would dramatically alter the program, including limiting categorical eligibility of participants in the program and modifying income and benefit calculations to reduce program usage. In addition, the budget proposes to create a state match for the SNAP program, currently a 100 percent federally funded program, which would begin with a 10 percent state match in 2020 and increase to 25 percent by 2023. These changes would result in a 29 percent cut to the program over 10 years, or \$193 billion.

Independent Payment Advisory Board (IPAB)

The budget proposes to repeal the IPAB and rescind any unobligated funds for the program.

Funding Levels

Below is a summary of the budget's proposals concerning health-related agencies and programs.

Department of Health and Human Services (HHS)

The President's FY 2018 budget request includes \$69 billion in appropriated funding for HHS, deviating slightly from the \$65.1 billion proposed in the administration's skinny budget in March. The funding request represents a decrease of \$4.5 billion from the FY 2017 enacted levels. Despite the 6.1 percent overall cut to HHS, the budget includes funding for the Substance Abuse and Mental Health Services Administration's abuse treatment activities and

\$500 million authorized in the 21st Century Cures Act to expand opioid misuse prevention efforts.

Health Resources and Services Administration (HRSA)

The budget provides \$5.5 billion to HRSA, a cut of nearly \$1 billion to the agency that oversees healthcare workforce programs, among many others. As mentioned in the March blueprint, the FY 2018 budget eliminates \$403 million in health professions and nursing training programs but will continue to fund health workforce activities that promote service in health professional shortage areas. It is unclear which of the programs authorized under Titles VII and VIII of the Public Health Service Act will be affected by the funding cut, although the administration's "[Major Savings and Reforms](#)" document indicates that 14 "diversity training programs, mental and behavioral health programs, oral health programs, and select nursing and physician training programs" would be eliminated. And, while NURSE Corps scholarship and loan repayment funding would be retained, programs such as the Health Careers Opportunity Program (HCOP), mental and behavioral health, and workforce analysis would be eliminated. Currently, programs under Titles VII and VIII receive nearly \$500 million in annual funding.

Although the agency saw a significant cut overall, the budget kept funding for certain programs – such as the Ryan White HIV/AIDS Program, the Title X Family Planning Program and the 340B Drug Pricing Program – relatively stable at \$2.3 billion, \$286 million and \$10 million, respectively. The FY 2018 budget request also extends the current \$3.6 billion in annual mandatory funding for community health centers for FYs 2018 and 2019 as well as provides \$1.5 billion in discretionary funding, which is level from the past two fiscal years.

Centers for Medicare & Medicaid Services (CMS)

The budget focuses on several programmatic changes to the health programs overseen by CMS, especially Medicaid and CHIP, and makes only a few proposals related to operations funded through discretionary dollars within the budget. Overall, the budget would cut discretionary program management funding for the agency by nearly \$400 million, which funds activities necessary for the administration of the Medicare, Medicaid and CHIP programs. In addition, the budget aims to curb waste, fraud and abuse in the Medicare and Medicaid programs, and includes \$751 million for the Health Care Fraud and Abuse Control (HCFAC) program at CMS, which represents increases of \$70 million and \$26 million, respectively, compared with the FY 2016 and FY 2017 enacted levels.

Food and Drug Administration (FDA)

The budget request takes two overarching actions concerning FDA funding: a) increasing medical product user fees, which are collected from medical product sponsors during the application process for new products, from approximately \$1.2 billion to \$2.4 billion, and b) reducing discretionary spending for the FDA as a whole by more than \$800 million to \$1.88 billion. This shift in user fees echoes a call by the administration to require medical product

sponsors to pay for the entirety of the new medical product review process rather having the process supplemented through discretionary appropriations.

However, some members of Congress and the medical products industry have already come out against the increase in user fees, expressing concern that it would supplant rather than supplement additional needed discretionary appropriations for the agency. In addition, there has been concern that the increase would adversely affect the user fee agreements that had already been negotiated between the medical products industry and the Obama Administration last year. Congressional leaders have already commented that an increase in fees would not occur during this fiscal year as part of the user fee reauthorization legislation currently being considered in Congress. Further, the cut in discretionary appropriations would likely affect many of the nearly 13,000 full-time employees and services they provide outside the medical product review divisions. Finally, the budget would cut nearly \$100 million from food safety programs across the agency and would institute regulatory reforms to speed the approval of medical products.

National Institutes of Health (NIH)

The FY 2018 budget provides \$26.9 billion for the NIH, representing a cut of \$7.1 billion compared with its current funding level. As briefly mentioned in the March blueprint, the budget details several shifts to the agency's institutes and centers, of which there are 27, to focus on high-priority research while eliminating the Fogarty International Center that contributes more than \$70 million in grant funding for global health research. The budget also cuts nearly \$1 billion from the National Cancer Institute and more than \$300 million each from the *Eunice Kennedy Shriver* National Institute of Child Health and Human Development (NICHD) and the National Institute of Neurological Disorders and Stroke (NINDS).

In addition, the budget would consolidate the Agency for Healthcare Research and Quality (AHRQ) into the NIH as an institute or center and would provide \$272 million for its operation within NIH. AHRQ, which has frequently been a target for elimination by congressional budget hawks over the past several years, is currently funded at \$324 million per year. The overall funding reductions to the NIH and its institutes and centers are at odds with the bipartisan support shown by Congress the past several years for continued financial support and budget increases for the agency.

Centers for Disease Control and Prevention (CDC)

The FY 2018 budget provides \$5.1 billion in funding for the CDC, a cut of more than \$1 billion from the FY 2017 enacted level. The budget makes several cuts of more than \$100 million from CDC programs, including Chronic Disease Prevention and Health Promotion, HIV/AIDS, Viral Hepatitis, Sexually Transmitted Diseases and Tuberculosis Prevention. In addition, the budget creates a Federal Emergency Response Fund to respond to public health outbreaks, such as the Zika virus outbreak, and would allow the HHS Secretary emergency transfer authority of up to 1 percent from any HHS account in addition to department-wide transfer authority. This account

will supplement CDC's current activities in emergency response, with the budget retaining all but \$25 million of funding for disaster preparedness programs within the Office of the Assistant Secretary for Preparedness and Response (ASPR). This funding mechanism has received bipartisan support in Congress in the past.

In addition, the budget attempts to counter proposed cuts to the agency's discretionary funding by establishing an America's Health block grant program, funded at \$500 million in FY 2018, to reform current state-based chronic disease programs and provide capped amounts of funding to states to address issues related to chronic disease and child and adolescent obesity. It is unclear what formula would be used to disburse funding from this account to the states.

It should also be noted that the House-passed AHCA eliminated the ACA-authorized Prevention and Public Health Fund that provides nearly \$1 billion annually to the CDC's core budget. This amounts to 12 percent of the CDC's annual funding. However, the FY 2018 budget assumes \$841 million in funding from the Prevention and Public Health Fund for CDC's budget and does not eliminate the program, indicating a potential divide between the congressional Republican agenda and the administration.

Other Health-Related Issues

Finally, the budget preserved the discretionary funding authorized by the 21st Century Cures Act (Public Law 114-255) for the NIH and FDA. This funding by law falls outside the discretionary budget caps and is directly appropriated for several provisions, such as the Cancer Moonshot, the Precision Medicine Initiative and the Brain Research through Advancing Innovative Neurotechnologies (BRAIN) Initiative.

President Trump's FY 2018 Budget Blueprint Comparison

| | FY 2016 Enacted Level | FY 2017 Enacted Level | President's FY 2018 Budget |
|--|------------------------------|------------------------------|-----------------------------------|
| Centers for Medicare & Medicaid Services (CMS) | | | |
| Health Care Fraud and Abuse Control (HCFAC) | \$681 million | \$725 million | \$751 million |
| Health Resources and Services Administration (HRSA) | \$6.3 billion | \$6.4 billion | \$5.5 billion |
| Health Workforce Programs | \$785 million | \$785 million | \$383 million |

| | | | |
|---|-----------------|-----------------|-----------------|
| Children's Hospital Graduate Medical Education (CHGME) | \$295 million | \$300 million | \$295 million |
| Ryan White HIV/AIDS Program | \$2.322 billion | \$2.318 billion | \$2.260 billion |
| Title X Family Planning Program | \$286 million | \$286 million | \$286 million |
| 340B Drug Pricing Program | \$10.2 million | \$10.2 million | \$10.2 million |
| Community Health Centers | \$1.5 billion | \$1.5 billion | \$1.5 billion |
| National Institutes of Health (NIH) | \$33.1 billion | \$32.3 billion | \$26.5 billion |
| <i>Eunice K. Shriver</i> National Institute of Child Health and Human Development (NICHD) | \$1.339 billion | \$1.380 billion | \$1.032 billion |
| Agency for Healthcare Research and Quality (AHRQ) | \$334 million | \$324 million | \$272 million |
| Food and Drug Administration (FDA) | \$2.8 billion | \$2.69 billion | \$1.88 billion |
| Centers for Disease Control and Prevention (CDC) | \$6.4 billion | \$6.26 billion | \$5.1 billion |
| ASPR Programs | \$1.405 billion | \$1.405 billion | \$1.380 billion |

Resources

[Trump Administration Budget Blueprint](#)

[Trump Administration FY 2018 Budget Request](#)

[Trump Administration FY 2018 Budget Request Major Savings and Reforms](#)

[Trump Administration FY 2018 Budget Request HHS Appendix](#)