Holland & Knight

Memorandum

Date: February 7, 2018

From: Holland & Knight

Re: House, Senate Proposals to Extend Funding for the Federal Government

**Overview**

Congress moved one step closer to avoiding a government shutdown on Feb. 6, voting overwhelmingly (245-182) to pass a short-term, GOP-backed government funding bill (text; section-by-section) that would keep the federal government running beyond the midnight Thursday deadline through March 23. The bill also needed to increase budget caps in order to enable congressional appropriators to craft and pass an omnibus appropriations package to fund the government beyond the March 23 deadline. However, this House-passed legislation only raised budget caps for the Department of Defense without raising budget caps for non-defense programs. This, in addition to the fact that the bill did not consider Senate defense priorities, made the passage of the legislation unlikely in the Senate without additional changes.

In order to ensure action prior to the shutdown deadline, Senate leaders then reached a bipartisan agreement to lift both defense and non-defense discretionary budget caps by $160 billion and $128 billion respectively over two years in order to avoid mandatory sequestration cuts and allow the opportunity for Congress to design a long-term appropriations package. The legislation also would raise the debt limit through March 2019, would include some tax break "extenders," and included a number of provisions meant to garner bipartisan support for the proposal, many of which were healthcare related. Earlier today, the Senate released the health provisions of the 2018 budget agreement (see attached). The Finance Committee is saying small tweaks are forthcoming tonight (Feb. 7) but no material changes. The Senate is expected to take first vote to advance the CR on Thursday (Feb. 8) morning, with a second vote to pass the legislation in the afternoon.

It is not entirely certain the package will win enough support to pass the House. House Minority Leader Nancy Pelosi (D-Calif.) says she will oppose the deal without a commitment from Speaker Paul Ryan (R-Wis.) to consider legislation to protect "Dreamers" and other immigrants facing possible deportation next month. The Senate is expected to address the issue later this month in separate floor action.

**Summary of CR Healthcare Provisions**

*Children's Health Insurance Program (CHIP)*
The Senate agreement provides an additional four years of funding for CHIP on top of the six-year extension of funding that was included as part of the Jan. 17 CR to fund the government until Feb. 8 for a total of 10 years of CHIP funding, through FY 2027. 10-year funding for CHIP was the ultimate result of an updated score from the Congressional Budget Office (CBO) as part of the sweeping tax legislation signed into law late last year indicating that the program would save the federal government $6 billion over 10 years as a result of the repeal of the ACA's individual mandate in the aforementioned tax package.

*Health Care Extenders*
The Senate agreement includes a total of $22 billion to extend or make permanent certain health care extenders, many of which had previously expired on Jan. 1. These provisions include:

- Permanent removal of caps on incurred expenses for outpatient therapy services, including physical and occupational therapy and speech-language pathology services under Medicare Part B, retroactive to Dec. 31, 2017

- A two-year delay in scheduled cuts to Medicaid disproportionate share hospital (DSH) allotments. This delay would then establish scheduled total cuts of $4 billion in FY 2020 and $8 billion for each of FYs 2021 – 2025. DSH cuts would total nearly $2 billion in FY 2018 without additional congressional action
- Extension of the ground ambulance add-on payments (increases of two percent for urban, three percent for rural, and 22.6 percent for super-rural) for an additional five years (until 2023)
- Extension of the home health rural add-on payment
- Extension of the increase in the inpatient hospital payment adjustment for certain low-volume hospitals by an additional five years, through FY 2023
- A two-year funding extension for the state health insurance assistance programs
- Extension of the Medicare geographic payment cost index for physicians, which increases the work component of physician fees in areas where labor costs fall below the national average, for two years
- Makes permanent Special Needs Plans within Medicare Advantage
- Two years of funding for both the Personal Responsibility Education and Sexual Risk Avoidance Programs
- Extension Health Professions Workforce Demonstration Projects for two years
- A two year extension of the Special Diabetes and the Special Diabetes for Indians Programs

*Community Health Center (CHC) Funding*
The Senate budget deal includes a total of $7.8 billion for Community Health Centers over two years, $3.8 billion for FY 2018 and $4 billion for FY 2019. Previously, the Dec. 22 CR only provided for $550 million for the program through March 31.

*Other Major Public Health Programs*
The deal includes $495 million over the next two fiscal years (FYs 2018 and 2019) for the National Health Service Corps (NHSC) and $395 million over two years for Teaching Health Centers. Previously, the Dec. 22 CR provided for $65 million for the NHSC and $15 million for Teaching Health Centers.

In addition, the agreement includes $6 billion over two years to combat the opioid crisis and support certain mental health programs. The agreement also includes an increase in National Institutes of Health (NIH) funding by $2 billion over and above increases authorized under the 21st Century Cures Act.

Finally, the agreement would include funding for the Maternal, Infant, and Early Childhood Home Visiting Program (MIECHV) for five years through FY 2022.

*Creating High-Quality Results and Outcomes Necessary to Improve Chronic (CHRONIC) Care Act*
The Senate agreement includes the CHRONIC Care Act, which:

- Allows providers to utilize telehealth for home dialysis patients
- Expands the testing of the Centers for Medicare and Medicaid Innovation (CMMI) Value-Based Insurance Design Model to allow Medicare Advantage (MA) plans in any state to participate in the model by 2020
- Allows MA plans to offer a wider array of targeted supplemental benefits to chronically ill enrollees beginning in 2020
- Allows MA plans to offer additional, clinically appropriate telehealth benefits in their annual bid amounts beyond the services that currently receive payment under Medicare Part B beginning in 2020
- Provides Accountable Care Organizations (ACOs) the ability to expand the use of telehealth services
- Expands the use of telehealth for individuals with stroke beginning in 2021
- Allows Medicare ACOs the choice to have their beneficiaries assigned prospectively at the beginning of a performance year. In addition, beneficiaries would have the option to voluntarily align to an ACO in which the beneficiary's main primary care provider is participating
- Establishes a new voluntary ACO Beneficiary Incentive Program, which would allow certain two-sided risk ACOs to make incentive payments to all assigned beneficiaries who receive qualifying primary care services

*Medicare Access and CHIP Reauthorization Act (MACRA) Technical Changes*

- Gives CMS the authority to extend the MIPS transition period for an additional three years before having to set the MIPS performance threshold at the mean or median of the previous year's score
- Continue to weigh the Cost category at less than 30% for three additional years
- Excludes Medicare Part B drugs from MIPS eligibility determinations and payment adjustments
- Makes updates to the ability of the Physician-Focused Payment Model Technical Advisory Committee (PTAC) to further aid the development of physician led alternative payment model

*Independent Payment Advisory Board (IPAB)*
The Senate agreement would permanently dismantle the IPAB, and independent board of experts authorized by the ACA to realize savings in the Medicare program without affecting coverage or quality if triggered by increased growth in healthcare spending over a specified period of time. The IPAB was never populated and has long been targeted for elimination by Congress.

**Offsets**

In order to offset the cost of the inclusion of many of these extensions to public health programs and provisions, the Senate agreement includes, among other things:

- Sunsetting the exclusion of biosimilar drugs from the Medicare Part D Coverage Gap Discount Program
- Reducing outlays for non-emergency end-stage renal disease (ESRD) ambulance transportation
- Including lottery winnings or other lump-sum income for purposes of Medicaid eligibility
- Reducing funding for the Prevention and Public Health Fund by $2.85 billion over 10 years
- Eliminating funding for the Medicare Improvement Fund, which generates $220 million
- Reappropriating $985 million in funding from the Medicaid Improvement Fund
- Accelerating the closure of the Part D coverage gap
- Adjustments to Medicare Part B and D premium subsidies for higher income individuals
- Modifying the annual Medicare Physician Fee Schedule update from 0.5 percent to 0.25 percent 2019