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RSC THE REPUBLICAN STUDY COMMITTEE

House Amendment to Senate Amendment to H.R. 1892 – Further Extension of Continuing Appropriations Act, 2018 (Rep. Frelinghuysen, R-NJ)

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FLOOR SCHEDULE:

H.R. 1892 is expected to be considered on February 6, 2018, under a rule.

The rule providing for consideration of H.R. 1153, H.R. 772, and H.R. 4771 waives clause 6(a) of rule XIII that would otherwise require a two-thirds vote to consider a rule on the same day it is reported from the Rules Committee for any resolution reported through the legislative day of February 9, 2018.

TOPLINE SUMMARY:

The bill would extend non-defense discretionary spending to March 23, 2018, at current levels as provided in H.R. 601, the Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (the "September 2017 CR"). The bill would fund the Department of Defense for the remainder of the 2018 fiscal year at levels set forth in the House-passed FY 2018 omnibus (H.R.3354 - the Make America Secure and Prosperous Appropriations Act, 2018), appropriate an additional $1.18 billion in cap-exempt Overseas Contingency Operations (OCO) funding for costs associated with Operation Freedom's Sentinel, and nullify the effects of any sequester ordered to reduce FY 2018 defense spending below the Budget Control Act's (BCA) defense cap for FY 2018.

The bill would also extend and modify numerous expiring Medicare and public health policies, fully offset with cuts to the ACA Prevention and Public Health Fund and common sense changes to Medicaid and Medicare.

The bill would make reforms and additional appropriations designed to improve foster care and related child services.

COST:

There is no Congressional Budget Office (CBO) cost estimate available for the bill.

Defense and Continuing Resolution Funding

CBO prepared a cost estimate for H.R. 4877, the Department of Defense Appropriations Act, 2018, as introduced. The text of H.R. 4877 *appears to be* the same as the defense spending portion of the bill currently under consideration. CBO estimated that H.R. 4877 would provide funding at an annualized rate of $664.1 billion. This figure includes base discretionary defense funding ($584.04 billion), cap-exempt appropriations designated for OCO ($75.11 billion), and emergency requirements ($4.92 billion).

CBO provided a cost estimate for H.J.Res. 124, a bill that like the present one would have appropriated full-year department of defense funds and contained a continuing resolution component for the remainder of government funding. That bill was never considered by the House, but CBO's estimate is instructive as to the amount the present bill would exceed the Budget Control Act's (BCA) spending caps for defense and non-defense discretionary spending. CBO estimated that if all the levels of budget authority provided by H.J.Res. 124 were extended for the remainder of FY 2018, appropriations would exceed the FY 2018 discretionary limit on defense programs by $69.93 billion and would exceed the limit on nondefense programs by $3.71 billion. We can assume those figures are accurate here given that H.J.Res. 124 would have appropriated Department of Defense funding at the same rate as the present bill, would have appropriated $1.18 billion for Operation Freedom's Sentinel, and would have appropriated $4.68 billion for missile defense and naval ship repair (which was appropriated in the December 21, 2017 continuing resolution). Exceeding the BCA caps would normally trigger across-the-board cuts to non-exempt programs (i.e, "sequestration") to offset the breach. However, the present bill would nullify the effects of any sequestration ordered for defense programs in FY 2018.

CONSERVATIVE VIEWS:

Many conservatives will be pleased that the bill would provide for full year military appropriations. Many conservatives oppose continuing resolutions that apply to defense spending, arguing that they negatively impact military training, readiness, equipment, and personnel.

Many conservatives will be concerned that the 515-page amendment was only made publicly available at 10:01 PM on February 5, 2018, in violation of the House Republican three-day rule.

Some conservative may be concerned that the bill extends the non-DOD appropriations provided by H.R.244, the Consolidated Appropriations Act 2017 ("FY 2017 Omnibus) that was passed with primarily Democratic support. For conservative concerns of the FY 2017 Omnibus, the RSC Legislative Bulletin is available here.

Some conservatives may be concerned that of the bill's $75 billion in OCO funding, approximately $10 billion would be designated for base budget purposes. OCO funding is cap-exempt, and is supposed to be used exclusively for war fighting purposes.

Some conservatives may be concerned that the bill would appropriate funds at a level that would result in a breach of the BCA's FY 2018 defense and nondefense caps.

Some conservatives oppose continuing resolutions arguing that they perpetuate an inability of Congress to wield its power of the purse and properly carry out the annual appropriations process to prioritize funding decisions based on the will of the voters that elected them.

Some conservatives may be concerned that this bill would be the fifth CR passed in FY 2018.

Some conservatives may be concerned that the measure would nullify enforcement of the discretionary spending cap for defense programs in FY 2018.

Some conservatives may be concerned Department of Health and Human Services (HHS) would be appropriated an additional $8 million in FY 2018 to make grants to states to support efforts to recruit foster families, and the bill would appropriate $92 million for the federal government to pay for outcomes under social impact partnerships.

Some conservatives may be concerned the bill would expand a HHS grant program by requiring HHS to make federal substance abuse prevention and treatment block grants to regional partnerships for FY2017-FY2021.

- **Expand the Size and Scope of the Federal Government?** Yes, the bill provides discretionary funding above existing levels and nullifies the effect of any sequestration order that would otherwise be required under current law. The bill would also expand a grant program under HHS.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No, according to the original Committee Report.

DETAILED SUMMARY AND ANALYSIS:

CONTINUING RESOLUTION (Non-Defense)

The CR component of the bill would extend defense and non-defense discretionary funding to March 23, 2018, at current levels as provided in H.R. 601, the Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (the "September 2017 CR"). Funding is set to expire on February 8, 2018.

The bill contains a number of spending anomalies – provisions that enumerate exceptions to the duration, amount, or purposes for which those funds may be used for certain appropriations accounts or activities. The bill would appropriate an additional $1.25 billion to the Census Bureau for completing the 2020 census, increase funding to the Southeastern Power Administration from $1 million to $6.4 million, allow a $350 million selloff from the Strategic Petroleum Reserve (SPR) to use for the SPR's Life Extension II project, and appropriates and additional $225 million to the Small Business Administration's Disaster Loan Program which the bill designates as cap-exempt emergency spending.

DEFENSE APPROPRIATIONS

The bill would appropriate full year funding for the Department of Defense (DOD). It would provide funding at an annualized rate of $664.1 billion. This figure includes base discretionary defense funding ($584.04 billion) that is subject to the Budget Control Act (BCA) discretionary spending caps (as increased by the Bipartisan Budget Act of 2015 (BBA15), cap-exempt appropriations designated for OCO ($75.11 billion) and emergency requirements ($4.92 billion). Approximately $10 billion of the OCO funds is designated for base purposes.

The defense spending component of the bill is virtually the same as Division A ("Department Of Defense Appropriations Act, 2018") of H.R. 3219, the House-passed Make America Secure Appropriations Act, 2018, which was added to H.R. 3354, the House-passed Make America Secure and Prosperous Appropriations Act, 2018. The only substantive differences are that it appropriates an additional $1.18 billion for costs associated with Operation Freedom's Sentinel, and would nullify the effects of any sequestration ordered for defense programs in FY 2018.

Active, Reserve, And National Guard Military Personnel: Military Personnel would be appropriated approximately $133 billion, about $904 million below President Trump's budget request and $4.3 billion above the FY 2017 enacted level.

Military Personnel End Strength: The bill would provide funding to support end-strength levels 27,800 above those authorized in FY 2017 and 17,000 above President Trump's budget request.

Military Pay Raise: The bill would provide funding to increase pay for all military personnel by 2.4 percent effective January 1, 2018.

Operation and Maintenance Operation and Maintenance (O&M) would be appropriated approximately $192 billion, a level that is about $3 billion above President Trump's budget request and $24 billion above the FY 2017 enacted level.

Sexual Assault Special Victims' Counsel Program: The bill would provide $25 million for the Sexual Assault Special Victims' Counsel Program.

Procurement: Procurement would be appropriated $132.5 billion, a level that is $19 billion above President Trump's budget request and $24 billion above the FY 2017 enacted level.

Research, Development, Test and Evaluation: Research, Development, Test and Evaluation (RDT&E) would be appropriated $82.7 billion, a level that is $62 million below President Trump's budget request and $10 billion above the FY 2017 enacted level.

Other Department of Defense Programs: Other Defense Programs would be appropriated $36 billion, a level that is $217 million above President Trump's budget request and $469.8 million above the FY 2017 enacted level.

Defense Health Program: The bill would provide $33.9 billion for the Defense Health Program, a level that is $267 million above President Trump's budget request and $150 million above the FY 2017 enacted level.

The primary mission of the Defense Health Program is to "provide for worldwide medical and dental services to active forces and other eligible beneficiaries." Within this total, $32 billion is for Operations and Maintenance, $895 million is for Procurement, and $1.3 billion is for Research, Development, Test, and Evaluation (RDT&E).

As part of RDT&E, the Congressionally Directed Medical Research Program (CDMRP) is funded at $627.1 million above the president's budget request. According to CRS, "Members of Congress are frequently lobbied to support adding funding to the annual defense appropriation for medical research on a wide variety of diseases and topics." While medical research is a laudable activity, some conservatives may be concerned that many of the programs funded within the CDMRP are not for military-specific conditions and are duplicative of the type of research done at the National Institutes of Health (NIH). According to Taxpayers for Common Sense, "These programs are clearly earmarks and therefore take money away from other necessary Defense Department functions."

The bill provides research funding for:

- alcohol and substance abuse disorders research
- ALS research
- Alzheimer's disease research
- autism research
- bone marrow failure disease research
- breast cancer research
- cancer research
- Duchenne muscular dystrophy research
- gulf war illness research
- hearing restoration research
- kidney cancer research
- lung cancer research
- lupus research
- multiple sclerosis research
- orthopedic research
- ovarian cancer research
- prostate cancer research
- spinal cord research
- reconstructive transplant research
- tickborne disease research
- traumatic brain injury and psychological health research
- tuberous sclerosis complex research
- vision research
- Global HIV/AIDS prevention
- HIV/AIDS program increase
- Joint warfighter medical research
- Trauma clinical research program

MAJOR POLICY PROVISIONS:

2001 AUMF: The bill would not include a provision adopted during the Appropriations Committee markup of the bill from Rep. Barbara Lee to repeal the 2001 Authorization for Use of Military Force.

Guantanamo Detainees: The bill would prohibit funds to transfer or release any detainee held at Guantanamo Bay into the U.S, modify any facility in the U.S. to house any Guantanamo detainee, and prohibit the use of funds to close or transfer the jurisdiction of the Naval Station Guantanamo Bay.

War Powers Resolution: The bill would prohibit the use of funds in contravention of the War Powers Resolution. The bill would also specifically prohibit the use of funds in contravention of the War Powers Resolution in Iraq.

Support for Israel: The bill would provide $705.8 million in direct support for Israel, including $92 million for Iron Dome, $205 million for upper-tier missile defense, and $225.1 million for Short Range Ballistic Missile Defense.

Second Amendment Provisions: The bill would prohibit funding to implement the U.N. Arms Trade Treaty unless it is ratified by the Senate, and would prohibit the DOD from demilitarizing or disposing of M–1 Carbines, M–1 Garand rifles, M–14 rifles, .22 caliber rifles, .30 caliber rifles, or M–1911 pistols or to destroy small arms ammunition that is not otherwise prohibited for commercial sale by federal law.

Rosoboronexport: The bill would prohibit funding for contracts, agreements, grants, loans, or other agreements with the Rosoboronexport company unless certain conditions are met, such as a prohibition on Rosoboronexport contracts with Syria and a requirement that the Russian Federation withdraws armed forces from Ukraine. Rosoboronexport is the Russian state sole-source export company for defense and dual-use products.

Intelligence: The bill would prohibit the use of funds for integration of foreign intelligence information unless the information has been lawfully collected and processed during the conduct of authorized foreign intelligence activities and that information pertaining to United States persons shall only be handled in accordance with protections provided in the Fourth Amendment of the United States Constitution as implemented through Executive Order No. 12333.

FISA: The bill would prohibit the use of funds for the National Security Agency (NSA) to "conduct an acquisition pursuant to section 702 of the Foreign Intelligence Surveillance Act of 1978 for the purpose of targeting a United States person; or acquire, monitor, or store the contents of any electronic communication of a United States person from a provider of electronic communication services to the public pursuant to section 501 of the Foreign Intelligence Surveillance Act of 1978."

BRAC: The bill would prohibit the use of funds for Base Realignment and Closure. The administration's statement of administration policy for the FY 2018 NDAA expressed opposition to such prohibition, which was also contained in that bill.

Prohibition on Assistance to North Korea: The bill would prohibit funding from being obligated or expended for assistance to the Democratic People's Republic of Korea unless specifically appropriated for that purpose.

Sale of Tobacco Products: The bill would prohibit the sale of tobacco products in military resale outlets below the most competitive price in the local community.

Evolved Expendable Launch Vehicle Procurement: The bill would require that the Evolved Expendable Launch Vehicle (EELV) competitive procurements be open for award to all certified providers of EELV-class systems and that the award shall be made to the provider that offers the best value to the government.

Grants to the Red Cross and the USO: The bill would provide $20 million for the United Service Organizations (USO) and $24 million to the Red Cross.

Fisher House: The bill would provide $11 million for Fisher Houses that provide free housing to the families of wounded warriors while they are receiving hospital treatment.

Protectionism: The bill included protectionist "buy American" provisions for: supercomputers, ball and roller bearings, anchors and chains, flags, and carbon, alloy, and armor steel plate.

The bill also subjects all funds made available by the bill to the Buy American Act, and requires the Secretary of Defense to consider disbarring any individual from contracting with the Department who has been convicted of intentionally misusing a "made in America" label.

Army Contracting Command—New Jersey: The bill would prohibit the use of funds to eliminate, restructure, realign, or make disproportionate personnel reductions at Army Contracting Command—New Jersey sites without 30-day notification to Congress. Picatinny Arsenal is located in New Jersey's 11th Congressional District.

HEALTH CARE

Title I
Subtitle A -- Medicare Part A

Section 2101: Extension of the Medicare-dependent hospital (MDH) Program

- The Medicare-dependent hospital (MDH) program provides enhanced reimbursement to support rural health infrastructure and to support small rural hospitals for which Medicare patients make up a significant percentage of inpatient days or discharges. A hospital qualifies for the MDH program if it is located in a rural area, has no more than 100 beds, is not classified as a sole community hospital, and has at least 60 percent of inpatient days or discharges covered by Medicare. This program would be extended through October 1, 2019.

Section 2102: Extension of increased inpatient hospital payment adjustment for certain low-volume hospitals

- Qualifying low-volume hospitals receive add-on payments based on the number of Medicare discharges. Low-volume hospitals must be more than 15 road miles from the nearest hospital and have fewer than 1600 Medicare discharges. This section would extend this provision through October 1, 2019.

Section 2103: Studies relating to hospital programs paid outside of prospective systems

- This section would require the Medicare Payment Advisory Commission (MedPAC) to study payments made under the MDH and low-volume hospital programs.

Section 2104: Extension of home health rural add-on

- This section would extend the three-percent add-on to payments made for home health services in rural areas for five years, through October 1, 2022, and modify the methodology to target the add-on payment to rural areas with a population density of six or fewer individuals per square mile.

Subtitle B -- Medicare Part B

Section 2111: Ground Ambulance Services cost reporting requirement

- This section would provide a five-year extension through December 31, 2022, of the urban (2 percent), rural (3 percent), and super-rural (22.6 percent) ground ambulance add-on payments and require annual cost reporting from providers and suppliers.

Section 2112: Extension of work Geographic Practice Cost Indicies (GPCI) floor

- This section would extend the floor for the work geographic index under current law until January 1, 2020. GPCIs are adjustments that are applied to the physician payment formula to account for geographic variations in the costs of practicing medicine in the different areas of the country relative to the national average. In 2003, Congress set a "floor" of 1.0, meaning that physician payments in any given geographic area would not be reduced just because the relative cost of physician work was less than the national average.

Section 2113: Repeal of Medicare payment cap for therapy services; replacement with limitation to ensure appropriate therapy

- This section would repeal the Medicare "therapy caps" beginning on January 1, 2018. The "therapy caps" were first enacted as a cost control mechanism under the Balanced Budget Act of 1997, and include a separate $1980 cap on the amount of (1) physical therapy services and speech-language pathology services and (2) occupational therapy services that Medicare beneficiaries may consume each year. Congress has consistently acted to override any imposition of the caps, so some conservatives argue they function more as a budget gimmick than a spending limitation as the compounded cost of temporarily suspending the therapy caps has exceeded any original projected savings. This section would require the HHS Secretary to implement a targeted manual medical review process for outpatient therapy services provided after a beneficiary exceeds $3000 in annual claims, and require that providers indicate on such claims that services are medically necessary.

Subtitle C

Section 2121: Providing continued access to Medicare Advantage special needs plans for vulnerable populations

- Medicare Advantage special needs plans (SNPs) are specifically designed to provide targeted care to individuals with special needs, including those who are (1) institutionalized (I-SNPs); (2) dually eligible for Medicare and Medicaid (D-SNPs); or (3) living with severe or disabling chronic conditions (C-SNPs). This section permanently reauthorizes the SNPs and makes modifications to D-SNPs and C-SNPs to improve case management.

Section 2122: Extension of certain MIPPA funding provisions; State health insurance assistance program reporting requirements

- This section would extend funding for the State Health Insurance Program, the Area Agencies on Aging, and the National Center for Benefits and Outreach Enrollment for two years, through FY 2019, and require the Agency for Community Living (ACL) to publicly post funding and other grant information.

Section 2133: Extension of funding for quality measure endorsement, input, and selection; reporting requirements

- This section would provide $7.5 million for each of FY 2018 and FY 2019 for the National Quality Forum's (NQF) review, endorsement, and maintenance of quality and resource use measures.

Title II -- Additional Medicare Policies Relating to Extenders

Section 2201: Home Health Payment Reform

- This section would require the Secretary, in a budget neutral manner, to reform the current home health payment system to implement a 30-day episode for payment beginning on January 1, 2020.

Section 2202: Information to satisfy documentation of Medicare eligibility for home health services

- This section would permit CMS to use records created by home health providers to determine a Medicare beneficary's eligibility for home health services, in addition to physician records required under current law.

Section 2203: Voluntary Settlement of home health claims

- This section would allow the Secretary to enter into a voluntary settlement with home health providers who have appealed a claims denial, in order to begin to clear the home health appeals backlog.

Section 2204: Extension of enforcement instruction on Medicare supervision requirements for outpatient therapeutic services in critical access and small rural hospitals

- This section would provide a one-year extension of a current law policy that blocks CMS from enforcing direct supervision rules for outpatient therapy services in critical access and small rural hospitals.

Section 2205: Technical amendments to Public Law 114-10

- This section includes certain technical amendments to the Medicare Access and CHIP Reauthorization Act (MACRA) of 2015, which correct drafting errors and provide CMS with additional flexibility to ensure participation for eligible physicians, in line with congressional intent.

Section 2206: Revised requirements for Medicare intensive cardiac rehabilitation programs

- This section provides the Secretary with additional flexibility to qualify providers of intensive cardiac rehabilitation.

Title III -- Creating High-Quality Results and OUtcomes Necessary to Improve Chronic (CHRONIC) Care

Subtitle A -- Receiving High Quality Care in the Home

Section 2301: **Extending the Independence at Home Demonstration Program**

- This section would provide a two-year extension of the Independence at Home Demonstration program to give Congress additional time to evaluate its effectiveness. THe program has been found to save money.

Section 2302: Expanding access to home dialysis therapy

- This section would allow providers to use telehealth to monitor home dialysis patients, which is prohibited under current law.

Subtitle B -- Expanding Innovation and Technology

Section 2311: Adapting benefits to meet the needs of chronically ill Medicare Advantage enrollees

- The Centers for Medicare and Medicaid Innovation (CMMI) is currently testing the Medicare Advantage Value-Based Insurance Design Model, which provides Medicare Advantage plans with additional flexibility to tailor their plans to chronically-ill beneficiaries. The demonstration is currently limited to ten states and will be expanded to 25 total states in 2019. This section would expand the demonstration to all states.

Section 2312: Expanding supplemental benefits to meet the needs of chronically ill Medicare Advantage enrollees

- Under current law, MA plans must comply with specific criteria governing the provision of supplemental benefits. This section would give MA plans flexibility to offer additional supplemental benefits to chronically ill beneficiaries, beginning in 2020, as long as the supplemental benefits are not limited to primarily health related services and have a reasonable expectation of improving or maintaining the beneficiary's health or overall function.

Section 2313: Increasing convenience for Medicare Advantage enrollees through telehealth

- Under current law, Medicare provides limited coverage of telehealth services. This section would allow MA plans to include additional clinically-appropriate telehealth services, beyond those currently covered under Part B, in the annual bid amount beginning in 2020. The section requires the HHS Secretary to request comments on the types of telehealth services that should be

considered as additional benefits, and the requirements for offering said benefits. The section also requires that the MA plan ensure that beneficiaries retain the right to decide whether to receive a service in person or via telehealth, and requires that MA plans that provide access to services via telehealth must also provide in person access.

Section 2314: Providing accountable care organizations (ACOs) the ability to expand the use of telehealth

- This section would allow accountable care organizations to expand the use of telehealth by applying the Next Generation ACO telehealth waiver criterion to the Medicare Shared Savings Program (MSSP) Track II and III, and two-sided risk ACO models with prospective assignment that CMMI tests or expands to improve flexibility.

Section 2315: Expanding the use of telehealth for individuals with stroke

- This section would permit physician payment in any area of the country for physician payments related to the diagnosis, evaluation, or treatment of an acute stroke. Under current law, Medicare covers telehealth services for patients experiencing acute stroke symptoms only if the beneficiary presents in certain rural areas.

Subtitle C -- Identifying the Chronically Ill Population

Section 2321: Providing flexibility for beneficiaries to be part of an ACO

- This section would permit ACOs in the MSSP the option to have their beneficiaries assigned prospectively at the beginning of a performance year and give beneficiaries the option to voluntarily align to their main primary care provider's MSSP ACO. The section would require the Secretary to develop a process to notify beneficiaries of their ability to make the election as well as how to change the election. Nothing in the section would limit a beneficairy's freedom of choice to see any provider.

Subtitle D -- Empowering Individuals and Caregivers in Care Delivery

Section 2331: Eliminating Barriers to Care Coordination under ACOs

- This section would establish a new voluntary ACO Beneficiary Incentive Program to allow certain two-sided risk ACOs to make incentive payments of up to $20 for each qualifying service to all assigned beneficiaries that are receiving qualifying primary care services. The section would not provide ACOs with any additional Medicare reimbursement to cover the incentive payment costs. Additionally, the section would require the Secretary to report to Congress on the program's impact on expenditures and beneficiary health outcomes by October 1, 2023.

Section 2332: GAO study and report on longitudinal comprehensive care planning services under Medicare Part B

- This section would direct the Government Accountability Office (GAO) to report to Congress within 18 months of enactment on the development of a new payment code related to longitudinal care planning services for serious or life-threatening illnesses like Alzheimer's disease and cancer, which may not have a predictable trajectory.

Subtitle E -- Other Policies to Improve Care for the Chronically Ill

Section 2341: GAO study and report on improving medication synchronization

- This section would direct GAO to report to Congress within 18 months of enactment on the prevalence and effectiveness of medication synchronization programs operated by Medicare or other payers. Medication synchronization is the practice of aligning prescription lengths and dispensing times, which can improve medication adherence for individuals with chronic conditions.

Section 2342: GAO Study and report on impact of obesity drugs on patient health and spending

- This section would direct GAO to report to Congress within 18 months of enactment on the use of obesity drugs on health outcomes and spending. Medicare Part D does not cover these drugs.

Section 2343: HHS study and report on long-term risk factors for chronic conditions among Medicare beneficiaries

- This section would require the HHS Secretary to report to Congress within 18 months of enactment on long-term Medicare cost drivers, including obesity, tobacco use, mental health conditions, and other factors that may affect individuals with chronic conditions.

Title IV -- Medicare Part B Miscellaneous Policies

Subtitle A -- Medicare Part B Improvement Act

Section 2401: Home infusion therapy services temporary transitional payment

- The 21st Century Cures Act included two provisions affecting Medicare coverage of home infusion therapy. First, it applied the formula used for most Part B drugs, Average Sales Price (ASP) plus six percent, to Part B infusion drugs furnished through durable medical equipment. Medicare had reimbursed for these drugs at 95 percent of the Average Wholesale Price (AWP) since 2003, but the HHS Office of the Inspector General found that the formula was "unrelated to actual prices in the marketplace... and has cost Medicare millions of dollars." Second, 21st Century Cures created a new benefit to provide a single payment for items and skilled care furnished by home infusion suppliers -- including professional and nursing services, training and education, remote monitoring, and monitoring services -- whereas Medicare had previously only paid for the medication. The first 21st Century Cures provision became effective in January 2017 and the second will become effective in 2021. Some stakeholders have labeled this discrepancy a "coverage gap," and the disruption to provider payments may affect access to care for medically fragile beneficiaries. This section would create a new temporary Medicare payment system to provide a transitional payment for items and services furnished in coordination with home infusion drugs, beginning in 2019 and operating until the permanent payment system is finalized.

Section 2402: Orthotist's and prothetist's clinical notes as part of the patient's medical record

- This section would ensure that clinical notes created by an orthotist or prosthetist are considered part of the Medicare beneficiary's patient record in order to support claims of medical necessity. Medicare's current claims review process has resulted in payment denials for medically necessary orthotics and prosthetics due to insufficient evidence to support medical necessity.

Section 2403: Independent accreditation for dialysis facilities and assurance of high quality surveys

- This section would allow renal dialysis facilities to use an outside agency to survey and accredit their facility for Medicare participation. Under current law, some Medicare providers may use an outside agency for accreditation purposes, but not dialysis facilities.

Section 2404: Modernizing the application of the Stark rule under Medicare

- This section would codify recent CMS modifications of the physician self-referral regualtions that are related to the use of signatures to document the terms of legal arrangements and when leases violate the Stark laws. The Stark laws prohibit physician self-referral, specifically prohibiting physician referral of Medicare or Medicaid patients to other health care entities in which the physician or an immediate family member has a financial relationship and prohibiting the facility from billing CMS for any services performed related to such a referral. The regulatory updates generally sought to reduce burden by providing clarifying terminology and guidance.

Subtitle B -- Additional Provisions

Section 2411: Making permanent the removal of the rental cap for durable medical equipment under Medicare with respect to speech generating devices

- This section would make the Steve Gleason Act permanent by repealing a provision that sunsetted the law in 2018. The Steve Gleason Act, passed in 2015, allows Medicare beneficiaries to purchase speech generating devices as durable medical equipment immediately, rather than requiring beneficiaries to rent the device for 13 months before becoming the owner of the device.

Section 2412: Increased civil and criminal penalties and increased sentences for Federal health care program fraud and abuse

- This section would update and modernize numerous existing civil and criminal penalties that apply in instances of Medicare fraud. Many of these penalties have not been updated for 20 years.

Section 2413: Reducing the volume of future EHR-related significant hardship requests

- This section would remove a requirement in the Health Information Technology for Economic and Clinical Health (HITECH) Act that requires the Secretary to make meaningful use standards more stringent over time. The meaningful use standards were intended to incentivize providers to adopt electronic health records, but many providers have faced difficulties demonstrating compliance with the meaningful use requirements.

Section 2414: Coverage of certain DNA specimen provenance assay tests under Medicare

- This section would provide for five years of Medicare coverage of DNA Specimen Provenance Assay (DPSA) testing, a highly specialized tool used to mitigate the chances of a false prostate cancer diagnosis that is often covered by private insurance but is not covered by Medicare under current law. The section would also require CMS to report to Congress on the policy and its impact on identifying false positive results and helping beneficiaries to avoid unnecessary and costly surgery and treatment.

Section 2415: Strengthening rules in case of competition for diabetic testing strips

- This section would codify numerous beneficiary protections established in regulations for Medicare's competitive bidding program, under which Medicare relies on supplier bids to set the amount it pays for certain durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) items. Medicare beneficiaries have reported facing issues related to how CMS has enforced beneficiary protections, for example, providing evidence that CMS has not fully enforced the "50 Percent Rule" which is intended to ensure that suppliers make available at least half of all types of diabetes testing supplies on the market before enactment of the competitive bidding program. The section would also require additional reporting to ensure beneficiary access to diabetes testing supplies.

Title V - Public Health Extenders

Section 2501: Extension for community health centers, the National Health Service Corps, and teaching health centers that operate GME programs

This section would provide for a two-year extension of funding for (1) Community Health Centers, (2) the National Health Service Corps (NHSC), and (3) the Teaching Health Center Graduate Medical Education (THCGME) program created under Obamacare. When combined with funding previously provided in the December 2017 Continuing Resolution and the Disaster Tax Relief and Airport and Airway Extension Act, this section would provide $3.6 billion for Community Health Centers, $310 million for the NHSC, and $126.5 million for THCGME for each of FY 2018 and FY 2019.

Section 2502: Extension for special diabetes program

- This section would provide for a two-year extension of the Special Diabetes Program for Type 1 diabetes and the Special Diabetes Program for Indians. When combined with funding provided in previous legislation, this section would provide $150 million for each program for each of FY2018 and FY 2019.

Section 2503: Extension for family-to-family health information centers

- This section would provide for a two-year extension of the Family-to-Family Health Information Center program at $6 million a year, and provide for the creation of Family-to-Family Health Information Centers in the territories and for the Indian tribes. This program funds grants to assure that families of children with special health care needs are able to participate in all levels of decision-making and be satisfied with the services they receive.

Section 2504: Extension for sexual risk avoidance education

- This section would provide for a two-year extension of the Sexual Risk Avoidance Education program (previously the Abstinence Education Program) at $75 million a year. It would also require data collection on activities funded under the program, require the Secretary to evaluate the program, and allow unused funds to be distributed through a competitive grant process.

Section 2505. Extension for personal responsibility education

- This section would provide for a two-year extension of the Personal Responsibility Education Program (PREP) at $75 million a year. This program provides federal funding for programs that teach about abstinence and contraception for the prevention of pregnancy and sexually transmitted infections.

FOSTER CARE, ADOPTION, AND CHILD SERVICES

TITLE VI—CHILD AND FAMILY SERVICES AND SUPPORT

Subtitle A—Family First Prevention Services Act

The bill would allow states to utilize foster care and adoption appropriations under the Social Security Act for up to a year to pay for a portion of expenses related to the state's effort to provide mental health and substance abuse prevention services and parent skills training. Generally, eligible children include those that are at risk of entering foster care.

The bill would also allow states to utilize these appropriations for children that have been placed in foster care of a parent that is being treated for substance abuse. Additionally, the bill would allow these appropriations to be used for kinship navigator programs.

Similarly, the bill would allow states to use funds available under the Social Security Act for child welfare services to provide support to children in foster care for an unrestricted amount of time and after reunified with their family for a 15-month period.

States would be required to operate a case processing system before the 2028 fiscal year so that children can be better placed across state lines.

The bill would require the Department of Health and Human Services to make federal substance abuse prevention and treatment block grants to regional partnerships for FY2017-FY2021. Grant applicants would have to require the applicant set goals for improving wellbeing of family as a whole including addressing substance abuse. HHS would also be required to consider the partnership's track record on child welfare, substance abuse treatment and mental health.

The bill would make reforms to licensing standards for family members seeking to foster a child, particularly requiring HHS to identify evaluation standards. States would have to describe how they gather child maltreatment information.

The bill would limit foster care maintenance payment support when a child is placed in a non-foster family home setting to two weeks unless certain exemptions exist. One such exemption would be that the setting is a qualified residential treatment program which is defined in the bill. The bill would set parameters for assessing and documenting children placed in a qualified residential treatment program.

The bill would require states to conduct criminal and child abuse background check on adults working in certain child care settings.

HHS would be appropriated an additional $8 million in FY 2018 to make grants to states to support efforts to recruit foster families

The bill would reauthorize through FY 2021 several programs:

1) the Stephanie Tubbs Jones Child Welfare Services Program;

2) the promotion of safe and stable families program;

3) funding reservations for monthly caseworker visits and regional partnership grants, and

4) the Highest State Court Entitlement to Court Improvement Program.

The bill would make changes to the John H. Chafee Foster Care Independence Program. For instance, it would permit states to serve youth who have aged out of care and are not yet 23 years of age, and it would focus on kids 14 years old and over. The bill would allow HHS to reallocated unused funds from the program.

The will would extend the federal program providing states with incentive payments regarding legal guardianship at current levels for the next five fiscal years (through FY 2020).

As of July 1, 2024, the bill would change current law so that no income test would be used for purposes of determining a child's eligibility for adoption assistance, regardless of the child's age.

Subtitle B—Supporting Social Impact Partnerships to Pay for Results

The bill would appropriate $92 million for the federal government to pay for outcomes under social impact partnerships.

Subtitle C—Modernizing Child Support Enforcement Fees

The bill would raise the annual fee on child support enforcement services from $25 to $35 and increase the amount of child support that must be collected for the case to be subject to a fee of $550.

Subtitle D—Increasing Efficiency of Prison Data Reporting

The bill would make it so that the $400 incentive fee related to the prison data reporting program would not be available unless it is made within 15 days of a social security beneficiary's imprisonment.

Title VIII – Offsets This title fully offsets the policies included in Titles I – VII.

Section 2701: Payment for early discharges to hospice care.

- This section adds hospice as an additional setting of care under current law post-acute care transfer policies, beginning on October 1, 2023, so that hospitals would receive lower reimbursement when transferring a patient that had a short length of stay in the hospital to hospice.

Section 2702: Home health market basket reduction

- This section would set the home health market basket update for FY 2020 to 1.4 percent, lower than under current law.

Section 2703: Reduction for non-emergency ESRD ambulance transports

- This section would increase the current law 10 percent payment reduction for non-emergency dialysis ambulance transports to 23 percent.

Section 2704: Extension of target for relative value adjustments for misvalued services and transitional payment rules for certain radiation therapy services under the physician fee schedule.

- This section would provide a one-year extension of the "misvalued codes" policy, under which CMS is required to identify and review potentially misvalued codes in the physician fee schedule and adjust them appropriately.

Section 2705: Delay in authority to terminate contracts for Medicare Advantage plans failing to achieve minimum quality ratings

- This section would extend or ten years the Secretary's authority to delay termination of a plan that has achieved a low star rating for three consecutive years, a policy that was first established on a temporary basis under 21st Century Cures.

Section 2706: Medicare Improvement Fund

- This section would zero out the Medicare Improvement Fund (MIF). The Ways and Means and Energy and Commerce Committees use this fund as a "parking spot" to bank savings that can offset future spending. The MIF may only be used to make improvements to the Medicare fee-for-service program and if not spent by Congress, is available to the HHS Secretary after FY 2021.

Section 2707: Payment for outpatient physical therapy services and outpatient occupational therapy services furnished by a therapy assistant

- This section would provide reimbursement for Part B therapy services that are furnished in full or part by a physical and occupational therapy assistant at 85 percent of the physician rate.

Section 2708: Changes to long-term care hospital payments

- This section would provide a two-year delay of a current law policy requiring site neutral discharges for long-term care hospitals (LTHCs) to be reimbursed as a blend of the site neutral payment rate and the LTCH payment rate. The section would also reduce the LTCH market basket update by 4.6 percent for FY 2018 through FY 2026.

Section 2709: Non-Budget Neutral Transitional pass-through payment change for certain products

- This section would prohibit pass-through payments for any drug that does not meet the statutory requirements for pass-through status.

Section 2710: Third party liability in Medicaid and CHIP

- This section would modify provisions governing third party liability in the Medicaid and CHIP programs to ensure other responsible parties pay claims first.

Section 2711: Treatment of lottery winnings and other lump-sum income for purposes of income eligibility under Medicaid

- This section would require states to consider lottery winnings and other lump sum income of $80,000 or more for the purposes of determining Medicaid eligibility over a period of months. Under current law, lump sum payments are only considered for Medicaid eligibility purposes during the month in which they are earned.

Section 2712: Modifying reductions in Medicaid DSH allotments

- This section would eliminate current law reductions to the Medicaid Disproportionate Share Hospital (DSH) payments for FY 2018 and FY 2019, and offset the delay by increasing DSH reductions by $6 billion in FY 2021-2023. Certain hospitals that treat a large number of low income patients are eligible for Medicaid DSH payments to help offset losses from treating uninsured patients and low Medicaid reimbursement rates.

Section 2713: Medicaid improvement fund rescission

- This section would rescind all funds available in the Medicaid Improvement Fund (MIF). The Energy and Commerce Committee uses this fund as a parking spot to bank savings to offset future spending. If not redirected by Congress, the MIF is available to the HHS Secretary for specific uses related to improving the Medicaid program.

Section 2714: Sunsetting the exclusion of Biosimilars from the Medicare Part D coverage gap

- This section would add biosimilars to the Medicare Coverage Gap Discount Program. The Medicare Coverage Gap Discount Program requires brand drug and biologic manufacturers to provide a 50 percent discount to assist beneficiaries with drug costs when they reach the Part D coverage gap, or "doughnut hole," which may create incentive beneficiaries in the coverage gap to choose higher cost biologics over less expensive biosimilars, increasing federal costs.

Section 2715: Prevention and Public Health Fund

- This section would redirect funds from the ACA's Prevention and Public Health Fund to support the programs extended in this bill. Specifically, the section would redirect $900 million each of FY 2018 and FY 2019, $1 billion in each of FY 2020 and FY 2021, and $1.1 billion for each of FYs 2022 through FY 2027. The Prevention Fund is a mandatory funding stream, available unless otherwise allocated by Congress, to be spent by the HHS Secretary to "provide for expanded and sustained national investment in prevention and public health programs to improve health and help restrain the rate of growth in private and public health care costs." Some conservatives have raised concerns that the Prevention Fund mirrors a slush fund, and in recent years has been used to support grants for activities including free pet spaying and neutering, Zumba classes, and urban gardening.

COMMITTEE ACTION:

The House Amendment to the Senate Amendment to H.R. 1892 was posted at 10:01 PM on February 5, 2018.

ADMINISTRATION POSITION:

A Statement of Administration Policy is not available at this time.

CONSTITUTIONAL AUTHORITY:

According to the Constitution Authority Statement: "Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 18."

NOTE: *RSC Legislative Bulletins are for informational purposes only and should not be taken as statements of support or opposition from the Republican Study Committee.*

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