



April 13, 2018

Both chambers returned to business this week after a two-week recess period.

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2018 ACEP LEADERSHIP AND ADVOCACY CONFERENCE

New Speakers and Sessions Confirmed

- o **NEMPAC VIP Reception, Sunday, May 20 at the International Spy Museum.**
- o **Congressional dine-arounds with legislators confirmed**

LEGISLATIVE UPDATE

Highlights from Congress’ busy week as legislators continue to address the opioid epidemic:

- On Wednesday, the Senate Health, Education, Labor and Pensions (HELP) Committee held a hearing on “The Opioid Crisis Response Act of 2018,” draft bipartisan legislation authored by Chairman Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA). ACEP sent a [letter](#) to the committee leaders urging the inclusion of three ACEP-supported bills - the “Alternatives to Opioids (ALTO) in the Emergency Department Act” (S. 2516), the “Preventing Overdoses While in Emergency Departments Act” (S. 2610), and the “Recovery Coaches Offer Addiction Counseling & Healing (COACH) Act” (S. 2609). Chairman Alexander announced that the committee intends to mark up this bill on April 24.
- Also, this week, the House Energy and Commerce Health Subcommittee held the last of three legislative hearings to address the opioid epidemic. With the conclusion of this hearing, the Health subcommittee has now considered 67 opioid bills, including **two ACEP-**

supported bills – H.R. 5197, the Alternatives to Opioids (ALTO) in the Emergency Department Act, and H.R. 5176, the Preventing Overdoses While in Emergency Rooms (POWER) Act. During the March 22 legislative hearing, Mark Rosenberg, DO, FACEP, testified on behalf of ACEP in support of these bills, and ACEP staff continues working to secure their inclusion as part of a comprehensive opioids package expected sometime this Spring.

- The House Committee on Ways and Means released a [white paper](#) with solutions to combat the opioid epidemic, issued in response to the feedback the committee solicited from physician and provider groups, hospitals, manufacturers, and other stakeholders. ACEP submitted [detailed responses](#) to the committee's questions, many of which were noted in the white paper. The committee plans to use the findings to develop bipartisan proposals that will be taken up soon. While the white paper does not specifically endorse or oppose any proposals, the committee does note that the eventual legislation will touch on Medicare treatment options and coverage, improving data tracking and prescribing practices, and educating providers and beneficiaries about the risks of long-term opioid use.
- Finally, the Senate Finance Committee announced a hearing on Thursday, April 19, on how Medicare, Medicaid, and human services programs can better address the opioid epidemic and substance use disorders. The hearing comes in response to the Finance Committee's own request for information from stakeholders. ACEP submitted [detailed comments](#) to the committee's request on February 16.

House Appropriations Committee Begins Work on FY2019 Budget

After passing a \$1.3 trillion omnibus spending bill in March, House Appropriators have begun their work on the fiscal year (FY) 2019 budget process, holding 17 hearings this week. More than a dozen additional hearings are scheduled for next week as legislators attempt to get an early start on the process. Appropriators also must deal with the additional challenge of President Trump seeking to claw back more than \$60 billion from the recently passed omnibus, backtracking on the bill he signed in the face of criticism from his base.

Speaker Paul Ryan Announces Retirement

On Wednesday, Speaker of the House Paul Ryan (R-WI) announced his retirement from Congress, ending months of rumor and speculation that he would step down from the post. Ryan stated that his intent is to finish out the remainder of his term and continue serving as Speaker throughout. However, not all members of the Republican House conference are enthusiastic about a "lame duck" Speakership and some are pushing for new leadership elections to occur as soon as possible to ensure a smooth transition.

The race to replace Ryan was thought by many to be a competition between Majority Leader Kevin McCarthy (R-CA) and Majority Whip Steve Scalise (R-LA), but by Thursday morning, Rep. Scalise announced he would not run against McCarthy. The expectation is that if McCarthy can secure the necessary 218 votes for Speaker, Scalise will then move up as Republican Majority Leader and current Deputy Whip Patrick McHenry (R-NC) will move up to Majority Whip. This, of course, is not a guarantee and there could be other Republicans who make a play for any of these positions.

Check out the latest ACEP Capital Minute

There's a new edition of ACEP's Capital Minute for the second week of April, 2018. Check it out here: <https://www.youtube.com/watch?v=TSeQtLvtr54>



REGULATORY UPDATE

ACEP Responds to the “Protecting Statutory Conscience Rights in Health Care; Delegations of Authority” Proposed Rule

On March 27, ACEP submitted comments on the Department of Health and Human Services’ proposed rule on “Protecting Statutory Conscience Rights in Health Care.” The rule proposes new definitions and requirements for enforcing anti-discrimination laws that protect the right of health care entities and providers to refuse to deliver or refer services that conflict with their moral or religious beliefs. While ACEP believes that enforcement of existing federal conscience protections for health care providers is important, we strongly object to this proposed rule and do not believe it should be finalized. As written, it does not reflect nor allow for our moral and legal duty as emergency physicians to treat everyone who comes through our doors. Both by law and by oath, emergency physicians care for all patients seeking emergency medical treatment. Denial of emergency care or delay in providing emergency services based on race, religion, sexual orientation, gender identity, ethnic background, social status, type of illness, or ability to pay, is unethical. While we object to the rule overall, we comment on numerous policies and provide examples of how this rule, if finalized, could hurt emergency departments, physicians, and the patients we serve. Our full set of comments on the rule is found [here](#). In late January when the proposed rule was first announced by HHS, [ACEP and EMRA responded with a joint media statement](#).

Opioid Policies for Medicare Prescription Drug Plans

On April 2, CMS released the CY 2019 Notice and Call Letter for the Medicare Advantage program (Part C) and the Part D Prescription Drug Benefit Program. CMS also released the CMS released the Part C and D final rule, which in part, implements the Comprehensive Addiction and Recovery Act of 2016 (CARA). The Notice and Call letter includes updates to payment rates for Medicare Advantage and Part D, guidance for plan sponsor organizations,

and new requirements for participating plans. CMS includes a few policies aimed at addressing our nation's growing opioid crisis. CMS is finalizing its proposal to require all Part D plans to implement a hard safety edit to limit initial opioid prescription fills for the treatment of acute pain to no more than a 7-day supply. CMS is also requiring plans to implement an "opioid care coordination safety edit" at 90 Cumulative Morphine Milligram Equivalent Daily Dose (MME). MME per day rather than a hard edit. In implementing this edit, plans must instruct the pharmacist to consult with the prescriber, document the discussion, and if the prescriber confirms intent, use an override code that specifically states that the prescriber has been consulted.

In the Part C and D final rule, CMS implements a provision of CARA that allows Part D plan sponsors to institute drug management programs which can limit an at-risk beneficiary's access to coverage of frequently abused drugs beginning 2019 through a beneficiary-specific claim edit and/or by requiring the beneficiary to obtain frequently abused drugs from selected pharmacies and/or prescribers after case management (including clinical contact) and notice to the beneficiary. CMS is finalizing the overall regulatory framework that was initially proposed.

MedPAC Recommendations on Freestanding Emergency Department Payment Rates

On April 5, MedPAC voted in favor of two payment policies that impact urban and rural freestanding emergency departments that are owned by hospitals (off-campus freestanding emergency departments). Independent freestanding emergency departments (which represent approximately one-third of all freestanding emergency departments) are not currently reimbursed under Medicare. MedPAC's recommendations do not impact these facilities—only ones that are currently reimbursed under Medicare. With respect to urban off-campus freestanding emergency departments that are open 24 hours a day, seven days a week, MedPAC recommended that Congress reduce payments by 30 percent for those facilities that are within six miles of an on-campus hospital emergency department. MedPAC argued that the acuity of patients seen in freestanding emergency departments is generally not as high as those seen in on-campus emergency departments, and that payment could be reduced to be more in line with payments to emergency departments that are not open 24 hours a day, seven days a week. MedPAC also recommended that Congress allow isolated rural stand-alone emergency department (more than 35 miles away from another emergency department) to bill standard outpatient prospective payment system facility fees. Under current law, if off campus freestanding emergency departments are within 35 miles of a hospital, they receive the full outpatient prospective payment system payment rate. However, if they are located 35 or more miles away from the hospital, then they may not bill for emergency department services, but can only receive physician fee schedule payments. It is important to note that the MedPAC recommendations only affect the facility payments for emergency department services, not the payments to providers made under the Medicare physician fee schedule. Furthermore, MedPAC recommendations are not binding and Congress does not have to consider them.

Final Policies for the Exchanges

On April 9, CMS released the Notice of Benefit and Payment Parameters Final rule. In the rule, CMS is finalizing its proposal to provide States with additional flexibility in their selection of Essential Health Benefit (EHB)-benchmark plans starting in 2020. ACEP had

expressed concern over these changes and stated that they would result in a “race towards the bottom,” with States choosing amongst the skimpiest offerings to design their own minimal coverage standard. ACEP also believed that even if the emergency services category remained untouched, altering other EHBs could drive patients to delay necessary care and make more unavoidable trips to the emergency department. CMS is also finalizing its proposed policy to extend new guidelines on network adequacy that were finalized in the 2018 Market Stabilization rule. ACEP had opposed this policy (both in this rule and previous rules) since the network adequacy requirements of many States are insufficient to address the needs of patients.

NEW SPEAKERS AND SESSIONS CONFIRMED FOR LAC18 - MAY 20-23 IN WASHINGTON, DC!

The Leadership & Advocacy Conference will celebrate emergency medicine’s accomplishments and attendees will advocate for improvements in the practice environment for our specialty and access for our patients. First-timers will receive special training on how to meet and educate your Members of Congress while seasoned participants will build upon valuable Congressional connections.

Confirmed Speakers Include:

- U.S. Surgeon General Vice Admiral (VADM) Jerome M. Adams, M.D., M.P.H.
- HHS Assistant Secretary for Preparedness and Response Bill Kadlec, MD will be presenting during the Public Policy Town Hall on Emergency Preparedness.
- Dr. David K. Rehr from George Mason University will address “How to Effectively Communicate with Legislators and Staff.”
- Amy Walter, National Editor for The Cook Political Report, will offer her predictions for the mid-term elections.
- Senator Bill Cassidy, MD (R-LA)
- Representative Kyrsten Sinema (D-AZ)

NEMPAC ACTIVITIES AT LAC18

2018 is an election year and NEMPAC is working hard to identify and support legislators and candidates who will work for sound health care policy to improve the practice of emergency medicine and access for patients. To that end, we have a host of NEMPAC activities planned for LAC18 including:

NEMPAC VIP Reception, Sunday, May 20 from 6:00 – 8:00 pm at the International Spy Museum.

Donors at the following levels are invited to attend:

Sterling: \$600 or more annually (\$60 for Residents)

Give-a-Shift: \$1200 or more annually (\$120 for Residents and \$365 for Residents transitioning into Year 1,2,3 of practice). You may also bring a guest at this level.

To register or for more information, click [here](#).

Congressional Dine-Arounds during LAC18

NEMPAC will again be hosting Congressional Dine-Arounds for key members of congress during the LAC. Join your emergency physician colleagues and some of the most influential lawmakers while dining or attending social events in our nation’s capital. A minimum donation to the Member of Congress’ campaign is suggested for participation, which will be

combined with the support provided by NEMPAC. Food and beverage is included with the events.

Here is the current schedule:

Monday, May 21

- Rep. Kyrsten Sinema (D-AZ)
- Rep. Brett Guthrie (R-KY)
- Rep. Dutch Ruppersberger (D-MD)
- Rep. Mike Kelly (R-PA)

Tuesday, May 22

- Rep. Carlos Curbelo (R-FL) w/special guest Rep. Ryan Costello (R-PA)
- Sen. Debbie Stabenow (D-MI)
- Rep. Greg Walden (R-OR)
- Sen. Patty Murray (D-WA)
- Rep. Raul Ruiz (D-CA), emergency physician and Rep. Ami Bera (D-CA), physician member of congress
- Rep. Kathy Castor (D-FL)
- Rep. Bill Pascrell (D-NJ)

If you have any questions about these events or wish to RSVP, please contact Jeanne Slade, ACEP Director of Political Affairs, at (202) 728-0610, ext. 3013 or jslade@acep.org.

ACEP members' support of NEMPAC makes events like these possible. [Click here](#) with your ACEP login credentials to donate to NEMPAC and make our voice even stronger!



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