WASHINGTON UPDATES

October 2017

In October, both the House of Representatives and Senate passed respective Fiscal Year (FY) 2018 budget resolutions.
Despite this budget action, Congress must still take up other legislation to complete FY 2018 appropriations before the continuing resolution that funds federal programs expires on Dec. 8. UC FGR remains actively engaged in budget and appropriations advocacy efforts and is working with the California congressional delegation and other key policymakers to support the university's key priorities in advance of the passage of final federal FY 2018 appropriations legislation.

Since the Sept. 5 announcement that the Trump Administration would end the Deferred Action for Childhood Arrivals (DACA) program, effective March 5, 2018, UC has continued its efforts to encourage a bipartisan legislative solution to protect DACA recipients, including participating in "Protect Dreamers Higher Education Theme Week." Details on UC's ongoing advocacy are below.

CONGRESSIONAL LEGISLATIVE ACTIVITY

Federal Perkins Loan Program Reauthorization Authorization for the Federal Perkins Loan Program expired on Sept. 30, and as a consequence, the U.S. Department of Education has taken initial steps to wind down the program. Perkins Loans, which in 2015-16 provided nearly 16,000 very low-income UC students with almost $25 million in financial aid, are a vital resource to those students who otherwise would have difficulty accessing funds from a private lender. Bipartisan legislation to extend the authorization of the program was introduced in both houses of Congress, and the legislation would not require additional funds from the federal government, as revolving funds in individual institutions' accounts support the creation of new loans.

Children's Health Insurance Plan (CHIP) Reauthorization
Authorization for CHIP expired on Oct. 1, though many states have sufficient reserve funds to continue providing care to covered children for several additional months. California's funding will not be fully exhausted until March 2018. UC FGR continues to advocate for CHIP reauthorization and funding with key members of the California congressional delegation. While the House and Senate have agreed to reauthorize CHIP for a five-year period, and fund it with the Affordable Care Act's (ACA) enhanced matching rate of 23 percent for two more years, they have yet to find consensus on funding offsets.

Delay of Disproportionate Share Hospital (DSH) Cuts
Provisions in a recent bill to provide funding for a number of programs – including the Children's Health Insurance Plan – also provides for the delay of Medicaid DSH cuts that had previously been slated to go into effect in FY 2018. Medicaid DSH payments are allotments from the federal government that are provided to qualifying hospitals, such as those in UC Health's system, that serve a large number of Medicaid and uninsured individuals. The House version of this legislation would eliminate DSH cuts for the current

fiscal year, postponing them by one year, while extending them into FY 2026 and 2027. UC and its partners have been advocating for a two-year postponement of Medicaid DSH cuts, with no cuts occurring in FY 2026 or 2027.

POLICY AND REGULATORY UPDATE

Title IX

President Trump Issues Executive Order Providing for Sale of Skinny Health Plans

On Oct. 12, President Trump signed an executive order that would make it easier for consumers to purchase less costly forms of "skinny" health care coverage including association health plans (AHPs), short-term stop gap insurance policies and health retirement savings accounts (HRSAs).

Under the executive order, small-business owners, trade groups and unions could band together to purchase AHPs sold across state lines. Additionally, the executive order would roll back ACA restrictions on short-term health insurance plans, permitting insurers to once again sell stopgap policies, and lengthen the policy period for short-term plans from a current three-month limit to one year. These forms of health care coverage, along with HRSAs, would be exempt from ACA rules, such as requirements to cover a minimum percentage of enrollees' health care costs and carry essential health benefits, including prescription drug coverage, maternity benefits or mental health benefits.

The university, along with other health care providers, is concerned that "skinny" health plans would destabilize state health insurance exchanges and increase exchange enrollees' out-of-pocket costs by allowing for the creation of separate competing risk pools, likely to be primarily accessed by younger, healthier insurance enrollees than older, sicker enrollees requiring more expensive, comprehensive state health exchange marketplace plans.

To push the sale of more AHPs, HRSAs and short-term stopgap insurance policies, the administration must reinterpret the Employee Retirement Income Security Act (ERISA), a federal statute governing most workplace healthcare benefits, so it can govern the sale of these plans.

The president's executive order does not constitute a law or regulation. It would allow the agencies to draft rules using the public notice and comment period required by the Administrative Procedures Act to implement rules providing for the sale of these more affordable skinnier health plans. FGR will continue to monitor this issue.

Ending Payment of Cost-Sharing Reduction Subsidies

President Trump announced on Oct. 12 that his administration will stop making CSR subsidy payments to health exchange insurance issuers that help cover the costs of providing lower-income exchange enrollees with private health care coverage. Payment of the CSRs costs the federal government $7 billion annually. Insurers' willingness to stay in the state exchanges, as well as keep premiums affordable, depends upon reliable monthly

CSR payments. In 2017, 7 million people, or 58 percent of all state marketplace enrollees, qualified for CSRs.

Recognizing that President Trump may terminate making CSR payments, California's health exchange, Covered California, announced its insurance issuers' intention to raise premiums for mid-level ("silver") exchange plans by 12.4 percent in 2018 to offset the Administration stopping CSR payments to exchange insurance issuers. Covered California consumers who were recipients of CSR subsidies from the government will not experience higher out-of-pocket costs, as the federal tax credits provided to enrollees eligible for CSRs rise with any increases insurance issuers make to their insurance premiums.

UC supports legislation that would require continued payment of CSRs for up to at least two more years, along with offering states some flexibility in the makeup of health care plans they sell to their exchange enrollees, so long as the plans they devise remain comparable in affordability to current ACA exchange plans, and retain certain ACA protections, like essential health benefits and not being able to discriminate against enrollees on the basis of their health status. FGR has emphasized to members and staff of the California delegation that CSR payments are necessary to many Californians retaining health care coverage.

Administration Proposal Cuts Safety Net Hospitals' Reimbursement for Medicare Drugs

This past summer, the Center for Medicare and Medicaid Services (CMS) introduced a proposed Medicare payment rule that proposed to cut by 28.5 percent the Medicare reimbursement that safety net hospitals receive on Part B drugs prescribed to Medicare beneficiaries. The proposal would uniquely apply to hospitals that have a high percentage of annually delivered uncompensated care and therefore, qualify for discounts from pharmaceutical manufacturers for the purchase of most outpatient prescription drugs.

FGR worked with UC Health to draft comments to CMS opposing this proposal. UC Health's comment letter explains that the current Medicare reimbursement formula for Part B drugs is imperative to its being able to operate primary and specialty care clinics throughout remote and inner-city areas of California, as well as provide costly life-sustaining medications to vulnerable patients treated at its five medical centers. UC FGR recently collaborated with partner health care provider groups to draft a legislative sign-on letter from congressional members to CMS Administrator Seema Verma imploring CMS to not finalize this proposal, and thereby compromise safety net hospitals' capacity to provide needed care.

Budget and Appropriations

On Oct. 5, the House passed H.Con.Res.71, the FY 2018 budget resolution by a vote of 219-206. This legislation provides an avenue for tax cut legislation and calls for $203 billion in cuts to entitlement programs over the next 10 years. On Oct. 19, the Senate passed its version, S. Con. Res. 25, by a vote of 51-49, with all Democrats voting no. The resolution

sets up a reconciliation process for approving tax cut legislation with 51 votes in the Senate, and allows for an addition of $1.5 trillion to the deficit over the next decade.

In an effort to make conference negotiations unnecessary, House leaders agreed with Senate leaders on an amendment by Sen. Michael Enzi (R-WY) that substitutes the Senate language into the House resolution and strikes the entitlement cuts required by the House measure. The goal of this maneuver is to create an easier, accelerated path for Republicans in both chambers to begin writing tax cut legislation. The full House passed the Senate resolution on Oct. 26 by a vote of 216-212, with 20 Republicans voting no.

Despite this budget action, Congress must still take up other legislation to complete FY 2018 appropriations before the Continuing Resolution that funds federal programs expires on Dec. 8. After two years of partial relief enacted under the Bipartisan Budget Act of 2015, the full impact of the lower sequestration caps established by the 2011 Budget Control Act (BCA) returns for FY 2018.

New changes to the underlying 2011 BCA budget law would have to be enacted to alter the overall FY 2018 discretionary spending cap of $1.065 trillion, and to revise the caps for the defense and non-defense categories. Unlike tax reconciliation, however, changing the statutory BCA caps will require negotiations between congressional Republicans and Democrats because 60 Senate votes are required, instead of a simple majority. It is expected that Congressional leaders will focus on reaching an agreement that would raise the discretionary caps for two years.

Throughout the summer and early fall, the House and Senate each advanced regular FY 2018 funding bills, assuming different defense and non-defense budgetary caps. The full House passed its versions of all 12 appropriations bills, which would cut non-defense programs by $8 billion below FY 2017 levels, and increase defense spending by $70 billion over FY 2017. The Senate has been operating under a more conservative plan – roughly adhering to FY 2017 spending caps. As of Oct. 24, eight bills have passed out of the Senate Appropriations Committee, and none out of the full Senate.