

U.S. House legislation highlights escalating government-wide focus on opioid abuse

July 6, 2018

On June 22 the U.S. House of Representatives passed sweeping legislation that represents “the biggest effort Congress has ever undertaken” to address the opioid epidemic, according to Rep. Greg Walden (R-OR). The House approved [HR 6](#) – the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act – by a vote of 396 to 14, advancing a bipartisan package that combines 58 bills passed in recent weeks.

Notable measures in the bill include the following:

- “Jessie's Law,” which would require that medical records list a patient's addiction history.
- Changes to the post-approval study requirements for opioid-based medications, including a requirement that post-approval studies take into account the long-term efficacy of treatment with an opioid-based medication or other controlled substances, not just the drug's safety.
- Additional support for non-opioid pain treatment plans through Medicare.
- The removal of some limits on prescribing Buprenorphine, a drug approved to treat opioid dependence.
- A requirement, with exceptions, that prescriptions for controlled substances under Medicare Part D be written electronically in order to better track them.
- The removal of certain limits on Medicaid's contribution for opioid care at treatment facilities.
- A requirement that any addiction treatment program funded by the Substance Abuse and Mental Health Services Administration (SAMHSA) exclusively fund evidence-based treatment.
- Center for Disease Control (CDC) authorization to conduct certain controlled substances overdose prevention and surveillance activities.
- New tools for Border Patrol and the Postal Service to crack down on the trafficking of synthetic drugs into the U.S.

Opioid legislation awaits Senate action

The bill now heads to the U.S. Senate, where multiple committees are crafting their own bills to combat opioid abuse. A spokesman for Senate Majority Leader Mitch McConnell (R-KY) said the legislation was a priority but the Senate does not have a specific timeline for considering the bill, according to [STAT](#), which further reported that “lobbyists and Democratic congressional staffers have predicted that McConnell will wait until November” to address opioids legislation.

Recent Senate action provides some insight into the likely path of HR 6. The Senate HELP Committee approved a bipartisan bill in April, summarized [here](#), which includes some provisions

similar to those passed by the House. For example, both the House and Senate legislation would direct National Institute of Health (NIH) to invest more in studying pain treatments that are not addictive. Last week, the Senate Appropriations Committee also approved a spending bill for Health and Human Services (HHS) that includes US\$3.7 billion for opioid prevention and treatment efforts, which represents a US\$145 million increase over FY-2018.

Executive branch focuses on curbing opioid abuse

This legislative push comes as the Food and Drug Administration (FDA) held a summit on June 27 with the Drug Enforcement Administration (DEA) and key stakeholders – including representatives of Google, Facebook, and Amazon – to address the online sale of opioids. FDA Commissioner Scott Gottlieb, M.D., expressed concern over the “easy availability of opioids online.” Gottlieb [said](#), “The adoption of a far more proactive approach to addressing this public health emergency by the FDA and internet stakeholders is not only critical, but it's long overdue.”

In other executive action, the Department of Justice (DOJ) [announced](#) charges last week against hundreds for health care fraud, emphasizing its efforts to combat opioid abuse by highlighting how 162 of the suspects were charged for their roles in distributing opioid painkillers. The DEA in March [announced](#) it is hiring 250 new task force officers to focus on opioids investigations. In addition, the HHS Office of Inspector General (OIG) June 2018 [Data Brief](#) spotlighted “concerning” opioid use in Medicare Part D, and last week the Inspector General published a [toolkit](#) titled, “Using Data Analysis to Calculate Opioid Levels and Identify Patients at Risk of Misuse or Overdose.” The IG noted that in 2017 one in 10 Medicare beneficiaries received prescription opioids on a regular basis, defined as three or more months out of the year, and nearly one-third of Medicare beneficiaries received at least one prescription opioid last year.

The government is making it clear that it will leverage its resources and use every law enforcement tool it has to prosecute health care fraud and reverse the rising rate of opioid abuse.

Contacts



Jason Hades

Partner, Washington, D.C.

Tel +1 202 637 5785

jason.hades@hoganlovells.com



Lynn Mehler

Partner, Washington, D.C.

Tel +1 202 637 6419

lynn.mehler@hoganlovells.com

www.hoganlovells.com

“Hogan Lovells” or the “firm” is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses.

The word “partner” is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members. For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com.

Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney advertising. Images of people may feature current or former lawyers and employees at Hogan Lovells or models not connected with the firm.

© Hogan Lovells 2018. All rights reserved.