

House Energy and Commerce Committee, Subcommittee on Health

"The Fiscal Year 2020 HHS Budget"

March 12, 2019

12:00 PM 2123 Rayburn

Purpose

The purpose of this hearing was hear from the Department of Health and Human Services (HHS) Secretary Alex Azar regarding President Trump's budget request for the department and its agencies for fiscal year (FY) 2020.

Members Present

Chairman Eshoo, Ranking Member Burgess, Representatives Pallone, Bucshon, Walden, Butterfield, Upton, Matsui, Shimkus, Castor, Guthrie, Engel, Griffith, Sarbanes, Bilirakis, Schrader, Lujan, Brooks, Kennedy, Mullin, Cardenas, Hudson, Carter, Ruiz, Gianforte, Kuster, Long, Kelly, Barragan, Blunt Rochester, Rush, DeGette, and Schakowsky

Witnesses

The Honorable Alex Azar, Secretary, U.S. Department of Health and Human Services

Opening Statements

Chairman Eshoo said that the President's budget reflects the priorities of the Administration. But the national budget should be a statement of America's national values. This budget does not do that. This Administration has taken a hatchet to every part of the health care system, including numerous sabotages of the ACA. The American people rejecting this sabotage in 2018.

Ranking Member Burgess said that the President's budget provides Congress with an important blueprint for its appropriations process. The Energy and Commerce Committee is a critical authorizing committee, and it should examine the President's budget closely. Thus far, Sec. Azar has proven to be immensely helpful to this committee. Of all of the HHS secretaries he has worked with, Azar has been the most transparent and accessible. In addition to passing new groundbreaking legislation, the committee should continue to conduct thoughtful oversight to make sure HHS is faithfully implementing the laws that have already passed as intended. This budget proposes significant money to combat the opioid epidemic, childhood cancer, and HIV/Aids, all efforts that Congress should support. The Office of Refugee Resettlement, an important agency with HHS, is required to provide care for unaccompanied alien children, a task for which they were unprepared when the current immigration crisis began in 2012 when President Obama enacted DACA. Conditions and quality of care have improved, but the number of illegal border crossings have continued to increase. The budget includes \$3.7 billion for the unaccompanied alien children program, and Congress should support this proposal. HHS does not enforce immigration policy, but receives children as the result of other government actions.

Rep. Pallone said that last year, President Trump and the Republican passed a deficit-busting tax cut for the wealthy and corporations. We all knew who would take the hit when it came time to produce a budget, and now we see that middle-class Americans are the ones

who lose. Clearly, ensuring that every American has health care is not a priority for this administration. The budget for HHS continues the sabotage of the ACA and the assault on the millions of hardworking families that rely on Medicaid. This misguided budget also includes over \$500 billion in cuts to Medicare. This is a shame of a budget that has absolutely no chance of ever becoming law. Sec. Azar will also have to account for HHS' role in the Trump Administration's cruel policy of family separation. This policy has caused so much pain and trauma for thousands of children, and has still not come to an end. Over the last two months, this committee has attempted to work with HHS in good faith, asking for information on a variety of topics that is critical to its ability to conduct oversight, but HS has been unresponsive to the requests.

Rep. Bucshon said that HHS is doing tremendous work to address the crisis at the border.

Rep. Walden said that this committee has a strong history of bipartisan work on health care issues. The committee must continue its work on issues like the opioid epidemic and the cost of health care. The President's budget offers several important goal, including ending the HIV/Aids epidemic. He looks forward to a thoughtful discussion.

Testimony

Sec. Azar said that HHS has delivered record new and generic drug approvals, new affordable health insurance options, and signs that the trend in drug overdose deaths is beginning to decline. The budget proposes \$87.1 billion in FY 2020 discretionary spending for HHS. It's important to note that HHS has the largest discretionary budget of any non-defense department in 2018, which means that staying within the caps set by Congress has required difficult choices. The President's budget supports a number of important goals for HHS. First, it proposes reforms to help deliver Americans patient-centered, affordable health care, giving states necessary flexibility while maintaining fiscal responsibility and protecting those with preexisting protections. Second, the budget strengthens Medicare buy extending the program's solvency for eight years. The proposed changes would discourage hospitals from acquiring smaller practices just to charge Medicare more. Second, it addresses overpayment to post-acute care providers. Third, it takes on drug companies that are profiting off of seniors by reforming the Part D program to lower out-of-pocket costs and create incentives for lower list prices. There are many areas of common ground on drug prices. Finally the budget fully supports HHS strategy to combat the opioid epidemic, and invests in other public health priorities such as fighting infection disease. Additionally, as HHS begins the process of identifying a new FDA Commissioner, the current Director of the National Cancer Institute, Dr. Ned Sharpless, will serve as acting Commissioner for FDA, following Commissioner Gottlieb's departure sometime in early April.

Questions and Answers

Chairman Eshoo said that the budget proposes to cut funding for premium tax credits that help people afford their insurance. But HHS 1332 waiver guidance supports using federal subsidies to pay for junk insurance plans that don't cover patients when they get sick. The budget also revives the failed Graham-Cassidy bill. These policies have real consequences for people's lives.

She asked where in the budget people with pre-existing conditions are protected as well as they are under the ACA. **Sec. Azar** said that the ACA did not solve everything for people with preexisting conditions. **Chairman Eshoo** said that the budget cuts \$460 billion from Medicare. She asked how HHS can reassure the American people that the health care safety net will remain intact. **Sec. Azar** said that the proposal puts Medicare on sounder footing. The cuts are to providers. They will not be happy. But it will reduce the cost-sharing of beneficiaries. **Chairman Eshoo** asked if providers will keep covering Medicare patients. **Sec. Azar** said that most hospitals need to be Medicare providers to receive benefits, so they will likely remain Medicare providers. These cuts will not impact patient access to services. **Chairman Eshoo** asked how short term, limited duration (STLTD) “junk” plans strengthen coverage. **Sec. Azar** said that they are meant for people in a transition period and are not right for everybody.

Ranking Member Burgess asked how the improved economy has helped people get insured. **Sec. Azar** said the unemployment rate is historically low, and this means more people have access to employer-sponsored health insurance. **Ranking Member Burgess** asked what progress NIH has made on cycle-cell disease. **Sec. Azar** said we may be within five years of a cure.

Rep. Pallone asked if Sec. Azar has received his request for documents regarding HHS’ involvement in the *Texas vs. Azar* case. **Sec. Azar** said he is sure they did. **Rep. Pallone** asked if Sec. Azar received the follow up letter he sent. **Sec. Azar** said he is certain that they did. **Rep. Pallone** asked why he has not received a response to numerous requests. **Sec. Azar** apologized for the delay. His team has discussed compliance with the request. They will try to get as much material as possible over to the committee as quickly as possible. **Rep. Pallone** asked if this unacceptable level of cooperation will continue. **Sec. Azar** said he wants to have a good, productive relationship with this committee.

Rep. Walden asked how much the increase in generic drug approvals have saved the American people. **Sec. Azar** said it is estimated at \$26 billion since January of 2017. **Rep. Walden** asked what assurances Sec. Azar can provide that people in Medicare Part D’s protected classes will be able to continue getting the medications they need. **Sec. Azar** said that CMS has proposed allowing some of the commercial formulary practices to take place in the protected classes. But it’s just a proposal, and HHS is taking the feedback very seriously. **Rep. Walden** asked why seniors are increasingly chooses Medicare Advantage (MA) plans for their coverage. **Sec. Azar** said MA is very convenient for seniors who want to keep their medical and drug benefits together. MA plans also offer great supplemental benefits. **Rep. Walden** asked what would happen to people with MA plans under the Medicare for All bill. **Sec. Azar** said he believes they would lose their plan.

Rep. Butterfield said that the President’s budget does not reflect the values of the American people. Capping Medicaid, for example, would hurt some of the most vulnerable people in the program. The Republican block grant proposal would cut Medicaid by over \$4 trillion over the next 40 years. Congress has already rejected attempts like this. It is disheartening that the administration has doubled down on these schemes. He asked if the administration believes that it has the authority to block grant Medicaid without an act of Congress. **Sec. Azar** said that states are able to experiment with different payment models through demonstration programs. **Rep. Butterfield** asked if Sec. Azar can guarantee that capping Medicaid would not result in anyone

losing access to benefits. **Sec. Azar** said he cannot make that guarantee about a hypothetical waiver structure.

Rep. Upton asked how implementation of the 21st Century Cures Act is going. **Sec. Azar** said it has led to the approval of a record number of generic drugs that is saving the American people billions of dollars. **Rep. Upton** asked if it is true that budget cuts the National Cancer Institute by \$897 million. **Sec. Azar** said yes. There is an across-the-board reduction to NIH funding proportional to the overall cut to HHS. **Rep. Upton** asked how much funding there is to combat the opioid epidemic. **Sec. Azar** said that the budget maintains the funding that Congress prioritized last year at \$2.9 billion. **Rep. Upton** asked what the budget request is for the Office of Refugee Resettlement, and if additional monies may have to be reprogrammed. **Sec. Azar** said that in FY 19, the request was \$1 billion plus a \$200 million contingency fund. For FY 2020, HHS has requested \$1.3 billion as an appropriation, and a \$2 billion mandatory contingency fund with transfer authority of up to 20%.

Rep. Matsui said that the President's budget proposes to cut Medicaid by \$1.5 trillion over ten years. But strengthening Medicaid is perhaps the single best thing Congress can do to expand access to substance use and mental health services. She asked if Medicaid is critical tool for helping those with mental health conditions or substance use disorders. **Sec. Azar** said yes. **Rep. Matsui** asked if Sec. Azar will commit to not taking any further action to weaken the program. **Sec. Azar** said the administration is proposing changes that will refocus on the program on the core population, including those with substance use disorders and mental health issues.

Rep. Shimkus asked what the administration is doing to address antibiotic drug resistance. **Sec. Azar** said that HHS is working internationally to develop best practices with the use of antibiotics. The government will also have to work on policies that encourage innovation of new antibiotics even when we don't want them used. **Rep. Shimkus** asked how value-based payment structures could improve MA. **Sec. Azar** said that MA can be the leading edge of innovation. **Rep. Shimkus** asked is Congress should waivers to the STARK and Anti-Kickback statutes. **Sec. Azar** said that HHS is examining this issue. **Rep. Shimkus** asked if salaries of health care providers would be determined by the government under Medicare for All. **Sec. Azar** said that the danger with a single-payer system is that it may move to a system where the government owns providers and sets their salaries.

Rep. Castor asked if STLDI plans discriminate against Americans with preexisting conditions. **Sec. Azar** said that these plans do not have to comply with ACA requirements. If a plan does not exclude coverage for preexisting conditions, they must fully disclose it. **Rep. Castor** if Sec. Azar considered the fact that expanding junk plans would lead to increased premiums. **Sec. Azar** said that was part of the consideration, but he does not believes that anyone receiving subsidized insurance would choose to move to an STLDI.

Rep. Guthrie asked how the implementation of the opioid package is going. **Sec. Azar** said that HHS is grateful to Congress for that legislation and is working hard to put it into action. **Rep. Guthrie** asked if President Trump would support a health care bill that did not protect preexisting conditions. **Sec. Azar** said no.

Rep. Engel said that Medicaid DSH payments are critical to support all types of communities. The proposed DSH cuts would punish states that chose to expand Medicaid. He asked if cutting almost \$26 billion from hospitals that serve high numbers of low-income individuals would reduce access to care and endanger vulnerable patients. **Sec. Azar** said that part of the funding mechanism of Medicaid expansion was for DSH payments to be reduced. Medicaid expansion and the ACA were meant to eliminate uncompensated care. **Rep. Engel** said that he doesn't believe hospitals will be able to sustain cuts that size. He asked how the cuts to NIH and CDC will help patients in need of cures. **Sec. Azar** said those cuts are the result of tough choices.

Rep. Griffith asked how many health care providers would leave the field if Medicare for All were enacted. **Sec. Azar** said European socialist systems have demonstration that some providers will leave the market. He is concerned that it would create a two-tier system. **Rep. Griffith** said that Congress should look at reimbursement for telemedicine.

Rep. Sarbanes asked how HHS is going to hold pharmaceutical companies responsible for the dangerous marketing practices that contributed to the opioid epidemic. **Sec. Azar** said that HHS has been aggressively working to reduce legal opioid prescribing. HHS will also support the Justice Department in going after any companies that acted illegally or unethically. **Rep. Sarbanes** said that HHS should put a plan in place to review existing opioid practices.

Rep. Bilirakis asked if the government can negotiate better deals for Medicare Part D than the plans have been able to. **Sec. Azar** said he doesn't think the government can negotiate better than pharmacy benefit manager (PBMs) absent creating a highly restrictive formulary for all seniors in America. **Rep. Bilirakis** asked how the Medicare for All would affect the Part D program. **Sec. Azar** said it would take it away. **Rep. Bilirakis** asked what it would do to MA. **Sec. Azar** said it would take it away.

Rep. Schrader asked how often first-filers block competition from generics, and how long that "parking" seems to last. **Sec. Azar** said that HHS sees that about five times a year and causes, on average, about a 12 month delay in generics coming to market. **Rep. Schrader** asked why manufacturers do that. **Sec. Azar** said there are instances where manufacturers can't make the drug right away, or deals between the branded manufacturer and the generic manufacturer. **Rep. Schrader** asked is there is enough protection against that "parking" behavior. **Sec. Azar** said HHS works hard on enforcement, but more could be done to fix the issue.

Rep. Bucshon said that he was pleased to see the administration's focus on the 340B program in the budget, specifically the call for transparency in use of the program savings. There is a need for 340B reform. It is concerning that many hospitals in the 340B program may be providing only low levels of charity care, despite growth in the program. He asked if Sec. Azar would support including a charity care requirement as a condition of eligibility for the program. **Sec. Azar** said he would have to look at the proposal in detail. But the budget proposes that entities would have to provide at least 1% charity care in order to get the benefit from the reimbursement change. **Rep. Bucshon** asked if there should be a minimum charity care level met across all hospital networks. **Sec. Azar** said the rationale for the 340B program was that hospitals are providing that type of care. **Rep. Bucshon** asked if HRSA needs more authority to create clear and enforceable standards for the 340B program. **Sec. Azar** said absolutely. HRSA needs

regulatory authority and oversight authority. There must transparency in 340B, and there should also be a user fee program so that those benefitting from 340B pay for the needed oversight. **Rep. Bucshon** asked if 340B entities should be required to report savings achieved from the program and their uses. **Sec. Azar** said that type of transparency could be very useful.

Ranking Member Burgess asked if it is adding to the difficulty that contract pharmacies can participate in the 340B program. **Sec. Azar** said it is adding to the difficulty and to the issues of integrity in the program. It would be great if the committee could look into this question. Allowing contract pharmacies was a good idea initially, but contract pharmacies in the 340B program has now become an industry of shared profit. It is worth looking at to see if this is fulfilling the original intent of the program. **Ranking Member Burgess** said he agrees.

Rep. Lujan asked if Sec. Azar was given advanced warning of the Justice Department's decision not to defend the ACA. **Sec. Azar** said yes. **Rep. Lujan** asked how he was notified. **Sec. Azar** said that HHS is involved in consultations regarding litigation involving the department. **Rep. Lujan** asked if there was a phone call or an in person meeting. **Sec. Azar** said that he cannot freely discuss the nature of the consultation surrounding the litigation. **Rep. Lujan** asked if HHS conducted an analysis of the DOJ's position on consumer cost and coverage. **Sec. Azar** said they did not at the time. **Rep. Lujan** asked why Sec. Azar can't share the nature of the conversations he had with the DOJ. **Sec. Azar** said that conversations at a certain level are highly privileged, especially with pending litigation.

Rep. Brooks said that unfortunately, PAHPA has not yet been reauthorized. She asked what negative impact that has had. **Sec. Azar** said that there are several expired provisions, such as anti-trust provisions, that HHS needs in order to continue combatting bio terrorism. They rely on a delicate public-private partnership. If a pandemic were to occur, HHS would be unable to respond appropriately.

Rep. Kennedy said it was reported that HHS circulated a memo suggesting that gender be narrowly defined as a biological condition established at birth. He asked if that story was real. **Sec. Azar** said that he can't comment on the existence of a preliminary memo. But the court enjoined the Obama administration's enforcement of section 1557 of the ACA, and HHS is working to comply with that ruling. **Rep. Kennedy** asked if Sec. Azar believes health care is a right for all Americans. **Sec. Azar** said that lawmakers have a duty to make health care affordable and accessible. **Rep. Kennedy** said that work requirements for Medicaid have been shown to result in lost coverage. He asked why HHS wants to establish this practice nationwide. **Sec. Azar** said that it's not too much to ask for able-bodied adults to engage in some kind of community engagement. **Rep. Kennedy** said that he believes Medicaid work requirements are illegal.

Rep. Mullin asked if HHS is working on the issue of 42CFR Part 2. **Sec. Azar** said HHS. HHS is committed to ensuring that people with mental illness or substance use disorder get the care that they need while still protecting their privacy. **Rep. Mullin** asked if there's anything Congress can do to help. **Sec. Azar** said Congress can work on harmonizing these requirements with HIPPA.

Rep. Cardenas asked what evidentiary standard is needed to separate a child from their parents due to legal issues or safety concerns. **Sec. Azar** said that HHS does not separate children. He would have to defer to DHS on what standards are used. **Rep. Cardenas** asked if HHS is involved in advising DHS about how best to care for children. **Sec. Azar** said no, HHS is not involved in advising or setting standards for DHS, but he would welcome the opportunity to participate in those discussions. **Rep. Cardenas** asked if HHS has implemented policies to limit harm for families in these situations. **Sec. Azar** said yes. HHS has dramatically improved its information sharing practices to keep children and parents connected.

Rep. Hudson said that he recently submitted a letter to FDA with concerns about the agency's menthol and e-cigarette proposal. He asked if he will get a response back before HHS moves forward. **Sec. Azar** said that he cannot guarantee that FDA will get a response back. Addressing the issue of e-cigarette marketing to teenagers is very important. **Rep. Hudson** asked if potential tobacco user fees would result in more tobacco product approval at FDA. **Sec. Azar** said yes.

Rep. Welch asked if Sec. Azar supports ending pay-for-delay. **Sec. Azar** said yes. HHS wants to crack down on any manipulation of patents and exclusivity. **Rep. Welch** asked if HHS is open to exploring drug price negotiation in instances where competition doesn't exist. **Sec. Azar** said yes, such as Medicare Part B where the administration has proposed internationally referenced pricing.

Rep. Carter asked why HHS requested three different scores for the proposed rebate rule. **Sec. Azar** said that the scores are trying to predict the behavior of private businesses. Approving the rebate rule will result in dramatic savings for seniors and will lower drug prices. **Rep. Carter** said that the 340B program needs some guardrails. **Sec. Azar** said HHS wants to partner with Congress to keep 340B effective for its intended purpose.

Rep. Ruiz said that recently released Title X rule will make it more difficult to obtain necessary health care and family planning services. He asked if the Title X program provides critical care for patients. **Sec. Azar** said yes. **Rep. Ruiz** asked why the administration is going forward with this rule. **Sec. Azar** said that if a facility is providing abortion, it must be able to do so without Title X funds. The rule allows non-directive counseling related to abortion.

Rep. Gianforte asked what the administration is doing to combat suicide. **Sec. Azar** said that budget invests over \$1 billion in serious mental illness. **Rep. Gianforte** asked how health savings accounts help seniors. **Sec. Azar** said that the budget proposes more flexibility for HSAs so they can be used more freely. **Rep. Gianforte** asked if the FDA is still planning on having a public meeting on CBD. **Sec. Azar** said yes.

Rep. Kuster asked if Sec. Azar is aware that 1332 guidance can raise costs for people with pre-existing conditions. **Sec. Azar** said that HHS will not approve any 1332 waivers that do not protect pre-existing conditions. **Rep. Kuster** asked if tax payer should fund junk insurance plans. **Sec. Azar** said that what seems like a junk plan to some may be a lifeline for others.

Rep. Long asked what the budget does to ensure fiscal discipline. **Sec. Azar** said that the budget eliminates programs that it feels are ineffective or redundant, and allows more flexibility in

programs which saves money. **Rep. Long** asked how community health centers help people with mental illnesses and substance use disorders. **Sec. Azar** said that the community health center program is absolutely essential. **Rep. Long** asked if rural health centers should be able to use telemedicine. **Sec. Azar** said absolutely.

Rep. Kelly asked if children are some of the patients who need Medicaid the most. **Sec. Azar** said yes. Low income children are one of the core populations of Medicaid. **Rep. Kelly** asked if children will be affected by their parent's coverage loss as the result of work requirements. **Sec. Azar** said that children should not be affected. **Rep. Kelly** asked if the FDA will issue a proposed rule to prohibit menthol cigarettes. **Sec. Azar** said that FDA is committed addressing the issue of tobacco use in teens.

Rep. Barragan asked why HHS is running emergency detention facilities for unaccompanied children when there has been no unexpected surge in arrivals. **Sec. Azar** said there has been a surge. It's a crisis. **Rep. Barragan** asked if Sec. Azar has visited one of these facilities, and if he saw children being packed into cold rooms. **Sec. Azar** said he has visited facilities, and has not seen children packed into rooms. **Rep. Barragan** asked if these facilities are like prisons. **Sec. Azar** said no.

Rep. Blunt Rochester asked if Sec. Azar will commit to make sure that those who are eligible to enroll in insurance are fully aware of the timing and options. **Sec. Azar** said he believes people are well informed. There has been more limited federal spending on marketing and outreach, but private plans have an incentive to advertise.

Rep. Rush asked if people should have their pre-existing conditions covered. **Sec. Azar** said yes. **Rep. Rush** asked if STLDI plans often engage in aggressive marketing so that people buy them without knowing the benefits. **Sec. Azar** said that HHS has strengthened the disclosure requires for STLDI plans under the Trump administration.

Rep. DeGette asked if Sec. Azar was consulted before issuance of the family separation policy. **Sec. Azar** said no. **Rep. DeGette** asked when he learned about the policy. **Sec. Azar** said that he learned about it when it was announced. **Rep. DeGette** asked if the separations are still happening. **Sec. Azar** said that separations have always happened and continue to happen in cases of legal issues and child welfare. There are also still a small number of children arriving when their parents were prosecuted for a felony violation of immigration policy.

Rep. Guthrie asked what HHS process is for reporting sexual abuse allegations against staff. **Sec. Azar** said that sexual abuse is unacceptable. All allegations are reported to state and federal officials. There is also a full-time sexual abuse prevention coordinator. **Rep. Guthrie** asked what is meant by "staff" in these cases. **Sec. Azar** said that it is grantee staff that have direct contact with children. He is not aware of any sexual abuse allegation against HHS staff.

Rep. Schakowsky asked if Sec. Azar was aware of the family separation policy before it was publically announced. **Sec. Azar** said no. **Rep. Schakowsky** asked if Sec. Azar has raised any opposition to the issue. **Sec. Azar** said that his immediate concern after learning of the policy

was to make sure that every child was in contact with their parents and that they were well cared for.

Rep. Walden asked if children are crossing the border by themselves. **Sec. Azar** said yes. **Rep. Walden** asked how HHS vets guardians to place children with. **Sec. Azar** said that they have an extensive hearing process. **Rep. Walden** asked if the children are provided with medical and educational services. **Sec. Azar** said yes.

Rep. Pallone asked what explains HHS' slow document production related to family separations. **Sec. Azar** said he wants HHS to be as cooperative as possible. Congressional oversight is appropriate. HHS is working to meet the requests. **Rep. Pallone** asked if Sec. Azar will ensure that this wholesale family separation will never happen again under his watch. **Sec. Azar** said that he is committed to child welfare.