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IN THE NEWS

Virus Pushes Health Insurance Profits ‘Significantly’ Higher
Profits for health insurers will be significantly higher in 2020 than in 2019 because of the Covid-19 pandemic, a health insurance analyst said Tuesday.

For the second half of 2020, claims costs at the largest health insurance companies are likely to be about 2% lower than what they normally would be without the pandemic, Bradley Ellis, head of Fitch Ratings’ North American health insurance and managed care sector, said in a webinar on the outlook for the health-care industry. The 2% equates to 200 basis points for insurers’ medical loss ratios, the amount of premiums insurers must pay in claims under the Affordable Care Act. “You’re going to see for 2020 a significant improvement in operating results across the board for these companies,” Ellis said. Revenue for the largest publicly held health insurers increased from $375 billion in the first half of 2019 to about $400 billion in the first half of 2020, he said.

The outlook from Fitch Ratings, a credit rating agency, highlights how health insurers have profited from the reduction in elective care in hospitals and doctors’ offices. However, patients are returning to get elective procedures done, Ellis said. “We’re a little surprised by how quickly people started moving back into the health-care system” after facilities were shut down for elective procedures, he said. For insurers, the uncertainties revolve around the cost of increased severity related to deferred care and secondary effects from the virus, Ellis said.

Changes in how people are covered for health care may be the biggest risk for health insurers as well as hospitals. Over the long-term, “a shifting of the payer mix” may have a big impact, Kevin Holloran, sector leader of Fitch Ratings’ not-for-profit health-care group, said in the webinar. Higher unemployment rates will result in higher coverage through Medicaid, which pays lower rates than most commercial coverage sponsored by employers, Holloran said. In addition, there will be higher numbers of uninsured people who may not be able to pay hospitals, he said. “You could start to paint this perfect storm where your commercial mix really takes a dip; your Medicaid, self-pay-no-pay starts to pop up, and inevitably everyone’s Medicare continues to rise” as more seniors move into the government program for people at age 65, Holloran said. That would result in reductions in payments to providers.

Holloran said the effect of reduced payments to providers may push more providers to move away from fee-for-service to taking risk by accepting set fees to provide care for people, Holloran said. “Do you see more health insurers partnering and getting together with health systems? Do you see health systems developing their own insurance products? And I think that answer is yes going forward, so I expect to see some larger term integration.” That sort of integration “can cause some concerns,” Holloran said. More integration generally reduces competition and leads to higher prices.

Blackstone, Government Give Team Health New Cash to Pay Doctors
Team Health Holdings Inc. got fresh lifelines from the government and its sponsor Blackstone Group Inc. to help it pay doctors and debt interest as it deals with continued pressures from the pandemic.

Team Health obtained an additional $105 million of financing through the CARES Act in July, according to people familiar with the matter, following an earlier round of government funding it disclosed in May. At the end of June, Team Health had $696 million of cash, which increased to more than $800 million after it obtained the CARES Act money, said the people, who asked not to be named discussing private earnings.
Blackstone also gave the physician provider a $45 million payment-in-kind loan during the second quarter for interest on other debt. That follows a senior loan the private equity firm provided earlier in the year, according to the people.

The new funds will go toward pay and benefits for doctors and other medical staffers, a representative for Team Health said in an emailed statement. “While these funds have only covered less than half of our nearly $400 million in COVID-19-related losses, they have helped ensure that we can maintain staffing and compensation levels well in excess of current patient volumes, which have dropped precipitously by as much as 70 percent in some specialties as non-COVID patients avoid treatment,” the statement said.

A representative for Blackstone referred Bloomberg to an earlier emailed statement, saying its loan will cover interest payments “specifically to ensure that 100% of the emergency Health and Human Services funding goes to physician compensation and benefits.” Team Health, which has nearly $4 billion of debt, saw a key measure of earnings turn negative in the three months that ended June 30, said the people. It lost $1.5 million before interest, taxes, depreciation and amortization.

Second-quarter revenue declined to around $934 million compared with $1.2 billion a year earlier, the people added. Including a CARES Act grant, revenue was $990.8 million. Team Health has also drawn down all but $10 million of a $400 million credit line. The company’s debt rebounded on Wednesday after a private call discussing the new funds and results, becoming some of the top performers in the U.S. high-yield market. Team Health’s notes due 2025 traded up to 64.25 cents on the dollar after second-quarter results, according to Trace. Team Health’s term loan trades around 81 cents, Bloomberg data shows.

The Knoxville, Tennessee-based company is one of a handful of medical staffing firms that supply emergency doctors, anesthesiologists and other clinicians to hospitals. It works with more than 16,000 professionals at about 3,100 facilities and physician groups, according to its website.

Like competitors such as KKR-backed Envision Healthcare, Team Health faced steep losses as patients have avoided visiting doctors’ offices for vital care. During lockdowns, physicians across the country deferred elective procedures and saw appointments canceled in staggering amounts since the onset of the virus. Team Health’s billed patient volumes for the three months through June were down 28% compared to a year earlier, the people said.

**Kids Hospitalized by Virus Infrequently, But Number Is Rising**

Children with Covid-19 are hospitalized infrequently compared to adults, but the rate has been growing and about a third of those hospitalized in a subset of a federal study published Friday needed intensive care.

The study by the U.S. Centers for Disease Control and Prevention analyzed pediatric hospitalization data for 576 cases in 14 states. It found that about eight children are hospitalized for every 100,000 infected, compared with more than 164 adults per 100,000.

But between March and July, the hospitalization rates of children increased steadily, with Black and Latino children hospitalized at a higher rate. Among 208 hospitalized children with complete medical chart reviews, a third were admitted to an intensive care unit. One died and 12 needed invasive ventilation.

The report comes as President Donald Trump has pushed for schools to reopen across the U.S., and many large districts have pushed back. This week, in urging schools to reopen, the president falsely asserted in a Fox News interview that children are “almost immune from this disease.”
Continued surveillance is needed to further identify “the burden and outcomes of COVID-19–associated hospitalizations among children,” the researchers wrote in the report. “These data will help to better define the clinical spectrum of disease in children and the contributions of race and ethnicity and underlying medical conditions to hospitalizations and outcomes.”

The hospitalization rate among Latinos was around 16 per 100,000 while black children had a rate of about 11 per 100,000.

There remains a lack of knowledge about how Covid-19 is transmitted to and from children. Some early evidence has suggested that children — and especially younger children — don’t transmit the virus as frequently as adults or even older children.

While children do appear to be at a lower risk of getting very ill, a small number have died or required intensive care as a result of either the respiratory failure commonly associated with the virus or a frightening inflammatory condition sometimes described as similar to Kawasaki disease that causes heart or circulatory problems.

On Friday, the National Health Institutes also launched a program seeking to identify which children might be most at risk for developing that condition, known as multi-system inflammatory syndrome.

The CDC study examined cases reported to the COVID-19–Associated Hospitalization Surveillance Network, a population-based surveillance system that collects data on laboratory-confirmed COVID-19–associated hospitalizations in 14 states.

**Bill Gates Says U.S. Virus Testing Has ‘Mind-Blowing’ Problems**

Microsoft Corp. founder and billionaire philanthropist Bill Gates said it’s “mind-blowing” that the U.S. government hasn’t improved Covid-19 testing that he described as slow and lacking fair access.

“You’re paying billions of dollars in this very inequitable way to get the most worthless test results of any country in the world,” Gates said on CNN’s “Fareed Zakaria GPS” on Sunday. “No other country has this testing insanity.”

“A variety of early missteps by the U.S. and then the political atmosphere meant that we didn’t get our testing going,” he said.

Gates cited long lines at commercial labs and delays in obtaining test results, meaning that “you pay as much for the late result as the timely result.” Meanwhile, “very wealthy people have access to these quick-turnaround tests,” he said.

“It’s mind-blowing that you can’t get the government to improve the testing because they just want to say how great it is,” Gates said.

Public officials have regularly cited delays in testing results in the U.S. as an impediment to quick contact tracking and isolation of people infected with the virus.

President Donald Trump has defended the U.S. record on testing as “the best ever, the best in the world,” telling Fox News last week that half of the country’s testing is “short-term.”
Gates reiterated that he expects the U.S. to largely get through the pandemic by the end of next year as therapeutics and a vaccine become available. In a Bloomberg interview last week Gates said he’s funded vaccine development efforts by AstraZeneca Plc, Johnson & Johnson and Novavax Inc.

The Bill & Melinda Gates Foundation has pledged more than $350 million toward Covid-19 research. Much of that has gone toward funding research and manufacturing capacity that will help a vaccine be distributed globally.

**Public Option Experiment Hits Speed Bump as Premiums Don’t Fall**
Premiums aren’t dropping as predicted in Washington state’s first-in-the-nation experiment with offering health insurance plans based on Medicare rates.

Five insurers are offering 15 so-called public option plans for 2021, but their average proposed premium for 2021 is higher than what the state’s consumers typically paid for traditional Obamacare policies in 2020. Washington’s experience setting up a public option plan highlights the difficulties for states weighing similar plans they hope will expand health-care coverage while driving down costs. Providers, especially hospitals, have been reluctant to agree to rates based on Medicare payments, which are lower than rates paid by employers and commercial health plans.

It also could presage problems that a national public option plan could face. Democratic presidential candidate Joe Biden is calling for a similar plan to shore up Affordable Care Act markets. The average proposed public option premium for 2021 is 5% higher than 2020 average Obamacare premiums, Christine Gibert, policy director with the Washington Health Benefit Exchange, said in an interview. “Overall we were hoping for more of an impact for premium prices,” Michael Marchand, the Obamacare exchange’s chief marketing officer, said.

The public option plans are required by the state law authorizing them to pay rates to hospitals and medical providers that average 160% of Medicare rates, and they also must offer standard benefits that feature lower deductibles and other out-of-pocket costs than traditional plans. The public option plans will be offered on the Evergreen State’s 212,000-customer exchange. Of the five insurers offering public option plans, two are new to the state exchange and are only offering public option plans, and three are offering public option plans along with their traditional Obamacare marketplace policies.

For Community Health Network of Washington, which offered Obamacare plans on Washington’s exchange from 2014 through 2017, “This is a completely different product for us than how we approached it the first time,” Chief Executive Officer Leanne Berge said in an interview. “We are really focusing on affordability and on populations that we are currently serving through our community health centers,” Berge said.

The organization, which has about 260,000 enrollees primarily in its Medicaid managed care plan, intends to offer public option plans in 11 counties, Berge said. Its proposed public option plan premiums are lower than the silver-tier plans in seven of the counties, according to the organization.

The nonprofit is using its primary care network based on its community health centers, Berge said. “Our community health centers know how to manage total cost of care” with integrated care that includes a wide range of services such as social services, behavioral health, and dental care, she said. That should translate into a lower-cost product, Berge said. “We were shooting for between 5 and 10% lower than the costs
would otherwise be,” she said. “Hopefully, the rates are the right ones for the costs that we’re going to incur.”

Negotiating with hospitals for Medicare-based rates has been especially challenging during the pandemic, Berge said. “This has been a tough time to get hospitals to accept lower rates because of what’s going on with Covid and all of the strains on the hospitals,” she said. Her organization has argued to hospitals that it’s in their interest to join the public option program, Berge said. “Many of these people would be uninsured, and they would be even more poorly reimbursed if they don’t have insurance at all,” she said.

Washington Gov. Jay Inslee (D) in 2019 signed into law the measure creating the public option plans. Inslee, then a presidential candidate, said it would be a “significant step to the goal of universal coverage in the state of Washington,” and that it would ensure that state residents have affordable health insurance.

State Sen. David Frockt (D), chief Senate sponsor of the law creating the public option plans, said that while the public option experiment in the state “is not as comprehensive as we would have liked,” more plans are coming into the state and consumers will have more choices for products that allow lower out-of-pocket costs. “I see a mixed picture but a solid start,” he said.

Other states are considering public option plans. However, Colorado, which was closest to moving forward, pushed back action on its legislation because it was too hard to get providers who opposed it to negotiate during the Covid-19 crisis.

**INSIDE CMS**

**Medicare Likely Overpaid Hospitals $267 Million, Watchdog Says**

The Medicare agency should try to recoup an estimated $267 million in hospital overpayments resulting from improper bill coding, a government watchdog agency recommended Friday.

The Health and Human Services Office of Inspector General also called on the Centers for Medicare & Medicaid Services to use data analytics to identify hospitals that may be improperly billing for acute-care inpatient claims.

“Finally, we recommend that CMS consider reducing the need for clinical judgment when processing” certain claims that involve discharging patients to home health care, the office wrote in a report.

After previous OIG audits found similar overpayments, the OIG identified 89,213 inpatient claims totaling $948 million that were at risk for overpayment in fiscal years 2016 and 2017. An audit of 150 of these claims found that only three were properly paid by Medicare. “However, it improperly paid 147 with $722,288 in overpayments,” the report said.

“Based on our sample results, we estimated that Medicare improperly paid $267 million during a 2-year period for hospital services that should have been paid” at a lower rate, the report added.

The CMS concurred with OIG recommendations to try to recoup the money and to improve its claims review processes. But the agency didn’t agree with an OIG recommendation to “reduce the need for clinical judgment” when processing certain claims.
The CMS said the “Social Security Act requires complex clinical judgment to determine whether home health care services” relate to the condition or diagnosis “for which an individual received inpatient hospital services.”

**Bristol-Myers’s Opdivo, Yervoy Improved Survival Rates in Trial**

Bristol-Myers Squibb Co. said the results of a clinical trial to test a combination of Opdivo with Yervoy in the treatment of previously untreated, unresectable malignant pleural mesothelioma showed an improvement in overall survival.

Data from the trial showed treatment with the two drugs reduced the risk of death by 26% and increased the median overall survival rate to 18.1 months, compared to 14.1 months for platinum-based standard of care chemotherapy, the company said, citing data to be presented at the 2020 World Conference on Lung Cancer Virtual Presidential Symposium.

At the two-year mark, 41% of patients who received the combination were alive, compared to 27% of patients treated with chemotherapy. Patients tested were part of a Phase 3 clinical trial named CheckMate - 743.

Immuno-oncology drug Opdivo brought Bristol-Myers $1.65 billion in revenue in the second quarter, with Yervoy sales bringing in $369 million in the same period.

**LEGISLATIVE/REGULATORY**

**Pelosi Rebuffs Mnuchin ‘Overture’ With Relief Talks in Limbo**

House Speaker Nancy Pelosi said she rebuffed an “overture” from Treasury Secretary Steven Mnuchin to restart talks on a new round of U.S. pandemic relief because the White House hadn’t budged from demands for a smaller stimulus.

But Mnuchin said it was Pelosi who refused to compromise, and the negotiations remained in limbo with no sign of the stalemate easing. “We have made clear to the administration that we are willing to come down $1 trillion if they will come up $1 trillion,” Pelosi said Wednesday in a joint statement with Senate Democratic leader Chuck Schumer. “We are willing to resume negotiations once they start to take this process seriously.”

A Democratic lawmaker said there would be no talks until the White House raised its offer. In response, Mnuchin said in a statement that Pelosi mischaracterized their conversation. “She made clear that she was unwilling to meet to continue negotiations unless we agreed in advance to her proposal, costing at least $2 trillion,” Mnuchin said. He added that the administration wants to agree on a package meeting a range of pandemic needs, but that “the Democrats have no interest in negotiating.”

Mnuchin earlier in the day said Congress could pass a relief plan of “a little more than $1 trillion” and deal with any additional stimulus that’s needed later. “We can always come back later in the year or January and do a sixth bill,” he said on Fox Business Network. “We don’t have to do everything at once.” Pelosi and Schumer have repeatedly rejected a more constrained package of measures.
There have been no negotiations since a Friday meeting that ended in stalemate, and the impasse risks dragging on for weeks. Both parties also have their presidential nominating conventions in the next two weeks, pulling some attention away from the relief-package talks. Read More: Trump Pledges Big Tax Cuts

Pelosi said Wednesday that there’s a “chasm” separating the two sides, but also that she’s hopeful a compromise can be reached. She told reporters that relief can’t wait until the fall -- when stimulus measures conceivably could be added to annual government spending bills.

The White House says Democrats must reduce demands for state and local aid and for $600 a week in unemployment relief to restart the talks. But Pelosi and Schumer said the aid is needed to prevent additional layoffs by local governments and cut backs in service. “We have to come to a conclusion, but they have to recognize that we have to defeat the virus, we have to invest in our state and local governments and we have to put money in the pockets of the American people to keep the economy going,” Pelosi said earlier on MSNBC.

President Donald Trump for the time being appears content to let his executive actions deferring payroll taxes and providing a temporary $300 a week boost in unemployment aid to play out. With the stock market climbing toward all-time highs this month, there has been no pressure on him from that quarter. During Wednesday’s trading, the S&P 500 Index was heading for a record close at one point.

Mnuchin Wednesday reiterated the administration’s call for Congress ultimately to forgive the payroll tax liabilities that Trump deferred in an executive memo issued over the weekend. That could cost $100 billion, according to an estimate from the Committee for a Responsible Federal Budget. Mnuchin also said that the Treasury is working on guidelines for the payroll tax deferral. A key challenge for the department will be how to assuage some employers’ concerns they could get stuck with large bills once the deferral period ends, if they passed the savings along to employees.

The Treasury chief also indicated that Trump’s executive order, which delayed levies that fund Social Security for those earning up to $104,000 from Sept. 1 through year-end, would be optional for companies to implement. “We’re going to create a level of certainty for small businesses who want to do this,” he said.

**Trump Turns Up Pressure to Open Schools With White House Event**

President Donald Trump stepped up his effort to push school systems to reopen by hosting an event at the White House featuring parents, educators and researchers who argued for in-person learning. Trump criticized as “a little ridiculous” some school districts’ plans to have students attend in person some days and online on other days so that they have enough space to socially distance in classrooms. “One thing we’ve learned during this horror show of the China plague is that virtual is not as good as being there,” Trump said on Wednesday.

Trump has been demanding schools reopen so that parents are able to work -- part of a bid to restart the economy and create the impression the U.S. is returning to normal ahead of the November election. Yet the virus is continuing to rage across parts of the U.S., with the country’s death toll at about 165,000. At a briefing with reporters later Wednesday, Trump said his administration will provide up to 125 million reusable masks to schools around the country. The administration is ready to deploy teams from the U.S. Centers for Disease Control and Prevention to help support schools in safely reopening, Trump said. He also outlined eight steps for how to reopen schools safely, including encouraging masks when social distancing isn’t possible.
Those steps include ensuring that students, teachers and staff understand the symptoms of Covid-19 and that everyone check how they feel every morning prior to entering school. They also encourage frequent handwashing and sanitizing as well as maintaining “high standards of hygiene and ventilation” during the school day. Instructions regarding hygiene and social distancing should be posted “liberally” around schools, and large indoor group gatherings should be minimized. When high-risk individuals are present, students, teachers and staff should socially distance. “All schools should be making plans to resume in-person classes as soon as possible,” Trump said.

The president has tried to force re-openings by saying that half the money for schools in the next round of stimulus legislation should be reserved for those that open their doors. “If a school is closed, why are we paying the school?” Trump asked.

Trump’s efforts on schools haven’t been totally successful. Just over half of students in kindergarten through high school will attend school virtually in the fall, while 44% will take classes in person in some form, according to a survey of public school districts by Burbio, a New York-based data service. Some 66% of students across the 200 largest school districts are taking virtual-only classes, Burbio found. Trump has asserted that children are “virtually immune” to the coronavirus. The president appears to be referring to the notion that children are less likely to become ill from the virus, even though they can spread it to adults. There is still relatively little known about how Covid-19 is transmitted to and from children. On one hand, some early evidence has suggested that children -- and especially younger children -- do not transmit the virus as frequently as adults or even older children.

But children can certainly still contract the virus, and a growing number of them have as the virus has surged throughout the U.S. Infections among kids grew 40% in the last half of July, according to a report this week from the American Academy of Pediatrics and the Children’s Hospital Association.

And while children do appear to be at a lower risk of getting very ill, a small number have died or required intensive care as a result of either the respiratory failure or an inflammatory condition that seems to only impact children with the virus that causes heart or circulatory problems. A federal study published last week found that a growing number of children require hospitalization. Advocates for reopening schools often point to regions that have already done so successfully, or never closed schools to begin with, such as several nations in Northern Europe. Experts, though, stress that those regions have had far less viral transmission than the U.S. “We believe that we can safely reopen our schools,” Vice President Mike Pence said at the White House event on schools.

Paul Peterson, director of the Program on Education Policy and Governance at Harvard University, appeared, warning that students who miss school likely will earn less money when they’re older. He added, “The most important element in social growth is being with your peers.” Melanie McGraw Piasecki, a mother of three and former neonatologist, said the “science is so clear” that the risk to children of death is “so, so low.” Janie Neeley, a mother from South Carolina, said the structure and routine of the school day is critical for her special-needs child. Her school district adopted a virtual-only plan, she said. “This style of learning will cause my son to regress and fall behind,” she said.

**Trump Plans Order to Require Pre-Existing Condition Coverage**

President Donald Trump said he will be “pursuing” an executive order in the next two weeks requiring health insurance companies to cover pre-existing conditions for all customers.
“That’s a big thing,” he told reporters at his golf club Friday evening in Bedminster, New Jersey. “We have to cover pre-existing conditions. This has never been done before, but it’s time the people of our country are properly represented and properly taken care of.”

Obamacare, which the Trump administration is seeking to overturn in court, protects patients with pre-existing conditions.

The announcement was one of several executive actions Trump said he’s prepared to take. He also said he’s prepared to sign executive actions to provide expanded unemployment benefits, a temporary payroll tax deferral, eviction protection and student-loan relief -- if the administration can’t reach agreement on a stimulus package with Democrats.

Trump has long promised, but never delivered, a comprehensive health plan. Last month, Trump pledged a full health plan that was to have arrived at the start of this week, but did not.

Trump has regularly committed to protect people with pre-existing conditions, without saying how -- a promise at odds with Republicans’ push to invalidate Obamacare.

Trump continues to grapple with the coronavirus pandemic, which has driven down his polling numbers and has focused more attention on the fragility of employer-provided insurance in the U.S. Polls show him trailing Democrat Joe Biden nationally and in key states. Democrats retook control of the House of Representatives in 2018, focusing heavily on health care.

**Trump’s Payroll Tax Deferral Raises Red Flags on Social Security**

President Donald Trump announced four executive actions on Saturday, including a temporary payroll tax deferral for some workers and continued expanded unemployment benefits, as the coronavirus pandemic continues to hobble the U.S. economy.

The moves were criticized by Democrats and some Republicans as, variously, proving little real help, an unconstitutional power grab from Congress, and a backhanded way to defund Social Security and Medicare, critical programs for millions of American retirees. “Unilaterally eliminating the payroll tax and ignoring Congress’s power of the purse on funding unemployment insurance will do nothing to help Americans recover,” Representative Maxine Waters, chair of the House Financial Services Committee, said in a statement.

Trump’s actions could imperil negotiations with congressional Democrats over an additional coronavirus relief package, with the two sides trillions of dollars apart on key issues. The president, though, said he’d continue to negotiate with Democrats. The “meager” policy announcements were “unworkable, weak and narrow,” and by pushing off payroll taxes for some, “endanger seniors’ Social Security and Medicare,” House Speaker Nancy Pelosi and Senate Democratic Leader Chuck Schumer said in a joint statement.

**Tax Deferrals**

Trump said his action authorizes the U.S. Treasury to allow companies to defer -- not suspend -- payroll taxes for Americans making less than $100,000 a year from Sept. 1 through Dec. 31. He said if he’s re-elected in November, he may extend the deferral and terminate the tax for some workers. “This fake tax cut would also be a big shock to workers who thought they were getting a tax cut when it was only a delay,”
Senator Ron Wyden, the ranking Democrat on the Senate Finance Committee, said in a statement. “These workers would be hit with much bigger payments down the road.”

Representative Richard Neal of Massachusetts, chairman of the House Ways and Means Committee, said Trump was focused on undermining retired Americans’ financial security. “This decree is a poorly disguised first step in an effort to fully dismantle these vital programs by executive fiat,” Neal said in a statement.

The president said another move would provide $400 a week in jobless benefits -- down from $600 weekly that had been provided through last week, authorized by a Congressional stimulus bill in March -- and that states would be responsible for covering 25% of that cost. The administration is directing states to use part of the $150 billion Coronavirus Relief Fund, while the federal government will tap on $44 billion of the existing $70 billion Disaster Relief Fund, said Andrew Husby, an economist for Bloomberg Economics. “Because the Trump plan taps a limited pool of existing funds to extend unemployment benefits at $400 per week, there is a high risk they run short ahead of the election,” Husby said. Neal said the plan was cumbersome: “What the President outlines is likely legally and logistically impossible to execute in nearly every state, not to mention that the proposed funding falls far short of what would be required.’

To act on his own, the president is relying on an expansive and controversial reading of executive power that likely will face legal challenges. Trump’s advisers say executive action could pressure Democrats to reduce their demands and allow him to argue to voters that he’s looking out for their well-being amid congressional inaction. Republican Senator Ben Sasse of Nebraska said of Trump’s actions, “the pen-and-phone theory of executive lawmaking is unconstitutional slop,” adding that the president “does not have the power to unilaterally rewrite the payroll tax law.” Even Senator Lindsey Graham, a close Trump ally, said in a tweet that he “would much prefer a congressional agreement.”

But the gambit risks alienating Democratic lawmakers and decreasing the odds for a deal that both sides say is necessary to help the economy recover from a pandemic that’s decimated industries and left nearly 160,000 Americans dead so far. “Unable to deliver for the American people in a time of crisis, Donald Trump offered a series of half-baked measures today,” Democratic nominee Joe Biden said in a statement. “He is laying out his roadmap to cutting Social Security.”

Democrats criticized the president when he threatened the move during negotiations, saying the administration would be better off returning to the bargaining table. White House Chief of Staff Mark Meadows and Treasury Secretary Steven Mnuchin had been meeting throughout the week with Schumer and Pelosi to try to craft a deal, without success.

Of the $3.7 trillion Congress has authorized for the coronavirus response, there is still $1.5 trillion yet to be spent or committed, according to an analysis from the Committee for a Responsible Federal Budget. The White House, though, has limited authority to redirect the unused money without Congress’s approval. Because the president can’t cut taxes on his own, Trump is simply delaying the due date for the payroll tax, which is paid jointly by employers and employees. The administration hopes employers will stop withholding the money from Americans’ paychecks, with voters in turn pressuring Congress to eventually pass legislation forgiving the accumulated amount.

But employers may decide simply to do nothing in the face of uncertainty, fearing that if Congress fails to act, they could be stuck trying to claw back money from their employees to settle their obligations to the Internal Revenue Service. The president’s effort to unilaterally extend additional unemployment benefits to Americans after a $600 enhanced weekly benefit expired at the end of July may also face logistical
challenges. Renewing the payments has been a key sticking point in negotiations on Capitol Hill. Democrats favored extending the $600 weekly amount through January or beyond, while Republicans sought a reduction, saying that the benefit was so generous that Americans were choosing not to return to work. “The temporary $400-a-week supplement on top of the traditional state benefits will help the unemployed, no doubt, but it means that more than half of the jobless will earn more unemployed than at work,” Representative Kevin Brady of Texas, the top House Ways and Means Committee Republican, said in a statement. “This maintains a serious barrier to reconnecting workers to their jobs.”

The administration says that about $81 billion has yet to be spent and could be provided to unemployed Americans, though some states have already committed their funds for health care, distance learning and housing assistance. And even if states do use the money for an expanded unemployment benefit, it’s unlikely to match the previous $600.

Some 10.2% of Americans are unemployed, a government report showed Friday. That’s just above the peak following the 2008 financial crisis, but a marked decline from almost 15% at the height of the pandemic. The president’s eviction moratorium expands the congressionally approved version that expired in July. Trump directed the Department of Housing and Urban Development to extend protection for renters in federally backed housing, mirroring the previous stimulus legislation that shielded around a third of the nation’s renters. Those who live in buildings with federally backed mortgages or loans would be shielded from eviction proceedings.

Around one in five American renters -- between 19 million and 23 million people -- are at risk of eviction by the end of September, according to an analysis by the Aspen Institute.

**Trump’s Pandemic Relief Orders Likely to Face Legal Challenges**

Throughout his presidency, Donald Trump has faced a barrage of lawsuits from top Democrats and liberal advocacy groups challenging his broad assertions of executive power, usually over contentious issues like his crackdown on sanctuary cities or his refusal to cooperate with congressional investigations.

Now, however, the president faces a battle over a set of executive actions he issued on Saturday providing economic relief measures that many of his fiercest critics actually support, including weekly federal unemployment payments, student loan relief and efforts to protect tenants from eviction during the pandemic.

President Donald Trump announced four executive actions on Saturday, including a temporary payroll tax deferral for some workers and continued expanded unemployment benefits, as the coronavirus pandemic continues to hobble the U.S. economy.

With those actions, Trump is trying to wrest core powers away from Congress, after weeks of discussions over a second pandemic rescue package stalled on Friday. Democratic lawmakers, who were pushing for a much more expansive relief plan, have called the orders an insufficient stopgap that will be difficult to implement. And in the coming weeks, the president’s directives are likely to get tied up in litigation over whether they violate core constitutional principles like the separation of powers. “If he could actually help people, that would be great,” said Laurence Tribe, a constitutional law professor at Harvard University. “But the Constitution isn’t a magic wand for the president. Anything as sweeping as what he’s promising is just pie in the sky.”
At the heart of Trump’s plan is an extension of the weekly federal unemployment payments that lapsed in July, several months after Congress established them as part of its initial coronavirus relief package. Trump has proposed financing $400 weekly payments, down from $600 under the original legislation, by redirecting funds from the Federal Emergency Management Agency and calling on the states to cover some of the costs with money left over from the first relief package.

To critics, that creative budgeting looks like an illegal end run around Congress, which has spending power under the Constitution. House Democrats sued to prevent a similar effort by the White House to finance the construction of a wall on the Mexican border using funds redirected from the Defense Department. “He’s basically saying he doesn’t need to rely on Congress’s power of the purse -- he can simply spend money, and he can spend it on whatever he wants,” Tribe said. “And that’s simply not the law.”

One question is, who will sue? While they have criticized the orders as insufficient and impractical, congressional Democrats may view it as politically risky to block payments to Americans in distress. “It puts the administration in a different position than what they’ve been used to,” said Keith Whittington, an expert on politics and law at Princeton. “It’s smart politics.” But states that planned to use pandemic relief funds for purposes other than unemployment payments might refuse to comply with Trump’s directive, potentially setting up a legal battle. The president seemed to acknowledge that possibility when he announced the orders on Saturday. “I guess maybe they’ll bring legal actions. But they won’t win,” he told reporters. “I think this will go very rapidly through the courts.”

Landlords are among the potential litigants. One of the orders Trump issued appears to give federal housing officials broad discretion to prevent evictions. “Every legal aid lawyer in the country faced with a destitute client being evicted will slap this executive order on the judge’s table and say there should not be any eviction,” said Charles Tiefer, a law professor at the University of Baltimore. “And their landlords who have federally insured mortgages will argue back that it would be illegal for evictions to be halted.”

In a third order, the president said he would defer payroll tax payments from September through December for people making less than $100,000 a year, a proposal that has met bipartisan opposition in Congress because it could endanger funding for Social Security and Medicare. The order also said the Treasury Department would “explore avenues” to eliminate the obligation to pay the tax altogether. That directive may well draw legal challenges. “The argument behind the payroll tax seems very aggressive,” said Whittington. “The breadth of the order clearly exceeds what Congress anticipated in giving the Treasury some discretion to delay tax deadlines in disaster areas.”

Trump may have better luck defending the fourth of his executive actions -- student loan relief. Existing federal statutes allow the secretary of education to temporarily delay loan repayments during periods of economic hardship. It’s unlikely that perennial opponents of Trump like liberal advocacy groups, congressional Democrats and Democratic state attorneys general would want to block that measure, and they might not even have legal standing to sue. “It is not clear who would be well situated to challenge the administration’s action,” Whittington said.

LEGAL

**Caremark Must Disclose Walgreens Emails in Drug Price Suit**

Generic drug buyers who alleged that Walgreen Co. misrepresented its usual and customary charges for their medications, resulting in inflated copays, will get to look at emails between the retailer and pharmacy benefit manager Caremark LLC, a federal court in Rhode Island said.
Caremark must run an in-house online search for 2016–2018 using search terms based on Walgreens’ email addresses, in response to the plaintiffs’ request for communications in which the two discussed the definition of “usual and customary” prices, the U.S. District Court for the District of Rhode Island said Aug. 7.

This is one of several lawsuits brought throughout the U.S. alleging that pharmacies overcharged third-party payers and consumers for generic prescription drugs they offered to cash-paying customers at a discounted price.

Walgreens must have “communicated extensively” with Caremark about the drugs’ usual and customary prices, the plaintiffs said. But their requests to Walgreens for copies of those communications turned up short. They then subpoenaed Caremark.

Caremark isn’t a party to the lawsuit, but its parent corporation, CVS Health Corp., and other CVS entities are defendants in several cases involving essentially the same practices, the court said. Thus, the plaintiffs weren’t “pulling a non-involved third party into a case to which it was a stranger,” the court noted.

The requested documents were plainly relevant, and the plaintiffs’ attempts to get them from Walgreens weren’t entirely successful, the court said in granting the plaintiffs’ motion to compel Caremark to respond to their subpoena.

The plaintiffs took steps to reduce the burden on Caremark by limiting the search to Walgreens’ emails and by formulating their request to rely solely on the pharmacy’s in-house capabilities, the court said. Caremark must produce the documents by Aug. 31, with a privilege log provided by Sept. 7, the court said.

**AROUND THE STATES**

**States Wary of Trump Move for Them to Kick In on Federal Aid**

A day after President Donald Trump took executive action to offer $400 per week in supplemental unemployment benefits, including 25% he said should be kicked in from state coffers, governors are pushing back.

The leaders of states including New York and Michigan said Trump’s plan ignores the cash-strapped reality of most states, which have deep budget holes as a result of the coronavirus pandemic. New York Governor Andrew Cuomo said the president’s order was based on “shaky ground legally” and it was “impossible” for states to pay.

“The concept of saying to states ‘you pay 25% of unemployment insurance’ is just laughable,” Cuomo, a Democrat, said on a call with reporters on Sunday. “The whole issue here was getting states funding.” Michigan Governor Gretchen Whitmer, also a Democrat, said Trump is ordering states “that are facing severe holes” in their budgets to pay 25% of the funding while the federal government cuts funding for unemployed workers.

“His refusal to provide full federal funding to states across the country to help us combat this virus will hurt the brave men and women on the front lines,” Whitmer said in a statement.

Unlike the federal government, which can run massive budget deficits, many states must balance their budgets each year -- and if there’s a revenue shortfall, they must cut services, raise taxes or use other tactics.
Democrats and Republicans are trillions of dollars apart on overall spending and on key issues. Trump’s executive actions to bypass the Congressional impasse may face legal challenges, although House Speaker Nancy Pelosi and Senate Democratic Leader Chuck Schumer stopped short of saying that Democrats would attempt to stop them in court.

White House economic adviser Larry Kudlow defended Trump’s order Sunday on CNN’s “State of the Union,” saying estimates from the Treasury Department show states will be able to provide the extra dollars, because they haven’t spent all the money that was allocated to them under the CARES Act passed in March. Asked how many states will be able to pay, Kudlow answered, “We will probably find that out today and tomorrow as we make our canvass.”

The Center on Budget and Policy Priorities said in a statement that Trump’s executive actions will “force states to choose” between letting the federal supplemental jobless benefits end entirely, or slashing other parts of their budgets. Ohio Governor Mike DeWine, a Republican, said on CNN that he doesn’t know yet if his state can afford to pay. “We have set some money aside, a significant amount of money, for testing. Testing is going to be very, very important.” DeWine said, adding he’s “reviewing this issue.” Meanwhile, he urged Congress to “get back in and negotiate.”

That sentiment was echoed by Illinois Governor J. B. Pritzker, a Democrat. “The president needs to do what’s right and work with Congress to pass a comprehensive aid package that supports working families instead of legally questionable theatrics,” Pritzker said in a statement.

The Trump administration is directing states to use part of the $150 billion Coronavirus Relief Fund, while the federal government will tap $44 billion of the existing Disaster Relief Fund. To participate, states would have to establish a new measure, the “lost wages assistance program.”

Economists estimate the money discussed by Trump could be enough for one to two months of payouts. Treasury Secretary Steven Mnuchin said Sunday on Fox News that the 25% match would be “coming from money we already gave the states. So this is effectively 100% paid for by the federal government.”