

Solving the Opioid Crisis: 4 Potential Regulatory and Legislative Scenarios

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There were a record-breaking 72,000 drug overdose deaths in 2017 according to preliminary estimates recently released by the Centers for Disease Control (CDC). Analysts believe that a major cause of this rise is the ongoing opioid crisis. Last fall, President Trump declared the crisis a national public health emergency, and there is wide agreement on both sides of the political aisle and within the White House that more needs to be done to address opioid addiction.

In the last few months, we've seen dozens of new bills proposed in the U.S. House of Representatives and U.S. Senate, an increase in resources devoted to dealing with the issue at the Drug Enforcement Administration (DEA) and, most recently, letters sent by the U.S. House Committee on Energy and Commerce to some of the leading manufacturers of prescription opioids requesting that they appear in front of Congress for questioning. While a comprehensive opioid package passed the U.S. House of Representatives and the U.S. Senate hopes to pass a comprehensive bill before the mid-terms, it is unclear if an agreement can be reached for legislation to reach the President's desk for signature.

The big question for industries impacted by the crisis - insurance companies, healthcare providers and companies, and pharmaceutical companies - is what the government will do next. From where we sit, there are four potential regulatory and legislative scenarios that could play out in the next six to 12 months. Below we handicap the likelihood of each and the factors that may influence their outcomes.

Scenario #1: Status Quo — No New Legislation or Actions

It's been three years since a report from the DEA first stated that "overdose deaths, particularly from prescription drugs and heroin, have reached epidemic levels."¹ Since that time, the calls from the public for action have grown to a fever pitch. Because the issue cuts across geography, age, race, and socio-economic status, there's pressure on Congress and the White House to act. It seems almost impossible that we won't see at least some relevant legislation in the next year. We've already seen numerous bills proposed in both houses of Congress. The one complicating factor is the upcoming mid-term election. With differing approaches on how to deal with the issue and many members of Congress up for re-election, it seems that getting something done before November 6 could be difficult.

Likelihood: In the long-term, almost zero. In the short-term, we may not see an agreement between the U.S. House of Representatives and U.S. Senate until after the mid-term election.

¹<https://www.dea.gov/press-releases/2015/11/04/dea-releases-2015-drug-threat-assessment-heroin-and-painkiller-abuse>

Scenario #2: Increased Enforcement Efforts

As mentioned above, an increase in enforcement efforts by the DEA is already underway. In June 2018, the federal government arrested 600 people, including 165 medical professionals, for allegedly participating in fraud schemes involving opioids. New guidelines issued by the CDC have also put tighter restrictions on the recommended prescription dosage of opioids for patients. More recently, the latter effort has received pushback from healthcare professionals, as some hospitals have reported shortages of opioids needed to treat patients for appropriate treatment. Even in light of this news, the Trump administration seems committed to enforcement. At a speech in Florida in February 2018, Attorney General Jeff Sessions said, "I am operating on the assumption that this country prescribes too many opioids."² The White House continues to reiterate its position on strengthening enforcement, recently touting the launch of Operation Synthetic Opioids Surge, which embraces a zero-tolerance policy toward synthetic opioid trafficking.

Likelihood: Very high. Efforts have increased significantly this year and are currently underway.

Scenario #3: A Comprehensive Bill to Address the Crisis

The major challenge in dealing with the opioid crisis legislatively is that it is a sprawling, complex issue. There are a wide range of opinions on how to best tackle the problem. Everything from better mental healthcare access, changes in insurance coverage, law enforcement actions, and criminal justice reform have been suggested. One thing is clear: There is no silver bullet. That makes crafting some sort of comprehensive bill almost impossible. In the current political environment, bipartisan agreement is rare. However, the opioid crisis has found both sides of the aisle committed to finding solutions, but almost no one knows for certain what efforts will have the greatest impact. It seems like an issue that just doesn't lend itself to some kind of big reform bill. While the U.S. House of Representatives has passed a comprehensive bill and the U.S. Senate continues to prepare such a package, finding agreement between the two measures may prove difficult.

Likelihood: Highly unlikely. It's too big of an issue and even experts can't agree on how to deal with it.

Scenario #4: Smaller Legislative Action to Attack the Issue Piecemeal

It may not be ideal, but with so many constituencies, stakeholders, and influencers involved, this seems like the most viable path for dealing with the crisis. Many of the bills currently making their way through Congress might only have incremental impact. Some of the bills are aimed at putting even tighter regulations around prescription practices. Other bills are related to the tracking and disposal of prescription opioids. A few bills propose an expansion of addiction treatment under Medicare. Since the smaller bills are unlikely to be passed before the election, we could see more proposals presented during the lame-duck period. Much of what happens with the new Congress in January 2019 will depend on who's in power, but this is a key issue for both parties. We could see more legislative action addressing discreet aspects of the opioid crisis next year, especially if the death toll continues to rise.

Likelihood: Very likely in the lame-duck period. Somewhat likely next year.

What Does It Mean for You?

Now might be the most critical time to engage in advocacy efforts with members of Congress if your organization has a stake in the opioid crisis. It seems very likely that there will be legislative action within the next year. But at this point, there is still a lot of uncertainty about what that legislation will look like. Getting in front of your representatives to educate them on issues and express concerns will be critical in shaping legislative outcomes. Given that this issue is most likely to be attacked in a piecemeal manner, smaller bills that may have a large impact on specific sectors and industries are likely.

²https://www.tampabay.com/news/courts/In-Tampa-visit-Attorney-General-Jeff-Sessions-recommends-aspirin-over-opioids-for-pain-relief_165258353