



Health Policy Briefing

January 24, 2022

Build Back Better to Be Scaled Back, Broken Down

President Joe Biden conceded last week that his \$2 trillion economic agenda will need to be significantly scaled back and broken down to win enough support for passage amidst continued opposition from Sens. Joe Manchin (D-W. Va.) and Kyrsten Sinema (D-Ariz.). The President specifically highlighted that provisions in the **Build Back Better** reconciliation package to lower prescription drug prices and expand support for childcare and the elderly would make the economy more productive and lower costs for Americans. Speaker of the House Nancy Pelosi (D-Calif.) responded that while the bill may be more limited than initially proposed by congressional Democrats, she still hopes that the policies will be contained in a significant tax and spending bill moving forward. The Senate and the House of Representatives are scheduled to be in recess until January 31.

President Pushes for Rules Change, Voting Rights Bill Fails in Senate

President Joe Biden’s push to pass voting rights legislation failed last week amid a party split and GOP opposition. Senate Democrats forced a vote on a one-time change to the chamber’s filibuster rules to create a pathway specifically for passage of voting rights legislation. Democrats had sought to pass a bill combining the **Freedom to Vote Act**, to revise elections and campaign finance laws, and the **John Lewis Voting Rights Advancement Act**, which would strengthen the 1965 **Voting Rights Act**. The rules change, which would have required a simple majority vote, was rejected 52-48, with Sen. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) voting to uphold the 60-vote threshold.

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Appropriators Work to Meet Feb. 18 Government Funding Deadline

Appropriators are still working to negotiate a spending framework to allow a roughly \$1.5 trillion omnibus appropriations package to fund the government for the remainder of fiscal year (FY) 2022 to move forward by February 18, the expiration of the current continuing resolution (CR). House Speaker Nancy Pelosi (D-Calif.) has stated that the appropriations measure may also carry more money for additional COVID-19 relief. Senate Appropriations Ranking Member Richard Shelby (R-Ala.), however, has cast doubt on the possibility of a mid-February omnibus, stating that progress is being made but that it will be a difficult deadline to meet.

Lawmakers Ask CMS to Reevaluate Premium Increase

A group of House Democrats led by Rep. Angie Craig (D-Minn.) have sent a [letter](#) to the Centers for Medicare and Medicaid Services (CMS) asking the agency to reduce its planned increase of 14.5% to Medicare Part B premiums following the agency's proposal to limit coverage of the Alzheimer's treatment Aduhelm. Aduhelm was originally priced at \$56,000 annually. Biogen announced late last year that it would cut the price to \$28,000. CMS' preliminary coverage decision would limit Medicare coverage of Aduhelm to patients enrolled in qualifying clinical trials. The letter was signed by 32 other lawmakers.

Murray Requests Permanent OSHA Standard for Health Care Workers

Senate Health, Education, Labor, and Pensions (HELP) Committee Chair Patty Murray (D-Wash.) has sent a [letter](#) to Secretary of Labor Marty Walsh and the Occupational Safety and Health Administration (OSHA) urging the administration to issue a permanent standard to protect health care workers, and to take immediate action to secure strong workplace protections for all workers. Murray outlines the continuing danger of the highly contagious Omicron variant and asks OSHA "to use its authority to ensure robust protections for health care workers and all workers who are at risk of COVID-19 infection in their workplace." OSHA recently withdrew the non-recordkeeping portions of its emergency temporary standard (ETS) for health care workers but announced that it intends to continue to work to issue a final standard to protect health care workers from COVID-19 related hazards as it also considers broader infectious diseases rulemaking.

Wyden to Investigate Bristol-Myers Tax Practices

Sen. Ron Wyden (D-Ore.) is [requesting](#) details from Bristol-Myers Squibb about reports that the company engaged in a tax avoidance strategy using offshore subsidiaries. A 2012 transaction by the company shifting its intellectual property profits to Ireland resulted in a tax rate reduction of more than 30 percentage points. The letter is a part of an ongoing investigation by Sen. Wyden into pharmaceutical manufacturers' tax practices and the use of loopholes to avoid paying taxes on prescription drug sales. Bristol-Myers has said that it will cooperate with the request for information.

Democrats Push for Testing Coverage, Affordability

Reps. Bill Pascrell, Jr. (D-N.J.) and Scott Peters (D-Calif.) are [asking](#) the administration to provide full Medicare reimbursement to beneficiaries who purchase at-home COVID-19 tests. The White House recently moved to require commercial insurers to cover the cost of at-home diagnostic test kits. In related news, Sen. Edward Markey (D-Mass.) has sent [letters](#) to the Federal Trade Commission (FTC), COVID-19 test manufacturers, and retailers asking that at-home tests be sold at-cost. The senator cites reports that the tests can cost as little as \$2 to manufacturer but can retail for \$12 or more.

E&C GOP Seek Details on COVID-19 Research

Republican leadership of the House Energy and Commerce Committee has sent letters to three different U.S. Department of Health and Human Services (HHS) agencies requesting information about research activities related to COVID-19 and other coronaviruses, including the sources of funding for such research. Ranking Member Cathy McMorris Rodgers (R-Wash.), Subcommittee on Health Ranking Member Brett Guthrie (R-Ky.), and Subcommittee on Oversight and Investigations Ranking Member Morgan Griffith (R-Va.) are asking the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), and the National Institutes of Health (NIH) to provide details about their research activities by February 16. Copies of the letters can be found [here](#).

Ways and Means Leadership, Membership Update

Rep. Vern Buchanan (R-Fla.) will assume the position of ranking member on the House Ways and Means Health Subcommittee this week, following Rep. Devin Nunes' (R-Calif.) departure from Congress. Buchanan is the second-ranking Republican on the Ways and Means Committee. Rep. Greg Murphy (R-N.C.) will fill the opening on the committee left by Nunes. Murphy, a urologist, will serve on the Health Subcommittee. Dr. Murphy ran in North Carolina's Third Congressional District special election in 2019 to replace Rep. Walter B. Jones, Jr., who passed away in office after serving in Congress for more than 22 years. Murphy is the only practicing surgeon in Congress and is also a Vice-Chair of the GOP Doctors Caucus.

McNerney, Langevin to Retire

Reps. Jerry McNerney (D-Calif.) and Jim Langevin (D-R.I.) announced that they will not seek reelection at the end of the 117th Congress. They join 26 other Democrats and 13 Republicans who will not be running for reelection to the House of Representatives in November. McNerney was first elected to Congress in 2016. He is a member of the Energy and Commerce Committee and the Committee on Science, Space, and Technology. Langevin has served in the House of Representatives since 2000. He is the first quadriplegic to serve in the House and currently sits on the House Armed Services Committee and Homeland Security Committee.

Cherfilus McCormick Sworn In

Representative-elect Sheila Cherfilus McCormick was sworn in to the House of Representatives last week. She will fill the Florida district 20 seat of the late Rep. Alcee Hastings (D), increasing the Democratic majority in the House to 222-212. Cherfilus-McCormick has most recently worked as the CEO of Trinity Health.

More Lawmakers Test Positive for COVID-19

Lawmakers on Capitol Hill continue to be diagnosed with COVID-19. Reps. Diana DeGette (D-Colo.), David Trone (D-Md.), Emanuel Cleaver (D-Mo.), Thomas Massie (R-Ky.), Raúl Grijalva (D-Ariz.), Jeff Fortenberry (R-Neb.), Dan Kildee (D-Mich.), Lizzie Fletcher (D-Texas), and Troy Carter (D-La.) are the latest members to announce that they have tested positive. Massie is the only member in this group known to not be vaccinated. According to GovTrack.us, more than 125 members of Congress have been diagnosed with COVID-19 since March 2020.

CBO Examines Hospital, Physician Pricing Practices

The Congressional Budget Office (CBO) has released a new [report](#) examining the potential reasons the prices paid by commercial health insurers for hospital and physician services are higher, rise more quickly, and vary more by area than the prices paid by the Medicare fee-for-service (FFS) program. The agency concludes that greater market power among providers consistently leads to higher prices for commercial insurers. “Commercial insurers may try to obtain lower prices by excluding providers from their networks, but in many cases, their ability to do that is limited,” CBO says. “The prices that Medicare FFS pays providers are set administratively through laws and regulations, and providers can either take them or leave them.” CBO also asserts that providers do not raise the prices they negotiate with commercial insurers to offset the lower prices paid by government programs – also known as cost shifting – as the share of patients covered by Medicare and Medicaid is not related to the higher prices in the commercial market.

GAO Reports on Operation Warp Speed Management

A new report from the Government Accountability Office (GAO) [asserts](#) that the U.S. Department of Health and Human Services (HHS) assumed control of the effort formerly known as Operation Warp Speed (OWS) without the personnel needed to oversee it properly. Operation Warp Speed refers to the development, manufacturing, and distribution of COVID-19 vaccines previously run by the Department of Defense (DOD). HHS assumed full control of vaccine distribution and supply at the start of this year. GAO reports that HHS will require multiple additional contractors to continue these programs and recommends that DOD work to support HHS in this effort. GAO makes five recommendations related to workforce needs, scheduling best practices for vaccine-related activities, and lessons learned from key stakeholders. HHS did not concur with GAO’s recommendation on workforce needs.

Recently Introduced Health Legislation

S.3514 — A bill to repeal COVID-19 vaccination requirements imposed by the District of Columbia; Sponsor: Sen. Paul, Rand [R-KY]; Committees: Senate - Homeland Security and Governmental Affairs

S.3516 — A bill to require the Secretary of Health and Human Services to provide emergency use authorization with respect to certain COVID-19 diagnostic tests approved for use in the European Union; Sponsor: Sen. Sasse, Ben [R-NE]; Committees: Senate - Health, Education, Labor, and Pensions

H.R.6411 — To amend title 38, United States Code, to make certain improvements in the mental health care provided by the Department of Veterans Affairs, and for other purposes; Sponsor: Rep. Takano, Mark [D-CA-41]; Committees: House - Veterans’ Affairs

H.R.6414 — To amend title XI of the Social Security Act to prohibit any conditions of participation under the Medicare or Medicaid programs that include a vaccine or drug mandate; Sponsor: Rep. Crenshaw, Dan [R-TX-2]; Committees: House - Energy and Commerce; Ways and Means

S.Res.492 — A resolution designating January 23, 2022, as “Maternal Health Awareness Day”; Sponsor: Sen. Booker, Cory A. [D-NJ]; Committees: Senate - Judiciary

S.J.Res.34 — A joint resolution disapproving the action of the District of Columbia Council in approving the Coronavirus Immunization of School Students and Early Childhood Workers Amendment Act of 2021; Sponsor: Sen. Cruz, Ted [R-TX]; Committees: Senate - Homeland Security and Governmental Affairs

H.Res.876 — Expressing the sense that the process behind Operation Warp Speed should be integrated within operations at the Food and Drug Administration; Sponsor: Rep. Burgess, Michael C. [R-TX-26]; Committees: House - Energy and Commerce

H.Res.878 — Recognizing the seriousness of polycystic ovary syndrome (PCOS) and expressing support for the designation of the month of September 2022 as “PCOS Awareness Month”; Sponsor: Rep. Scott, David [D-GA-13]; Committees: House - Energy and Commerce

H.Res.879 — Supporting the designation of July 2022 as Uterine Fibroids Awareness Month; Sponsor: Rep. Scott, David [D-GA-13]; Committees: House - Energy and Commerce

H.Res.880 — Supporting the designation of March 2022 as Endometriosis Awareness Month; Sponsor: Rep. Scott, David [D-GA-13]; Committees: House - Energy and Commerce

H.R.6421 — To amend title 38, United States Code, to direct the Secretary of Veterans Affairs to ensure the timely scheduling of appointments for health care at medical facilities of the Department of Veterans Affairs, and for other purposes; Sponsor: Rep. Baird, James R. [R-IN-4]; Committees: House - Veterans' Affairs

H.R.6423 — To amend the Congressional Budget Act of 1974 respecting the scoring of preventive health savings; Sponsor: Rep. Burgess, Michael C. [R-TX-26]; Committees: House – Budget

H.R.6429 — To establish certain protections for members of the Armed Forces who refuse to receive vaccinations against COVID-19, and to increase basic pay for members of the uniformed services; Sponsor: Rep. Miller, Mary E. [R-IL-15]; Committees: House - Armed Services

H.R.6431 — To amend the Federal Food, Drug, and Cosmetic Act to prohibit the alteration, falsification, fabrication, destruction, omission, or removal of records or certain information required to be produced or maintained for a drug, and for other purposes; Sponsor: Rep. Schrier, Kim [D-WA-8]; Committees: House - Energy and Commerce

H.R.6463 — To provide for equal protection of the law and to prohibit discrimination and preferential treatment on the basis of race, color, or national origin in the administration of programs of the Department of Health and Human Services, and for other purposes; Sponsor: Rep. Tiffany, Thomas P. [R-WI-7]; Committees: House - Energy and Commerce; Ways and Means; Education and Labor; Natural Resources

H.R.6464 — To amend title 38, United States Code, to establish a presumption of service-connection for certain veterans with tinnitus or hearing loss, and for other purposes; Sponsor: Rep. Velazquez, Nydia M. [D-NY-7]; Committees: House - Veterans' Affairs