



Health Policy Briefing

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Supreme Court Justice Breyer to Retire

Supreme Court Justice Stephen Breyer has announced plans to retire at the end of the Supreme Court’s current term, which is expected to end in late June or early July. At age 83, Breyer is the court’s oldest justice. He is known as a pragmatist who typically sides with the liberal wing of the court in divisive cases. It has been his position that “it is wrong to think of the court as another political institution.” Breyer has served in the Supreme Court since 1994 when he was nominated by President Bill Clinton. President Joe Biden has committed to nominating a Black woman to replace Breyer on the nation’s highest court and has said that he will announce a nomination by the end of February. Vice President Kamala Harris and five others in the White House—Ron Klain, Dana Remus, Louisa Terrell, Cedric Richmond, and Paige Herwig—will lead the search for a new justice. Possible candidates include U.S. Circuit Judge Ketanji Brown Jackson, District Judge Michelle Childs, and California Supreme Court Justice Leandra Kruger. The nominee would reinforce the liberal wing of the court but would not shift its ideological balance, which currently stands with a 6-3 conservative majority. It has been reported that Senate Majority Leader Chuck Schumer (D-N.Y.) will move to confirm the nominee on an expedited timeline, similar to that used to confirm Justice Amy Coney Barrett in 2020. Barrett was confirmed 30 days after she was nominated by President Donald Trump.

HELP Leadership Release Pandemic Preparedness Discussion Draft

Bipartisan leadership of the Senate Health, Education, Labor, and Pensions (HELP) Committee have [released](#) a discussion draft of their major pandemic preparedness legislation to overhaul the nation’s public health programs. The bill from Chair Patty Murray (D-Wash.) and Ranking Member Richard Burr (R-N.C.) would change how the U.S. monitors

Inside

- House to Consider China Competition Bill This Week.....2
- Pelosi to Run for Re-election.....2
- Wyden Previews Work on Pared Back BBB.....2
- Lawmakers Request Investigation Into Nurse Staffing Industry.....3
- Pressley, Beyer Ask for Data on Long COVID.....3
- CMS Under Pressure to Lower Medicare Premiums.....3
- More Lawmakers Request Medicare Coverage of At-Home COVID Tests.....3
- Opposition Emerges to Calif’s Nomination.....3
- HHS Provides Detail on COVID Spending.....4
- GOP Healthy Future Task Forces Request Comments on Health Care Affordability and Patient Access.....4
- TN Rep. Cooper to Retire.....4
- Warner, Romney Experience Breakthrough COVID Cases.....4
- Supreme Court Rejects Challenge to Proxy Voting.....4
- HHS Announces Additional Distribution of Phase 4 Provider Relief Funds.....5
- Agencies Release Report on Mental Health Parity.....5
- GAO Says HHS At High Risk of Mismanagement.....5
- Upcoming Congressional Hearings and Markups.....5
- Recently Introduced Health Legislation.....6

disease outbreaks, stockpiles supplies, and responds to public health threats. The legislation, the [***PREVENT Pandemics Act***](#), has been in the works since last year. It would establish a task force comprised of members appointed by bipartisan congressional leadership to assess U.S. pandemic preparedness and to make recommendations for improvement to the President and Congress. It also aims to increase coordination between U.S. health agencies. The bill would make the director of the Centers for Disease Control and Prevention (CDC) subject to Senate confirmation and would refocus the mission of the CDC to strengthen U.S. genomic sequencing capabilities and improve the reporting and exchange of health data. The draft proposes specific functions for the CDC director and would require the agency to publish a strategic plan every four years. The legislation would mandate more accountability for the Assistant Secretary for Preparedness and Response (ASPR), requiring ASPR to appear annually before the Senate Health, Education, Labor, and Pensions (HELP) Committee and the House Energy and Commerce Committee and requiring an evaluation of the Strategic National Stockpile (SNS) every five years. At the Food and Drug Administration (FDA), the bill would tweak the agency's development and review of tests, treatments, and vaccines to increase the use of real-world evidence, revise the way the FDA inspects facilities, reviews products, revises labels, and penalizes counterfeit devices, modernize clinical trials, prevent drug shortages, and increase manufacturing capabilities. The FDA would also be provided with more authority to share the information it uses to issue emergency use authorizations (EUAs). The bill also has a focus on improving state and local readiness and addressing health disparities. Lawmakers are still considering whether to use the bill to establish the Advanced Research Projects Agency for Health (ARPA-H) or to add provisions to improve laboratory safety and security. The deadline for feedback on the discussion draft is February 4. Comments should be sent to HELPPandemicbill@help.senate.gov. Committee leadership plan to mark up the bill in the coming weeks.

House to Consider China Competition Bill This Week

Following the recent week-long recess, the Senate will return to session today while the House of Representatives reconvenes on Tuesday. The House Rules Committee will meet this week to set the rules for floor debate for the [***America COMPETES Act***](#) (H.R. 4521). The bill aims to strengthen U.S. competitiveness against China and includes funding to shore up supply chains and scientific research. It would authorize \$45 billion over six years for a new Supply Chains for Critical Manufacturing Industries Fund, reauthorize programs at the National Science Foundation (NSF), create a Science and Engineering Solutions Directorate, authorize funding for efforts to address climate change, and expand the Strategic National Stockpile (SNS). More than two dozen Democrats sent a [letter](#) to House leadership last week urging them to bring the bill to the floor as soon as possible so that it can be passed and go to conference with the Senate-passed ***U.S. Innovation and Competition Act*** (USICA) (S. 1260).

Pelosi to Run for Reelection

Speaker of the House Nancy Pelosi (D-Calif.) has announced that she will run for re-election in November. Pelosi, 81, has served in the House of Representatives since 1987. She did not say whether she will also seek to remain in her leadership post as the head of the Democratic Caucus, though she has signaled in the past that this term as speaker would be her last.

Wyden Previews Work on Pared Back BBB

Senate Finance Committee Chair Ron Wyden (D-Ore.) stated last week that Democrats are working on a pared back legislative package to revive key provisions in the stalled ***Build Back Better Act*** that would expand health care access, lower drug costs, and provide tax incentives for clean energy and should be ready for release soon. Any package would need the support of Sen. Joe Manchin (D-W.Va.), who has previously said he supports proposed reforms to prescription drug pricing and the climate and energy parts of the reconciliation package. Progressive Democrats are pressuring the Senate to pass legislation before the State of the Union address on March 1, with Congressional Progressive Caucus Chair Pramila Jayapal (D-Wash.) highlighting climate change, the care economy, pharmaceutical pricing, and health care costs as areas of agreement that can win the support of all Democrats and should move forward.

Lawmakers Request Investigation Into Nurse Staffing Industry

A group of nearly 200 members of the House of Representatives is [urging](#) the administration to investigate the nurse-staffing industry amidst reports that some companies are using the Omicron surge to charge rates that are two or three times more than the rates charged before the pandemic. The letter, which was led by Reps. Peter Welch (D-Vt.) and Morgan Griffith (R-Va.), was sent to White House COVID-19 response coordinator Jeff Zients. It asks him to “enlist one or more of the federal agencies with competition and consumer protection authority to investigate this conduct to determine if it is the product of anticompetitive activity and/or violates consumer protection laws.”

Pressley, Beyer Ask for Data on Long COVID

Reps. Ayanna Pressley (D-Mass.) and Don Beyer (D-Va.) have sent a [letter](#) urging the Centers for Disease Control and Prevention (CDC) to publish data on the public health impact of long-COVID. The lawmakers cite studies that suggest that women are more vulnerable to long COVID and highlight the disproportionate impact of the pandemic on people of color. They request disaggregated demographic data on the prevalence of long COVID.

CMS Under Pressure to Lower Medicare Premiums

House Energy and Commerce Health Subcommittee Chair Anna Eshoo (D-Calif.) has sent a [letter](#) to the Centers for Medicare and Medicaid Services (CMS) asking the agency to reduce Medicare Part B monthly premiums for beneficiaries this year. CMS has planned a 14.5% increase in premiums – the largest annual increase in the program’s history – which is in part attributed to the price of the new Alzheimer’s treatment Aduhelm. Aduhelm was originally priced at \$56,000 annually, but Biogen announced late last year that it would cut the price to \$28,000. CMS’ preliminary coverage decision would also limit Medicare coverage of Aduhelm to patients enrolled in qualifying clinical trials, leading many Democrats to call for a reevaluation of the premium hike. A similar [letter](#) was sent by Sen. Bernie Sanders (I-Vt.) last week. Sanders argued that the administration “should immediately lower Medicare premiums by at least \$11.50 a month and provide a refund to some 57 million senior citizens for the premium increases that have already gone into effect this month.”

More Lawmakers Request Medicare Coverage of At-Home COVID Tests

A group of 18 senators led by Sen. Debbie Stabenow (D-Mich.) has sent a [letter](#) to the administration asking the Centers for Medicare and Medicaid Services (CMS) to broadly cover at-home coronavirus tests for Medicare beneficiaries. The lawmakers argue that Medicare enrollees – older adults and individuals with disabilities – are at the highest risk of severe illness and death from COVID-19. The letter points out that while federal guidance already requires private insurers to cover the cost of up to eight over-the-counter COVID-19 tests per month, people covered by Medicare and Medicare Advantage (MA) are left “on the hook for potentially significant out-of-pocket costs.”

Opposition Emerges to Califf’s Nomination

Dr. Robert Califf, the President’s nominee to lead the Food and Drug Administration (FDA), does not yet appear to have enough votes in the Senate to be confirmed. A handful of lawmakers from both parties have raised concerns related to Califf’s ties to industry and his ability to effectively respond to the opioid epidemic, and his nomination has faced increasing opposition from the GOP over the issue of access to abortion drugs. At least five Democratic senators are on the record in opposition to his confirmation. Califf’s nomination was advanced out of the Senate Health, Education, Labor, and Pensions (HELP) Committee in a bipartisan 13-8 vote on January 13. Chair Patty Murray (D-Wash.) and Ranking Member Richard Burr (R-N.C.) had hoped a Senate floor vote on his confirmation would take place by early February. Among those currently serving in the Senate are 69 lawmakers who previously voted to confirm Califf to head the FDA during the Obama administration in 2016. His first appointment was approved in an 89-4 vote.

HHS Provides Details on COVID Spending

In response to a request from Sens. Roy Blunt (R-Mo.) and Richard Burr (R-N.C.), the U.S. Department of Health and Human Services (HHS) has detailed the \$18 billion in unobligated funds for coronavirus testing, mitigation, and contact tracing. Only \$4.6 billion have not been allocated for a specific purpose; the remaining \$16.6 billion were appropriated in the *American Rescue Plan Act*. The administration provided examples of major expenditures and spending routed to programs outside of its original purpose from the \$97 billion it received since the start of the pandemic. This includes \$29.4 billion to states for testing, contact tracing, and mitigation programs; \$9 billion for community testing sites; \$5 billion for the procurement of tests and supplies; and \$4.5 billion to purchase and distribute 500 million tests. Unused funds will likely be taken into consideration during congressional negotiations on the need for additional coronavirus relief.

GOP Healthy Future Task Forces Request Comments on Health Care Affordability and Patient Access

The Republican Healthy Future Task Force Subcommittee on Affordability has issued a request for information (RFI) to health care stakeholders on legislation that could increase hospital price transparency, lower barriers to competition, and empower consumers to have more choice in their health care providers. The RFI is also interested in information on 340B program eligibility and how Congress can transfer more power back to state governments to manage health insurance coverage for its residents. Parties interested in responding to the Affordability RFI should fill out this [form](#) by February 4, 2022. In addition, the Healthy Future Task Force Treatments Subcommittee is [seeking information](#) regarding medical innovation to advance development and availability, while addressing patient costs. Parties interested in responding to the Treatments RFI should fill out this [form](#) by March 11, 2022. The Republican Healthy Future Task Force was created by House Minority Leader Kevin McCarthy (R-Calif.) as a part of an effort to craft a patient-focused agenda for the future.

TN Rep. Cooper to Retire

Rep. Jim Cooper (D-Tenn.) has announced that he will not seek reelection this year. Cooper is a leader of the moderate Blue Dog Coalition and a member of the House committees on Armed Services, Budget, Oversight and Reform, and Intelligence. Previously, he taught health policy at Vanderbilt University's Owen Graduate School of Management. He served in Congress from 1983 to 1995, returning to Congress again in 2003. Cooper is the 29th Democrat to announce plans to retire from the House of Representatives this election cycle.

Warner, Romney Experience Breakthrough COVID Cases

Sens. Mark Warner (D-Va.) and Mitt Romney (R-Utah) have tested positive for COVID-19. Both lawmakers are fully vaccinated and boosted. Warner reportedly is experiencing "extremely mild" symptoms, while Romney is currently asymptomatic.

Supreme Court Rejects Challenge to Proxy Voting

The U.S. Supreme Court has rejected a challenge from House Minority Leader Kevin McCarthy (R-Calif.) to the chamber's use of proxy voting. Proxy voting procedures were instituted in response to the COVID-19 pandemic in 2020. SCOTUS left intact, without comment, a federal appeals court ruling that the use of proxy voting is an internal legislative issue that cannot be challenged in federal court. McCarthy and a group of six other Republicans had argued that the Constitution's quorum requirement and other provisions necessitated Congress meeting in person.

HHS Announces Additional Distribution of Phase 4 Provider Relief Funds

On January 25, the U.S. Department of Health and Human Services (HHS) [announced](#) the distribution of an additional \$2 billion from the Provider Relief Fund (PRF) Phase 4 General Distribution. This is in addition to the \$9 billion distribution [announced](#) in December 2021, but it does not complete the full distribution of [\\$17 billion](#) initially allocated to Phase 4. According to HHS, Phase 4 payments have an increased focus on equity, including reimbursing a higher percentage of losses for smaller providers and incorporating “bonus” payments for providers who serve Medicaid, Children’s Health Insurance Program (CHIP), and Medicare beneficiaries. Approximately 82% of all Phase 4 applications have now been processed. For additional information, visit www.hrsa.gov/provider-relief.

Agencies Release Report on Mental Health Parity

The Departments of Labor, Health and Human Services, and the Treasury have issued their 2022 [Report](#) to Congress on the *Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008* (MHPAEA). The report finds that health insurers are failing to deliver the mental health care coverage parity as required by law; not even one of the 1,000 parity analyses requested were viewed as sufficient. Treatment for autism and applied behavior analysis therapy were two areas that frequently stood out in terms of coverage exclusions. The report includes recommendations to Congress on how to strengthen mental health parity, such as the use of civil monetary penalties for violation of the law. Such a provision was proposed in the *Build Back Better Act*. The report also recommends that the Department of Labor be given the authority to directly pursue parity violations by third parties that provide administrative services to health plans.

GAO Says HHS At High Risk of Mismanagement

The Government Accountability Office (GAO) has placed the U.S. Department of Health and Human Services (HHS) on its list of agencies at high risk of mismanagement and abuse if significant changes are not made. The list, which is a part of the GAO’s evaluation of the federal pandemic response, includes approximately three dozen other agencies and federal programs. GAO’s assessment indicates that leadership shortcomings at HHS undermine its efforts to address public health challenges, including the response to the coronavirus pandemic and other natural disasters. GAO asserts that HHS has failed to delineate roles and responsibilities and to fix long-standing problems in response to the pandemic. HHS also faces difficulties managing the medical supply chain, coordinating with other agencies, collecting and analyzing data, and clearly communicating with the public. Of the 115 recommendations GAO has made to HHS over the past 15 years related to public health emergencies, 72 have not been fully implemented.

Upcoming Congressional Hearings and Markups

Senate Health, Education, Labor, and Pensions (HELP) Committee hearing “Mental Health and Substance Use Disorders: Responding to the Growing Crisis;” 10:00 a.m.; February 1

House Ways and Means Committee hearing on America’s mental health crisis; 10:00 a.m., February 2

House Veterans’ Affairs Committee markup of A.N.S. to H.R. 5575, *VA Nurse and Physician Assistant RAISE Act* and H.R. 6411, *STRONG Veterans Act*; 2:00 p.m.; February 2

Senate Finance Subcommittee on Fiscal Responsibility and Economic Growth hearing “The Hospital Insurance Trust Fund and the Future of Medicare Financing;” 2:30 p.m.; February 2

House Energy and Commerce Subcommittee on Health hearing “FDA User Fee Reauthorization: Ensuring Safe and Effective Drugs and Biologics;” 10:30 a.m.; February 3

Recently Introduced Health Legislation

H.R.6468 — To direct the Secretary of Health and Human Services, in collaboration with the Assistant Secretary for Preparedness and Response and the Director of the Centers for Disease Control and Prevention, and in coordination with the Secretary of Defense and the Secretary of Homeland Security, to establish a program of entering into partnerships with eligible domestic manufacturers to ensure the availability of qualified personal protective equipment to prepare for and respond to national health or other emergencies, and for other purposes; Sponsor: Rep. Griffith, H. Morgan [R-VA-9]; Committees: House - Energy and Commerce; Oversight and Reform

H.R.6471 — To amend the Internal Revenue Code of 1986 to prohibit treatment of certain distributions and reimbursements for certain abortions as qualified medical expenses; Sponsor: Rep. Mooney, Alexander X. [R-WV-2]; Committees: House - Ways and Means

H.R.6474 — To amend the Internal Revenue Code of 1986 to raise the limit on contributions to health savings accounts, to remove the requirement to maintain high deductible coverage with respect to such accounts, to include drugs and medicine as qualified medical expenses for the purposes of such accounts, and for other purposes; Sponsor: Rep. Van Duyne, Beth [R-TX-24]; Committees: House - Ways and Means

H.Res.886 — Recognizing the roles and the contributions of America's Certified Registered Nurse Anesthetists (CRNAs) and their critical role in providing quality health care for the public, especially during the ongoing coronavirus pandemic; Sponsor: Rep. Schakowsky, Janice D. [D-IL-9]; Committees: House - Energy and Commerce

H.R.6478 — To establish the Office of Supply Chain Resiliency within the Department of Commerce to provide expansion support to companies and supply chains in the United States that are vulnerable to shortages and price increases, and for other purposes; Sponsor: Rep. Axne, Cynthia [D-IA-3]; Committees: House - Energy and Commerce

H.R.6483 — To amend the Federal Food, Drug, and Cosmetic Act to clarify reporting requirements for establishments within a foreign country engaged in the manufacture, preparation, propagation, compounding, or processing of an active pharmaceutical ingredient, and for other purposes; Sponsor: Rep. Eshoo, Anna G. [D-CA-18]; Committees: House - Energy and Commerce

H.R.6502 — To prohibit the use of Federal funds for any system of records on religious accommodations with respect to any COVID-19 vaccination requirement; Sponsor: Rep. Norman, Ralph [R-SC-5]; Committees: House - Energy and Commerce

H.R.6507 — To amend the Internal Revenue Code of 1986 to allow for the establish of child health savings accounts, and for other purposes; Sponsor: Rep. Van Duyne, Beth [R-TX-24]; Committees: House - Ways and Means

H.R.6508 — To amend title XXVII of the Public Health Service Act to extend group health plan and health insurance coverage to parents of enrollees if such parents are not eligible to enroll in the Medicare or Medicaid program; Sponsor: Rep. Van Duyne, Beth [R-TX-24]; Committees: House - Ways and Means; Energy and Commerce