



## Health Policy Briefing

April 11, 2022

### Ketanji Brown Jackson Confirmed as Supreme Court Justice

The Senate voted 53 to 47 to confirm Ketanji Brown Jackson to the Supreme Court. All 50 Senate Democrats, along with Republican Sens. Susan Collins (R-Maine), Lisa Murkowski (R-Alaska), and Mitt Romney (R-Utah), voted in support of her confirmation. Jackson will be the first Black woman justice on the Supreme Court when she replaces Justice Stephen Breyer who will retire at the end of the court’s current term. Her confirmation leaves the ideological balance on the nation’s high court unchanged. Jackson is a 51-year-old appellate court judge who also served on the U.S. District Court, as a federal public defender, and as vice-chair of the U.S. Sentencing Commission. Many of the Republican lawmakers who voted against Jackson cited their concerns about her being a potential activist judge.

### Congress Leaves for Recess Without Passing Additional COVID Relief

Lawmakers have left Capitol Hill for a two-week recess without passing any additional coronavirus relief. While a bipartisan agreement was reached early last week on a \$10 billion measure – a fraction of the White House’s initial \$30 billion request – a dispute over the President’s decision to end Title 42 caused the deal to fall apart. Title 42 is the policy allowing the administration to expel migrants and asylum seekers if it is in the interest of public health. The COVID-19 funding agreement would have provided the administration with \$5 billion to purchase therapeutics and antivirals, \$4.75 billion that could be used for a wider range of purchases, and \$750 million for research on future COVID-19 vaccines and therapeutics, repurposing unspent funds from prior pandemic relief efforts.

Leadership will resume negotiations when Congress returns after recess, with lawmakers already discussing the need for follow-up legislation containing funding for global pandemic response. The administration has warned that the agreed-upon \$10 billion in aid will not last through October.

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## Wyden Continues Investigation into Rx Tax Practices

Senate Finance Committee Chair Ron Wyden (D-Ore.) is continuing his investigation into the finances of pharmaceutical manufacturers. In his latest [letter](#), sent to Merck, Wyden asserts that the company has minimized profits in the United States while reporting substantial foreign profits to avoid paying U.S. corporate income taxes. The letter requests detailed information on the company's tax practices, overseas operations, and entities that hold the intellectual property for medications by April 15.

## VA Requests Change to Health Funding Process

During a hearing before the House Appropriations Military Construction-VA Subcommittee last week, Secretary of Veterans Affairs Denis McDonough stated his support for negotiating money for veterans' health programs separately from the topline guiding defense and non-defense discretionary funding each year. President Joe Biden's fiscal year 2023 budget request broke out an allocation for veterans' health, apart from its non-defense budget proposal. The White House called for \$813 billion in defense funds, \$650 billion in nondefense discretionary funds, and \$119 billion for Veterans Affairs medical care. Senate Appropriations Committee Ranking Member Richard Shelby (R-Ala.) raised concerns that this change could put spending on veterans' health on an upward trajectory.

## Upton, Gibbs Announce Plans to Retire

Rep. Fred Upton (R-Mich.) announced his plans to retire last week. Upton was first elected to the House of Representatives in 1986. He is the third most senior Republican in the 117th Congress and the former chair of the Energy and Commerce Committee. Upton has stated that his proudest accomplishment during his time in Congress was the 2016 passage of the *21st Century Cures Act*. Under his redrawn congressional district, Upton would have faced Rep. Bill Huizenga (R-Mich.) in this year's primary. Huizenga has been endorsed by former President Donald Trump. Rep. Bob Gibbs (R-Ohio) also announced that he will retire at the end of his term, citing the redistricting process happening in his state. Gibbs would have faced a primary challenge against a candidate also endorsed by Trump. Gibbs was first elected to the House of Representatives in 2010 and currently serves on the Oversight and Reform Committee.

## New Breakthrough COVID Cases Hit Capitol Hill, Administration

House Speaker Nancy Pelosi (D-Calif.) has tested positive for COVID-19. Pelosi is asymptomatic but is quarantining consistent with the Centers for Disease Control and Prevention guidance. While Pelosi spent time with President Joe Biden in the days leading up to her positive test, the White House has not qualified the President as a close contact of the House Speaker. Sen. Susan Collins (R-Maine) also tested positive for COVID last week. She is experiencing mild symptoms and will isolate herself while working remotely. Several other administration officials have tested positive in recent days, including Attorney General Merrick Garland, Commerce Secretary Gina Raimondo, and Agriculture Secretary Tom Vilsack. Vice President Kamala Harris's communications director Jamal Simmons recently contracted COVID-19 as well, and the Vice President is considered a close contact.

## NCI's Sharpless to Step Down

National Cancer Institute (NCI) Director Ned Sharpless will step down at the end of this month after nearly five years at the helm of the agency. Sharpless' departure follows President Joe Biden's recent announcement of plans to reignite the Cancer Moonshot initiative – with a goal to cut the cancer death rate in half in 25 years. “Working at the National Cancer Institute has been the highlight of my career, and I am honored to have had the chance to serve my country in this role, alongside so many talented scientists and administrators,” Dr. Sharpless said. “I leave this job knowing that the talent and passion present at NCI, across the Biden-Harris Administration, and throughout the cancer research community will continue to fuel tremendous progress for people with cancer in the years ahead.” NCI Principal Deputy Director Douglas Lowy will serve as NCI's acting director for the third time starting April 30. Lowy previously held this title between April 2015 and October 2017 and again between April 2019 and October 2019. NCI is the only institute leader within the National Institutes of Health (NIH) that requires a presidential appointment. The White House also has yet to pick a nominee for NIH director following Francis Collins' departure in December.

## WH Proposes to Further Delay RO Model

The Biden administration has proposed to further delay the start and performance period of the Radiation Oncology (RO) Model. The model would bundle payments for 90-day radiation treatment episodes provided to patients regardless of setting. It aims to remove incentives to provide radiation therapy in settings with higher reimbursement rates. The model is estimated to save the Medicare program \$230 million over five years. The Radiation Oncology Model and performance period was originally scheduled to begin on January 1, 2021 and end on December 31, 2025. The start date was pushed back six months to July 1, 2021, due to the COVID-19 public health emergency. The *Protecting Medicare and American Farmers from Sequester Cuts Act*, which was enacted late last year, prohibited the implementation of the model before January 1, 2023. Under the latest proposed rule issued by the Centers for Medicare and Medicaid Services (CMS) last week, the start date and model performance period would be established by future rulemaking. CMS stated its plans to provide at least six months' notice from the announcement of a proposed start date and the actual start date for the model.

## HRSA to Delay PRF Recoupment, Allow More Time for Reporting

The Health Resources and Services Administration (HRSA) recently announced on its [website](#) that it will delay its recoupment of money from certain Provider Relief Fund (PRF) recipients who failed to meet certain required reporting deadlines and provide a new opportunity to submit financial information and other details to retain the funds. Providers who received \$10,000 or more in COVID-19 relief in a roughly six-month period are required to submit certain financial information and details on how they used the relief funds. The first reporting deadline was November 30, 2021, applied to relief received before June 30, 2020. Providers have 30 days after the reporting deadline to return unused funds; those who missed the deadline have 30 days after the final notice to return all the relief. HRSA's latest announcement will provide an opportunity for non-compliant providers to complete a report as a result of specific extenuating circumstances. Providers will be able to submit a Request to Report Late Due to Extenuating Circumstances for Reporting Period 1 from Monday, April 11 to Friday, April 22, 2022, at 11:59 p.m. ET. The Request Form will be available starting on April 11, 2022. As part of the process, a provider must indicate and attest to a clear and concise explanation related to the applicable extenuating circumstance (i.e., severe illness or death, impacted by natural disaster, lack of receipt of reporting communications, failure to click “Submit”, internal miscommunication or error, or incomplete Targeted Distribution payments); however, supporting documentation will not be required. HRSA notes that providers should visit this [webpage](#) for additional information.

## Administration to Cover OTC COVID Tests Under Medicare

The Biden administration has announced that Medicare will now cover over-the-counter COVID-19 tests at no cost to the beneficiary through a new national demonstration program that will provide eight rapid tests per month during the public health emergency for Medicare beneficiaries with Part B drug coverage. The administration is using Section 402 waiver authority to conduct the demonstration. More information on the new initiative can be found [here](#).

## Recently Introduced Health Legislation

H.R.7370 — To direct the Secretary of Education to study student mental health at institutions of higher education and to issue guidance on compliance with the Americans with Disabilities Act of 1990 for mental health and substance use disorder policies of institutions of higher education, and for other purposes. Sponsor: Rep. Porter, Katie [D-CA-45]; Committees: House - Education and Labor

H.R.7359 — To amend the Public Health Service Act to provide the Secretary of Health and Human Services with the authority to suspend the right to introduce certain persons or property into the United States in the interest of the public health. Sponsor: Rep. DesJarlais, Scott [R-TN-4]; Committees: House - Energy and Commerce

H.R.7358 — To amend the Federal Food, Drug, and Cosmetic Act to apply the exempt infant formula requirements to certain human donor milk, and for other purposes. Sponsor: Rep. DeLauro, Rosa L. [D-CT-3]; Committees: House - Energy and Commerce

S.Res.576 — A resolution supporting the goals and ideals of National Public Health Week; Sponsor: Sen. Lujan, Ben Ray [D-NM]; Committees: Senate - Health, Education, Labor, and Pensions

H.Res.1027 — Supporting the goals and ideals of National Public Health Week; Sponsor: Rep. Roybal-Allard, Lucille [D-CA-40]; Committees: House - Energy and Commerce

H.R.7377 — To amend the Federal Food, Drug, and Cosmetic Act to modernize therapeutic equivalence rating determinations; Sponsor: Rep. Curtis, John R. [R-UT-3]; Committees: House - Energy and Commerce

H.R.7378 — To amend title XIX of the Social Security Act to make permanent the State plan amendment option to provide medical assistance for certain individuals who are patients in certain institutions for mental diseases, and for other purposes; Sponsor: Rep. Burgess, Michael C. [R-TX-26]; Committees: House - Energy and Commerce

H.R.7383 — To establish a program ensuring access to accredited continuing medical education for primary care physicians and other health care providers at Federally-qualified health centers and rural health clinics, to provide training and clinical support for primary care providers to practice at their full scope and improve access to care for patients in underserved areas; Sponsor: Rep. Lee, Susie [D-NV-3]; Committees: House - Energy and Commerce

H.R.7389 — To amend title XIX of the Social Security Act to codify value-based purchasing arrangements under the Medicaid program and reforms related to price reporting under such arrangements, and for other purposes; Sponsor: Rep. Schrader, Kurt [D-OR-5]; Committees: House - Energy and Commerce

S.3991 — A bill to direct the Secretary of Health and Human Services to conduct a demonstration program to test providing preferential treatment under the Medicare, Medicaid, and CHIP programs for certain drugs and biologicals manufactured in the United States; Sponsor: Sen. Smith, Tina [D-MN]; Committees: Senate - Finance

S.3998 — A bill to clarify the inability of the President to declare national emergencies under the National Emergencies Act, major disasters or emergencies under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and public health emergencies under the Public Health Service Act on the premise of climate change, and for other purposes; Sponsor: Sen. Capito, Shelley Moore [R-WV]; Committees: Senate - Environment and Public Works

S.4007 — A bill to require the Attorney General to propose a program for making treatment for post-traumatic stress disorder and acute stress disorder available to public safety officers, and for other purposes; Sponsor: Sen. Grassley, Chuck [R-IA]; Committees: Senate – Judiciary

H.R.7400 — To direct the Secretary of Health and Human Services to conduct a demonstration program to test providing preferential treatment under the Medicare, Medicaid, and CHIP programs for certain drugs and biologicals manufactured in the United States; Sponsor: Rep. Craig, Angie [D-MN-2]; Committees: House - Energy and Commerce; Ways and Means

H.R.7404 — To clarify the authority of the President to declare certain national emergencies under the National Emergencies Act, certain major disasters or emergencies under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, or public health emergencies under the Public Health Service Act on the premise of climate change, and for other purposes; Sponsor: Rep. McKinley, David B. [R-WV-1]; Committees: House - Transportation and Infrastructure; Energy and Commerce

H.R.7406 — To amend the Workforce Innovation and Opportunity Act to update the definition of supportive services, and for other purposes; Sponsor: Rep. Omar, Ilhan [D-MN-5]; Committees: House - Education and Labor

H.R.7410 — To amend the Internal Revenue Code of 1986 to provide for credits against tax for domestic medical and drug manufacturing and advanced medical manufacturing equipment; Sponsor: Rep. Wenstrup, Brad R. [R-OH-2]; Committees: House - Ways and Means

S.Res.577 — A resolution designating April 2022 as “Parkinson’s Awareness Month”; Sponsor: Sen. Stabenow, Debbie [D-MI]; Committees: Senate – Judiciary

S.4009 — A bill to amend title XVIII of the Social Security Act to rebase the calculation of payments for sole community hospitals and Medicare-dependent hospitals, and for other purposes; Sponsor: Sen. Casey, Robert P., Jr. [D-PA]; Committees: Senate – Finance

S.4011 — A bill to amend title XVIII of the Social Security Act to provide for a cap on beneficiary liability under part D of the Medicare program, and for other purposes; Sponsor: Sen. Warnock, Raphael G. [D-GA]; Committees: Senate – Finance

S.4014 — A bill to authorize the Director of the National Science Foundation to award grants to support research on the disruption of regular cognitive processes associated with COVID-19 infection, and for other purposes; Sponsor: Sen. Duckworth, Tammy [D-IL]; Committees: Senate - Health, Education, Labor, and Pensions

S.4015 — A bill to authorize the Secretary of Health and Human Services to award grants to eligible entities for creating or enhancing capacity to treat patients with Long COVID through a multidisciplinary approach; Sponsor: Sen. Duckworth, Tammy [D-IL]; Committees: Senate - Health, Education, Labor, and Pensions

H.Res.1041 — Supporting the designation of July 20, 2022, as “Glioblastoma Awareness Day”; Sponsor: Rep. Mast, Brian J. [R-FL-18]; Committees: House - Energy and Commerce

H.R.7414 — To amend chapter 73 of title 38, United States Code, to direct the Secretary of Veterans Affairs to establish a rural recruitment office within the Department of Veterans Affairs to recruit health care professionals, and for other purposes; Sponsor: Rep. Huffman, Jared [D-CA-2]; Committees: House - Veterans’ Affairs

H.R.7418 — To amend title XI of the Social Security Act to exclude certain individuals and entities from participation in Medicare and State health programs that discriminate on the basis of a covered statement; Sponsor: Rep. Cawthorn, Madison [R-NC-11]; Committees: House - Energy and Commerce; Ways and Means

H.R.7422 — To amend the HITECH Act to allow an individual to obtain a copy of such individual's protected health information at no cost unless certain circumstances apply, and for other purposes; Sponsor: Rep. Foster, Bill [D-IL-11]; Committees: House - Energy and Commerce

H.R.7423 — To prohibit imposing certain COVID-19 face covering and vaccine mandates, and for other purposes; Sponsor: Rep. Gimenez, Carlos A. [R-FL-26]; Committees: House - Education and Labor; Transportation and Infrastructure; Energy and Commerce; Judiciary

H.R.7427 — To amend title XI of the Social Security Act to require CMI testing of incentive payments for behavioral health providers and certain other providers for adoption and use of certified electronic health record technology, and for other purposes; Sponsor: Rep. Matsui, Doris O. [D-CA-6]; Committees: House - Energy and Commerce; Ways and Means

S.4074 — A bill to prevent future pandemics, and for other purposes. Sponsor: Sen. Cornyn, John [R-TX]; Committees: Senate - Foreign Relations

S.4071 — A bill to amend the Federal Food, Drug, and Cosmetic Act to improve the treatment of rare diseases and conditions, and for other purposes. Sponsor: Sen. Casey, Robert P., Jr. [D-PA]; Committees: Senate - Health, Education, Labor, and Pensions

S.4067 — A bill to amend title XI of the Social Security Act to improve access to care for all Medicare and Medicaid beneficiaries through models tested under the Center for Medicare and Medicaid Innovation, and for other purposes. Sponsor: Sen. Booker, Cory A. [D-NJ]; Committees: Senate - Finance

S.4058 — A bill to direct the Secretary of Health and Human Services, acting through the Administrator of the Health Resources and Services Administration, to establish a grant program to be known as the Mental Health Licensure Portability Program to award grants to eligible entities, and for other purposes. Sponsor: Sen. King, Angus S., Jr. [I-ME]; Committees: Senate - Health, Education, Labor, and Pensions

S.4053 — A bill to amend the Federal Food, Drug, and Cosmetic Act to grant eligible researchers access to eligible products at a discounted price for qualified research, and for other purposes. Sponsor: Sen. Stabenow, Debbie [D-MI]; Committees: Senate - Health, Education, Labor, and Pensions

S.4052 — A bill to reauthorize a program for early detection, diagnosis, and treatment regarding deaf and hard-of-hearing newborns, infants, and young children, and for other purposes. Sponsor: Sen. Portman, Rob [R-OH]; Committees: Senate - Health, Education, Labor, and Pensions

S.4050 — A bill to amend title XVIII of the Social Security Act to eliminate a provision under the Medicare Advantage program that inadvertently penalizes Medicare Advantage plans for providing high quality care to Medicare beneficiaries. Sponsor: Sen. Daines, Steve [R-MT]; Committees: Senate - Finance

S.4046 — A bill to amend the Social Security Act to remove the restriction on the use of Coronavirus State Fiscal Recovery funds, to amend the Internal Revenue Code of 1986 to codify the Trump administration rule on reporting requirements of exempt organizations, and for other purposes. Sponsor: Sen. Braun, Mike [R-IN]; Committees: Senate - Finance

S.4043 — A bill to instruct the Secretary of Health and Human Services to issue regulations regarding over-the-counter hearing aids. Sponsor: Sen. Warren, Elizabeth [D-MA]; Committees: Senate - Health, Education, Labor, and Pensions

S.4042 — A bill to amend title XVIII of the Social Security Act to provide Medicare coverage for all physicians' services furnished by doctors of chiropractic within the scope of their license, and for other purposes. Sponsor: Sen. Blumenthal, Richard [D-CT]; Committees: Senate - Finance

S.4039 — A bill to require the Secretary of Health and Human Services to provide guidance to States regarding Federal reimbursement for furnishing behavioral health services and treatment under Medicaid and the Children's Health Insurance Program using telehealth services, and for other purposes. Sponsor: Sen. Thune, John [R-SD]; Committees: Senate - Finance

S.4037 — A bill to amend the Public Health Service Act to increase the transparency of pharmaceutical research costs, and for other purposes. Sponsor: Sen. Stabenow, Debbie [D-MI]; Committees: Senate - Health, Education, Labor, and Pensions

S.4036 — A bill to establish a procedure for terminating a determination by Surgeon General to suspend certain entries and imports from designated places. Sponsor: Sen. Lankford, James [R-OK]; Committees: Senate - Health, Education, Labor, and Pensions

S.4031 — A bill to award posthumously a Congressional Gold Medal to Henrietta Lacks, in recognition of her immortal cells which have made invaluable contributions to global health, scientific research, our quality of life, and patients' rights. Sponsor: Sen. Van Hollen, Chris [D-MD]; Committees: Senate - Banking, Housing, and Urban Affairs

S.4026 — A bill to amend the Federal Food, Drug, and Cosmetic Act to grant eligible researchers access to eligible products at a discounted price for qualified research, and for other purposes. Sponsor: Sen. Smith, Tina [D-MN]; Committees: Senate - Health, Education, Labor, and Pensions

S.Res.590 — A resolution recognizing the designation of the week of April 11 through April 17, 2022, as the fifth annual "Black Maternal Health Week" to bring national attention to the maternal health crisis in the United States and the importance of reducing maternal mortality and morbidity among Black women and birthing persons. Sponsor: Sen. Booker, Cory A. [D-NJ]; Committees: Senate - Health, Education, Labor, and Pensions