



## Health Policy Briefing

July 11, 2022

### Democrats Release Agreements on Drug Pricing, Medicare Reconciliation Provisions

Last week, Senate Majority Leader Chuck Schumer (D-N.Y.) released the text of an agreement reached among all 50 Democrats to enable the Medicare program to directly establish the price of certain prescription drugs. The revived language is similar to the drug pricing proposal debated last November, but it would require Medicare to negotiate prices on a specified and increasing number of drugs each year instead of on a range “up to” a certain number of treatments. The measure would also move forward to next year the date on which negotiations would begin but push back the pricing implementation from 2025 to 2026. The text also includes a proposal to allow a delay in biologic drug negotiation if a biosimilar treatment is likely to come to market within two years. A \$2,000 cap on patient out-of-pocket costs would go into effect in 2024. The agreement is being reviewed by the Senate parliamentarian to ensure it complies with the Senate’s rules for reconciliation.

Democrats have also reached a deal to extend the solvency of the Medicare program by closing a tax loophole for pass-through businesses. Under current law, the Medicare hospital trust fund is projected to become insolvent by 2028. This proposal would count distributed profits in pass-through entities as subject to the 3.8% tax instituted by the Affordable Care Act for individual earners making above \$400,000 per year. It would produce \$200 billion in additional funding and extend the solvency of the Trust Fund through 2031. Lawmakers intend for both proposals to be included in a scaled-back version of the President’s Build Back Better economic agenda, which is also expected to include tax hikes on the wealthy and corporations as well as energy and climate provisions. A deal has not yet been reached on the broader reconciliation package, which Democrats hope to move before the midterm elections in November.

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## Schumer Tests Positive for COVID

Senate Majority Leader Chuck Schumer (D-N.Y.) has tested positive for COVID-19 in a breakthrough case of the virus. The Majority Leader, who is fully vaccinated and boosted, is experiencing mild symptoms and plans to work remotely consistent with Centers for Disease Control and Prevention guidelines. Sen. Patrick Leahy (D-Vt.) will also be absent from the chamber this week. The Appropriations Chair is still recovering from his recent hip replacement surgery. The Senate is scheduled to reconvene this week following the chamber's two-week Fourth of July recess. The absence of Schumer and Leahy will impact the ability of the evenly-divided Senate to confirm executive nominees.

## House to Vote on FY23 Funding Minibus Next Week

The House of Representatives plans to vote on a package of six appropriations bills the week of July 18. The minibus includes fiscal 2023 programs under the Transportation-Housing and Urban Development, Agriculture-Rural Development, Energy-Water Development, Financial Services-General Government, Interior-Environment and Military Construction-Veterans Affairs sections of the appropriations legislation.

## Senators Urge Administration to Deschedule Cannabis

A group of Senate Democrats is [asking](#) the White House to declassify cannabis as a Schedule I drug and to pardon anyone convicted of non-violent cannabis-related offenses. The letter, sent by Sens. Elizabeth Warren (D-Mass.), Bernie Sanders (I-Vt.), Kirsten Gillibrand (D-N.Y.), Ed Markey (D-Mass.), Cory Booker (D-N.J.), and Ron Wyden (D-Ore.), asserts that cannabis has accepted medical benefits and that legalization has public support. The group had previously written to the Department of Justice (DOJ) on this issue last year. The DOJ responded that "cannabis has not been proven in scientific studies to be a safe and effective treatment for any disease or condition."

## Lawmakers Push for Abortion, Location Data Privacy Protections

A pair of data brokers have pledged to permanently stop selling the location data of people who visit abortion clinics, according to Sen. Elizabeth Warren (D-Mass.). Warren and 13 colleagues had previously criticized the companies – SafeGraph and Placer.ai – for collecting and selling cellphone-based location data of individuals. House Oversight Committee Chair Carolyn Maloney (D-N.Y.) also recently sent [letters](#) to a group of data brokers and personal health application companies about the collection of personal reproductive health data, arguing that the "collection of sensitive data could pose serious threats to those seeking reproductive care as well as to providers of such care, not only by facilitating intrusive government surveillance, but also by putting people at risk of harassment, intimidation, and even violence."

## President Signs E.O. on Abortion, Reproductive Health Care Access

President Joe Biden has signed an executive [order](#) (E.O.) aimed at protecting access to reproductive health care services. The order directs the U.S. Department of Health and Human Services (HHS) to submit a report within 30 days on efforts to protect access to medication abortion, ensure emergency medical care for all, protect access to contraception, educate the public regarding access to reproductive health care services, and to convene volunteer lawyers to encourage legal representation of those seeking or offering reproductive health care services throughout the country. The E.O. also asks that the Federal Trade Commission consider taking steps to protect the privacy of consumers seeking information about reproductive health care services, and that HHS consider additional actions to better protect sensitive information related to reproductive health care. The order also establishes an interagency Task Force on Reproductive Health Care Access that will be responsible for coordinating related federal policymaking and program development.

## CMS Releases 2023 MPFS Proposed Rule

The Centers for Medicare and Medicaid Services (CMS) released its 2023 Medicare Physician Fee Schedule (PFS) proposed rule last week. Under the regulation, the conversion factor used to determine Medicare physician reimbursement would drop 4.42% to \$33.08 in calendar year (CY) 2023 from \$34.61 in 2022. According to CMS, the proposed cut is a result of “the statutorily required update to the conversion factor for CY 2023 of 0%, the expiration of the 3% increase in PFS payments for CY 2022 as required by the Protecting Medicare and American Farmers from Sequester Cuts Act,” and a statutorily required budget neutrality adjustment. Health care providers argue that the cuts could reduce beneficiary access to care, and numerous stakeholder organizations, including the American College of Surgeons, the Surgical Care Coalition, the American Society of Plastic Surgeons, and the American Society of Breast Surgeons, are calling on Congress to stop the cuts.

## PRF Reporting Period 3 Portal Opens

The Provider Relief Fund (PRF) [reporting portal](#) is open for reporting period three. Providers who received one or more PRF payments exceeding \$10,000, in the aggregate, from January 1 to June 30, 2021, must report on their use of funds no later than Friday, September 30. The deadline to use funds for payment received in period three was June 30, 2022. A technical assistance webinar for new reporters will be held [July 12, 2022 at 3:00 p.m. ET](#), and a webinar for returning reporters will be held [July 13, 2022 at 3:00 p.m. ET](#). Reporting period four will open on January 1, 2023, and reporting period five will open on July 1, 2023. More information and resources can be found on the [PRF Reporting web page](#).

## Upcoming Congressional Hearings and Markups

Senate Finance Committee hearing to Consider the Nominations of Jay Curtis Shambaugh, of Maryland, to be an Under Secretary of the Treasury and Rebecca Lee Haffajee, of Massachusetts, to be an Assistant Secretary of Health and Human Services; 10:00 a.m.; July 12

Senate Judiciary Committee hearing “A Post-Roe America: The Legal Consequences of the Dobbs Decision;” 10:00 a.m.; July 12

House Oversight and Reform Committee hearing “The Impact of the Supreme Court’s Dobbs Decision on Abortion Rights and Access Across the United States;” 9:30 a.m.; July 13

Senate HELP Committee hearing to examine reproductive care in a post-Roe America, focusing on barriers, challenges, and threats to women’s health; 10:00 a.m.; July 13

Senate Committee on Indian Affairs business meeting to consider the nomination of Roselyn Tso, of Oregon, to be Director of the Indian Health Service, Department of Health and Human Services; 2:30 p.m.; July 13

Senate Environment and Public Works legislative hearing to examine S. 1345, the Comprehensive National Mercury Monitoring Act; S. 2476, the Environmental Justice Air Quality Monitoring Act of 2021; and S. \_\_\_\_, the Public Health Air Quality Act; 10:00 a.m.; July 14

House Veterans’ Affairs Subcommittee on Health hearing “Examining VA Community Care Access, Utilization, and Expenditures;” 10:00 a.m.; July 14

House Judiciary Committee hearing “What’s Next: The Threat to Individual Freedoms in a Post-Roe World;” 10:00 a.m.; July 14

House Energy and Commerce Subcommittee on Oversight and Investigations hearing “Roe Reversal: The Impacts of Taking Away the Constitutional Right to an Abortion;” 10:30 a.m.; July 19

H.R.8282 — Making appropriations for the Department of State, foreign operations, and related programs for the fiscal year ending September 30, 2023, and for other purposes. Sponsor: Rep. Lee, Barbara [D-CA-13]; Committees: House – Appropriations

H.R.8279 — To require the Cybersecurity and Infrastructure Security Agency of the Department of Homeland Security to submit a report on the impact of the SolarWinds cyber incident on information systems owned and operated by Federal departments and agencies and other critical infrastructure, and for other purposes. Sponsor: Rep. Torres, Ritchie [D-NY-15]; Committees: House - Oversight and Reform; Homeland Security Latest

H.R.8278 — To direct the Attorney General to conduct a study on the efficacy of extreme risk protection orders on reducing gun violence, and for other purposes. Sponsor: Rep. Torres, Ritchie [D-NY-15]; Committees: House - Judiciary

H.R.8270 — To amend the Employee Retirement Income Security Act of 1974, title XXVII of the Public Health Service Act, and the Internal Revenue Code of 1986 to require group health plans and health insurance issuers offering group or individual health insurance coverage to provide notices relating to prescription drug refills to individuals covered under such plans or coverage who reside in emergency areas during emergency periods. Sponsor: Rep. McBath, Lucy [D-GA-6]; Committees: House - Energy and Commerce; Ways and Means; Education and Labor

H.R.8264 — To improve the processing of samples of sexual assault evidence, and for other purposes. Sponsor: Rep. Cleaver, Emanuel [D-MO-5]; Committees: House – Judiciary

H.R.8257 — Making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2023, and for other purposes. Sponsor: Rep. Roybal-Allard, Lucille [D-CA-40]; Committees: House – Appropriations

H.Res.1217 — Addressing the national crisis of suicide among minority adolescents; Sponsor: Rep. Espaillat, Adriano [D-NY-13]; Committees: House - Energy and Commerce; Education and Labor

H.R.8289 — To require the Secretary of Health and Human Services to promulgate a past due final rule with respect to direct-to-consumer prescription drug advertisements, and for other purposes; Sponsor: Rep. Spanberger, Abigail Davis [D-VA-7]; Committees: House - Energy and Commerce

H.R.8295 — Making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2023, and for other purposes; Sponsor: Rep. DeLauro, Rosa L. [D-CT-3]; Committees: House – Appropriations

H.R.8296 — To protect a person's ability to determine whether to continue or end a pregnancy, and to protect a health care provider's ability to provide abortion services; Sponsor: Rep. Chu, Judy [D-CA-27]; Committees: House - Energy and Commerce

H.R.8299 — To allow for devices with a predetermined change control plan to be marketed without submitting a supplemental application or premarket notification if the changes to such devices are consistent with such plan; Sponsor: Rep. Bilirakis, Gus M. [R-FL-12]; Committees: House - Energy and Commerce

H.R.8307 — To amend the Public Health Service Act to direct the Secretary of Health and Human Services to require certain medical information related to donors of reproductive tissue be made available to recipients of such tissue and persons conceived using such tissue, and for other purposes; Sponsor: Rep. Jacobs, Chris [R-NY-27]; Committees: House - Energy and Commerce

H.R.8318 — To restrict limitations on the possession, sale, purchase, transportation or use of any contraceptive that relates to interstate commerce; Sponsor: Rep. Thompson, Mike [D-CA-5]; Committees: House - Energy and Commerce