



Health Policy Briefing

October 17, 2022

Senate Takes Up Defense Bill

The Senate formally began debate on the **National Defense Authorization Act** (NDAA) (H.R. 7900/S. 4543) last week. Upon the filing of a substitute amendment for the must-pass annual defense and national security policy bill, the legislation was pulled from the floor until lawmakers return from recess after the November midterm elections. The package includes provisions to formally recognize the Department of Homeland Security’s Office of Health Security, which was spun off by the Department from the Office of Countering Weapons of Mass Destruction in July. The change was aimed at creating a more targeted approach to addressing threats to the nation’s health. Lawmakers in both the Senate and House of Representatives have been working on bipartisan legislation (S. 4465/H.R. 8610) to formally authorize the organizational change.

Sens. Michael Bennet (D-Colo.) and Todd Young (R-Ind.) have also filed an updated version of their **Pioneering Antimicrobial Subscriptions to End Upsurging Resistance (PASTEUR) Act** as an amendment to the NDAA. **PASTEUR** would provide subscription-based government contracts for antibiotics to encourage new antibiotic development. The bill has been updated based on feedback the bill’s sponsors received to ensure that contracts are only rewarded to products that improve patient outcomes. The **PASTEUR** amendment would cost \$6 billion, down from the \$11 billion price of the original bill.

Eshoo to Prioritize ARPA-H Authorizing Legislation

The Chair of the House Energy and Commerce Subcommittee on Health stated last week that advancing legislation (H.R. 5585) to establish the Advanced Research Projects Agency for Health (ARPA-H) will be her top priority in the forthcoming lame duck session of Congress. The legislation has already been passed by the House of Representatives. While Rep. Anna Eshoo (D-Calif.) praised the swearing-in of the inaugural ARPA-H director - and her constituent - Renee Wgrzyn last week, Eshoo has previously raised concerns about the placement of ARPA-H as an independent entity within the National Institutes of Health (NIH) by the U.S. Department of Health and Human Services. She supports ARPA-H residing outside the NIH.

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COVID PHE Extended Into 2023

The U.S. Department of Health and Human Services (HHS) has [extended](#) the COVID-19 public health emergency (PHE) for an additional 90 days. The PHE designation was set to expire on October 13. The emergency was first declared in January 2020 and is revisited every 90 days. The continued PHE declaration will allow expanded Medicaid coverage, telehealth flexibilities, nursing home staffing waivers, and other pandemic response measures to remain in place for another 90 days – extending into January 2023. HHS has committed to providing a 60-day notice to states before terminating the PHE or allowing it to expire. While daily deaths and case rates have been declining, more than 300 people still die each day from COVID-19 in the U.S.

President Issues EO on CMMI, Drug Prices

President Joe Biden has issued a new executive order to lower health care and prescription drug costs for Americans. The order directs the U.S. Department of Health and Human Services to submit a formal report within 90 days outlining plans to use the Center for Medicare and Medicaid Innovation's authorities to lower drug costs and promote access to innovative drug therapies for Medicare beneficiaries. A White House fact sheet can be found [here](#).

Administration Issues Final Rule on Family Glitch

The U.S. Department of Treasury and the Internal Revenue Service issued a final rule last week to ensure that current regulations are consistent with the administration's policy to protect and strengthen the Affordable Care Act (ACA). President Joe Biden issued an executive order in January 2021 calling for a review of certain federal regulations to determine if they undermine protections for people with pre-existing conditions. ACA premium tax regulations previously required that employers offer affordable coverage based only on the cost of employee coverage, what became known as the "family glitch." The new rule requires the affordability of plans to be based on both the employee's share plus their family members. The regulation was praised by House Ways and Means Committee Chair Richard Neal (D-Mass.) and Senate Finance Committee Chair Ron Wyden (D-Ore.), who stated that the rule "goes one step further in fulfilling the ACA's mission of ensuring all Americans have access to affordable, comprehensive health coverage."

CMS Withdraws Secondary Payer Regulation

The Centers for Medicare and Medicaid Services (CMS) has withdrawn a proposed regulation that would have specified the obligations of Medicare secondary payers. The rule, which had been sent to the White House Office of Management and Budget for review, aimed to remove obsolete regulations. It would have outlined the obligations of secondary payers "related to liability insurance (including self-insurance), no-fault insurance, and workers compensation settlements, judgments, awards, or other payments," according to a White House summary of the proposal.

Medicare Open Enrollment Begins Oct. 15

Medicare open enrollment for 2023 opened on October 15 and remains open through December 7. During this time beneficiaries can review their coverage and plan options on Medicare.gov. "This year, more than ever, it is vital that people with Medicare review and compare their options to find the coverage that best meets their needs," said U.S. Department of Health and Human Services Secretary Xavier Becerra. "We are unwavering in our commitment to strengthening Medicare, and we will keep doing all we can to lower costs and improve benefits."

Gottlieb, McClellan Push for FDA Regulatory Reforms

Former commissioners of the Food and Administration Scott Gottlieb and Mark McClellan published an article in JAMA last week criticizing the decision by lawmakers to exclude an overhaul of dietary supplements, cosmetics, and diagnostics regulations from the recent medical product user fee reauthorizations. Gottlieb and McClellan characterize the decision as a “profound missed opportunity” to enhance FDA’s consumer protection authorities. While congressional leadership has said they will continue to negotiate on including these provisions as a part of a year-end omnibus spending package, Gottlieb and McClellan do not believe this is likely in the absence of strong bipartisan support.

JAMA Publishes Study on Untitling

JAMA Network Open published a new [study](#) last week on “untitling” (i.e., patients omitting professional titles when conversing with their healthcare provider). The results of the study, conducted by Dr. Yul Yang, a dermatologist at the Mayo Clinic in Scottsdale, Arizona sought to identify patterns of untitling in electronic messages with physicians and found that female doctors were more than twice as likely as male doctors to be addressed by their first names, and doctors of osteopathy were twice as likely as doctors with an M.D. Male patients were more likely than female patients to use their physician’s first name. The study did not examine the age, race, or ethnicity of either the patients or doctors.

Recently Introduced Health Legislation

H.R.9162 — To direct the Secretary of Homeland Security to designate illicit fentanyl as a weapon of mass destruction, and for other purposes. Sponsor: Wenstrup, Brad R. [Rep.-R-OH-2]; Committees: House - Homeland Security; Judiciary; Foreign Affairs

H.R.9160 — To amend the Internal Revenue Code of 1986 to create health freedom accounts available to all individuals. Sponsor: Roy, Chip [Rep.-R-TX-21]; Committees: House - Ways and Means

H.R.9158 — To amend title 18, United States Code, to prohibit people from intentionally impeding the 9-8-8 suicide and crisis lifeline telephone number, and for other purposes. Sponsor: Moulton, Seth [Rep.-D-MA-6]; Committees: House - Judiciary

H.R.9156 — To amend title XVIII of the Social Security Act to extend the period for certain teaching hospitals to establish full-time equivalent residency caps for new residency training programs impacted by the COVID-19 pandemic, and for other purposes. Sponsor: Harder, Josh [Rep.-D-CA-10]; Committees: House - Ways and Means; Energy and Commerce

H.R.9144 — To amend the Food and Nutrition Act of 2008 to allow households with children with chronic medical conditions to deduct allowable medical expenses incurred by such household member that exceeds \$35 per month. Sponsor: Brown, Shontel M. [Rep.-D-OH-11]; Committees: House - Agriculture

H.R.9142 — To amend the Older Americans Act of 1965 to establish a LGBTQI rural outreach grant program, and for other purposes. Sponsor: Bonamici, Suzanne [Rep.-D-OR-1]; Committees: House - Education and Labor Latest Action:

H.Res.1427 — Thanking and promoting the profession of perinatal nurses by encouraging participation in National Perinatal Nurses Week. Sponsor: Roybal-Allard, Lucille [Rep.-D-CA-40]; Committees: House - Energy and Commerce

S.Res.828 — A resolution recognizing the end of the COVID-19 pandemic for Federal employees, servicemembers, and contractors; Sponsor: Lankford, James [Sen.-R-OK]; Committees: Senate - Homeland Security and Governmental Affairs

S.5073 — A bill to amend the Public Health Service Act to authorize a public education campaign across all relevant programs of the Health Resources and Services Administration to increase oral health literacy and awareness; Sponsor: Lujan, Ben Ray [Sen.-D-NM]; Committees: Senate - Health, Education, Labor, and Pensions

H.R.9164 — To amend title 38, United States Code, to provide for the retroactive payment of benefits for veterans with covered mental health conditions based on military sexual trauma, and for other purposes; Sponsor: Carbajal, Salud O. [Rep.-D-CA-24]; Committees: House - Veterans' Affairs

H.R.9166 — To establish requirements for skilled nursing facilities, nursing facilities, and assisted living facilities to manage the outbreak of COVID-19, and for other purposes; Sponsor: Gottheimer, Josh [Rep.-D-NJ-5]; Committees: House - Energy and Commerce