



Health Policy Briefing

November 22, 2021

House Passes Build Back Better Reconciliation Bill

The House of Representatives passed the **Build Back Better Act** (H.R. 5376) on Friday morning by a vote of 220-213. All but one Democrat – Jared Golden (D-Maine) – voted for the bill and all Republicans voted against it. The \$1.85 trillion tax and social spending package includes several major health reforms, including a short-term fix to the Medicaid coverage gap, an extension of enhanced **Affordable Care Act** (ACA) tax credits, the addition of a hearing benefit to the Medicare program, and \$150 billion for home health care. The bill also includes drug pricing-related provisions, including a new authority for the Medicare program to negotiate the prices of some of the highest-cost drugs and an annual cap on beneficiaries’ out-of-pocket drug spending.

A vote on the bill had been delayed because several moderate Democrats insisted on waiting for the release of the Congressional Budget Office’s (CBO) score of the legislation. CBO estimated that the bill would increase the deficit by \$367 billion between fiscal year (FY) 2022 through 2031 – with \$1.64 trillion in spending increases offset by \$1.27 trillion in additional revenue. Tax enforcement funding would raise an additional \$207 billion. While CBO’s analysis was largely in keeping with earlier estimates by lawmakers and the White House, the budget agency estimated that the Medicare drug price negotiation proposal would save \$79 billion instead of \$100 billion, and that the permanent extension of the Children’s Health Insurance Program (CHIP) would ultimately save \$1 billion instead of costing money.

The reconciliation package is expected to be modified when it reaches the Senate, both to comply with the Senate’s rules for the reconciliation process and to gain the necessary support of every Senate Democrat. Sen. Joe Manchin (D-W. Va.) has already expressed reservations about some of the key provisions of the bill and has called for slowing the pace of negotiations. The revised bill would then be sent back to the House for another vote before being sent to the President’s desk for his signature. According to Senate Majority Leader Chuck Schumer (D-N.Y.), the Senate will first complete work on the **National Defense Authorization Act**

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before turning to the reconciliation bill, which he hopes to complete before the Christmas holiday.

Congress' attention will also be focused on funding the government before current appropriations expire on December 3. A second stopgap spending measure will likely be necessary to avoid a shutdown in early December, but House Appropriations Chair Rosa DeLauro (D-Conn.) says she hopes to reach a bipartisan deal on topline spending figures next month rather than delaying government funding talks until 2022. Negotiations in the Senate on government funding are currently stalled on policy disagreements, including restrictions on abortion funding.

DeGette, Upton Introduce Cures 2.0

Reps. Diana DeGette (D-Colo.) and Fred Upton (R-Mich.) have officially introduced the [Cures 2.0 Act](#) (H.R. 6000), which aims to build upon their previous landmark *21st Century Cures Act*. The 173-page [bill](#) would authorize \$6.5 billion to establish the Advanced Research Projects Agency for Health (ARPA-H), a medical research agency housed within the National Institutes of Health (NIH) responsible for accelerating new medical breakthroughs. ARPA-H was first proposed by President Joe Biden in his budget. The bill also includes provisions to speed Medicare coverage of innovative treatments, increase access to telehealth services, provide training and education for at-home caregivers, encourage innovative antimicrobial drug development, and improve clinical trial diversity. Cures 2.0 requires the U.S. Department of Health and Human Services (HHS) to conduct a nationwide study on the implications of long COVID and to develop a nationwide testing and vaccine distribution strategy to be used in future pandemics. While the bill's sponsors are working to drum up support amongst their Senate colleagues for fast tracking the legislation, they have also acknowledged that Cures 2.0 is unlikely to reach the President's desk by the end of the year as they had initially hoped. Many expect next year's Food and Drug Administration (FDA) user fee reauthorization to serve as a vehicle for Cures 2.0 passage given lawmakers' current focus on the *Build Back Better* reconciliation package, government funding, and the debt ceiling.

Leahy, Speier, Butterfield to Retire

Senate President Pro Tempore and Appropriations Chair Patrick Leahy (D-Vt.) has announced that he will not seek reelection in 2022. Leahy is the chamber's longest-serving member, having first been elected in 1974. In addition to leading the appropriations panel, Leahy serves on the Judiciary and Agricultural committees. The names of several potential Democratic contenders have been floated, including Rep. Peter Welch (D-Vt.), state Senate President Pro Tempore Becca Balint, state Sen. Kesha Ram-Hinsdale, and Lt. Gov. Molly Gray. The next Democrat in line to serve as president pro tempore is Sen. Dianne Feinstein (D-Calif.), followed by Sen. Patty Murray (D-Wash.).

Leahy's retirement could have a ripple effect on the leadership of Senate committees with health care jurisdiction. Sen. Patty Murray, current chair of the Senate Health, Education, Labor, and Pensions (HELP) Committee, would be in line to replace Leahy as Democratic leader of the Appropriations Committee. If she chooses to do so, she may leave an opening at the helm of the Labor-Health and Human Services-Education Subcommittee, with Sens. Jeanne Shaheen (D-N.H.) and Jeff Merkley (D-Ore.) next in line for that position. Sen. Bernie Sanders (I-Vt.) would be eligible for the position of top Democrat on the HELP Committee if Murray assumes the senior appropriations post. This would leave a vacancy at the head of the Senate Budget Committee.

Democratic Reps. Jackie Speier (D-Calif.) and G.K. Butterfield (D-N.C.) also announced that they will not seek reelection next year. Butterfield was first elected in 2004 and is a member of the House Energy and Commerce Committee. Speier was first elected to national office in 2008. She currently serves on the House Committee on Oversight and Reform.

OSHA Suspends Implementation of Vaccine ETS

The U.S. Court of Appeals for the Fifth Circuit has granted a motion to stay the Occupational Safety and Health Administration's (OSHA) COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS), which would require all private employers with 100 or more employees to mandate vaccines or weekly testing for all personnel. In response, OSHA has suspended activities related to the implementation and enforcement of the ETS pending further developments in the litigation. The case stems from Texas Attorney General Ken Paxton, along with the states of Louisiana, Mississippi, Utah, and South Carolina, filing a lawsuit against the Biden administration over the vaccine mandate, requesting a preliminary and permanent injunctive relief to stop the mandate from being enforced. The lawsuit also asks that the mandate be declared unlawful. The White House is urging businesses to continue implementing the guidance for COVID-19 vaccines and testing, noting its confidence that it has the authority to mandate vaccination for workers to stop the spread of COVID-19. The OSHA suspension does not affect a related vaccine mandate from the Centers for Medicare and Medicaid Services (CMS) for health care workers.

Republican senators led by Mike Braun (R-Ind.) have formally filed a challenge against the OSHA ETS under the Congressional Review Act (CRA). A floor vote on the resolution of disapproval of the President's vaccine mandate could happen as soon as early December. The effort is expected to fail in the Democratic-controlled Congress.

Senators Call for 9/11-Like COVID Commission

A bipartisan group of senators [wrote](#) Senate leadership urging the inclusion of a provision in the *National Defense Authorization Act* to establish a national commission on the coronavirus pandemic. They argue that the commission, which would resemble the 9/11 Commission, is necessary to better understand the vulnerabilities of the nation's health care system and to improve pandemic preparedness for future public health crises. Earlier this month, Sens. Dianne Feinstein (D-Calif.), Roger Marshall (R-Kansas), Kirsten Gillibrand (D-N.Y.) and Joni Ernst (R-Iowa) introduced [S. 3203](#), the *National Commission on the COVID-19 Pandemic Act*, which is endorsed by the Infectious Diseases Society of America.

COVID Panel Subpoenas Trump Trade Adviser

The House Select Subcommittee on the Coronavirus Crisis is subpoenaing former White House trade adviser Peter Navarro. Navarro has failed to respond to the panel's requests for documents relating to decision-making within the Trump administration during the coronavirus pandemic. Chair Jim Clyburn (D-S.C.) has raised concerns about Navarro's role in procurement and the award of government contracts. The committee has already issued a subpoena to Steven Hatfill, former adviser to Navarro.

Oversight Republicans Consider Impact of PBMs

Republicans on the House Oversight and Investigations Committee hosted a [forum](#) last week titled "Reviewing the Role of PBMs in Pharmaceutical Markets" on the impact of pharmacy benefit managers (PBMs) in pharmaceutical markets with experts, including pharmacists, researchers, a practicing physician, and a PBM representative. During the forum, Republican lawmakers argued that PBMs play a role in the rising cost of drugs in the U.S. and that the industry is over-consolidated. Committee Ranking Member James Comer (R-Ky.) stated that if Republicans retake the majority in the House, he expects the party to act on PBM reform. He also noted that a report summarizing the panel and outlining potential next steps would be forthcoming.

Provider Relief Fund Reporting Grace Period Concludes Nov. 30

The U.S. Department of Health and Human Services (HHS) is reminding stakeholders that the 60-day grace period for Provider Relief Fund (PRF) reporting period 1 ends on November 30, 2021. Providers with outstanding reporting requirements should go to the [PRF Reporting Portal](#) and submit their report on use of funds. Providers who fail to meet this deadline will be required to return their PRF payments by December 30, 2021. Additional guidance can be found in the Health Resources and Services Administration's (HRSA) [Returning Funds Fact Sheet](#) and the [PRF Reporting Resources](#) webpage.

All Adults Now Eligible for Pfizer/Moderna Boosters

The Food and Drug Administration (FDA) has expanded the emergency use authorization (EUA) of the Pfizer-BioNTech and Moderna COVID-19 vaccines to include individuals 18 years of age and older. Centers for Disease Control and Prevention (CDC) Director Rochelle Walensky signed off on the Advisory Committee for Immunization Practices' (ACIP) endorsement of expanding booster shot eligibility. The boosters, which are the same dosage strength as the other doses in the series, should be administered at least six months after completion of the primary series.

FCC Approves 988 for Suicide Prevention

New action from the Federal Communications Commission (FCC) will allow Americans to text 988 to access the National Suicide Prevention Lifeline. The move is intended to broaden access to mental health and crisis counseling services for at-risk communities, like youth and people with disabilities. Texting providers will be required to route messages sent to 988 to the Lifeline's number by July 16, 2022. During the transition, the FCC suggests continuing to contact the network at 1-800-273-8255.

Recently Introduced Health Legislation

- H.R.5963 — To provide for improvements in the reimbursement of eligible health care providers through the Provider Relief Fund, and for other purposes. Sponsor: Rep. Spanberger, Abigail Davis [D-VA-7]; Committees: House - Energy and Commerce; Ways and Means
- H.R.5962 — To manage supply chain risk through counterintelligence training, and for other purposes. Sponsor: Rep. Neguse, Joe [D-CO-2]; Committees: House - Oversight and Reform
- H.R.5950 — To amend the Controlled Substances Act to increase the number of days before which certain controlled substances for maintenance or detoxification treatment must be administered, and for other purposes. Sponsor: Rep. Dean, Madeleine [D-PA-4]; Committees: House - Energy and Commerce; Judiciary
- H.Res.790 — Expressing support for the designation of November, 2021 as “Pancreatic Cancer Awareness Month”. Sponsor: Rep. Carson, Andre [D-IN-7]; Committees: House - Energy and Commerce; Armed Services
- S.3208 — A bill 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: Sen. Baldwin, Tammy [D-WI]; Committees: Senate - Commerce, Science, and Transportation
- H.R.5967 — To ensure that institutions of higher education with COVID-19 vaccination requirements provide an opportunity for religious exemption from such requirements, and for other purposes; Sponsor: Rep. Norman, Ralph [R-SC-5]; Committees: House - Education and Labor
- H.R.5977 — To amend the controlled substances Act regarding marihuana, and for other purposes; Sponsor: Rep. Mace, Nancy [R-SC-1]; Committees: House - Judiciary; Energy and Commerce; Natural Resources; Agriculture; Transportation and Infrastructure; Armed Services; Ways and Means; Small Business; Veterans’ Affairs; Oversight and Reform; Education and Labor; Foreign Affairs
- H.R.5978 — To exempt Federal employees and contractors that are critical infrastructure workers from Federal COVID-19 vaccination mandates, and for other purposes; Sponsor: Rep. Newhouse, Dan [R-WA-4]; Committees: House - Oversight and Reform
- H.R.5981 — To amend the Internal Revenue Code of 1986 to permanently extend the exemption for telehealth services from certain high deductible health plan rules; Sponsor: Rep. Steel, Michelle [R-CA-48]; Committees: House - Ways and Means
- H.R.5983 — To expand the eligibility of veterans for hospital care and medical services provided by non-Department of Veterans Affairs medical providers under the Veterans Choice Program; Sponsor: Rep. Carl, Jerry L. [R-AL-1]; Committees: House - Veterans’ Affairs
- H.R.5986 — To improve men’s health initiatives, and for other purposes; Sponsor: Rep. Payne, Donald M., Jr. [D-NJ-10]; Committees: House - Energy and Commerce
- H.R.5987 — To amend the Toxic Substances Control Act with respect to the PFAS data call, and for other purposes; Sponsor: Rep. Ross, Deborah K. [D-NC-2]; Committees: House - Energy and Commerce
- H.R.5989 — To require the Secretary of Health and Human Services to conduct a demonstration program to genetic and genomic testing for certain children, to provide for a study by the National Academy of Medicine on the use of such testing to improve health care, and for other purposes; Committees: House - Energy and Commerce; Ways and Means

S.Res.455 — A resolution designating November 2021 as “National Hospice and Palliative Care Month”; Sponsor: Sen. Rosen, Jacklyn [D-NV]; Submitted in the Senate, considered, and agreed to without amendment and with a preamble by Unanimous Consent.

S.J.Res.29 — A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Labor relating to “COVID-19 Vaccination and Testing; Emergency Temporary Standard”; Sponsor: Sen. Braun, Mike [R-IN]; Committees: Senate - Health, Education, Labor, and Pensions

S.3223 — A bill to establish certain duties for pharmacies to ensure provision of Food and Drug Administration-approved contraception, medication related to contraception, and for other purposes; Sponsor: Sen. Booker, Cory [D-NJ]; Committees: Senate - Health, Education, Labor, and Pensions

S.3225 — A bill to prohibit any Federal agency from requiring that staff in health care facilities be vaccinated against COVID-19 as a condition of the facility participating in the Medicare, Medicaid, or CHIP programs; Sponsor: Sen. Lee, Mike [R-UT]; Committees: Senate – Finance

H.J.Res.65 — Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Labor relating to “COVID-19 Vaccination and Testing; Emergency Temporary Standard”; Sponsor: Rep. Keller, Fred [R-PA-12]; Committees: House - Education and Labor

H.R.5993 — To direct the Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, to establish a competitive grant program under which the Secretary will award grants to certain institutions to establish American Biopharmaceutical Manufacturing Worker Training Centers of Excellence, and for other purposes; Sponsor: Rep. Butterfield, G. K. [D-NC-1]; Committees: House - Energy and Commerce

H.R.5995 — To provide research on, and services for, individuals with clinical mental health complications following a pregnancy loss, and for other purposes; Sponsor: Rep. Emmer, Tom [R-MN-6]; Committees: House - Energy and Commerce

H.R.5998 — To require the Secretary of Health and Human Services to issue guidance on authorities available to States under the State Medicaid programs under title XIX of the Social Security Act to extend waivers granted during the COVID-19 emergency period beyond such period; Sponsor: Rep. Griffith, H. Morgan [R-VA-9]; Committees: House - Energy and Commerce

H.R.6000 — To continue the acceleration of the discovery, development, and delivery of 21st century cures, and for other purposes; Sponsor: Rep. DeGette, Diana [D-CO-1]; Committees: House - Energy and Commerce; Ways and Means; Budget; Science, Space, and Technology; Agriculture; Education and Labor; Armed Services; Natural Resources; Veterans’ Affairs; Homeland Security; Judiciary

H.R.6005 — To establish certain duties for pharmacies to ensure provision of Food and Drug Administration-approved contraception, medication related to contraception, and for other purposes; Sponsor: Rep. Maloney, Carolyn B. [D-NY-12]; Committees: House - Energy and Commerce

H.R.6007 — To amend title XVIII of the Social Security Act to provide for the expansion of coverage of vaccines under part B of the Medicare program, and for other purposes; Sponsor: Rep. O’Halloran, Tom [D-AZ-1]; Committees: House - Energy and Commerce; Ways and Means

H.R.6008 — To provide for a grant program to support access to free eye care services for students attending public elementary schools and secondary schools; Sponsor: Rep. Schiff, Adam B. [D-CA-28]; Committees: House - Energy and Commerce; Education and Labor

H.R.6009 — To provide that the public health emergency declared with respect to COVID-19 shall terminate on the date on which the Secretary of Health and Human Services approves, or authorizes emergency use of, a drug intended to treat COVID-19; Sponsor: Rep. Schweikert, David [R-AZ-6]; Committees: House - Energy and Commerce

H.Res.809 — Supporting the designation of the third week of November, November 14 to November 20, 2021, as “Thyroid Eye Disease (TED) Awareness Week”; Sponsor: Rep. Davis, Danny K. [D-IL-7]; Committees: House - Energy and Commerce

H.Res.810 — Supporting the goals and ideals of American Diabetes Month; Sponsor: Rep. DeGette, Diana [D-CO-1]; Committees: House - Energy and Commerce

H.Res.811 — Expressing support for the designation of November 18, 2021, as “National Rural Mental Health Day”; Sponsor: Rep. Emmer, Tom [R-MN-6]; Committees: House - Energy and Commerce; Agriculture

H.Res.813 — Supporting the goals of World AIDS Day; Sponsor: Rep. Lee, Barbara [D-CA-13]; Committees: House - Energy and Commerce; Foreign Affairs

H.Res.815 — Supporting the goals and ideals of National Rural Health Day; Sponsor: Rep. O’Halloran, Tom [D-AZ-1]; Committees: House - Energy and Commerce

H.Con.Res.62 — Expressing the sense of Congress that public health professionals should be commended for their dedication and service to the United States on Public Health Thank You Day, November 22, 2021; Sponsor: Rep. Wittman, Robert J. [R-VA-1]; Committees: House - Energy and Commerce

H.R.6016 — To prohibit executive agencies from requiring employees to receive a vaccination against infection by the SARS-CoV-2 virus under Federal contracts, and for other purposes; Sponsor: Rep. Comer, James [R-KY-1]; Committees: House - Oversight and Reform

H.R.6017 — To prohibit certain COVID-19 vaccination mandates for minors, and to require parental consent for COVID-19 vaccination of minors; Sponsor: Rep. Banks, Jim [R-IN-3]; Committees: House - Energy and Commerce; Education and Labor

H.R.6020 — To amend title XVIII of the Social Security Act to extend certain increases in payments for physicians’ services under the Medicare program through 2022; Sponsor: Rep. Bera, Ami [D-CA-7]; Committees: House - Energy and Commerce; Ways and Means

H.R.6025 — To conduct or support further comprehensive research for the creation of a universal influenza vaccine or preventative; Sponsor: Rep. DeLauro, Rosa L. [D-CT-3]; Committees: House - Energy and Commerce

H.R.6027 — To provide for individual rights relating to privacy of personal information, to establish privacy and security requirements for covered entities relating to personal information, and to establish an agency to be known as the Digital Privacy Agency to enforce such rights and requirements, and for other purposes; Sponsor: Rep. Eshoo, Anna G. [D-CA-18]; Committees: House - Energy and Commerce; Judiciary; House Administration

H.R.6047 — To direct the Secretary of Health and Human Services to submit to Congress a report on COVID-19 natural immunity, and for other purposes; Sponsor: Rep. Roy, Chip [R-TX-21]; Committees: House - Energy and Commerce

H.R.6048 — To prohibit the Secretary of Health and Human Services from taking certain actions with respect to the clinical labor price, and for other purposes; Sponsor: Rep. Rush, Bobby L. [D-IL-1]; Committees: House - Energy and Commerce; Ways and Means

- S.3258 — A bill to conduct or support further comprehensive research for the creation of a universal influenza vaccine or preventative. Sponsor: Sen. Markey, Edward [D-MA]; Committees: Senate - Health, Education, Labor, and Pensions
- S.3257 — A bill to amend the Controlled Substances Act to lengthen the period of time during which certain controlled substances must be administered to a patient after being delivered by a pharmacy to the administering practitioner. Sponsor: Sen. Shaheen, Jeanne [D-NH]; Committees: Senate - Judiciary
- S.3253 — A bill to amend the Family and Medical Leave Act of 1993 to provide leave for the spontaneous loss of an unborn child, and for other purposes. Sponsor: Sen. Cotton, Tom [R-AR]; Committees: Senate – Finance
- S.3252 — A bill to address the supply chain backlog in the freight network at United States ports, and for other purposes. Sponsor: Sen. Lee, Mike [R-UT]; Committees: Senate - Commerce, Science, and Transportation
- S.3248 — A bill to allow States and Tribal entities to use unexpended COVID-19 relief funds to pay fines on behalf of employers for violating the emergency temporary standard issued by the Department of Labor relating to COVID-19 Vaccination and Testing and any final rule issued with respect to such emergency temporary standard, and for other purposes. Sponsor: Sen. Rubio, Marco [R-FL]; Committees: Senate - Health, Education, Labor, and Pensions
- S.3246 — A bill to amend title XVIII of the Social Security Act to reduce the occurrence of diabetes in Medicare beneficiaries by extending coverage under Medicare for medical nutrition therapy services to such beneficiaries with pre-diabetes or with risk factors for developing type 2 diabetes. Sponsor: Sen. Peters, Gary [D-MI]; Committees: Senate - Finance
- S.3244 — A bill to amend the Public Health Service Act to establish a Bio-Preparedness and Infectious Diseases Workforce Loan Repayment Program. Sponsor: Sen. Baldwin, Tammy [D-WI]; Committees: Senate - Health, Education, Labor, and Pensions
- S.3243 — A bill to prohibit certain Federal agencies from requiring that any employee of such an agency receive a COVID-19 vaccine, and for other purposes. Sponsor: Sen. Lee, Mike [R-UT]; Committees: Senate - Homeland Security and Governmental Affairs
- S.3239 — A bill to amend title XXVII of the Public Health Service Act to provide for a special enrollment period for pregnant persons, and for other purposes. Sponsor: Sen. Brown, Sherrod [D-OH]; Committees: Senate – Finance
- S.Res.457 — A resolution expressing support for the designation of November 9, 2021, as “National Microtia and Atresia Awareness Day”. Sponsor: Sen. Warren, Elizabeth [D-MA]; Committees: Senate - Health, Education, Labor, and Pensions