



Federal Issues

Legislative

Budget Reconciliation Process Initiated to Advance Next Federal COVID-19 Relief Package

On February 1, negotiations began between Congress and the Biden Administration on a policy package to provide COVID-19 stimulus and relief.

The U.S. House and U.S. Senate moved forward in laying the foundation to advance a \$1.9 trillion package, consistent with President Biden's [American Rescue Plan](#), through the budget reconciliation process. Biden's plan has not garnered any bipartisan support but Democratic leaders are moving their chambers forward with a [joint budget resolution](#) for Fiscal Year 2021, which would allow Democrats to approve President Biden's plan without Republican support. A group of Republican Senators last week presented President Biden with a \$618 billion counter proposal and made the case for a bipartisan approach.

The [reconciliation process](#) allows passage in the Senate with a simple majority vote—rather than 60 votes—and offers an expedited legislative process without the ability to filibuster.

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On Thursday, the Senate completed a “vote-a-rama” on the budget resolution and early Friday morning the Senate voted 51-50, with Vice President Kamala Harris casting her first tie-breaking vote, to adopt a budget resolution readying next steps to enact much of the Biden proposal. The House approved the Senate-passed budget resolution later in the day, by a vote of 219 to 209. The budget includes reconciliation instructions setting forth the budget parameters of what the COVID-19 legislative package may include.

The next step will be action by 25 committees across the Hill in writing and marking up pieces of the legislation. The March 14 deadline to extend increased unemployment compensation benefits creates urgency for legislative action.

The American Hospital Association (AHA) has identified and is working to advance a series of advocacy priorities to support hospitals and health systems in the next COVID-19 relief package, including:

- Providing additional funds to the Provider Relief Fund and for vaccine distribution and administration to allow for the continued support of hospitals' COVID-19-related lost revenues; and additional expenses incurred due to purchasing supplies and equipment, staffing, establishing emergency testing and vaccination centers, and constructing and retrofitting facilities; and
- Extending the Medicare sequester moratorium, which expires by March 31, through the remainder of the public health emergency (PHE).

Hospitals continue to highlight the impact of the Medicare Accelerated and Advance Payment program loan and call for action to, at a minimum, delay the repayments which will come due this spring and ultimately work to enact loan forgiveness.

House Committee Examines COVID-19 Vaccine Supply and Distribution

On Tuesday, the House Energy & Commerce Subcommittee on Oversight held a [hearing](#) entitled, "No Time to Lose: Solutions to Increase COVID-19 Vaccinations in the States." Witnesses representing State government and departments of health discussed the importance of non-pharmaceutical COVID-19 guidance from the federal government and improvements in data tracking. They also emphasized the need for continued funding for the National Guard and increasing the vaccine supply to ensure marginalized communities are not left behind.

The Biden Administration will begin distributing a limited number of COVID-19 vaccine doses directly to retail pharmacies across the nation. Only about one million doses per week will be made available through the new program at first. Vaccinations will start on February 11, and CVS Health said it will begin offering shots to “eligible populations” using doses from the federal program on the first day.

At a White House briefing, coronavirus response coordinator Jeff Zients said states will be fully repaid for emergency resources and services they’ve purchased or provided since the beginning of the pandemic. Examples include masks, gloves, and mobilizing the National Guard.

Additionally, on Wednesday, the House Energy and Commerce Subcommittee on Health held a [hearing](#) titled “Road to Recovery: Ramping Up COVID-19 Vaccines, Testing, and Medical Supply Chain.” The hearing focused on issues such as what is needed to improve testing and vaccine distribution. The Biden administration plans to sign Defense Production Act contracts with six diagnostic companies to increase manufacturing of COVID-19 home tests, with the goal of making 61 million point-of-care or at-home tests available by the end of summer. Andy Slavitt, a senior adviser to the White House's COVID-19 response team, announced Friday that the Pentagon has approved the deployment of more than 1,000 active-duty troops to help deliver COVID-19 vaccines.

Federal Issues

Regulatory

Federal Court Delays Major Part D Rebate Rule Provision until 2023

The most significant provision in a Trump administration-finalized rule will not take effect until 2023, under an order dated January 31 by the U.S. District Court for the District of Columbia.

Why this matters: The provision would have removed the existing safe harbor under the Anti-Kickback Statute that allows for pharmaceutical manufacturer discounts to be provided in relation to Medicare Part D plans. The removal of the safe harbor is estimated to increase premiums for Medicare Part D beneficiaries and cost taxpayers more than \$200 billion.

Next Steps: The decision, which the parties in the case supported including the Justice Department, clears the way for the Department of Health and Human Services to spend time reexamining the final rule and potentially rescinding or amending it, as well as to coordinate policy with CMS, which importantly manages and oversees the Part D program. Other provisions - two new safe harbors that plans may use in lieu of the potentially removed safe harbor - are delayed until March.

Insurer Perspective: AHIP President and CEO Matt Eyles issued a [statement](#) in support of delaying the rule's effective date, further urging the Administration to fully withdraw it.

Executive Order Directs Public Charge Rule Reexamination

Following an Executive Order last week to “reconsider rules and other policies that limit Americans’ access to health care and consider actions that will protect and strengthen that access,” the White House issued another order that orders an “immediate review” of the so-called public charge rule finalized by the Department of Homeland Security.

The rule is the subject of several legal challenges currently underway and potentially denies immigration status adjustments such as green cards to immigrants based on their actual or potential receipt of public benefits including Medicaid. In addition to leading to rulemaking, the order could change the Justice Department's positions defending the rule in courts, which would likely make the cases moot.

The public charge rule is thought by some policy experts to have a “chilling effect” that caused a decline in the insured population by both adults and children, even as the economy was strong before the COVID-19 pandemic.

State Issues

Pennsylvania

Legislative

Governor Unveils Budget for 2021-2022 Fiscal Year

Last week, Governor Wolf [presented](#) his proposed budget for the 2021–2022 fiscal year.

Governor Wolf's [budget proposal](#) would increase General Fund spending by nearly \$3.8 billion or 11.1 percent. The spending plan advances his budget priorities, including \$1.3 billion for education, a minimum wage increase, and additional resources to support infrastructure, workforce development, job creation, and protecting vulnerable populations.

Central to Governor Wolf's proposal are new sources of revenue, including an increase in the Personal Income Tax and a severance tax on natural gas, as well as the legalization of recreational cannabis. The Governor's proposal also includes significant emphasis on workforce, and it also promotes the buildout of broadband infrastructure.

Other notable items outlined in Governor Wolf's budget proposal:

- Preserves traditional funding sources for hospitals
- Maintains level-funding for Medical Assistance supplemental payments for critical access hospitals, obstetrics/neonatal units, burn care centers, and trauma centers
- Preservation of Tobacco Settlement uncompensated care dollars
- No changes to the Quality Care Assessment
- The commonwealth will receive enhanced FMAP, available as a result of the federal Public Health Emergency (PHE) designation, for the entire fiscal year
- An increase in the minimum wage to \$12 per hour by July 1, 2021, with annual increases of 50 cents to reach \$15 per hour by July 1, 2027
- \$8.3 million to support ten county and municipal health departments throughout the state (including support for the establishment of the Delaware County Health Department during January 2022) to fight against COVID-19
- Significant investment in workforce development through the existing Keystone Economic Development and Workforce Command Center, which would be funded through a severance tax on natural gas extraction
- The legalization of recreational cannabis, but no further details about the initiative were given

Budget materials are available [online](#).

House and Senate Appropriations Committees will hold budget hearings to review the administration's budget requests. The [Senate budget hearing schedule](#) has been released. The House Appropriations Committee has not released its schedule.

State Legislative Actions: Vaccine Distribution, COVID-19 Relief, and Constitutional Amendment

[House Bill 326](#), sponsored by Rep. Tim O'Neal (R-Washington), was unanimously voted out of the House. The original bill directed the Pennsylvania National Guard (PANG) to set up and operate mass vaccination sites in every county of the commonwealth. After outreach by hospitals and other stakeholders to lawmakers, the sponsor of the bill agreed to an amendment that changes the bill to:

- Direct PANG to work with the Department of Health and the Pennsylvania Emergency Management Agency to establish a regional plan for the distribution and administration of vaccines;
- Require the Governor to submit a report to the General Assembly outlining how PANG has been integrated into the commonwealth's vaccine distribution plan; and
- Remove the language mandating PANG set up 67 sites, one in every county.

The bill now heads to the Senate for consideration.

[Senate Bill 2](#), sponsored by Sen. Kim Ward (R-Westmoreland) was signed in the House and Senate. House Republicans were joined by four Democrats in supporting a constitutional amendment limiting the powers of the executive branch during emergency declarations. As a constitutional amendment, the bill does not require the Governor's signature but does require voters to approve or reject the measure as a referendum. The referendum could appear on the 2021 May primary ballot.

The constitutional amendment would limit any gubernatorial emergency disaster declaration to 21 days, down from 90 days, and would require the approval of the general assembly to renew any substantially similar declarations moving forward.

[Senate Bill 109](#), sponsored by Sen. Langerholc (R-Cambria), provides for COVID-19 assistance for the hospitality industry, rental, and utility support to be administered by counties, and emergency education relief to non-public schools and higher education. This bill excludes Paycheck Protection Program loans and Federal Economic Impact Payments (stimulus checks) from Pennsylvania Personal Income Tax.

The bill passed the House unanimously and the Senate concurred. The bill now heads to the Governor's desk for his signature.

House Health Committee Holds Public Hearing on COVID-19 Vaccine Distribution

Two of Pennsylvania's COVID-19 vaccine providers testified before the Pennsylvania House Health Committee on February 3 about the challenges they face to administer the vaccine and the need for additional support, communication, and vaccine supply to improve the overall process.

Richard Allen, CEO, Warren General Hospital, and Susan Friedberg Kalson, CEO, Squirrel Hill Health Center, provided testimony about their current vaccination efforts. Allen said Pennsylvania needs "coordinated direction, authority, and resources," to bolster its vaccine response. Rural areas without county health departments, Allen said, need more clarity about the state's upcoming plans for community-wide vaccination clinics, and who will ultimately be in charge of the scheduling and coordinating of those plans.

In addition, the vaccine providers outlined the following priority issues to accelerate the COVID-19 vaccination process:

- **Supply:** The limited federal supply and allocation has a direct impact on hospitals, federally qualified health centers, and other vaccine providers. These providers need enough advance notice about the state's planned COVID-19 vaccine allocation to properly plan, communicate, and manage expectations within their individual communities.
- **Communication:** Vaccine providers need clear direction from the state about their role within the commonwealth's overall plan for community-wide vaccination, such as mass vaccination sites.
- **Resources:** To vaccinate millions of Pennsylvanians, the state's vaccine providers will need additional staffing, resources, and supply to meet this unprecedented public health challenge.

Pennsylvania's Acting Health Secretary Alison Beam and other state health officials testified about the state's vaccine response, discussing the limited federal supply and the state's decision to handle scheduling through [local providers](#) rather than through a statewide registry.

Acting Health Secretary Beam said a statewide registration system would not address the primary challenge of the limited vaccine supply. She said there were additional issues related to interoperability for a statewide registry and that the state is working to make its online tools and provider map more user friendly.

The state Department of Health also updated the committee on the following developments in its COVID-19 vaccination plan:

- The federal government will begin providing notice of vaccine supply three weeks in advance, allowing for better coordination and planning throughout the process;
- The state is evaluating vaccine allocation based on how efficiently providers are able to administer doses and move through their vaccine inventory; and
- Providers do not need to “hold back” second doses of the vaccine, as the state builds both scheduled doses into its allocation plan.

Representatives from Walgreens and CVS Health also provided updates on their role within the state and federal COVID-19 response.

PA Senate Hearing Highlights COVID-19 Vaccination Efforts, Areas to Improve Statewide Distribution

Last week, the Senate Health and Human Services Committee and Senate Aging Committee held a joint hearing on the COVID-19 vaccine distribution in Pennsylvania.

Dr. Robert X. Murphy Jr., executive vice president and chief physician executive, Lehigh Valley Health Network, and Dr. Michael Ripchinski, chief clinical officer at Penn Medicine Lancaster General Health, testified during the [public hearing](#) on behalf of Pennsylvania hospitals.

Dr. Murphy said Pennsylvania’s hospitals and health systems are well-positioned to efficiently administer the COVID-19 vaccine, drawing from years of public health knowledge, deep community partnerships, and a clear capacity to scale up their vaccination efforts to inoculate thousands of Pennsylvanians.

Dr. Ripchinski said collaboration between the Department of Health, local municipalities, and the health care system is critical during this stage of the pandemic. The sudden expansion of the first priority group in Phase 1A has led to frustration among the general public. The small volume of vaccines available at multiple county locations has led patients to sign up for appointments at different pharmacies and physician practices, increasing the risk for wasted vaccine, he said.

During the hearing, lawmakers asked representatives from the Pennsylvania Department of Health about the state’s progress to distribute the COVID-19 vaccine and areas for improvement, highlighting the need to ensure vaccination for residents and staff at long-term care facilities.

Acting Health Secretary Alison Beam said the department is focused on getting Pennsylvanians vaccinated as quickly as possible. She said the department is contemplating a “strategic shift” toward providers who are able to get through their allocations.

Acting Secretary Beam described the balancing act to ensure the vaccine is available throughout Pennsylvania, while rewarding providers who are able to get through their inventory. The state will eventually reach a point where the demand allows all providers to receive larger allocations, but the federal supply has not reached that stage, she said.

In addition, representatives from pharmacies and long-term care facilities also discussed their role in the COVID-19 vaccine administration process and the significant challenges in the initial rollout of the vaccine, specifically noting that Pennsylvania is weeks away from every nursing home receiving vaccines and months away from assisted living facilities being full vaccinated. Because of the many failings in the state's vaccine rollout to date, advocates from the long-term care industry called for creation of an emergency task force to bring all key stakeholders together to develop a more comprehensive plan for distributing vaccines. Similar task forces have been used in other states, such as West Virginia, with good results.

Interested in reviewing a copy of a bill(s)? Access the following web sites:

Delaware State Legislation: <http://legis.delaware.gov/>.

Pennsylvania Legislation: www.legis.state.pa.us.

West Virginia Legislation: <http://www.legis.state.wv.us/>

For copies of congressional bills, access the Thomas website – <http://thomas.loc.gov/>.

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