



Issues for the week ending February 19, 2021

Federal Issues

Legislative

House to Vote on Reconciliation Package

House lawmakers are expected to vote on a budget reconciliation package on Friday, after several House committees finalized their work last week to write the components of the next COVID-19 relief package. Following passage in the House, the relief package will be taken up in the Senate. Despite broad Republican opposition to the package, Senate Democrats remained focused on passing the aid bill by mid-March on a party-line vote if necessary.

- **The Score:** The Congressional Budget Office (CBO) released the cost estimates of the pieces of the COVID-19 relief proposal passed by the [House Energy & Commerce, Ways & Means](#), and [Education & Labor](#) Committees. Over the next 10 years, the proposals from the committees are expected to cost over \$123 billion, over \$877 billion, and over \$293 billion in direct spending, respectively.

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Elsewhere on the Hill

- The Senate HELP Committee announced it will hold a February 23 [hearing](#) on Xavier Becerra's nomination for the Department of Health & Human Services (HHS) Secretary. The Senate Finance Committee, which will ultimately vote on whether to send Becerra's nomination to the Senate floor, will hold a [hearing](#) for Becerra's nomination on February 24.
- The Senate Committee on Health, Education, Labor, and Pensions (HELP) will hold a nomination [hearing](#) for Vivek Murthy to serve as Medical Director in the Regular Corps of the Public Health Service and Surgeon General of the Public Health Service, and Rachel Levine to serve as Assistant Secretary of Health and Human Services (HHS) on Thursday, February 25.
- In other nomination news, President Biden [announced](#) on Friday his selection of Chiquita Brooks-LaSure to serve as the Administrator of CMS, which will require Senate confirmation. Additionally, it has been reported that President Biden has tapped Liz Fowler to lead the Center for Medicare & Medicaid Innovation (CMMI) at CMS.
- House Ways and Means Health Subcommittee Chairman Lloyd Doggett announced that the Subcommittee will hold a [hearing](#) on "The Path Forward on COVID-19 Immunizations" on Friday, February 26.

Democratic Senators Unveil Public Option Bill

On Wednesday, Senators Michael Bennet (D-CO) and Tim Kaine (D-VA) [unveiled](#) an updated version of their [Medicare-X Choice Act](#) for the 117th Congress, including a [summary](#) of the legislation. The proposal aims to create a Medicare Exchange (Medicare-X) public option plan that is initially available on the individual exchange "in areas where there is a shortage of insurers or higher health care costs due to less competition." The bill further calls for adding the public option plan to the Small Business Health Options Program Marketplace and making it available to all Americans by 2025. The bill would expand tax credits to ensure that no person, including those with an offer of employer coverage, must pay more than 8.5% of their income on monthly premiums. To do so, the bill would also eliminate the subsidy cap for people earning 400% of the federal poverty level.

H [America's Health Insurance Plans](#), [Blue Cross Blue Shield Association](#), the [American Hospital Association](#) and many other health industry and employer groups are part of the [Partnership for America's Health Care Future](#) (PAHCF), a coalition dedicated to improving the health care system by building what is already working under our current system to promote affordability and access for all Americans. The PAHCF released a [statement](#) on the reintroduction of the public option proposal in opposition to

“unaffordable, one-size-fits-all government health insurance systems like Medicare-X,” saying we should instead be focusing on improving “what’s working where private coverage, Medicare, and Medicaid work together to expand access to health coverage and care.”

Outlook

- While the Medicare-X Choice Act will be impossible to pass through Congress on regular order, it could potentially be included within a reconciliation package where its chances improve but are not certain.
 - The current “American Rescue Plan” reconciliation package will likely reach the Senate where the bill has the opportunity to be hitched onto the package, but chances of this happening are slim given budgetary guidelines set forth from the Budget Resolution.
 - However, elements of the Medicare-X Choice Act are included within the reconciliation package. Specifically, the expanded tax subsidies mentioned above are included as a two-year measure within the reconciliation package.
 - Congress will have another opportunity to pass a second reconciliation package for the 2022 fiscal year, but it is unclear whether Congress will seek to include health-related matters (like the public option).
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Federal Issues

Regulatory

EEOC Wellness Program Rules On Hold

The impact of the White House’s January 21 memo directing a regulatory freeze on pending health policy regulations continues. Recently, the U.S. Equal Employment Opportunity Commission (EEOC) announced that two final rules posted in January 2021 have been withdrawn from the Federal Register’s docket and formally removed from the EEOC’s website. The two rules are a proposed rule amending regulations under the Americans with Disabilities Act and a proposed rule amending regulations under the Genetic Information Nondiscrimination Act. Together, the rules would have provided clarity around incentives for participatory wellness programs (e.g., rewards for obtaining preventive services), while conforming health-contingent wellness programs (e.g., rewards for obtaining a health outcome) to the levels permitted by existing law under HIPAA as amended by the ACA. The rules would attempt to resolve a gap in regulatory guidance caused by a federal lawsuit that invalidated the agency’s prior interpretations on what constitutes a “voluntary” wellness program. Per the memo, these rules will not be issued unless an agency head or designee appointed by President Biden reviews and approves them. The EEOC’s webpage notes, “The next steps for each rule are under consideration.”

Coronavirus Updates

- The White House announced a series [of new actions](#) to expand COVID-19 testing, improve the availability of tests, and better prepare for the threat of variants. These include:
 - \$650 million to expand testing opportunities for K-8 schools and underserved congregate settings, such as homeless shelters, by establishing regional coordinating centers to organize the distribution of COVID-19 testing supplies and partnering with laboratories to collect specimens, perform tests, and report results to the relevant public health agencies;

- \$815 million to increase domestic manufacturing of testing supplies and raw materials; and
- \$200 million to identify, track, and mitigate emerging strains of SARS-CoV-2 through genome sequencing, in coordination with the CDC.
- The Ad Council, Business Roundtable, the CDC Foundation, the de Beaumont Foundation, and the Robert Wood Johnson Foundation [announced](#) the launch of the [Health Action Alliance](#) (HAA). This new partnership will focus on promoting COVID-19 prevention and vaccine education, strengthening public health infrastructure, and advancing health equity by addressing the needs of disproportionately affected communities. AHIP is proud to partner with the HAA and its mission to improve both vaccine acceptance and health equity. The HAA has created a full suite of [tools and resources](#), including resources in Spanish, to help businesses and organizations educate the public about the COVID-19.
- WHO [granted](#) the Oxford/AstraZeneca coronavirus vaccine an emergency use listing.
- GAO released a new [report](#) on the importance of Medicaid in times of crisis. The report uses the COVID-19 pandemic as a crisis example and offers policy questions and considerations for assessing how Medicaid can help during times of crisis.
- CMS issued a [memo](#) to Dual Eligible Special Needs Plans (D-SNPs), PACE Organizations, and Medicare-Medicaid Plans (MMPs) focused on ensuring equitable access and uptake of the COVID-19 vaccine among dually eligible individuals.
- The White House [announced](#) the U.S. will provide an initial \$2 billion contribution to Gavi, the Vaccine Alliance for the COVAX Advance Market Commitment, the innovative financing instrument of the COVAX Facility. The United States will also take a leadership role in galvanizing further global contributions to COVAX by releasing an additional \$2 billion through 2021 and 2022.
- Pfizer and BioNTech [announced](#) their coronavirus vaccine — which currently needs to be transported in ultra-low temperatures between -80 to -60 degrees Celsius — can actually remain stable at much higher temperatures.

State Issues

Delaware

Regulatory

Governor Signs 7th Modification to Emergency Order

Governor John Carney signed the [Seventh Modification](#) to the [Omnibus Emergency Order](#), increasing gathering limits for indoor events with restrictions in place to prevent spread of COVID-19.

Under the latest order, the limit on gatherings at businesses and other indoor spaces has increased from the current limit of 10 people. The new limit is a maximum of 25 people or 50% of stated fire occupancy restrictions, whichever is less. Organizers may submit a plan to the Division of Public Health (DPH) to host larger events up to 150 people. Outdoor gatherings are limited to 50 people or up to 250 with an approved plan from DPH. The limit for private indoor gatherings or events, such as dinner parties, house parties, and

birthday parties, remains at 10 people. The order also raises the group exercise class capacity to 15 people, excluding staff, with additional restrictions in place.

State Issues

West Virginia

Legislative

House Passes Legislation Impacting PBMs and Price Transparency; Senate Health Committee Advances Telehealth Payment Parity

The West Virginia Legislature completed its first full week of the 2021 Regular Session still running at a full sprint to pass major bills.

Tax Reform

Governor Justice has yet to reveal any details of his proposed phased repeal of the state's personal income tax and how the \$2.1 billion (43% of the general revenue budget) will be accommodated in his plan. The governor did, however, issue a news release late Thursday announcing a variety of proposed business tax reforms designed to incentivize the location of remote workers into the state. The increases to the consumer sales tax and the extension of the sales tax to professional services are key areas of dispute in response to the personal income tax plan. While the governor has yet to introduce his PIT legislation, it is expected in the very near future and will undoubtedly spark a great deal of debate given its wide-ranging effects on the public, business and the state's budget.

The House of Delegates unanimously passed two significant health care bills last week.

Health Costs and Transparency

First, HB 2005, relating to healthcare costs, was passed 96-0. This bill includes far reaching provisions concerning hospital price transparency, requirements for estimated costs of specific services in advance of treatment, requirements governing "surprise billing" that reach beyond the new federal law in this area and also has a requirement for near-real time modifications to health plan network partners to be disclosed online and to plan beneficiaries.

Pharmacy Benefit Managers

The House also unanimously passed **HB 2263** this week by a vote of 99-0. This bill proposes enhanced regulation on pharmaceutical benefit managers, with resulting increased costs and requirements on health plans. Specifically, the bill proposes to require PBMs and health plans to convey 100% of the value of rebates from pharmaceutical manufacturers at the point of sale to the plan member, as well as for PBMs to allow any pharmacy into their networks and to reimburse them at higher levels for both dispensing prescriptions and for the costs of medicines they procure for sale to patients. Additionally, the bill proposes to bring ERISA plans under state regulation in terms of pharmacy benefits for the first time as a result of a recent decision by the US Supreme Court.

A similar bill was passed by the House in 2020 but was not considered in the Senate. This year's bill is much more far reaching in scope.

Telehealth Payment Parity

The Senate Health Committee on Thursday advanced to the full Senate, **SB 1**, proposing to mandate payment parity between in-person health providers and telehealth providers. Legislation enacted on this topic in 2020 left the issue of provider compensation up to negotiations between those providers and health plans. The Senate Health Committee made substantial revisions to the proposed bill and attempted to create new definitions for “existing” and “new” patients for purposes of calculating reimbursements for telehealth visits; proposed to allow prescribers to issue prescriptions for controlled substances over telehealth platforms to current patients; allow for audio only initial visits and; proposed no limits on telehealth visits as long as one in-person visit was made to the provider on an annual basis.

While the Health Committee chairman, Dr. Mike Maroney, attempted to find a compromise solution for health plans in dealing with the parity of payment issue by creating a definitional differentiation between providers with existing patients and telehealth providers with none, this effort appears to have created a potentially complicated and expensive programming and administrative problems for health plans. The House Health Committee and the full House chose not to support payment parity for telehealth in 2020.

Insulin Copay Caps

Legislation is expected to be introduced that proposes a significant expansion of legislation enacted in 2020 to limit the monthly out of pocket costs for insulin products at \$100 to become a new mandated benefit modeled after recent legislation in Connecticut applying a maximum \$25 charge for all types of insulin, diabetes medications, monitoring equipment, and supplies. It is not clear whether this legislative proposal will have the support of Republican leaders.

Insurance Product Innovation Program

The House Banking and Insurance Committee this week endorsed **HB 2221** proposing the creation of an insurance product innovation program in the state. House chairman Steve Westfall is the champion of this initiative, which is modeled after what was enacted in Kentucky. While the bill seems geared toward the property and casualty insurance market, there are no restrictions against health insurance innovations being proposed under its provisions. The bill now goes to the House Judiciary Committee for further review.

Industry Trends

Policy / Market Trends

Campaign for Sustainable Rx Pricing Highlights New Report on Pharma Profits in 2020

The Campaign for Sustainable Rx Pricing (CSRxP) [highlights](#) a new [report](#) from research firm Evaluate Vantage, which lays out the blockbuster year the pharmaceutical industry had in 2020 while the industry repeatedly raised prescription drug prices amid the COVID-19 crisis.

CSRxP's post summarizes key takeaways from the report, including how 2020 was a banner year for the pharmaceutical industry through stock market evaluations, high profits on treatments developed with taxpayer investment, and huge company mergers. CSRxP points out Evaluate Vantage's report comes on the heels of a series of fourth quarter earnings reports from pharmaceutical companies, which demonstrate price hikes continue to support significant profits for brand name drug makers.

The Pennsylvania General Assembly returns to session March 15.

The Delaware Legislature returns to session March 9.

The West Virginia session runs from February 10 through April 10, 2021.

Congress

The U.S. House is in session February 23-26 and the U.S. Senate is in session February 22-26.

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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