

Federal Issues

Legislative

Biden Signs \$1.9 Trillion COVID-19 Package; Announces Details of ACA Tax Credit Implementation

Handing President Biden the first legislative win of his presidency, the House on Wednesday passed a Senate-amended version of the [American Rescue Plan Act of 2021](#), a \$1.9 trillion COVID-19 relief package, which was later signed into law by the president.

The Highlights: The package includes an extension of jobless benefits; direct payments to American households; \$360 billion to state and local governments; expansion of the child tax credit program; and \$25 billion for a stabilization funding to help open childcare centers.

In this Issue:

Federal Issues

Legislative

- Biden Signs \$1.9 Trillion COVID-19 Package; Announces Details of ACA Tax Credit Implementation

Regulatory

- District Court Strikes Down Trump-era ACA Changes
- Biden Administration Removes Public Charge Rule after Supreme Court Dismisses Cases
- HHS Seeks to Include Social Needs Information in Electronic Health Records
- Biden Administration Taps Brakes on CMMI Models
- Coronavirus Updates

State Issues

Pennsylvania

Legislative

- PA Announces Steps to Expand COVID-19 Vaccination

Regulatory

- Annual Autism Spectrum Disorders Coverage - Maximum Benefit Adjustment

West Virginia
Legislative

- Health Care Legislation Advances

Key health provisions include:

- Nearly \$50 billion for COVID-19 testing and contact tracing efforts.
- \$20 billion for vaccine distribution.
- Two years of increased tax credits for individuals to purchase ACA coverage.
- 100% coverage of COBRA premiums through September for workers who have lost jobs due to the pandemic.
- A five-year Medicaid pilot program allowing states to extend postpartum coverage up to a year after birth.
- A Medicaid FMAP increase incentive of 5% for two years for non-expansion states.

Sequester to return? Not included in the package was an extension of the suspension of the Medicare sequester, meaning a 2% cut in funding is set to return on April 1. The House is expected to pass an extension this week, but it is unclear if the Senate will take up additional relief legislation. A large coalition of providers and insurers are [advocating](#) that the suspension be extended before April 1.

Insurers continue to advocate for other issues that were not addressed in the legislation, such as an increase in the Federal Medicaid Assistance Percentage to 12 percentage points, legislation to ease access to telehealth services for Medicare Advantage (MA) enrollees, and ensuring MA program stability, among others.

ACA Tax Credits: The Administration released fact sheets from [HHS](#), [CMS](#), and [ASPE](#) providing details on the implementation of tax credit changes under the law and insights into the anticipated impact for access to coverage and affordability.

- Notably, expanded premium tax credits will be available on healthcare.gov beginning April 1 (state exchanges may implement on different dates).
- Individuals with incomes over 400% federal poverty level will newly be able to access tax credits, eliminating the “subsidy cliff.”
- The law also limits the amount enrollees pay toward the premiums to 8.5% of their household income, based on the cost of the benchmark plan. These changes are effective temporarily for the 2021 and 2022 plan years.
- Data released by HHS and ASPE highlight the potential impact of the law’s changes to tax credits, including state- and count-specific estimates of uninsured who are newly eligible for tax credits or now eligible for \$0 coverage. HHS estimates nearly 15 million people who are currently uninsured will be able to access tax credits.

- The Congressional Budget Office (CBO) expects these changes to extend coverage to about 800,000 uninsured people in 2021, 1.3 million uninsured people in 2022, and 400,000 uninsured people in 2023.

Consumers who are uninsured or enrolled off-exchange may submit an application and enroll in coverage with expanded tax credits. Current enrollees must update their application and reselect their plan, or switch to a new plan, to access expanded tax credits. Consumers have until May 15 to enroll or switch plans under the ongoing 2021 Marketplace SEP. The CMS fact sheet provides answers additional consumer-facing questions about the tax credits.

AHIP President and CEO Matt Eyles issued a statement: “We applaud Congress for protecting and strengthening the coverage on which hundreds of millions of hardworking Americans rely and for providing additional resources to deliver faster, more equitable access to safe and effective COVID-19 vaccines and testing that are essential to saving lives and speeding recovery of our communities.”

Elsewhere on the Hill

- On Tuesday, the Senate Health, Education, Labor and Pensions (HELP) Committee heard from a panel of experts on their experiences on the frontlines of battling the COVID-19 pandemic. The [hearing](#) focused on challenges and strains that were put on the public health and health care system due to the sudden spikes in COVID-19 cases and deaths. Conversation centered on investing in robust public health infrastructures, along with bio surveillance and data analysis, that would better predict and prepare the U.S. for another public health crisis.
- On Thursday, the House Appropriations Committee held a [hearing](#) to examine the impact the coronavirus pandemic has had on the mental health and substance use epidemics that were already plaguing the U.S. prior to COVID-19. Members and panelists discussed a broad range of issues around the spike in mental health, substance abuse and suicides during the pandemic, including the need for early identification of issues before they escalate into a crisis; the overwhelming stress, isolation and unemployment that can lead to greater substance abuse; and trauma faced by parents that impact the children through added stressors and even abuse. Telehealth also was a key topic of conversation with panelists agreeing it has been a silver lining during COVID-19 as more providers and patients have embraced the technology-based services.
- Thursday, the full Senate [voted](#) 51-48 to advance Xavier Becerra’s nomination to be Secretary of Health and Human Services. The procedural vote means that his nomination is formally discharged from the Senate Finance Committee, which split 14-14 on the nomination markup last week. The Senate is projected to vote on final confirmation of Becerra’s nomination next week.

Federal Issues

Regulatory

District Court Strikes Down Trump-era ACA Changes

A federal district court in Maryland ruled that certain administrative changes by the Trump administration to the ACA exchanges were contrary to law or violated the Administrative Procedures Act.

Specifically, the court vacated four provisions of a 2019 final rule:

- (1) Elimination of optional standardized plan options designed to simplify plan choices;
- (2) Requiring additional income verification documentation for consumers seeking premium tax credits;
- (3) Withdrawing from a federal review process of Exchange plan's networks and deferring to state reviews; and
- (4) Providing a standard medical loss ratio credit for quality improvement activities for insurers regardless of whether they spent premium revenue on such activities.

Biden Administration Removes Public Charge Rule after Supreme Court Dismisses Cases

Last week, the Department of Homeland Security (DHS) Secretary Alejandro N. Mayorkas issued a [statement](#) announcing the government will no longer defend the 2019 public charge rule on the basis doing so is “neither in the public interest nor an efficient use of limited government resources.”

Background

- Public charges are barred from receiving a favorable immigration status adjustment like legal permanent residency. In a 2019 final rule, the DHS interpreted public charge criteria more expansively to include noncitizens who receive various government benefits, such as Medicaid or SNAP, for more than 12 months over a three-year period.
- Litigation ensued with cases striking down the rule having reached the U.S. Supreme Court this term under appeal by the Trump administration.

Why this matters: The Supreme Court dismissed the cases after all parties, including the Biden administration, requested dismissal with the Justice Department refusing to defend the rule. On Thursday, DHS published a final rule that officially removes the 2019 final rule from the Federal Register.

As a result, the public charge rule is now no longer in effect and, per the Secretary's statement, “the 1999 interim field guidance on the public charge inadmissibility provision (i.e., the policy that was in place before the 2019 public charge rule) is now in effect.”

HHS Seeks to Include Social Needs Information in Electronic Health Records

As part of an information collection request pursuant to the Paperwork Reduction Act, the Department of Health and Human Services' Office of the National Coordinator for Health Information Technology (HHS-ONC) is considering amending the United States Core Data for Interoperability (USCDI) to include social determinants of health (SDOH) data elements. The USCDI is a standardized set of health data classes and constituent data elements for nationwide, interoperable health information exchange so that information is portable and accessible to patients. For example, USCDI clinical data, if maintained by a payer, must be included in an API available to patients that can be incorporated into a third-party application of the patient's choosing. The HHS-ONC request for comment asked for feedback on creating standardized data elements for social needs. Many providers are increasingly using SDOH screening tools to help patients' access services in the community. The USCDI change would be designed to make this data more standardized and capable of ingestion and use by other providers across the health care system.

HHS-ONC is accepting comments to the [information collection request](#) through May 10, 2021.

Biden Administration Taps Brakes on CMMI Models

In a series of [postings](#) on CMS webpages, the Biden administration has informed stakeholders that it is delaying the implementation of a number of Center for Medicare and Medicaid Innovation (CMMI) models started during the Trump administration.

To date, it appears that the administration has delayed three models:

- 1.) The GEO track of the Direct Contracting Model;
- 2.) The Kidney Care Choices Model; and
- 3.) The Primary Care First – Seriously Ill Population Model.

Why this matters: The delays are part of a broader review of CMMI activity that the agency is currently conducting, according to a statement released to the press. MedPAC and other key Medicare stakeholders have expressed concerns to CMMI in recent months with particular models, the general lack of Medicare savings associated with the models, and with regard to the [total number of models](#).

Coronavirus Updates

- The Centers for Disease Control and Prevention (CDC) released [guidance](#), which recommends vaccinated individuals “refrain” from quarantining and testing if they come into contact with someone with COVID-19 and do not develop symptoms. The guidelines state those who have received their vaccine can socialize with other fully vaccinated individuals and unvaccinated people from a single household who are at low risk for severe COVID-19 indoors without wearing masks or social distancing.
- The Biden Administration [announced](#) an investment of \$250 million to encourage COVID-19 safety and vaccination among underserved populations. The funding will be offered as health literacy grants to localities, who will partner with community-based organizations, to reach racial and ethnic minority, rural and other vulnerable populations. The new initiative – [Advancing Health Literacy to Enhance Equitable Community Responses to COVID-19](#) – is expected to fund approximately 30 projects in urban communities and 43 projects in rural communities for two years.
- The Biden Administration [announced](#) it will expand the Health Center COVID-19 Vaccine Program to 700 additional community health centers (CHCs). The additional 700 health centers invited to participate in the next phase of the program include those that serve high proportions of low-income and minority patients, provide services to rural or frontier populations, operate Tribal/Urban Indian Health Programs, and/or utilize mobile vans to deliver services.
- President Biden [announced](#) he will direct states, territories, and Tribes to make every adult in the U.S. eligible for vaccination no later than May 1. Steps of the strategy include increasing vaccination sites, [eligible vaccine providers](#), and providing tools for easily finding vaccines. The President also laid out new steps to help reopen schools, and steps to continue expanding testing and genomic sequencing.

State Issues

Pennsylvania

Legislative

PA Announces Steps to Expand COVID-19 Vaccination

Governor Tom Wolf and state lawmakers last week outlined Pennsylvania's strategy to expand the COVID-19 vaccine rollout and expressed confidence that all Pennsylvania adults would be eligible to make vaccine appointments starting May 1.

Last Thursday evening, President Joe Biden announced he would direct states to make all adults eligible to receive the vaccine starting May 1. Governor Wolf said he was confident Pennsylvania would meet the May 1 deadline and that the state's COVID-19 Vaccine Task Force was "taking aggressive steps" to get there.

The state's task force announced:

- **Scheduling Phase 1A:** The state is requesting all vaccine providers to make "best efforts to schedule all Phase 1A appointments by the end of the month." To assist this effort, the state plans to provide more notice of upcoming allocations.
- **Mass vaccination clinics:** A portion of the state's future Johnson & Johnson vaccine supply will go to support regional mass vaccination clinics.
- **Frontline workers:** Additional doses of the Johnson & Johnson vaccine will support targeted efforts to vaccinate law enforcement, firefighters, grocery workers, meat-processing workers, and agricultural workers.

By the end of the month, Pennsylvania's allocation of the Johnson & Johnson vaccine will increase to 200,000 weekly doses, Governor Wolf said. Earlier this month, the state directed its initial allocation of the one-dose vaccine to inoculate school and childcare workers, and that effort is ongoing. The order takes effect at 12:01 a.m. on March 16, 2021.

Why this matters: Hospitals are evaluating the impact of this new order on their existing vaccine efforts and how they can best continue to collaborate with the Wolf Administration and the COVID-19 Task Force as the state coordinates the vaccine rollout and provides additional doses to help meet the overwhelming demand.

Regulatory

Annual Autism Spectrum Disorders Coverage—Maximum Benefit Adjustment

Each year the Insurance Commissioner, on or before April 1 of each calendar year, publishes in the *Pennsylvania Bulletin* an adjustment to the autism spectrum disorders coverage maximum benefit. The adjustment is equal to the change in the United States Department of Labor Consumer Price Index for All Urban Consumers (CPI-U) in the preceding year. The published adjusted maximum benefit is then applicable to the following calendar years to health insurance policies issued or renewed in those calendar years.

The CPI-U change for the year preceding December 30, 2020, was an increase of 1.4%. Accordingly, the maximum benefit, previously adjusted to \$42,220 per year, was adjusted to \$42,811 for policies issued or renewed in calendar year 2022.

State Issues

West Virginia

Legislative

Health Care Legislation Advances

The 2021 Regular Session of the West Virginia Legislature passed the halfway point of the 60-day term last week, with Governor Justice promoting his proposed personal income tax reduction and repeal legislation, as well as with regard to the passage of the American Recovery Act in Washington, which prohibits governors from using federal funds to filter through state budgets in a manner that would permit state tax reductions to occur. Meanwhile, the West Virginia Senate and House of Delegates continued to advance major legislation at a record pace, including a number of significant bills impacting health care.

PBM Legislation

HB 2263, proposing new regulations on PBMs and health plans with regard to pharmaceutical rebates and dispensing fees, among other issues, was amended and reported from the Senate Health Committee to the full Senate this past week and will be on passage stage for return back to the House of Delegates this week.

There were two significant modifications to the bill:

- Making it effective for plan years beginning on or after January 1, 2022; and
- Allowing for pharmaceutical rebates due to PBMs to be passed through health plans on an annual basis during the calculation of new premiums under the jurisdiction of the Office of the Insurance Commissioner.

Two significant provisions – a required \$10.49 dispensing fee mandated in the bill and the applicability of the new bill to ERISA plans – remain in the bill as it moves toward passage.

Expanded Alternative Opioid Therapy Mandate

HB 2634 has been endorsed by the House Health Committee and will be passed by the full House of Delegates this week.

This bill proposes to clarify current law to require that up to 20 alternative therapy treatments for physical therapy, occupational therapy, chiropractic, and a range of other therapy modalities can be stacked and maximized at 20 visits for each therapy type rather than a simple total of 20 visits for all types of alternative opioid treatment. The patients seeking “alternative” pain management services would still be permitted to be prescribed opioids while undergoing these treatments.

Expanded Diabetes Coverage Mandate

HB 2708 proposes a significant expansion of the insulin coverage mandate enacted last year by creating a new required treatment model based on a law enacted by Connecticut in 2020. Cost sharing would be limited to \$25 across a wide range of medications, therapies, equipment, and supplies in HB 2708, in contrast to the current state law limiting cost sharing to \$100 monthly for insulin only.

The House Health Committee is expected to consider the bill this week.

Hospital Price Transparency/Surprise Billing

HB 2005 remains lodged in the Senate Health Committee and there are no indications at this time that the bill will be considered in the Senate. This bill proposes to require hospitals to fully disclose their prices on a granular basis and provide estimates for procedures in advance, as well as provisions exceeding the scope of recent federal action in the field of surprise billing and new requirements for health plan network disclosures that go beyond those changes adopted just last year.

Other Issues

- HB 2965, proposing a **coverage mandate for PANS/PANDA cases** was endorsed by the House Health Committee last week and is now under the jurisdiction of the House Finance Committee where the costs to the state's public health plans will be scrutinized.
- SB 39, proposing a relaxing of **prior authorization standards** for screens to determine cancer staging has passed the Senate and has received two references in the House—to the Health and Judiciary committees.
- HB 2876 seeks to **significantly lower the standards for the creation of association health plans** in the state.
- New proposed coverage mandates were introduced last week. SB 589 concerns the **treatment of hypothyroidism** and HB 3091 would mandate a significant **new standard of care for mental health and substance abuse treatment**.
- HB 2776, seeking to **grant insurance coverage status to air medical aviation subscriptions**, was endorsed to the full House by the Judiciary Committee and is on the road to passage in the Senate.
- The Senate Health Committee endorsed a bill (SB 398) proposing a **moratorium on any new local government entities dropping private health coverage in favor of moving into the state's PEIA plan**.

The Pennsylvania General Assembly is in session March 15-18.

The Delaware Legislature is in session March 16-18.

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

Congress

The U.S. House is in session March 16-19. The U.S. Senate is in session March 15-19.

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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