

Federal Issues

Legislative

Lawmakers Release RFI on Public Option

On Wednesday, Senate Health, Education, Labor and Pensions (HELP) Committee Chair Patty Murray (D-WA) and House Energy and Commerce Committee Chair Frank Pallone, Jr. (D-NJ) released a [Request for Information](#) (RFI) from stakeholders on potential federal legislation to develop a public health insurance option.

- **Why it matters:** The move demonstrates responsiveness among committees to one of the key priorities of some Democrats. It is noteworthy, however, that the American Families Plan released last month by President Biden featured long term enhancements to the Affordable Care Act (ACA), but did not include language creating a public option.

The Partnership for America's Health Care Future opposes a one-size-fits-all government insurance system like a public option and supports building on what's working in the health care system to lower costs and expand access to coverage.

The Partnership issued a [statement](#) that details how a public option would come with unaffordable new costs,

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take away coverage choices from consumers, and threaten access to quality care.

Responses to the RFI are due by July 31.

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Senate Confirms CMS Administrator

The Senate on Tuesday confirmed Chiquita Brooks-LaSure to lead the Centers for Medicare & Medicaid Services (CMS). She will oversee President Biden's health care agenda, including building upon the ACA and spearheading Medicaid expansion efforts.

- **Background:** Brooks-LaSure is an experienced health policy staffer who worked in the Health and Human Services Department (HHS) during the Obama administration to implement the Affordable Care Act. She also worked as a staff member for the House Ways and Means Committee, where she overlapped with HHS Secretary Xavier Becerra, who was a member of the committee at the time. Most recently, she was a managing director at health care consulting firm Manatt Health.

HHS also [announced](#) several additional Biden Administration appointments. However, Brooks-LaSure is not the last major health policy appointment from the Biden administration; the Food and Drug Administration (FDA) is still without a nominated appointee to lead it.

Why this matters: The Brooks-LaSure's confirmation allows the Biden administration to move forward on pending policies in development. These include implementing regulations for the No Surprises Act, health equity initiatives, potential policies to respond to the pending U.S. Supreme Court decision in TX v. CA, and advancement of key annual Medicare payment policies.

Senate Committee Advances Bipartisan Health Care Bills

The Senate Health, Education, Labor and Pensions (HELP) Committee last week held a [markup session](#) where it unanimously passed six bipartisan health care bills, including several maternal health proposals.

Highlights of the bills passed:

- [The Maternal Health Quality Improvement Act](#) would authorize new federal grant programs aimed at reducing maternal mortality and to help improve maternal health outcomes for all expectant mothers and their infants.

- [The Rural Maternal and Obstetric Modernization of Services Act](#) would improve rural maternal and obstetric care data, award new rural obstetric network grants, expand existing federal telehealth grant programs, establish a new rural maternal and obstetric care training demonstration and report on maternal care in rural areas.
- [The Supporting the Foundation for the National Institutes of Health and the Reagan-Udall Foundation for the Food and Drug Administration Act](#) aims to advance the public health missions of the Food and Drug Administration and the National Institutes of Health by increasing the transfer authority for funding the Reagan-Udall Foundation for the Food and Drug Administration and the Foundation for the National Institutes of Health.
- [The Promoting Physical Activity for Americans Act](#) would codify the regular updating and publishing of the Physical Activity Guidelines for Americans based on the latest science to guide Americans to live healthier lifestyles.
- [The Dr. Lorna Breen Health Care Provider Protection Act](#) aims to help promote mental and behavioral health among those working on the frontlines of the COVID-19 pandemic. It also supports training for health professionals to prevent suicide and burnout and increases awareness about suicide and mental health concerns among health care professionals.
- [The Providing Urgent Maternal Protections for Nursing Mothers Act](#) provides salaried employees in traditional office environments with adequate break time and a private place to pump breastmilk. The legislation also includes an anti-retaliation enforcement provision to grant women whose workplaces flout the law with pathways to fight for fair compensation and enforcement of the law.

White House Releases 2022 Budget Proposal

The Biden Administration released its Fiscal Year 2022 [budget proposal](#) of \$6 trillion, a significant amount that the President says reflects the challenges facing the country. The budget combines several proposals already announced since taking office, including \$2.3T in infrastructure spending through the American Jobs Plan and \$1.8T in education and human services spending through the American Families Plan on top of \$1.5T in discretionary government spending. \$133.7B would fund the Department of Health and Human Services, including \$6.5B for a research accelerator at NIH (ARPA-H) focused on cancer and other disease treatment as well as a large increase in funding for CDC and notable increases for the HHS Office of Civil Rights and the Office of the Inspector General.

Why this matters: The President's budget proposal serves as a fiscal blueprint for the Administration's policy priorities and signals to Congress the White House key priorities. Although the budget is seen as a wish list and not a legislative vehicle in its own right, it reflects the administration's priorities and is consistent with President's address to Congress at the 100-day mark.

- **While the budget calls on the creation of a public option and a Medicare-at-60 buy-in option,** it does not go into specifics, though it does suggest that drug pricing reform will offset spending on health coverage programs.

- The budget reinforces the administration’s health care priorities to **make permanent the American Rescue Plan Act’s enhanced premium subsidies for individual market coverage to further reduce the uninsured rate permanently.**

The Department of Health and Human Services’ [Budget in Brief](#), states that in Calendar Year 2022, Medicare Advantage (MA) enrollment will pass 29 million beneficiaries, or 49.1% of all Medicare Part A and B beneficiaries. Additionally, the budget recognizes that MA plans’ supplemental benefits have increased while premiums have remained stable. Medicare payments for MA are expected to total \$433 billion in FY 2022. Other Medicare provisions in the budget proposal include:

- Allowing Medicare drug price negotiation for certain high-cost drugs;
- Coverage for dental, hearing, and vision within traditional Medicare;
- Requiring drug manufactures to pay rebates when prices rise faster than inflation.

Regarding the Medicaid program, the Administration’s budget voices support for eliminating Medicaid funding caps for Puerto Rico and other Territories while aligning their matching rate with States and the continuation of the Money Follows the Person demonstration. The budget also calls for “premium-free, Medicaid-like coverage through a Federal public option” for states that have not yet expanded Medicaid.

GOP Leaders Offer an Infrastructure Package Counteroffer without Health Policies

On Thursday, Republican leaders offered a \$928 billion infrastructure counteroffer to President Joe Biden’s \$1.7 trillion proposal. The plan, put forward by a group led by GOP Sen. Shelley Moore Capito of West Virginia, includes funding for roads, bridges and major infrastructure projects. The plan is focused on traditional forms of infrastructure compared to the “human” or “soft” infrastructure policies included within the Biden administration’s initial proposal such as an expansion of home and community-based services for Medicaid beneficiaries. The Republican counteroffer is more than \$1 trillion short of Biden’s latest proposal, illustrating how far apart the two sides are on the size of the package, how to define infrastructure, and how to fund the investments. The White House thanked Sen. Capito for the counteroffer and stated it will continue to explore other proposals that may emerge.

Federal Issues

Regulatory

EEOC Issues Updated COVID-19 Technical Assistance on Vaccines

The U.S. Equal Employment Opportunity Commission (EEOC) posted updated and expanded [technical assistance](#) related to the COVID-19 pandemic, addressing questions arising under the federal equal employment opportunity (EEO) laws. The EEOC also posted a new [resource](#) for job applicants and employees, explaining how federal employment discrimination laws protect workers during the pandemic.

These two publications follow an [EEOC hearing on April 28](#) on the impact of the COVID-19 pandemic on civil rights in the workplace at which the EEOC heard from a wide range of experts. They were prepared prior to the [CDC’s new guidance for fully vaccinated individuals](#) issued on May 13, 2021, and do not specifically address that new guidance.

Why this matters: The expanded technical assistance provides new information about how the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA) apply when an employer offers incentives for employees to provide documentation or other confirmation of vaccination when an employee gets a vaccine in the community or from the employer or its agent. The technical assistance answers COVID-19 questions only from the perspective of the EEO laws.

The key updates to the technical assistance are summarized below (start with section K.1 in the EEOC Website):

- Federal EEO laws do not prevent an employer from requiring all employees physically entering the workplace to be vaccinated for COVID-19, so long as employers comply with the reasonable accommodation provisions of the ADA and Title VII of the Civil Rights Act of 1964 and other EEO considerations. Other laws, not in EEOC's jurisdiction, may place additional restrictions on employers. From an EEO perspective, employers should keep in mind that because some individuals or demographic groups may face greater barriers to receiving a COVID-19 vaccination than others, some employees may be more likely to be negatively impacted by a vaccination requirement.
- Federal EEO laws do not prevent or limit employers from offering incentives to employees to voluntarily provide documentation or other confirmation of vaccination obtained from a third party (not the employer) in the community, such as a pharmacy, personal health care provider, or public clinic. If employers choose to obtain vaccination information from their employees, employers must keep vaccination information confidential pursuant to the ADA.
- Employers that are administering vaccines to their employees may offer incentives for employees to be vaccinated, as long as the incentives are not coercive. Because vaccinations require employees to answer pre-vaccination disability-related screening questions, a very large incentive could make employees feel pressured to disclose protected medical information.
- Employers may provide employees and their family members with information to educate them about COVID-19 vaccines and raise awareness about the benefits of vaccination. The technical assistance highlights federal government resources available to those seeking more information about how to get vaccinated.

CMS Delays Part of Medicaid Best Price Rule

CMS published [a proposed rule](#) delaying the enactment of two provisions of a Trump-era policy that modified the Medicaid "best price" rule to incentivize value-based purchasing arrangements for prescription drugs. Drugmakers were originally required to report multiple best prices charged for a drug in a value-based purchasing arrangement beginning in January 2022.

The proposed rule would:

- Delay for six months the effective date of manufacturer reporting of best prices connected to a value-based purchasing arrangement. It proposes to delay the effective date from Jan. 1, 2022, to July 1, 2022, so that CMS, states and manufacturers can implement the systems and infrastructure to support value-based purchasing without disrupting patient access to treatment.

- Delay for two years the effective date for the inclusion of the U.S. territories in the regulatory definitions of “States” and “United States” for purposes of the Medicaid Drug Rebate Program. CMS seeks public comment on two options for the effective date: (1) April 1, 2024 and (2) an effective date that is earlier than April 1, 2024, if public comments indicate that the U.S. territories can be ready to participate sooner than April 1, 2024.

Comments to the proposed rule are due June 28.

COVID-19 Updates

- The Department of Health and Human Services (HHS), through the Health Resources and Services Administration (HRSA), [announced](#) it is dedicating \$4.8 billion from the American Rescue Plan to support the HRSA COVID-19 Uninsured Program. This funding will allow the program to continue reimbursing health care providers for testing uninsured individuals for COVID-19. As of May 19, 2021, the program has issued nearly \$4 billion in testing reimbursements to providers.
 - Moderna [announced](#) that its COVID-19 vaccine provided strong protection in teens ages 12 to 17 in a late-stage trial. In the study, no cases of COVID-19 were observed in participants who had received two doses of the Moderna COVID-19 vaccine. The finding could pave the way for the shot to become the second authorized in the U.S. for use in teens, after the Food and Drug Administration expanded authorization of Pfizer's shot to include kids ages 12 to 15.
 - Pfizer [announced](#) a new trial testing the safety of giving patients a pneumonia vaccine along with their COVID-19 booster shot in adults ages 65 and older. The primary objective in the trial is to evaluate safety when both vaccines are co-administered. Other drugmakers, including Moderna and Novavax, are also testing combined formulations that would simultaneously protect against the flu and COVID-19, with some promising results in animal trials.
 - CDC published [clinical considerations](#) for myocarditis and pericarditis following COVID-19 vaccination. Since April 2021, cases of myocarditis and pericarditis have been reported in the United States after mRNA COVID-19 vaccination (Pfizer-BioNTech and Moderna). CDC is aware of these reports, which are rare given the number of vaccine doses administered. Additionally, [resources for the public](#) have been added to CDC's website that can be a resource for patients.
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State Issues

New York

Legislative

Legislative Activity Heats Up as End of Session Approaches on June 10

With the legislature scheduled to adjourn on June 10, there are seven session days remaining on the calendar where both houses can consider and pass bills. The Senate wrapped up regularly scheduled committee meetings last week and the Assembly will finish this week.

Going forward, only Rules, Ways and Means, Codes, and Finance committees will be meeting unless otherwise needed. However, over the next seven days, bills will be “discharged” from their committee of origin and moved directly to the Rules Committee, and then they can be fast tracked on an agenda if they are going to move. Bills currently in Codes, Ways and Means, Rules, or on Third Reading (on an agenda for consideration by the full house) will move with lightning speed.

Meanwhile, legislators continue to introduce new bills and are working to move new priority introductions as quickly as possible.

Legislation scheduled to move in the Assembly this week:

Outpatient mental health – Requires blanket health insurance policies to provide coverage for outpatient treatment by mental health practitioners.

Colorectal cancer screenings – Mandates coverage for colorectal cancer screenings. The bill is in Assembly Codes while Senate bill is in the Insurance Committee.

Mid-year formulary change prohibition -- The Assembly passed the bill last week, which would prohibit health plans from making midyear changes to their drug formulary. It was already passed by the Senate and may be sent to the Governor for consideration at any time. The governor vetoed a similar bill two years ago.

Medically fragile children – The Senate passed the proposal mandating coverage of any services for medically fragile children requested by a clinician. This bill is pending in Ways and Means in the Assembly.

Consumer protections – The Assembly Consumer Affairs Committee advanced the “Consumer and Small Business Protection Act” proposal that would expand protections against unfair, deceptive, or abusive acts to the Rules Committee. The Senate bill is in the Consumer Protection Committee.

Occupational therapy – This bill to allow patients up to ten visits with an occupational therapist without a referral from a physician or nurse practitioner moved in the Assembly Higher Education Committee, advancing to Rules. The Senate bill is in the Higher Education Committee.

Claim notice mandate – A bill to require medical insurance notices to “conspicuously state” whether a claim or a bill has been partially approved or entirely denied was approved by the Assembly Insurance Committee and moved to Rules. The bill has already passed in the Senate.

Opioid treatment copay ban – A proposal to prohibit copayments for treatment at an opioid treatment program advanced from the Assembly Codes Committee to Rules. The Senate bill is in the Insurance Committee.

Pharmacy mail order – This bill that would amend current law to limit pharmacy mail order options for health insurance purchasers advanced from the Assembly Codes Committee to Rules. The Senate bill awaits action by the full house.

PBM regulation – the bill would require licensure of PBMs and would create a fiduciary relationship with health plans. While it is still in committee, sponsors are pushing for passage and it is expected to be considered in the final days.

EMS direct reimbursement – A proposal that would require health plans to directly reimburse emergency medical service providers was moved by the Assembly Local Governments Committee, advanced to Ways and Means. The Senate has already approved the bill.

Regulatory

Small Group and Individual Rate Requests Posted

The Department of Financial Services posted the 2022 Affordable Care Act Rate Applications to the DFS [website](#) Friday. The average weighted increase requested for rates in the individual market is 11.2% and 14.0% in the small group market. This triggers the public comment period, and the required plan notification to members. DFS advised plans that initial notices should be sent to policy/certificate holders as soon as possible, but no later than June 4.

Medicaid Director to Retire

Donna Frescatore, NYS Medicaid Director and executive director of the New York State of Health (exchange) announced her retirement Monday, effective in August, ending a 40-year career in state government.

State Issues

Pennsylvania

Legislative

House Advances Insurance Coverage for Long-Term Antibiotic Treatment for Lyme Disease

On Wednesday, May 26, the House advanced [House Bill 1033](#), (Rapp, R-Warren) on second consideration. House Bill 1033 would require health insurers to cover treatment plans for Lyme disease or related tick-borne illnesses as prescribed by a patient's health care practitioner, regardless if the treatment plan includes short-term or long-term antibiotic treatment.

Highmark and AHN offered support for amendment A01154 (Frankel, D-Allegheny) to House Bill 1033 which would assure coverage for Lyme Disease aligns with the current evidence-based medicine and guidelines rather than mandate coverage for long-term antibiotic therapy. Amendment A01154 would also strike the specific physician immunity provision from House Bill 1033. This provision would grant immunity to physicians who follow treatment protocols outside of the clinical evidence, such as long-term antibiotic therapy for Lyme Disease.

Amendment A01154 failed by a vote of 89(Y)/112(N). House Bill 1033 now moves to third consideration for a final vote in the House. If the bill passes after third consideration, it will move to the Senate and referred to a committee with jurisdiction.

Why this matters: Long-term antibiotic therapy does not align with the current clinical practices for the treatment of Lyme Disease and in some cases poses significant harm to patients.

Senate Committee Advances Health Care Innovations Retention Act

On Monday, May 24, the Senate Health and Human Services Committee advanced [Senate Bill 671](#) (Hutchinson, R-Venango) which would extend COVID-19 waivers and administrative flexibilities afforded to health care professionals and administrative officials for an additional one year. Senate Bill 671 would also direct the Joint State Government Commission, with the assistance of health care professionals and administrative officials, to research and compile a compilation of these flexibilities and waivers and make recommendations as to which waivers and administrative flexibilities should permanently remain in place.

Why this matters: This legislation seeks to extend flexibilities for the health care delivery system granted during the COVID-19 pandemic.

The Pennsylvania General Assembly returns to session June 7.

The Delaware Legislature returns to session on June 8.

The New York Legislature is in session June 1-3.

The West Virginia Legislature concluded session on April 10.

Congress

The U.S. House has committee work only June 7-11. The U.S. Senate has committee work only June 7-11.

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

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

New York Legislation: <https://nyassembly.gov/leg/>

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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