



## Federal Issues

### Regulatory

#### **HHS Renews Public Health Emergency**

On October 13, HHS Secretary Xavier Becerra renewed the Public Health Emergency for the tenth time. The renewal will last for 90 days, until January 2023. The declaration can be found [here](#).

**Why this matters:** The renewal means, among other things, the continued availability of free COVID-10 vaccines and tests nationwide, continued enhanced matching funds for state Medicaid agencies and retention of coverage for millions of Medicaid enrollees, continued emergency authorization of COVID-19 vaccines, and extension of certain waivers to permit telehealth access, particularly for Medicare beneficiaries.

The renewal gives the administration and stakeholders additional time to evaluate post-pandemic policies and contingency plans when the PHE expires

**Next Steps:** The Administration has stated it will provide states and other stakeholders with at least 60 days' notice prior to the termination of the COVID-19 PHE declaration. The 60-day deadline notice date is now November 12, 2022.

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## **Biden Administration Issues Final Rule to Fix the “Family Glitch”**

The U.S. Department of the Treasury and Internal Revenue Service (IRS) issued a pre-publication [version](#) of the final rule on Affordability of Employer Coverage for Family Members of Employees to fix the “family glitch” in the Affordable Care Act (ACA), amending how premium tax credits (PTCs) are calculated for employee dependents under employer-sponsored coverage.

**Why this matters:** According to the administration’s estimates, fixing the glitch would help about 1 million Americans gain health insurance coverage or see their coverage become more affordable, starting in 2023 when the rule takes effect.

The final rule adopts, as proposed, three changes to fix the family glitch. First, it adopts a separate affordability test for an employee’s spouse and dependents (“related individuals”) to determine whether an offer of employer-sponsored coverage is affordable based on the cost of family coverage. Second, it clarifies the minimum value rule for family coverage. Third, it finalizes both the proposed minimum value rule for employees related to inpatient hospitalization services and physician services and the proposed clarification of the premium refund rule.

**The details:** The final rule was largely consistent with the proposed rule, issued in April. Under the final rule:

- **Employee:** Exchanges will continue to determine eligibility based on the cost of self-only coverage.
- **Employee’s dependents:** Affordability is based on comparing the cost of family coverage to the tax household’s total income and granting eligibility tax credits if the cost exceeds 9.61%.
- **Employers:** Employers will continue to face shared responsibility payments only if employees receive a tax credit.

**What’s next:** The Department of Health and Human Services (HHS) is working to implement changes to the affordability test for related individuals ahead of open enrollment for plan year 2023, which begins on November 1.

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## **President Biden Signs Executive Order on Lowering Drug Prices**

President Biden signed an [Executive Order \(EO\)](#) that directs the Department of Health and Human Services (HHS) to take further action to lower prescription drug costs. The Executive Order is designed to further

accelerate prescription drug reforms, primarily through the Medicare program, beyond those enacted as part of the Inflation Reduction Act.

**Why this matters:** The EO asks HHS to submit a report in 90 days detailing their plan for the Center for Medicare and Medicaid Innovation (CMMI) to test health care payment and delivery models that would lower drug costs and promote access to innovative drug therapies for beneficiaries enrolled in the Medicare and Medicaid programs. This includes models that may lead to lower cost-sharing for commonly used drugs and support value-based payment that promotes high-quality care.

Additionally, the White House released a [fact sheet](#) on the actions proposed in the EO to lower prescription drug costs and changes that will take effect this Medicare enrollment period as a result of the IRA.

**Background:** As a reminder, the key reforms under the Inflation Reduction Act are:

- Capping a month's supply of insulin to \$35 starting on January 1, 2023.
- Eliminating cost-sharing for Medicare beneficiaries for recommended adult vaccines covered by their Part D plan, including the shingles vaccine – which costs seniors up to \$200.
- Requiring Medicare to select a limited number of high-cost drugs for price negotiation and requiring drug manufacturers to pay Medicare a rebate if they raise their prices faster than inflation
- Capping total out-of-pocket costs for Part D beneficiaries to \$2,000 through a phased-in approach and allowing beneficiaries to pay high cost-sharing for a single prescription over time rather than in a lump sum.

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## **CMS Establishes the Medicare Drug Rebate and Negotiations Group within the Center for Medicare**

Through a Federal Register publication, the Department of Health and Human Services announced the creation of the Medicare Drug Rebate and Negotiations Group within the Center for Medicare (CM). This action, that took effect October 8, is designed to implement the Drug Price Negotiation Program and the Inflation Rebate Program in Medicare Part B and Part D as authorized under the Inflation Reduction Act of 2022 enacted in August. CMS is responsible for implementing these new programs. The new group will negotiate drug prices with pharmaceutical manufacturers for certain Part B and Part D drugs, among other functions. A [full list](#) of designated tasks for the group is available in the Federal Register posting.

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## **FDA Authorizes Pfizer and Moderna Omicron Boosters for Children**

The FDA [granted emergency use authorization \(EUA\)](#) to Pfizer-BioNTech's bivalent booster for children ages five and up. The FDA also authorized Moderna's bivalent booster shot for children ages six and up. The Centers for Disease Control and Prevention (CDC) [recommended](#) the expanded use of the boosters as well. These boosters are designed to target the BA.4 and BA.5 omicron subvariants of COVID-19. Previously, the Pfizer-BioNTech booster was authorized for children 12 and up, and Moderna's booster was only authorized for adults. The expanded EUAs come as the Biden Administration urges booster shots as

part of its fall vaccination campaign, though only 5% of the eligible U.S. population has [received the booster so far](#).

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## State Issues

### New York

#### Legislative

#### **Chest Wall Reconstruction Mandate Bill Signed**

Governor Hochul signed the bill mandating coverage of chest reconstruction surgery (A.8537/S.7881). Announcing the new law as part of ongoing recognition of Breast Cancer Awareness Month, the Governor [promoted](#) it as an effort to ensure that breast cancer survivors who choose to have chest reconstruction surgery “have proper insurance coverage.”

The NYS Health Plan Association, in both its opposition letter urging a veto as well as a press [statement](#) responding to the signing, noted that health plans provide coverage to a full array of medical care for women undergoing treatment for breast cancer and currently cover post-surgical treatments, including reconstructive surgery and chest wall reconstruction.

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## Industry Trends

### Policy / Market Trends

#### **Surprise Billing Laws in CA and NY Led to Dramatically Different Costs for Patients**

The Coalition Against Surprise Medical Billing (CASMB) released a new [blog](#) highlighting a study published in [Health Affairs](#) comparing medical billing policies in New York and in California.

In New York, out-of-network bills have increased by 24%, where existing state law allows the arbitration process to rely on billed charges. Certain providers may be taking advantage of this process by increasing the charges they bill in order to receive greater pay-outs for out-of-network bills or to raise the arbitration benchmark value. These are exactly the kinds of harmful billing practices the *No Surprises Act* sought to end.

In comparison, in California, where a payment standard is used in arbitration, out of-network bills decreased by 25% -- saving patients money and protecting consumers from unfair medical bills.

CASMB will continue to support the implementation of the *No Surprises Act* as Congress intended to protect patients from unfair and unwarranted surprise bills while lowering health care costs.

Read the full [blog](#) online.

**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](http://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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