



## Health Policy Briefing

September 28, 2020

### House Passes CR to Fund Government Through Dec. 11

The House of Representatives has passed, by a voice vote of 359-57, H.R. 8337, which would extend current levels of federal funding through December 11. Lawmakers were able to reach an agreement on the inclusion of nutrition assistance and trade relief payments for farmers in the final deal. The bill extends the Medicare geographic practice cost index (GPCI) floor and a number of health care programs, including community health centers, the National Health Services Corps, Teaching Health Centers, and the Special Diabetes Program, that were set to expire on November 30, and averts a \$50 increase in 2021 Medicare Part B premiums. It would instead limit any increase in Medicare premiums to around \$4 a month. It would also extend the time in which Medicare health care providers must repay accelerated and advanced payments, and reduce the interest rate of those loans to 4 percent until the current public health emergency end. The Senate has scheduled a procedural vote on Tuesday for the continuing resolution (CR) with a final vote expected on Wednesday, September 30 – just before the end of the fiscal year.

### President Unveils Executive Order on Preexisting Conditions, Surprise Billing

The President issued a new [executive order](#) (EO) regarding protections for Americans with preexisting conditions and surprise medical billing. The EO, which includes the two directives, forms the “America First Health Plan” unveiled by President Trump during an event in North Carolina on Thursday, which the President had previewed as his replacement plan for the Affordable Care Act (ACA). The first directive calls on Congress to pass a legislative fix to hold patients harmless from surprise medical bills and states that the administration will take regulatory action to ban surprise medical bills if lawmakers are not successful by the end of the year. Policymakers are still

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at odds over how to resolve payment disputes that arise between providers and payers in the case of surprise insurance gaps. The second directive would declare it national policy to protect coverage of people with preexisting health conditions, without any additional specifics. The order comes as the White House supports a Supreme Court challenge to the ACA that could result in the law's consumer protections being struck down. The high court is scheduled to hear the challenge just a week following the November elections. Should the 2010 health care law be declared unconstitutional, the administration would have to work with Congress to pass legislation to make the EO policy enforceable. During the event on Thursday, the President also promised to send \$200 drug discount cards to the nation's 33 million Medicare beneficiaries before the election. The cards would be paid for using projected savings from the administration's recently announced "most-favored nation" drug pricing demonstration.

### ***Trump Nominates Amy Coney Barrett to the Supreme Court***

President Trump has nominated Judge Amy Coney Barrett to the Supreme Court of the United States (SCOTUS). Barrett is a judge on the U.S. Court of Appeals for the Seventh Circuit, a position that required confirmation by the Senate in 2017, who clerked for the late Justice Antonin Scalia. If confirmed, she would fill the vacancy created by the late Justice Ruth Bader Ginsburg and strengthen the conservative majority on the court.

Supreme Court nominees require the support of a simple majority of the Senate. While Senate Majority Leader Mitch McConnell (R-Ky.) has said that he will hold a vote on Barrett's confirmation before the end of the year, it would be possible for the chamber to confirm Barrett in the time before the November 3 election if lawmakers move her nomination quickly. The confirmation process involves one-on-one meetings between the nominee and senators followed by a week of hearings before the Senate Judiciary Committee and a vote two weeks later on the Senate floor. Senate Judiciary Committee Chairman Lindsey Graham (R-S.C.) has stated that the confirmation hearings on Amy Coney Barrett's nomination to the Supreme Court will start October 12 and he expects to report out the nomination by October 22 for consideration by the full Senate.

Senate Democrats are unified in their opposition to any SCOTUS nominee considered before the election.

### ***Bipartisan Lawmakers Urge Fix to PFS Budget Neutrality Cuts***

A bipartisan group of 160 House members have [written](#) to U.S. Department of Health and Human Services (HHS) Secretary Alex Azar and Centers for Medicare and Medicaid Services (CMS) Administrator Seema Verma expressing concerns about the statutory budget neutrality requirements of the physician fee schedule (PFS). CMS will implement new Medicare payment policies for office and outpatient visits on January 1, 2021 that will result in payment cuts for certain other specialties. The lawmakers ask the administration to "engage with stakeholders in establishing fair and equitable payment solutions that address Medicare payment cuts," while at the same time "moving forward with policies to increase payments to primary care and other office-based specialties." The letter cites the need to protect patient access to medically necessary services given the unprecedented public health and economic challenges currently facing physicians and other health care providers due to the COVID-19 pandemic.

### ***House to Consider Health Bills and Possibly COVID-19 Relief Package This Week***

The House returns to session on Tuesday to consider 27 bills on the suspension calendar. Health bills to be considered include the ***TRANSPLANT Act*** (H.R. 4764), ***Creating Hope Reauthorization Act*** (H.R. 4439), ***EARLY Act Reauthorization*** (H.R. 4078), ***Helping MOMS Act*** (H.R. 4996), ***School-Based Allergies and Asthma Management Program Act*** (H.R. 2468), ***South Asian Heart Health Awareness and Research Act*** (H.R. 3131), ***Family Support Services for Addiction Act*** (H.R. 5572), ***School-Based Health Centers Reauthorization*** (H.R. 2075), ***Pursuing Equity in Mental Health Act*** (H.R. 5469), ***Mental Health Services for Students Act*** (H.R. 1109), ***Improving Mental Health Access from the Emergency Department Act*** (H.R. 2519), ***Effective Suicide Screening and Assessment in the Emergency Department Act*** (H.R. 4861), ***STANDUP Act*** (H.R. 7293), and ***Behavioral Intervention Guidelines Act*** (H.R. 3539). In addition, House Majority Leader Steny Hoyer (D-Md.) noted possible consideration of COVID-19 legislation later in the week.

## ***HHS Released Additional Details on the CARES Act Provider Relief Fund Reporting Requirements***

The CARES Act Provider Relief Fund (PRF) has provided funding to assist providers who have increased expenses or revenue losses due to the COVID-19 pandemic. The program details requirements primarily through the various Terms and Conditions, and those suggest extensive reporting requirements for the program. In July, the U.S. Department of Health and Human Services (HHS) provided additional clarity regarding the [reporting requirements](#). As part of the notice, HHS stated: “The purpose of this notice is to inform PRF recipients that received one or more payments exceeding \$10,000 in the aggregate from the PRF of the timing of future reporting requirements.” These revised requirements have lowered the threshold – from \$150,000 in the Terms and Conditions to \$10,000 in the notice. On September 19, HHS released [additional details](#) regarding the specific reporting elements. Of note, with respect to the revenue losses, the reporting requirements state that “PRF payment amounts not fully expended on health care related expenses attributable to coronavirus are then applied to lost revenues, represented as a negative change in year-over-year net patient care operating income (i.e., patient care revenue less patient care related expenses for the Reporting Entity, defined below, that received funding), net of the health care related expenses attributable to coronavirus calculated under step 1. Recipients may apply PRF payments toward lost revenue, **up to the amount of their 2019 net gain from health care related sources. Recipients that reported negative net operating income from patient care in 2019 may apply PRF amounts to lost revenues up to a net zero gain/loss in 2020.**” (emphasis added) In addition, HHS detailed the other sources of 2020 revenue to help ensure that any payments from the fund are not used to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse. A short summary of the reporting requirements can be found [here](#). Shortly after the release of this information, HHS further [clarified](#) the timeframe for these reporting requirements. All recipients must submit a report by **February 15, 2021**, and this can be a final report if all funds have been expended by December 31, 2020. Otherwise, the final report deadline is **July 31, 2021**. The portal for report submission will be open as of **January 15, 2021**.

### ***Lawmakers Question COVID Test Coverage***

Sens. Maggie Hassan (D-N.H.), Ron Wyden (D-Ore.), and Patty Murray (D-Wash.) have sent a [letter](#) concerning individuals who are being charged for coronavirus diagnostic tests. Their letter to Aetna President Karen Lynch asks her to confirm that customers will not be required to pay out-of-pocket for a COVID test. The CARES Act requires health insurers to cover certain testing costs, but the lawmakers cite reports of insured individuals receiving unexpected bills for their COVID-19 diagnostic tests.

### ***Lawmakers Continue to Probe Political Interference at CDC***

The House Select Subcommittee on the Coronavirus Crisis has reiterated its request to speak with administration officials regarding political meddling with the Centers for Disease Control and Prevention’s (CDC) Morbidity and Mortality Weekly Reports. Chairman Jim Clyburn (D-S.C.) has sent another [letter](#) to U.S. Department of Health and Human Services Secretary Alex Azar underscoring the seriousness of the investigation and arguing that “it would be highly inappropriate for the Department to prevent CDC and HHS employees from speaking to the Select Subcommittee.” HHS recently declined to make officials available for interviews. House Energy and Commerce Chair Frank Pallone (D-N.J.), Health Subcommittee Chair Anna Eshoo (D-Calif.), and Oversight Subcommittee Chair Diana DeGette (D-Colo.) have sent a related [letter](#) to the Health and Human Services Office of the Inspector General (OIG) requesting an investigation into political interference by the White House into the scientific work of the CDC.

### ***GAO Releases Third Set of Coronavirus Response Recommendations***

In its third report on the administration's response to the coronavirus pandemic, the Government Accountability Office (GAO) is recommending that the White House share its COVID-19 vaccine distribution plan with the nation. The agency recommends that U.S. Department of Health and Human Services (HHS) Secretary Alex Azar work with Defense Secretary Mark Esper to publish the plan. GAO asserts that the plan should include time frames so that Americans can best begin planning for a vaccine. The report also recommends that HHS, the Centers for Disease Control and Prevention (CDC), and the Centers for Medicare and Medicaid Services (CMS) develop a strategy to collect more complete demographic data on COVID-19 cases and deaths, that the Office of Management and Budget (OMB) and the Treasury Department should issue audit guidance for COVID-19 related programs as soon as possible, and that the CDC should make sure that its guidance on reassessing schools' operating status is clear and consistent.

### ***Pascrell to Chair Ways and Means Oversight Panel***

Rep. Bill Pascrell, Jr. (D-N.J.) has been named chairman of the House Ways and Means Subcommittee on Oversight. Pascrell will succeed the late Rep. John Lewis (D-Ga.), who passed away in July. Pascrell has vowed to hold President Trump's White House accountable and ensure that the administration is implementing the laws under Ways and Means' jurisdiction efficiently and according to congressional intent.

### ***House GOP Push for Stand-Alone Extension of PPP***

Rep. Jaime Herrera Beutler (R-Wash.) has introduced a discharge petition to force a vote on the floor of the House of Representatives to extend the Paycheck Protection Program (PPP). Should the petition garner 218 signatures from lawmakers in the House, the chamber would be compelled to vote on a bill that would distribute the remaining \$124 billion in current the PPP's reserve funding following the program's expiration on August 8.

### ***HHS Personnel Update***

Emily Newman and Catherine Granito have been transferred to the U.S. Agency for Global Media from their positions as liaisons between the White House and the U.S. Department of Health and Human Services (HHS). The move was a joint decision by the White House and HHS, according to officials in the administration.

### ***CBO Releases 2020 Long-Term Budget Outlook***

The Congressional Budget Office (CBO) has released its latest budget forecast projecting that the federal debt will nearly double gross domestic product (GDP) by 2050. The [2020 Long-Term Budget Outlook](#) estimates that debt will rise to 98 percent of GDP by the end of this year, from 79 percent prior to the pandemic in 2019, and reach 195 percent of GDP by 2050 – far exceeding the nation's previous record of 106 percent following World War II. CBO's report projects that mandatory government spending will increase from 13 percent of GDP last year to 17.5 percent in 2050. Interest on the debt is expected to quadruple as a percentage of GDP in the same time period – from 1.8 percent of GDP in 2019 to 8.1 percent of GDP in 2050, exceeding all discretionary spending by 2043.

***Hart Health Strategies COVID-19 Resources***

Hart Health Strategies Inc. continues to update the following resources related to the coronavirus pandemic. Please remember to clear your cache to ensure you download the most recent documents.

- [COVID-19 Testing](#)
- [Disaster Primer](#)
- [Federal Relief Overview](#)
- [Health Care Workers on the Front Lines](#)
- [Hospice and Palliative Care](#)
- [Nursing Resources](#)
- [Personal Protective Equipment](#)
- [Physician Provisions](#)
- [Re-Opening America](#)
- [Small Business Resources](#)
- [Small Business - Paycheck Protection Program](#)
- [Small Business – PPP FAQ](#)
- [State Resources](#)
- [Tax Provisions](#)
- [Telehealth Overview](#)

***Upcoming Congressional Hearings and Markups***

***House Oversight and Reform Committee hearing “Unsustainable Drug Prices: Testimony from CEOs, Part I;” 10:00 a.m., remote; September 30***

***House Veterans’ Affairs Health Subcommittee hearing “MISSION Critical: Assessing Community Care Wait Times;” 10:00 a.m., House Visitors Center Room 210; September 30***

***House Energy and Commerce Subcommittee on Oversight and Investigations hearing “Pathway to a Vaccine: Ensuring a Safe and Effective Vaccine People Will Trust;” 11:30 a.m., remote; September 30***

***House Veterans’ Affairs hearing “Examining VA’s Ongoing Efforts in the Electronic Health Record Modernization Program;” 2:30 p.m., House Visitors Center Room 210; September 30***

***Senate Armed Services Readiness and Management Support Subcommittee hearing “Supply Chain Integrity;” 9:15 a.m., G50 Dirksen Bldg.; October 1***

***House Oversight and Reform Committee hearing “Unsustainable Drug Prices: Testimony from CEOs, Part II;” 10:00 a.m., remote; October 1***

***House Small Business Investigations, Oversight, and Regulations Subcommittee hearing “Preventing Fraud and Abuse of PPP and EIDL: An Update with the SBA Office of Inspector General and the Government Accountability Office;” 10:00 a.m., 2360 Rayburn Bldg.; October 1***

***House Select Subcommittee on the Coronavirus Crisis hearing with Secretary of Health and Human Services Alex M. Azar II; 9:00 a.m., 2154 Rayburn Bldg.; October 2***

***House Armed Services and House Foreign Affairs Committees joint hearing “Strengthening Biological Security: Traditional Threats and Emerging Challenges;” 10:00 a.m., 2172 Rayburn Bldg.; October 2***

**Recently Introduced Health Legislation**

*H.Res.1125 — Expressing support for prioritizing racial and ethnic diversity in clinical trials for therapies, diagnostics, and vaccines for COVID-19; Sponsor: Rep. Engel, Eliot L. [D-NY-16]; Committees: House - Energy and Commerce*

*H.Res.1126 — Recognizing and supporting the goals and ideals of National Forensic Science Week; Sponsor: Rep. Fulcher, Russ [R-ID-1]; Committees: House - Science, Space, and Technology*

*H.Res.1127 — Supporting the designation of September 18, 2020, as “National Concussion Awareness Day”; Sponsor: Rep. Pascrell, Bill, Jr. [D-NJ-9]; Committees: House - Energy and Commerce*

*H.R.8318 — To extend the availability of amounts under the Coronavirus Relief Fund; Sponsor: Rep. Welch, Peter [D-VT-At Large]; Committees: House - Oversight and Reform*

*H.R.8322 — To amend title XI of the Social Security Act to provide the Secretary of Health and Human Services with the authority to temporarily modify certain Medicare requirements for hospice care during the COVID public health emergency; Sponsor: Rep. Balderson, Troy [R-OH-12]; Committees: House - Ways and Means; Energy and Commerce*

*H.R.8324 — To provide for domestic sourcing of personal protective equipment, and for other purposes; Sponsor: Rep. Budd, Ted [R-NC-13]; Committees: House - Veterans’ Affairs; Energy and Commerce; Homeland Security; Oversight and Reform; Education and Labor; Armed Services*

*H.R.8330 — To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to provide for certain health coverage of newborns; Sponsor: Rep. Porter, Katie [D-CA-45]; Committees: House - Ways and Means; Energy and Commerce; Education and Labor*

*H.Res.1141 — Expressing support for the designation of September 22, 2020, as “National Hispanic Nurses Day”; Sponsor: Rep. Shalala, Donna E. [D-FL-27]; Committees: House - Energy and Commerce*

*H.R.8349 — To provide hazard pay to frontline essential workers employed during the COVID-19 pandemic; Sponsor: Rep. Van Drew, Jefferson [R-NJ-2]; Committees: House - Ways and Means; Veterans’ Affairs; Energy and Commerce; House Administration; Oversight and Reform; Education and Labor*

*S.4638 — A bill to preserve and promote integrity in scientific decision-making at the Department of Health and Human Services; Sponsor: Sen. Schumer, Charles E. [D-NY]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.4640 — A bill to amend the Controlled Substances Act to require physicians and other prescribers of controlled substances to complete training on treating and managing patients with opioid and other substance use disorders, which shall also satisfy certain training requirements to receive a waiver for dispensing narcotic drugs for maintenance or detoxification treatment, and for other purposes; Sponsor: Sen. Bennet, Michael F. [D-CO]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.4648 — A bill to amend the Controlled Substances Act to list isotonitazene as a schedule I controlled substance; Sponsor: Sen. Cotton, Tom [R-AR]; Committees: Senate - Judiciary*

*S.4653 — A bill to protect the healthcare of hundreds of millions of people of the United States and prevent efforts of the Department of Justice to advocate courts to strike down the Patient Protection and Affordable Care Act; Sponsor: Sen. Schumer, Charles E. [D-NY]; Senate - Placed on Senate Legislative Calendar under Read the First Time.*

**H.Res.1142 — Expressing support for the designation of September 4, 2020, as “National Polycystic Kidney Disease Awareness Day”, and raising awareness and understanding of polycystic kidney disease; Sponsor: Rep. Cleaver, Emanuel [D-MO-5]; Committees: House - Energy and Commerce**

**H.Res.1143 — Recognizing September 2020 as National Ovarian Cancer Awareness Month; Sponsor: Rep. DeLauro, Rosa L. [D-CT-3]; Committees: House - Oversight and Reform**

**H.R.8351 — To amend title III of the Public Health Service Act to authorize the Secretary of Health and Human Services to award grants to Federally qualified health centers for purposes of conducting mental and behavioral health screenings, and for other purposes; Sponsor: Rep. Dean, Madeleine [D-PA-4]; Committees: House - Energy and Commerce**

**H.R.8358 — To establish the Commission on the Coronavirus Pandemic in the United States; Sponsor: Rep. Malinowski, Tom [D-NJ-7]; Committees: House - Energy and Commerce**

**H.R.8360 — To amend title VI of the Social Security Act to modify the restrictions on use of Coronavirus Relief Fund amounts, and for other purposes; Sponsor: Rep. Palmer, Gary J. [R-AL-6]; Committees: House - Transportation and Infrastructure; Oversight and Reform**

**H.R.8364 — To direct the Secretary of Veterans Affairs to automate third-party health insurance billings and collections of the Department of Veterans Affairs; Sponsor: Rep. Steube, W. Gregory [R-FL-17]; Committees: House - Veterans' Affairs**

**S.4672 — A bill to reauthorize the Stem Cell Therapeutic and Research Act of 2005, and for other purposes; Sponsor: Sen. Reed, Jack [D-RI]; Committees: Senate - Health, Education, Labor, and Pensions**

**S.4674 — A bill to amend title XIX of the Social Security Act to clarify that drugs and biologicals used for medication-assisted treatment under Medicaid are subject to the requirements of the Medicaid Drug Rebate Program; Sponsor: Sen. Klobuchar, Amy [D-MN]; Committees: Senate - Finance**

**S.4675 — A bill to amend the Health Insurance Portability and Accountability Act; Sponsor: Sen. Tillis, Thom [R-NC]; Introduced in the Senate. Read the first time. Placed on Senate Legislative Calendar under Read the First Time.**

**H.R.8374 — To amend the Public Health Service Act to provide for establishment of an Office of Minority and Women Inclusion within each covered agency of the Department of Health and Human Services, and for other purposes; Sponsor: Rep. DeLauro, Rosa L. [D-CT-3]; Committees: House - Energy and Commerce**

**H.R.8388 — To amend title XIX of the Social Security Act to encourage appropriate prescribing under Medicaid for victims of opioid overdose; Sponsor: Rep. Mullin, Markwayne [R-OK-2]; Committees: House - Energy and Commerce**

**H.R.8392 — To amend title V of the Public Health Service Act; Sponsor: Rep. Trone, David J. [D-MD-6]; Committees: House - Energy and Commerce**

**H.R.8393 — To provide student loan forgiveness to health care workers who are on the frontline in response to COVID-19; Sponsor: Rep. Van Drew, Jefferson [R-NJ-2]; Committees: House - Ways and Means; Education and Labor; Financial Services**

**H.R.8394 — To amend the Internal Revenue Code of 1986 to treat diapers as qualified medical expenses; and to prohibit States and local governments to impose a tax on the retail sale of diapers; Sponsor: Rep. Watson Coleman, Bonnie [D-NJ-12]; Committees: House - Ways and Means; Judiciary**

*S.Res.717 — A resolution expressing support for the designation of September 25, 2020, as “National Ataxia Awareness Day”, and raising awareness of ataxia, ataxia research, and the search for a cure; Sponsor: Sen. Warren, Elizabeth [D-MA]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.4690 — A bill to increase vaccination rates among pregnant women enrolled in Medicaid or CHIP, and for other purposes; Sponsor: Sen. Hassan, Margaret Wood [D-NH]; Committees: Senate – Finance*

*S.4697 — A bill to amend the Public Health Service Act to provide additional transparency and consumer protections relating to medical debt collection practices; Sponsor: Sen. Murphy, Christopher [D-CT]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.4702 — A bill to amend title XIX of the Social Security Act to encourage appropriate prescribing under Medicaid for victims of opioid overdose; Sponsor: Sen. Toomey, Pat [R-PA]; Committees: Senate – Finance*

*S.4705 — A bill to amend title XIX requiring coverage under Medicaid of vaccines for pregnant women; Sponsor: Sen. Cassidy, Bill [R-LA]; Committees: Senate – Finance*

*S.4708 — A bill to establish a commission to review certain regulatory obstacles to preparedness for, response to, and recovery from the Coronavirus SARS-CoV-2 pandemic and other pandemics, and for other purposes; Sponsor: Sen. Lankford, James [R-OK]; Committees: Senate - Homeland Security and Governmental Affairs*

*S.4709 — A bill to permit Centers for Disease Control and Prevention-recognized virtual diabetes prevention program suppliers to be included in the Medicare Diabetes Prevention Program Expanded Model conducted by the Center for Medicare and Medicaid Innovation under section 1115A of the Social Security Act (42 U.S.C. 1315a); Sponsor: Sen. Scott, Tim [R-SC]; Committees: Senate – Finance*

*S.4714 — A bill to preserve health benefits for workers; Sponsor: Sen. Durbin, Richard J. [D-IL]; Committees: Senate – Finance*

*S.4717 — A bill to amend title XIX of the Social Security Act to streamline enrollment of certain Medicaid providers across State lines, and for other purposes; Sponsor: Sen. Grassley, Chuck [R-IA]; Committees: Senate – Finance*

*S.4734 — A bill to amend title XVIII of the Social Security Act to provide for the application of Medicare secondary payer rules to certain workers’ compensation settlement agreements and qualified Medicare set-aside provisions; Sponsor: Sen. Portman, Rob [R-OH]; Committees: Senate – Finance*

*S.4737 — A bill to amend the Public Health Service Act to direct the Secretary of Health and Human Services to make grants to covered health departments to increase the rate of recommended immunizations, and for other purposes; Sponsor: Sen. Smith, Tina [D-MN]; Committees: Senate - Health, Education, Labor, and Pensions*