



## Health Policy Briefing

October 26, 2020

### Senate Judiciary Advances Supreme Court Nomination, Final Vote Expected Today

The Senate Judiciary Committee advanced the nomination of Amy Coney Barrett to the Supreme Court last Thursday. All 12 Republican panel members voted in favor of the nomination, with panel Democrats boycotting the vote in objection to what they have characterized as a rushed confirmation process. Democrats have conceded that they do not have the votes to defeat Barrett on the floor. Senate Majority Leader Mitch McConnell (R-Ky.) announced that the chamber will hold the final vote to confirm Barrett to the Supreme Court today. Sen. Susan Collins (R-Maine) is the only Republican who has said she will oppose Barrett's confirmation, because she does not believe a nominee should be considered prior to the election.

### *Bipartisan Lawmakers Request Legislative Fix to Medicare Budget Neutrality*

A bipartisan group of 229 House members sent a [letter](#) urging Speaker Nancy Pelosi (D-Calif.) and Minority Leader Kevin McCarthy (R-Calif.) to pass a fix preventing Medicare physician fee schedule cuts for certain medical specialties from going into effect. The letter expresses support for pay increases for office-based specialties, but urges the leaders to waive the budget neutrality requirement that would result in across-the-board pay cuts elsewhere to offset the increases. The lawmakers ask for a fix to be included in any upcoming legislation moving through the House in the absence of regulatory relief from the Centers for Medicare and Medicaid Services (CMS).

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### ***HHS Updates the PRF Reporting Requirements***

On October 22, the U.S. Department of Health and Human Services (HHS) [announced](#) expanded eligibility for the Phase 3 General Distribution of the CARES Act Provider Relief Fund (PRF), along with revisions to the reporting requirements. With respect to the reporting requirements, as detailed in a separate [memo](#), HHS described the rationale for the reporting requirement changes, noting that the “decision to prohibit most providers from using PRF payments to become more profitable than they were pre-pandemic, in order to conserve resources to allocate to providers who were less profitable, has generated significant attention and opposition from many stakeholders and Members of Congress. There is consensus among stakeholders and Members of Congress who have reached out to HHS that the PRF should allow a provider to apply PRF payments against all lost revenues without limitation. In consideration of this feedback, HHS has amended its reporting instructions to provide for the full applicability PRF distributions to lost revenues.” The [revised](#) reporting requirements state that “[r]ecipients may apply PRF payments toward lost revenue, up to the amount of the difference between their 2019 and 2020 actual patient care revenue.” This differs from the [initial](#) reporting requirements which focused on net profit but still retains the focus on comparing year over year.

As detailed within the application instructions, all providers receiving more than \$10,000 are subject to key reporting requirements, with the first deadline for reporting February 15, 2021. For the updated reporting elements, visit [here](#), along with a summary of those requirements [here](#). In addition, as noted within the reporting requirements document, all providers that expend more than \$750,000 in Federal funds (including PRF and the Paycheck Protection Program funds) will be subject to additional audit requirements. For additional information, visit the [Reporting Requirements and Auditing](#) page and read the [Auditing and Reporting Requirements FAQs](#). More information related to this program can be found on the [Provider Relief Fund website](#).

### ***Azar Floats Plan to Oust FDA Commissioner Hahn***

According to a recent *Politico* report, U.S. Department of Health and Human Services (HHS) Secretary Alex Azar is floating a plan to oust Commissioner of Food and Drugs Stephen Hahn. The Food and Drug Administration (FDA) has been at odds with President Trump in recent weeks over the standards for authorizing an eventual COVID-19 vaccine. The standards, which Hahn unilaterally published after allowing the White House to review for only a few hours, would preclude vaccine availability prior to the election. Azar has reportedly discussed the possibility of seeking White House permission to remove Hahn and potentially appoint HHS testing czar Brett Giroir, FDA Principle Deputy Commissioner Amy Abernethy, or Center for Drug Evaluation and Research Director Janet Woodcock as acting commissioner. Hahn and Azar have also engaged in recent disputes over the HHS Secretary’s decision to eliminate the FDA’s regulatory authority over laboratory-developed tests (LDTs).

## ***White House Steps Back from Drug Discount Cards Amidst Democratic Pushback***

Senior Democratic lawmakers continue to [demand](#) that the U.S. Department of Health and Human Services (HHS) release information related to the drug discount cards that President Trump proposed sending seniors ahead of the November elections. According to a recent report, HHS General Counsel Robert Charrow circulated an internal memo warning that the plan could violate election law. These reports “appear to confirm our concerns that the Trump administration is relying on dubious legal authority to justify a blatant political gambit by the President that would be paid for using taxpayer dollars,” the letter states. House Energy and Commerce Committee Chair Frank Pallone (D-N.J.), House Ways and Means Committee Chair Richard Neal (D-Mass.), and Senate Finance Committee Ranking Member Ron Wyden (D-Ore.) request a copy of Charrow’s memo and other related documents, including the letter the White House had planned to send to Medicare beneficiaries this month. Reps. Tom Suozzi (D-N.Y.) and Jan Schakowsky (D-Ill.) also led a [letter](#) last week calling on the Centers for Medicare and Medicaid Services (CMS) to abandon the drug discount card proposal and instead focus on more significant drug pricing reforms. “Taking \$8 billion from the Medicare Trust Fund, which finances vital health care services for tens of millions of elderly and disabled Americans, to fund a political stunt is unacceptable,” the lawmakers state. The letter was signed by 21 other House Democrats.

White House Chief of Staff Mark Meadows indicated last week that the administration is stepping back from the plan, stating that he does not anticipate anything will be done before Election Day. He said that the cards will likely be sent in November or December.

## ***GAO to Open Investigation into Political Interference at FDA, CDC***

The Government Accountability Office (GAO) announced plans to investigate political interference by the White House into decisions made by the Centers for Disease Control and Prevention (CDC) and the Food and Drug Administration (FDA). The decision was made in response to a request from Senators Elizabeth Warren (D-Mass.) and Gary Peters (D-Mich.). Recent reports have claimed that administration officials have tried to influence scientific decisions made by the agencies in response to the COVID-19 pandemic, and President Trump has stated that the White House could choose to overrule the FDA’s standards for an eventual COVID-19 vaccine. The GAO will conduct an investigation to determine whether interference has violated the agencies’ scientific integrity and communication policies.

In related news, House Select Subcommittee on the Coronavirus Crisis Chair James Clyburn (D-S.C.) is [threatening](#) to subpoena U.S. Department of Health and Human Services (HHS) officials if the agency does not provide the requested information and witnesses related to the panel’s investigation of political meddling at the CDC during the pandemic. Clyburn stated that HHS has failed to produce a single document or witness in response to a request last month.

### ***Democrats Outline Principles for Pandemic Preparedness***

A group of 140 lawmakers led by Rep. Ro Khanna (D-Calif.) and Sen. Elizabeth Warren (D-Mass.) have sent a [letter](#) to House and Senate leadership urging them to prioritize future pandemic prevention and to work to provide more relief for Americans in response to the coronavirus crisis. The letter outlines five steps for Congress to mitigate future pandemics:

- Invest in domestic programs, systems, and supply chains that will help improve Americans' health outcomes, combat the spread of new disease, and ramp up public health capacity during global health emergencies;
- Support global public health efforts to identify and mitigate the spread of new diseases before they become global pandemics;
- Create at least 250,000 permanent, high-paying public health jobs to rebuild our depleted public health workforce and ensure the rapid deployment of contact tracers and other support workers during future pandemics;
- Address the systemic racism and discrimination embedded in our health care system and pass legislation ensuring that health care treatments, pandemic countermeasures, vaccines, and primary disease prevention measures are accessible for all; and
- Halt the environmental degradation that increases the likelihood of global pandemics.

### ***Patient Organizations Release Health Care Plan for Next Administration***

A coalition of 33 patient organizations has released a 100-day [plan](#) aiming to strengthen the Affordable Care Act (ACA) and Medicaid and achieve patient-centered coverage expansions. The ***100 Days Agenda: A Patient-First Blueprint***, which has been presented to both the Democratic and Republican presidential campaigns, contains 29 recommendations, including a proposal for a public option that would protect enrollees of the existing marketplace. The recommendations are divided into three main categories: reversing administrative actions that have created barriers to care; standing up for patients in the courts; and advancing a patient-centered legislative agenda.

### ***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](#)

**Recently Introduced Health Legislation**

*H.Res.1192 — Expressing support for the goals of November National Lung Cancer Awareness Month and for the early detection of lung cancer; Sponsor: Rep. Boyle, Brendan F. [D-PA-2]; Committees: House - Energy and Commerce*

*H.R.8599 — To amend the United States-Mexico Border Health Commission Act, with respect to preparedness for COVID-19 and other infectious diseases in the border region, and for other purposes; Sponsor: Rep. Escobar, Veronica [D-TX-16]; Committees: House - Energy and Commerce; Foreign Affairs*

*H.R.8604 — To direct the Secretary of Health and Human Services to maintain an internet clearinghouse of information on suppliers of personal protective equipment needed to prevent the spread of COVID-19 or any other pathogen triggering a public health emergency declaration, including information on the quality and availability of such equipment, and for other purposes; Sponsor: Rep. Kim, Andy [D-NJ-3]; Committees: House - Energy and Commerce*

*H.R.8605 — To authorize the Secretary of Health and Human Services, in consultation with the Administrator of the Environmental Protection Agency to award grants to certain entities to conduct research on, or to establish, wastewater surveillance and other early warning systems, and for other purposes; Sponsor: Rep. Kim, Andy [D-NJ-3]; Committees: House - Energy and Commerce*

*H.R.8615 — To amend titles XVIII and XIX of the Social Security Act to provide for coverage of peripheral artery disease screening tests furnished to at-risk beneficiaries under the Medicare and Medicaid programs without the imposition of cost-sharing requirements, to amend title XXVII of the Public Health Service Act to require group health plans and health insurance issuers offering group or individual health insurance coverage to provide coverage for such screening tests furnished to at-risk enrollees of group health plans and group or individual health insurance coverage without the imposition of cost sharing requirements, and for other purposes; Sponsor: Rep. Payne, Donald M., Jr. [D-NJ-10]; Committees: House - Ways and Means; Energy and Commerce*

*H.R.8623 — To amend the CARES Act to clarify the inclusion of certain COVID-19 vaccines covered under the Medicare program without any cost sharing; Sponsor: Rep. Spanberger, Abigail Davis [D-VA-7]; Committees: House - Ways and Means; Energy and Commerce*

*H.R.8624 — To amend title XVIII of the Social Security Act to authorize the extension of pass-through status under the Medicare program for certain drugs and devices impacted by COVID-19; Sponsor: Rep. Wenstrup, Brad R. [R-OH-2]; Committees: House - Ways and Means; Energy and Commerce*

*S.4800 — A bill to provide Coronavirus relief; Sponsor: Sen. Schumer, Charles E. [D-NY]; Introduced in the Senate. Read the first time. Placed on Senate Legislative Calendar under Read the First Time.*

*S.4811 — A bill to establish procedures related to the coronavirus disease 2019 (COVID-19) in correctional facilities; Sponsor: Sen. Warren, Elizabeth [D-MA]; Committees: Senate - Judiciary*

*H.R.8639 — To authorize the Secretary of Health and Human Services to award grants to States and political subdivisions of States to hire, employ, train, and dispatch mental health professionals to respond in lieu of law enforcement officers in emergencies involving one or more persons with a mental illness or an intellectual or developmental disability, and for other purposes; Sponsor: Rep. Porter, Katie [D-CA-45]; Committees: House - Energy and Commerce; Judiciary*

*H.R.8640 — To amend the Public Health Service Act to establish the Public Health Oversight Panel to advise the agencies of the Public Health Service regarding the scientific basis for their actions, and for other purposes; Sponsor: Rep. Rush, Bobby L. [D-IL-1]; Committees: House - Energy and Commerce*

*H.R.8642 — To amend title XVIII to provide coverage and payment for certain tests and assistive telehealth consultations during the COVID-19 emergency period, and for other purposes; Sponsor: Rep. Schweikert, David [R-AZ-6]; Committees: House - Energy and Commerce; Ways and Means*

*H.R.8644 — To ensure the availability of critical medications in the event of public health emergencies, and for other purposes; Sponsor: Rep. Smith, Jason [R-MO-8]; Committees: House - Energy and Commerce*

*S.4819 — A bill to improve the health of minority individuals, and for other purposes; Sponsor: Sen. Hirono, Mazie K. [D-HI]; Committees: Senate - Finance*

*S.4824 — A bill to amend the Public Health Service Act to expand the capacity of the suicide prevention lifeline and mental health crisis centers; Sponsor: Sen. Cornyn, John [R-TX]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.4825 — A bill to provide clarification with respect to the effective date of Medicare coverage of COVID-19 vaccines without any cost-sharing; Sponsor: Sen. Reed, Jack [D-RI]; Committees: Senate - Finance*

*S.4840 — A bill to amend title XVIII of the Social Security Act to require the inclusion of certain audio-only diagnoses in the determination of risk adjustment for Medicare Advantage plans, and for other purposes; Sponsor: Sen. Roberts, Pat [R-KS]; Committees: Senate - Finance*

*S.4846 — A bill to establish requirements for skilled nursing facilities, nursing facilities, and assisted living facilities to manage the outbreak of COVID-19, and for other purposes; Sponsor: Sen. Booker, Cory A. [D-NJ]; Committees: Senate - Finance*