



## Health Policy Briefing

July 6, 2021

### FY 22 Appropriations Update

Democratic appropriators in the House of Representatives released their fiscal year (FY) 2022 top-line spending allocations (i.e., the 302(b) allocations) for each of the 12 annual appropriations bills last week. The Subcommittee on Labor-Health and Human Services-Education would receive a total of \$237.5 billion, an increase of \$61 billion over current funding levels. The panel also continued its work to advance individual spending bills, including approving the proposed Agriculture-Food and Drug Administration (FDA) legislation, which includes \$26.2 billion in funding, a more than 10% increase over current spending levels. Amongst other priorities, the bill includes increased funding for rural broadband, public health and consumer safety infrastructure, drug safety oversight, drug and device supply chain monitoring and surveillance, and FDA data infrastructure modernization. The Committee also advanced the FY 22 State and Foreign Operations bill, which includes a provision to bar federal funding for the Wuhan Institute of Virology. The Legislative Branch spending bill advanced by the panel includes funding to provide COVID-19 booster shots for members of Congress should they be recommended by the Centers for Disease Control and Prevention (CDC) in the next year. The bill's report language also directs the Office of Attending Physician to establish a plan to distribute booster shots for congressional offices. Democrats hope to complete House passage of FY22 funding bills prior to August recess.

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### ***HHS Issues First Surprise Billing Regulation***

The U.S. Department of Health and Human Services (HHS) has released the first of several expected regulations relating to the implementation of the **No Surprises Act**, which bans surprise out-of-network bills to patients. The interim final rule (IFR) specifies how the qualifying payment amount (QPA), which is based on a health plan's historic median contracted rate for similar services in a particular geographic area, adjusted by the consumer price index, will be determined. The IFR discusses how to determine if services are similar and what are considered normal practices in insurer-provider contracts. The regulation also details the law's notice and consent requirements for patients agreeing to out-of-network services. Health providers must publicly post rules prohibiting surprise billing on their website and in information to patients. The administration will create a process to review the complaints of patients who think they have received a surprise medical bill. The rule also seeks to address a policy proposed by UnitedHealthcare, under which the insurer could retroactively deny ER claims deemed to be not actual emergencies. The IFR states that this practice would not be permitted under either the **No Surprises Act** or the **Affordable Care Act**. In addition to the IFR, HHS also released a [fact sheet](#) for patients explaining their surprise billing rights and a [fact sheet](#) on how to comply with the rule's requirements. Other provisions of the law, including the independent dispute resolution (IDR) process to settle payment disputes between insurers and providers, will outlined in future regulations. Rulemaking on arbitration must be completed by Dec. 27; the law is set to take effect Jan. 1.

### ***PRF Reporting Portal Opened***

The Provider Relief Fund (PRF) reporting portal was opened by the Health Resources and Services Administration (HRSA) last week. Providers in reporting period one have until September 30 to submit their information as a part of the required post-payment reporting process. HRSA published updated [reporting requirements](#) on June 11. Revised reporting requirements will be applicable to providers who received one or more payments exceeding, in the aggregate, \$10,000 during a single Payment Received Period from the PRF General Distributions, Targeted Distributions, or Skilled Nursing Facility and Nursing Home Infection Control Distributions. A [webcast](#) is scheduled for July 8 to assist providers in understanding the reporting process.

### ***Supreme Court to Consider Health Care Cases Next Term***

The Supreme Court has announced that it will hear four health care-related cases during its next term. The high court will consider the nearly 30% cut in reimbursement for 340B drugs that occurred under the Trump administration. They will also review a Centers for Medicare and Medicaid Services (CMS) rule setting Medicare payments for disproportionate share hospitals (DSH) as well as a case to decide whether a state Medicaid program can claim part of a tort settlement for past medical expenses. Finally, the court will consider whether the Affordable Care Act allows a disparate impact claim from plaintiffs alleging disability discrimination.

## ***House Passes Surface Transportation Reauthorization***

The House of Representatives passed legislation (H.R. 3684) last week that would reauthorize surface transportation programs that are currently set to expire on September 30. Democrats intend the \$760 billion measure to inform parts of the President's broader, bipartisan infrastructure package, currently under negotiation between the Senate and White House. The bill was passed along a largely party line vote of 221-201, with only two Republicans supporting the proposal.

## ***Democrats Introduce HCBS Bill***

Democrats in the Senate have unveiled legislation containing proposals from the President's American Jobs Plan to expand access to home care and community supports and make investments in the home care workforce. The ***Better Care Better Jobs Act*** (S. 2210/H.R. 4131) would provide states with enhanced Medicaid funding for home and community-based services if the states take certain actions to support expanding access to these services and strengthen the workforce providing them. The bill would also provide funding to the Centers for Medicare and Medicaid Services (CMS) to carry out the programs and conduct oversight. The bill, which was introduced by Senate Health, Education, Labor, and Pensions (HELP) Committee Chair Patty Murray (D-Wash.), Special Aging Committee Chair Bob Casey (D-Pa.), Finance Committee Chair Ron Wyden (D-Ore.), Majority Leader Chuck Schumer (D-N.Y.), and Sens. Tammy Duckworth (D-Ill.), Maggie Hassan (D-N.H.), and Sherrod Brown (D-Ohio), is supported by 40 Senate Democrats. Companion legislation in the House of Representatives was introduced by Reps. Debbie Dingell (D-Mich.), Frank Pallone (D-N.J.), Jan Schakowsky (D-Ill.), and Doris Matsui (D-Calif.).

## ***McCarthy Announces GOP Task Force Membership***

Last week, House Minority Leader Kevin McCarthy (R-Calif.) announced memberships for seven issue-specific Republican task forces. The key health-related task force is the Healthy Future Task Force which will be convened to "examine policies to modernize and personalize America's health care system, support innovative treatments, restore the doctor/patient relationship, and provide all Americans more affordable health care options that fit their individual needs." The task force will also focus on pandemic preparedness and resilient medical supply chains. The group will be led by Energy and Commerce Subcommittee on Health Ranking Member Brett Guthrie (R-Ky.) and Ways and Means Subcommittee on Health Ranking Member Devin Nunes (R-Calif.). The full list of members serving on each task force can be found [here](#).

## ***GAO Releases Report on VA Community Care***

The Government Accountability Office (GAO) has released a new [report](#) detailing the scheduling challenges faced by the Department of Veterans Affairs (VA) Community Care Program. Wait times for community care have increased during the COVID-19 pandemic according to schedulers, though GAO details the VA's lack of a wait-time measure for the Community Care Program, making it difficult to determine how much the pandemic has actually impacted appointment timeliness. GAO also reports that the VA has yet to implement previous recommendations from the agency regarding the need for medical facilities to assess community care staffing needs.

## ***New Analysis Tracks Increase in Physician Acquisitions***

The number of U.S. physicians employed by hospitals or corporate entities has increased since the start of the COVID-19 pandemic according to a new [analysis](#) conducted by Avalere Health on behalf of the Physicians Advocacy Institute. Approximately 48,400 physicians became employees of hospitals or other corporate entities since January 1, 2019, with 22,700 of those physicians leaving independent practice since the onset of the COVID-19 pandemic – a 12% increase in the percentage of employed physicians over the two-year period. Nearly half of physicians were employed by hospitals or health systems by the end of 2020, while an additional 20% of physicians employed by corporate entities by the close of last year.

## Upcoming Congressional Hearings and Markups

*House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies markup of fiscal year 2022 appropriations legislation; 11:00 a.m.; July 12*

*House Science, Space, and Technology Subcommittee on Investigations and Oversight hearing “Principles for Outbreak Investigation: COVID-19 and Future Infectious Diseases;” 12:00 p.m., July 14*

*House Appropriations Committee markup of fiscal year 2022 appropriations legislation for Labor, Health and Human Services, Education, and Related Agencies; time TBD; July 15*

## Recently Introduced Health Legislation

*H.R.4171 — To remove barriers to health professions by providing resources to access foundational educational training, such as English as a foreign language and adult basic education, and to require the provision of child care, in demonstration projects funded under the health profession opportunity grant program under section 2008 of the Social Security Act; Sponsor: Rep. Chu, Judy [D-CA-27]; Committees: House - Ways and Means*

*H.R.4187 — To amend title XVIII of the Social Security Act to provide coverage for certain vision items and services under part B of the Medicare program; Sponsor: Rep. Schrier, Kim [D-WA-8]; Committees: House - Energy and Commerce; Ways and Means*

*H.Res.506 — Expressing support for the designation of the month of June 2021 as “National Post-Traumatic Stress Injury Awareness Month” and June 27, 2021, as “National Post-Traumatic Stress Injury Awareness Day”; Sponsor: Rep. Peters, Scott H. [D-CA-52]; Committees: House - Armed Services; Veterans’ Affairs*

*H.R.4194 — To establish within the Department of Health and Human Services a Division on Community Safety, and for other purposes; Sponsor: Rep. Bush, Cori [D-MO-1]; Committees: House - Judiciary; Energy and Commerce; Education and Labor; Transportation and Infrastructure; Financial Services*

*H.R.4196 — To nullify the order issued by the Centers for Disease Control and Prevention titled “Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19”; Sponsor: Rep. Duncan, Jeff [R-SC-3]; Committees: House - Energy and Commerce*

*H.R.4198 — To establish the Mental Health in Schools Excellence Program to increase the recruitment and retention of school-based mental health services providers, and for other purposes; Sponsor: Rep. Fitzpatrick, Brian K. [R-PA-1]; Committees: House - Education and Labor*

*H.R.4200 — To amend the Omnibus Crime Control and Safe Streets Act of 1968 to reauthorize the residential substance use disorder treatment program, and for other purposes; Sponsor: Rep. Jackson Lee, Sheila [D-TX-18]; Committees: House - Judiciary*

*H.R.4203 — 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.4211 — To amend the Public Health Service Act to require full inspection, and complete transparency, with respect to entities receiving financial assistance from the National Institutes of Health, and for other purposes; Sponsor: Rep. Turner, Michael R. [R-OH-10]; Committees: House - Energy and Commerce*

*H.R.4217 — To amend the Public Health Service Act to provide for the establishment of a Task Force on Maternal Mental Health, and for other purposes; Sponsor: Rep. Barragan, Nanette Diaz [D-CA-44]; Committees: House - Energy and Commerce*

*H.R.4223 — To provide grants for the conduct of demonstration projects designed to provide education and training for eligible individuals with an arrest or conviction record to enter and follow a career pathway in the health professions through occupations that pay well and are expected to experience a labor shortage or be in high demand, under the health profession opportunity grant program under section 2008 of the Social Security Act; Sponsor: Rep. Davis, Danny K. [D-IL-7]; Committees: House - Ways and Means*

*H.R.4233 — To amend title 38, United States Code, to furnish Vet Center readjustment counseling and related mental health services to veterans and members of the Armed Forces using certain educational assistance benefits; Sponsor: Rep. Murphy, Gregory [R-NC-3]; Committees: House - Veterans' Affairs*

*H.R.4236 — To guarantee that grants are made under the health profession opportunity grant program under section 2008 of the Social Security Act to grantees in each State that is not a territory, and for other purposes; Sponsor: Rep. Pascrell, Bill, Jr. [D-NJ-9]; Committees: House - Ways and Means*

*H.R.4244 — To make amendments to the names of certain agencies to help end the stigmatization of substance use disorder, and for other purposes; Sponsor: Rep. Trone, David J. [D-MD-6]; Committees: House - Energy and Commerce*

*H.Res.516 — Supporting the designation of July 2021 as Uterine Fibroids Awareness Month; Sponsor: Rep. Scott, David [D-GA-13]; Committees: House - Energy and Commerce*

*H.R.4251 — To amend the Indian Health Care Improvement Act to authorize a special behavioral health program for Indians, and for other purposes; Sponsor: Rep. Pallone, Frank, Jr. [D-NJ-6]; Committees: House - Energy and Commerce; Natural Resources*

*H.R.4263 — To amend title XVIII of the Social Security Act to provide for an exception to the definition of an off-campus outpatient department of a provider under the Medicare program for certain departments of a provider if such provider was forced to relocate its campus; Sponsor: Rep. Gottheimer, Josh [D-NJ-5]; Committees: House - Energy and Commerce; Ways and Means*

*H.R.4278 — To direct the Comptroller General of the United States to conduct a study on how direct-to-consumer pharmaceutical advertising negatively impacts drug costs to consumers, and for other purposes; Sponsor: Rep. Murphy, Gregory [R-NC-3]; Committees: House - Energy and Commerce*

*H.R.4283 — To amend the Public Health Service Act to improve the public health system in tribal communities and increase the number of American Indians and Alaska Natives pursuing health careers, and for other purposes; Sponsor: Rep. Ruiz, Raul [D-CA-36]; Committees: House - Energy and Commerce*

*H.R.4285 — To amend the Public Health Service Act to provide for full repayment under National Health Service Corps Loan Repayment Program in case of a 5-year commitment, and for other purposes; Sponsor: Rep. Rush, Bobby L. [D-IL-1]; Committees: House - Energy and Commerce*

*H.R.4289 — To amend title II of the Social Security Act to provide for long-term care insurance benefits, and for other purposes; Sponsor: Rep. Suozzi, Thomas R. [D-NY-3]; Committees: House - Ways and Means*

*H.R.4292 — To provide for the establishment of COVID-19 and pandemic response centers of excellence, and for other purposes; Sponsor: Rep. Velazquez, Nydia M. [D-NY-7]; Committees: House - Energy and Commerce*

*H.R.4294 — To amend the Public Health Service Act to authorize the Secretary of Health and Human Services to award grants to nursing homes, assisted living facilities, and other long-term care facilities to improve their preparedness for power outages; Sponsor: Rep. Wilson, Frederica S. [D-FL-24]; Committees: House - Energy and Commerce*

*H.R.4295 — To require the Director of National Intelligence and the Director of the Central Intelligence Agency to conduct a study to identify supply chains critical to national security, and for other purposes; Sponsor: Rep. Van Duyne, Beth [R-TX-24]; Committees: House - Intelligence (Permanent Select)*

*H.R.4301 — To amend the Internal Revenue Code of 1986 to allow individuals with direct primary care service arrangements to remain eligible individuals for purposes of health savings accounts, and for other purposes; Sponsor: Rep. Blumenauer, Earl [D-OR-3]; Committees: House - Ways and Means*

*H.R.4303 — To require applications for a health profession opportunity grant under section 2008 of the Social Security Act to contain evidence of in-demand jobs or worker shortages; Sponsor: Rep. Boyle, Brendan F. [D-PA-2]; Committees: House - Ways and Means*

*H.R.4305 — To amend the Community Mental Health Service Block Grant to authorize a set-aside for crisis care services, and for other purposes; Sponsor: Rep. Bustos, Cheri [D-IL-17]; Committees: House - Energy and Commerce*

*H.R.4311 — To amend title XVIII of the Social Security Act to provide for coverage of dental, vision, and hearing care under the Medicare program; Sponsor: Rep. Doggett, Lloyd [D-TX-35]; Committees: House - Energy and Commerce; Ways and Means*

*H.R.4316 — To provide a set-aside of funds for Indian populations under the health profession opportunity grant program under section 2008 of the Social Security Act, and for other purposes; Sponsor: Rep. Gomez, Jimmy [D-CA-34]; Committees: House - Ways and Means*

*H.R.4319 — To require the Director of the Centers for Disease Control and Prevention to track and report on suicides and other issues among public safety telecommunicators, to require the Federal Emergency Management Agency to award grants to advance public safety telecommunicator health and well-being, and for other purposes; Sponsor: Rep. Kelly, Robin L. [D-IL-2]; Committees: House - Energy and Commerce*

*H.R.4323 — To expand the Medicaid certified community behavioral health clinic demonstration program and to authorize funding for additional grants to certified community behavioral health clinics; Sponsor: Rep. Matsui, Doris O. [D-CA-6]; Committees: House - Energy and Commerce*

*H.R.4325 — To require preference to be given to applicants for health profession opportunity grants under section 2008 of the Social Security Act who have certain kinds of business and community partners; Sponsor: Rep. Murphy, Stephanie N. [D-FL-7]; Committees: House - Ways and Means*

*H.R.4341 — To provide support with respect to the prevention of, treatment for, and recovery from, substance use disorder; Sponsor: Rep. Trone, David J. [D-MD-6]; Committees: House - Energy and Commerce; Judiciary; Ways and Means; Education and Labor; Financial Services; Agriculture*