



## Health Policy Briefing

October 19, 2020

### Senate to Vote on Slimmed-Down COVID Legislation This Week

Majority Leader Mitch McConnell (R-Ky.) announced that the Senate will vote on a targeted COVID relief bill as well as additional funding for the Paycheck Protection Program (PPP) when the chamber returns this week. The half-trillion-dollar measure is similar to the bill that Republicans previously tried to pass in September. It includes \$300 in enhanced unemployment benefits through the end of December and money for testing and reopening of schools. Lending authority for the PPP expired on August 8 with approximately \$134 billion unspent. The Senate will vote on additional PPP money on Tuesday, and the rest of the package on Wednesday. McConnell plans to vote on the measure before proceeding to the pending Supreme Court nomination of Amy Coney Barrett. Democrats have characterized the bill as inadequate and are not expected to support it. In the House, negotiations are ongoing between Speaker Nancy Pelosi (D-Calif.) and Treasury Secretary Steven Mnuchin on a more comprehensive stimulus package. Staff continue to exchange language on several areas of disagreement, but Mnuchin stated that the President will personally lobby any Senate Republicans who are reluctant to support an eventual deal.

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### ***Judiciary Committee Vote on Supreme Court Nominee Set for Oct. 22***

The Senate Judiciary Committee completed its confirmation hearings on the President's nominee to the Supreme Court Amy Coney Barrett last week. During the proceedings, Democrats raised concerns about the nominee's position on a number of health care related issues, including her stance on the constitutionality of the Affordable Care Act (ACA), abortion, gun restrictions, and consumer rights. Democratic panel members focused on the potential consequences for Americans if the ACA is rolled back during the pandemic, citing a law review article authored by Barrett that critiqued the court's previous reasoning for upholding the 2010 health care law. While Democrats stated that her confirmation would likely guarantee a vote against the ACA in a hearing on the law's future scheduled for November 10, Republicans argued that the current lawsuit against the ACA has little chance of succeeding. Democrats also vocally opposed the decision to hold the hearings in the midst of the pandemic, with two Republican members of the panel having tested positive for COVID-19.

Barrett stated that she would put her personal preferences aside if appointed to the Supreme Court and characterized herself as someone who will interpret the Constitution and laws as they are written. She expressed support for a limited role for federal judges who do not try to resolve policy disputes or make value judgements. Barrett said that she is "not hostile" to the ACA, stating that her previous writings on the law were focused on the majority's reasoning and not the law itself, and that she had made no "deal" with the President to rule in a particular way on the case. She offered no indication of how she would vote on an abortion-rights case but declined to characterize *Roe v. Wade* or contraception rights as super-precedents that could not be overturned. She stated that the constitutional right to bear arms is not absolute and leaves room for gun regulations. Barrett appears to have avoided any slips that would derail her confirmation by the Senate. The Judiciary Committee will vote to advance her nomination to the full Senate on October 22. Democrats have acknowledged that there is nothing they can do to prevent Barrett's confirmation. Majority Leader Mitch McConnell (R-Ky.) stated last week that Barrett has the votes to be confirmed, and that he expects to bring her nomination to the floor on October 23.

### ***Democrats Request Details on Drug Discount Cards***

Democratic leadership of several congressional health panels have sent [letters](#) to the U.S. Department of Health and Human Services (HHS) and the Government Accountability Office (GAO) requesting details about the Trump administration's plan to send \$200 drug discount cards to Medicare beneficiaries in the weeks leading up to the November presidential elections. The letters were signed by House Energy and Commerce Chairman Frank Pallone (D-N.J.), House Ways and Means Chairman Richard Neal (D-Ma.), and Senate Finance Ranking Member Ron Wyden (D-Ore.). The lawmakers question the motive and legality of the White House plan, expressing concerns about the "propriety of these actions, particularly in light of recent press reports indicating that the timing of this project is being driven by the upcoming presidential election." They argue that current law does not provide the Administration authority to proceed with the drug card demonstration.

### ***Ways and Means Leadership Continues Work on Health Equity***

House Ways and Means Committee Chair Richard Neal (D-Mass.) is following up on his series of inquiries regarding racial health equity, [asking](#) the Centers for Medicare and Medicaid Services (CMS) to examine the issue of the misuse of race in clinical decision-making. He urged the agency to take his questions as "an opportunity to immediately evaluate the unintended consequences of clinical decision tools, including algorithms developed by specific professional societies, along with their uses and relevance to CMS initiatives related to quality and safety for Medicare and Medicaid beneficiaries." He also requests a briefing from CMS on the current use of racial bias in such clinical decision-making tools by October 30.

### ***Provider Relief Fund Monies Cannot Be Used to Pay Off Accelerated and Advanced Payments***

On October 8, the Centers for Medicare and Medicaid Services (CMS) [issued](#) an announcement related to the accelerated and advanced payment program. As part of that announcement, CMS noted that “[t]o allow even more flexibility in paying back the loans, the \$175 billion issued in Provider Relief funds can be used towards repayment of these Medicare loans.” Subsequent to that announcement on October 9, the Department updated its Provider Relief Fund [FAQs](#) noting that this was not a permissible use of funds. In light of that FAQ, the CMS announcement was reviewed, and the key language noted above was deleted, without any indication on the announcement when the update was made. For the Hart Health summary of this program, visit [here](#).

### ***CMS Expands Codes Eligible for Telehealth Reimbursement***

The Centers for Medicare and Medicaid Services (CMS) has [announced](#) an additional set of telehealth services that will be eligible for Medicare reimbursement during the COVID-19 public health emergency (PHE). The announcement was in response to the President’s recent Executive Order on Improving Rural Health and Telehealth Access. CMS added 11 new services to the Medicare telehealth services list and will immediately start paying eligible practitioners who provide these services. The new services include certain neurostimulator analysis and programming services as well as cardiac and pulmonary rehabilitation services.

### ***CMS Administrator Verma Previews Vaccine Regulations***

The Centers for Medicare and Medicaid Services (CMS) is in the process of drafting regulations to ensure speedy access to an eventual COVID-19 vaccine. According to CMS Administrator Seema Verma, the agency plans to ensure full payment of COVID vaccines and treatments for Medicare beneficiaries. During the Health Care Payment Learning and Action Network (HCPLAN) Virtual Summit last week, Verma stated that CMS expects to release more details on its plans within the month.

### ***New Survey Results on COVID Vaccine Expectations***

Medisafe has released the [results](#) from a new survey regarding the immediate concerns and expectations of patients about an eventual COVID-19 vaccine. The results indicate that 65 percent of people will wait to get the vaccine once it becomes available, either until their doctor approves or until enough people get it to know it works. Approximately 64 percent of respondents were concerned that a vaccine will be rushed to market too soon, with one in 10 saying that they will never trust a COVID-19 vaccine. Seventy-two percent of respondents, however, said that they plan to get or have already received a flu shot this year.

## 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 Ways and Means Subcommittee on Oversight hearing “Maximizing Health Coverage Enrollment Amidst Administration Sabotage;” 12:00 p.m., October 20*

*Senate Veterans’ Affairs Committee hearing to examine VA MISSION Act, focusing on assessing progress implementing Title I;” 9:30 a.m., 106 Dirksen Bldg.; October 21*

## Recently Introduced Health Legislation

*H.Res.1185 — Recognizing the importance of mental health globally and highlighting the contributions and value of mental health, well-being, psychosocial support, and human capacity, particularly in areas of economic inequity, development contexts, and humanitarian settings; Sponsor: Rep. Cardenas, Tony [D-CA-29]; Committees: House - Energy and Commerce; Foreign Affairs*

*H.Res.1186 — Recognizing the importance of biomedical research and thanking biomedical researchers in the United States; Sponsor: Rep. DelBene, Suzan K. [D-WA-1]; Committees: House - Energy and Commerce*

*H.R.11 — To amend the Internal Revenue Code of 1986 to encourage investment to renew, restore, and rebuild the American economy for our workers, families, and small businesses, maximize innovation through research and development, and secure America’s medical supplies; Sponsor: Rep. McCarthy, Kevin [R-CA-23]; Committees: House - Ways and Means*

*H.R.8555 — To direct the Secretary of Health and Human Services to submit to Congress a weekly report on COVID-19 vaccine distribution, and for other purposes; Sponsor: Rep. Craig, Angie [D-MN-2]; Committees: House - Energy and Commerce*

*H.R.8558 — To amend the Employee Retirement Income Security Act of 1974 to provide for health coverage of nipple-areolar complex tattooing in connection with reconstructive surgery following mastectomy and to amend titles XVIII and XIX of the Social Security Act to extend coverage of certain breast reconstructive services following mastectomy under the Medicare and Medicaid programs; Sponsor: Rep. Hastings, Alcee L. [D-FL-20]; Committees: House - Ways and Means; Energy and Commerce; Education and Labor*

*H.R.8561 — To amend title XIX of the Social Security Act to sunset the increased FMAP for medical assistance for newly eligible mandatory individuals, and for other purposes; Sponsor: Rep. Johnson, Bill [R-OH-6]; Committees: House - Energy and Commerce*

*H.R.8568 — To amend title XVIII and title XIX of the Social Security Act to codify certain infection control and emergency preparedness regulations, to prohibit a reduction in the frequency of surveys of skilled nursing facilities and nursing facilities, to prohibit the waiver of certain reporting requirements, and for other purposes; Sponsor: Rep. Pascrell, Bill, Jr. [D-NJ-9]; Committees: House - Ways and Means; Energy and Commerce*

*H.R.8571 — To direct the Secretaries of Defense and Veterans Affairs to update the electronic health records of the respective departments to include information regarding the deployments of members of the Armed Forces; Sponsor: Rep. Rose, Max [D-NY-11]; Committees: House - Veterans' Affairs; Armed Services*

*H.R.8573 — To prohibit group health plans, health insurance issuers offering group or individual health insurance coverage, State plans under title XIX of the Social Security Act, State child health plans under title XXI of such Act, and the TRICARE program from applying a deductible to outpatient pediatric services; Sponsor: Rep. Schrier, Kim [D-WA-8]; Committees: House - Ways and Means; Energy and Commerce; Education and Labor; Armed Services*

*H.R.8574 — To amend titles XVIII and XIX of the Social Security Act to increase enforcement under Medicare and Medicaid for skilled nursing facilities and nursing facilities during the COVID-19 emergency period and other infectious disease outbreak periods, and for other purposes; Sponsor: Rep. Sherrill, Mikie [D-NJ-11]; Committees: House - Ways and Means; Energy and Commerce*

*H.Res.1190 — Thanking and promoting the professions of perinatal nurses by encouraging participation in National Perinatal Nurses Week; Sponsor: Rep. Roybal-Allard, Lucille [D-CA-40]; Committees: House - Energy and Commerce*

*H.R.8581 — To direct the Government Accountability Office to evaluate appropriate coverage of assistive technologies provided to patients who experience amputation or live with limb difference; Sponsor: Rep. Butterfield, G. K. [D-NC-1]; Committees: House - Ways and Means; Veterans' Affairs; Energy and Commerce*

*H.R.8586 — To amend title XIX of the Social Security Act to provide States with an option to provide medical assistance to individuals between the ages of 22 and 64 for inpatient services to treat substance use disorders at certain facilities, and for other purposes; Sponsor: Rep. Foster, Bill [D-IL-11]; Committees: House - Energy and Commerce*

*H.R.8588 — To provide for a study on the current and historical production of drugs in the United States and in foreign countries, and for other purposes; Sponsor: Rep. Hudson, Richard [R-NC-8]; Committees: House - Energy and Commerce; Foreign Affairs*

*H.R.8592 — To require the Secretary of Labor to revise the Standard Occupational Classification System to accurately count the number of emergency medical services practitioners in the United States; Sponsor: Rep. Wild, Susan [D-PA-7]; Committees: House - Education and Labor*