

Federal Issues

Legislative

Congress Passes \$1.5 Trillion Omnibus Spending Package

With a Friday midnight deadline in sight, the Senate on Thursday evening passed a \$1.5 trillion [spending package](#) that will fund the federal government through Sept. 30, 2022. The final vote on the legislation, which cleared the House earlier in the week, was 68-31.

Health care items of note include:

- **Telehealth Waivers:** The bill extends certain telehealth waivers for 151 days beyond the end of the COVID-19 public health emergency (PHE), including allowing for coverage for audio-only telehealth, continuing to eliminate Medicare originating site and geographic restrictions, and maintaining the expansion of practitioners that are eligible to provide services through telehealth.
- **Enhanced FMAP for Territories:** The bill extends enhanced FMAP for territories at 55 percent through December 13, 2022.
- **Puerto Rico:** Under the bill, Puerto Rico would receive an extension of its FMAP at 76 percent through December. The bill also gives Puerto Rico an additional \$200 million provided it

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establishes a reimbursement floor for providers and requires a report on procurement processes and standards used to select Medicaid managed care contracts in Puerto Rico. The report would be due to Congress by December 1st.

- **Maternal Health:** The bill includes \$30 million in funding to improve maternal and infant health outcomes. It also allocates \$8 million in funding for programs in rural maternal and obstetric networks.
- **340B Eligibility:** The bill includes an extension of 340B eligibility through end of 2022 for previously enrolled organizations that don't currently meet the applicable requirement for the Disproportionate Share Hospital adjustment percentage due to COVID-19 patient admissions.
- **Cybersecurity:** The bill includes a reporting requirement to DHS/CISA within 72 hours and within 24 hours for a ransomware payment.

COVID Money dropped: Although the bill initially included \$15.6 billion in funding for COVID-19 response, lawmakers pulled the pandemic funding after both sides of the aisle grew contentious around pay-fors to cover the new spending. There will likely be a separate effort to pass the COVID funding, but it remains unclear how the underlying disagreements will be overcome that will produce a bipartisan path forward in the House and Senate.

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Federal Issues

Regulatory

HHS Provides Details on COVID-19 Test to Treat Initiative

The Department of Health and Human Services (HHS) released [additional details](#), including a [fact sheet](#) and FAQs, on the COVID-19 “Test to Treat” Initiative. The initiative is part of the White House’s previously announced [National COVID-19 Preparedness Plan](#) to improve access to COVID-19 treatments.

Why this matters: Under the initiative, individuals will be able to go “one stop” sites at hundreds of locations throughout the country to get tested for COVID-19, receive a prescription for an oral antiviral treatment, and have their prescriptions filled all in one location and without patient cost-sharing. These sites will be available at locations such as pharmacy-based clinics, federally qualified health centers (FQHCs), and long-term care facilities. HHS indicated that they will add locations and create a website in the coming weeks.

According to the HHS fact sheet, individuals can either test positive on-site or present a positive test from another location, including from over-the-counter (OTC) at-home tests. People who are at high risk for developing severe disease from COVID-19 qualify for treatment. There are currently two oral antiviral treatments approved through emergency use authorization: Pfizer’s Paxlovid (for individuals 12 and older) and Merck’s Molnupiravir (for individuals 18 and older). HHS began distributing oral antiviral pills directly to participating Test to Treat sites this week.

Of note, fourteen organizations, representing the pharmacy community, including the American Society of Health-System Pharmacists, the American Pharmacists Association, the National Association of Boards of Pharmacy, and the National Community Pharmacists Association, among others, wrote a letter to the Administration noting that the terms of the FDA’s authorizations of those drugs prevent pharmacists from prescribing them directly — meaning a limited number of pharmacies that employ health care providers licensed to write and authorize prescriptions can serve patients as a one-stop shop.

HHS Publishes Vaccines Federal Implementation Plan 2021-2025

The Department of Health and Human Services’ (HHS) Office of Infectious Disease and HIV/AIDS Policy in the Office of the Assistant Secretary for Health (OASH) [published](#) the draft [Vaccines Federal Implementation Plan 2021-2025](#), a companion document to the [Vaccines National Strategic Plan 2021-2025](#) (VNSP) which was published in January 2021. The Vaccines Federal Implementation Plan is a compilation of federal agency immunization activities intended to advance the goals of the VNSP.

AHIP Submits Comments on Advance Notice for Medicare Advantage and Part D

AHIP submitted [comments](#) to the Centers for Medicare & Medicaid Services (CMS) on the Contract Year (CY) 2023 Policy and Technical Changes to the Medicare Advantage (MA) and Medicare Part D programs.

The letter supports regulatory recommendations to strengthen and improve the MA and Part D programs, including:

- Enhancing Integration of D-SNPs

- Improving Consumer Experience
- Exploring ways that MA plans can help further improve health equity

AHIP also expresses concerns about key changes in the Proposed Rule that would limit consumer flexibility, choice, competition, and value:

- Withdrawing Point-of-Sale Pharmacy Price Concessions Proposal
 - Revising Certain Star Ratings Proposals due to COVID-19 Effects
 - Considering Alternatives on MOOP Limit Calculations to Better Protect Beneficiaries
-

HHS Announces Nearly \$35 Million to Strengthen Mental Health Support for Children and Young Adults

The Department of Health and Human Services (HHS) [announced](#) nearly \$35 million in grant and funding opportunities focused on expanding and strengthening community mental health services and suicide prevention. These opportunities will come through the Substance Abuse and Mental Health Services Administration (SAMHSA) and the Office of Minority Health (OMH). This funding comes as the latest part of the Administration's push to tackle the nation's mental health crisis.

State Issues

New York

Legislative

Legislature Releases Budget Proposals

The Senate and Assembly released their respective one-house budget proposals over the weekend.

Highlights:

- Both houses removed the Governor's proposal to subject the Medicaid managed care program to a procurement
- Added language to expand coverage to low-income immigrants, expanding on the Governor's coverage expansion proposals (expand eligibility for the Essential Plan program, eliminate the \$9 monthly premium in the Child Health Plus for members with incomes below 222% FPL, and improve Medicaid coverage for prenatal and postpartum care).
- The Senate and Assembly proposals did not include funding to cover commercial insurers' unanticipated costs related to COVID-19 testing.

The two houses are expected to vote on their proposals this week, after which the Legislature and Executive will begin negotiating a final budget plan to be approved by the April 1 start of the new fiscal year.

On a related note, last week a [letter](#) opposing the Medicaid managed care procurement proposal was sent to legislative leaders signed by nearly 140 organizations representing providers, nonprofits, social services groups, and business associations.

State Issues

Pennsylvania

Regulatory

Autism Spectrum Disorders Coverage—Maximum Benefit Adjustment; Notice 2022-04

Section 635.2 of The Insurance Company Law of 1921 (40 P.S. § 764h) requires the Pennsylvania Insurance Commissioner, annually, on or before April 1 of each calendar year to publish in the *Pennsylvania Bulletin* an adjustment to the maximum benefit equal to the change in the United States Department of Labor Consumer Price Index for All Urban Consumers (CPI-U) in the preceding year, and the published adjusted maximum benefit shall be applicable to the following calendar years to health insurance policies issued or renewed in those calendar years.

The CPI-U change for the year preceding December 30, 2021, was an increase of 7.0%. As a result, the maximum benefit, previously adjusted to \$42,811 per year, is hereby adjusted to \$45,808 for policies issued or renewed in calendar year 2023.

State Issues

West Virginia

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Legislature Advances Choice of Pharmacy Services and Loss Ratio Information Legislation

Last week, the legislature advanced the following bills:

- [House Bill 4112](#) (Rohrbach, R-Cabell) Limits the ability of PBMs to characterize a pharmaceutical product as “specialty” and limit their ability to restrict the participation of independent pharmacies in networks for purposes of dispensing specialty medications.
- [Senate Bill 568](#) (Roberts, R-Raleigh) Requires health insurers that consider a loss ratio at the time of renewal of a policy, plan, or contract, to provide upon request, the loss ratio, and the components of the loss ratio calculation to the subscriber no more than 90 days but no less than 60 days before the renewal date of the policy, plan, or contract.

House Bill 4112 and Senate Bill 568 passed both chambers and are now awaiting the Governor’s signature.

Industry Trends

Policy / Market Trends

No Surprises Act Litigation Update

There are six separate lawsuits challenging the government's effort to implement various provisions of the No Surprises Act. To date, only one case has resulted in a decision. That ruling, in a case filed by the Texas Medical Association in U.S. District Court for the Eastern District of Texas, was issued late last month and struck down various provisions of an October interim final rule (IFR) on the basis they conflicted with the underlying statute and violated the Administrative Procedure Act. We continue to wait to see if the government will seek to appeal that decision up to the U.S. Court of Appeals for the Fifth Circuit.

Separately, a case filed by the Association of Air Medical Services and another by the American Medical Association and American Hospital Association have been consolidated into one action in the U.S. District Court for the District of Columbia. Summary judgment briefing in those consolidated cases has concluded, and a hearing is scheduled for March 21.

Two cases pending in federal district courts in Georgia and Illinois were recently stayed given the recent decision out of Texas. Finally, a case filed in New York federal district court challenging similar provisions in the October IFR as well as the constitutionality of the No Surprises Act remains in the preliminary organizing stages. There has been no briefing in that case.

The government has also indicated it is in the process of preparing a final rule to replace the interim final rules that are currently being challenged in each of these cases. In various court proceedings the government has indicated that it intends to issue that final rule by May of this year.

AHIP Releases New Report on the State of Medicare Supplement Coverage

AHIP's Center for Policy Research released a new [report](#) on the state of Medicare Supplement (Medigap) coverage. For the millions of seniors and people with disabilities in original Medicare, purchasing Medicare Supplement coverage helps fill gaps that more fully protect their health and financial security. AHIP's new report describes Medicare Supplement coverage options, demographics of enrollees with Medicare Supplement policies, and the most recent enrollment trends.

The report demonstrates that Americans highly value their Medicare Supplement coverage:

- **Medicare enrollees with Medicare Supplement coverage were 3 times less likely to have problems paying medical bills** compared to enrollees without Medicare Supplement policies.
- Among original Medicare enrollees without additional insurance coverage (such as Medicaid, employer-provided insurance, etc.), **53% chose Medicare Supplement coverage in 2020**.
- Between December 2017 and December 2020, **the share of original Medicare beneficiaries who purchase Medicare Supplement coverage increased from 35% to 39%**.

"Medigap protects the health and financial well-being of millions of seniors," said Jeanette Thornton, AHIP Senior Vice President of Product, Employer, and Commercial Policy. "Because it covers out-of-pocket costs that original Medicare doesn't, it's an important resource that helps enrollees budget for medical expenses. As a result, more seniors are choosing these plans – and they are benefiting from the additional protection they offer."

AHIP will highlight this report to showcase the value Medicare Supplement provides for the millions of Americans that rely on it.

Administration Highlights Health Insurance Subsidies That Promoted Critical Increases in Enrollment and Cost Savings

On March 10, to mark the year anniversary of the American Rescue Plan, the White House [released data](#) on health insurance enrollment during this year's Open Enrollment Period (OEP), including a state-by-state breakdown. According to data from HHS, during the 2021 Open and Special Enrollment periods, 5.8 million new consumers enrolled in coverage. Total enrolment in this year's OEP increased 21% to 14.5 million over 2021.

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.

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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