



Policy Brief

January 8, 2021



Key Things to Know: COVID-19 Legislative Package

On December 27th, President Trump signed the Consolidated Appropriations Act of 2021, an appropriations and stimulus package that includes funds to help fight the COVID-19 pandemic. The package also includes critical health-related provisions, such as surprise billing and price transparency. Many of these provisions require regulations to be issued in order to implement, which are expected in the near future. Below are key highlights from the legislation. Further information on other sections of the legislation will be provided in future Policy Briefs.

COVID-19 Vaccines and Contact Tracing

- Appropriates \$73 billion for federal agencies to support efforts related to the COVID-19 vaccine and improving testing capabilities and contact tracing.

Provider Relief Fund (PRF)

- Appropriates an additional \$3 billion for the PRF.
- Allows providers to calculate lost revenues using the Frequently Asked Questions guidance released by the Department of Health and Human Services (HHS) in June 2020, which specified that providers can use “any reasonable method” for the calculation. This includes the difference between budgeted and actual revenue if such budget had been established and approved prior to March 27, 2020.
- Clarifies that health systems may move all PRF distributions within their system.

Medicare Physician Fee Schedule (PFS)

- Includes a partial fix to the provider [reimbursement cuts](#) finalized in the PFS CY 2021 final rule:
 - Freezes payments until January 2024 for CPT code G2211, the visit add-on code that increased payments for office-based practitioners seeing more complex patients. This is estimated to mitigate the payment reductions by one third.
 - Provides an additional \$3 billion to the PFS, which will result in CMS having to update the conversion factor for CY 2021. It is estimated that PFS payments will increase across the board by 3.75% in CY 2021 as a result of this measure.

Medicare Sequestration

- Pauses the 2% Medicare sequester cuts through March 31, 2021, which were originally scheduled for January 1, 2021.

Mental Health

- Provides Medicare telehealth coverage for mental health services provided in both urban and rural areas.
- Requires insurers to analyze their compliance with the Mental Health Parity and Addiction Equity Act (MHPAEA) and make those analyses available upon request by HHS.
- Appropriates more than \$4 billion for various federal agencies to support mental health and substance use disorder initiatives.

Surprise Billing

- Beginning on January 1, 2022, protects patients from surprise medical bills arising from out-of-network emergency care, ancillary services provided by out-of-network providers at in-network facilities, and for out-of-network services provided at in-network facilities without the patient's informed consent. Surprise billing for air ambulance services will also be prohibited.
- Prohibits health providers from balance billing patients beyond the in-network cost-sharing amount, which will be determined through a formula established by the HHS Secretary.
- Beginning on January 1, 2022, requires providers to inform patients of their out-of-network status and provide an estimate of charges at least 72 hours before furnishing a service.
- For out-of-network services, requires providers to obtain the patient's written consent and retain that documentation for at least seven years after the service is provided.
- Establishes an Independent Dispute Resolution (IDR) process for providers and insurers to dispute out-of-network claims. This process will be established by the Secretaries of HHS, Labor and Treasury through rulemaking.

- This process will be administered by an independent, private entity and there will be no dollar threshold for claims to qualify.
- Payments must be made within 30 days of the date on which an IDR determination is made.
- To determine the reimbursement rate, the arbitrator is required to consider the market-based median in-network rate, alongside other factors, such as patient acuity and the complexity of services.
- Applies the provisions outlined above to states without surprise billing legislation. For those states with existing measures, the reimbursement and IDR provisions of this legislation will apply only to health plans regulated by the federal government, such as Employee Retirement Income Security Act of 1974 (ERISA) plans.

Transparency

- Establishes price transparency requirements for both health providers and health insurers. This includes:
 - Beginning in CY 2022, requires insurers to provide patients with an Advance Explanation of Benefits (EOB) when a provider notifies the insurer or group health plan that an enrollee is scheduled to receive a health care service. The legislation stipulates requirements for when the EOB must be delivered to patients.
 - Requires insurers and group health plans to provide information on a provider's network status within one business day of a request and establish a database of in-network providers.
- Requires health providers to submit updates regarding their provider directory information to insurers and group health plans.



Additional Public Health Provisions Included in the Consolidated Appropriations Act

In addition to COVID-19 relief, the Consolidated Appropriations Act [also includes](#) \$1.4 trillion for government spending with several [provisions](#) that address public health policies. These provisions include funding for mental health, food and nutrition programs, and community

services. The bill also included measures to expand services for behavioral health and veterans affairs. Below are key public health provisions included in the Act.

The Consolidated Appropriations Act includes funding for many public health provisions.

- \$6 billion for the Substance Abuse and Mental Health Services Administration (SAMHSA); \$7.5 billion for the Health Resource and Services Administration (HRSA).
- \$62 million for the Office of Minority Health
- \$114 billion for the Supplemental Nutrition Assistance Program (SNAP); \$25 billion for childhood nutrition programs.
- \$10.7 billion for Head Start; \$5.9 billion for childcare and development block grants.
- \$21.5 million for water projects to bring communities into compliance with the Safe Drinking Water Act.
- \$2.4 billion for the Ryan White HIV/AIDS program.
- \$745 million for the Community Services [Block Grant](#), which provides funds to alleviate the causes and conditions of poverty.
- \$730 million for the expansion of broadband internet service.

In addition to funding, it also addresses public health priorities in other ways.

The legislation expands telehealth in Medicare to cover mental health services. It also requires that insurance plans perform comparative analyses examining their medical and surgical benefits compared to their behavioral health benefits. Funding was provided for the [MISSION Act](#) and the Caregivers Program, which supports and provides training to the caregivers of veterans.

Other public health measures included in the legislation include the extension of Temporary Assistance for Needy Families (TANF) through September 30, 2021 and the establishment of a Social Determinant of Health Pilot Program to create Social Determinant of Health Accelerator Plans. This would help state and local governments to develop plans to address the health and social needs of targeted populations.



Attorney General Xavier Becerra Tapped to Lead HHS

President-elect Joe Biden has nominated Mr. Xavier Becerra to lead HHS. Mr. Becerra, formerly a member of Congress himself, is seen as somewhat of an unconventional choice, raising [concerns](#) for some Senators who are worried about his lack of formalized public health experience and history of supporting laws that protect access to abortion services. If confirmed by the Senate, Becerra would make history as the [first Latino](#) to lead HHS.

Who is Xavier Becerra?

Mr. Becerra has served as California's Attorney General since 2017, working to advance health policy solutions related to health equity, gun violence reduction and protecting the environment. Much of Becerra's work focuses on solving public health problems; during his tenure as an attorney, he filed [more than a dozen](#) lawsuits directly related to issues in health care. Prior to this, Becerra served 12 terms representing Los Angeles in the House of Representatives. Beyond California, he may be best known for [stepping in](#) to defend the Affordable Care Act (ACA) when the Trump Administration refused. Becerra has [opposed](#) large-scale health system mergers, but [expresses eagerness](#) to work with health systems in this next phase of combatting COVID-19.

What's next for Becerra on the road to leading HHS?

At this point, Becerra still needs to progress through the usual [confirmation process](#) required for Cabinet appointees. To step into the Secretary role, Becerra will need to win support from the majority of Senators during his confirmation hearing—something that could be helped by the 24 years he spent making connections as a House member. However, his strong support for universal health care and the ACA is already [drawing the ire](#) of some Republican Senators. The date of Becerra's confirmation hearing before the Senate has not yet been publicly released.



Federal Appeals Court Upholds Price Transparency Rule

The U.S Court of Appeals for the District of Columbia has [upheld the legality](#) of the Trump Administration's much-debated Hospital Price Transparency Rule. Under the rule, hospitals must make public their payer-specific negotiated rates or face financial penalties. The American Hospital Association (AHA) [challenged](#) the rule in October, arguing that it violated the First Amendment and the Administrative Procedures Act. Judge Tatel disagreed; the rule became effective January 1st.

Democratic Candidates Win Senate Runoff Races in Georgia

Democratic candidates Jon Ossoff and Raphael Warnock have been declared the [winners](#) in Georgia's Senate runoff races. Voter turnout reached [near-historic levels](#) of 92% in Georgia, in part helped by robust grassroots organizing and voter registration campaigns. Ossoff and Warnock's victory gives Democrats control of the Senate, with a 50-50 split and Vice President-elect Kamala Harris casting the tie-breaking vote, which will make it easier for President-elect Biden to advance his policy priorities.

Congress Certifies Biden's Election Victory

Despite [deadly riots](#) at the Capitol, Congress has ratified President-elect Joe Biden's victory over President Trump in the 2020 presidential election. The session lasted nearly all night, with congressmembers reconvening at 8:00 PM to resume certifying the results. Following the violence at the Capitol, some lawmakers who had previously planned to open additional objection debates [changed their mind](#). In total, eight Republican Senators and 139 Representatives [voted to overturn](#) the election results.

Updates to COVID-19 Regulations

AHPA continues to follow new COVID-19 regulations, guidance and other government actions. The updates below are the latest guidance and other developments since December 21st to help mitigate the impacts of COVID-19. For earlier COVID-19 regulations and guidance, visit the previous [Policy Brief](#).

Trump Administration Announces Plan to Speed Up Vaccine Delivery

- The Trump Administration has [announced](#) its plan to begin accelerating vaccine delivery by offering vaccinations in pharmacies. Within the next two weeks, the Administration estimates that between 3,000 and 6,000 pharmacies could begin administering COVID-19 shots.

FEMA Extends Rule Prioritizing Scarce PPE for Domestic Use

- The Federal Emergency Management Agency (FEMA) has [extended their rule](#) allocating certain health and medical resources for domestic use, prohibiting their exportation without explicit FEMA approval.

FDA Warns of False Negative Risk from Curative's COVID-19 Test

- The FDA has [warned](#) that Curative's SARS-CoV-2 test could produce false negative test results and that health care providers should strictly follow its authorization and labeling.

Updated FAQs for State Medicaid Agencies' COVID-19 Pandemic Response

- CMS has posted additional [Frequently Asked Questions \(FAQs\)](#) to Medicaid.gov, to aid state Medicaid and Children's Health Insurance Program (CHIP) agencies in their response to the COVID-19 pandemic.



A Look at the Federal Register

Employment and Training Opportunities in the Supplemental Nutrition Assistance Program

The Food and Nutrition Service has released a [final rule](#) implementing changes pertaining to the Employment and Training (E&T) program and aspects of work requirements for able-bodied adults without dependents.

Medicare Program: Secure Electronic Prior Authorization for Medicare Part D

CMS has released a [final rule](#) naming a new transaction standard for Medicare's Prescription Drug Benefit program (Part D) e-prescribing program.



AHPA Resources

- AHPA is hosting a webinar on the final OPPS and PFS rules **this afternoon** (January 8th) from 1:30 – 2:30 PM EST.

[Request a Calendar Invitation](#)

- **Save the Date!** AdventHealth invites AHPA members to attend their upcoming webinar to discuss the health care implications of the election results.

Implications of the Election Results: What to Expect

Host: AdventHealth Advocacy and Public Policy

Date: Thursday, January 28, 2021

Time: 1:30 – 2:10 PM EST

[Request a Calendar Invitation](#)

IN OTHER NEWS

[Fauci: US Could Soon Administer More Than 1 Million Vaccines Doses Per Day](#) – The Hill

[Georgia Senate Wins Followed Years of Party Organizing](#) – The Wall Street Journal

[COVID-19 as the Leading Cause of Death in the United States](#) – JAMA

[The 14 Republican Senators Who Planned to Reject the Electoral College's Certification](#) – Vox

[The Racial Contradictions of Trump's "Law and Order" Mantra](#) – Politico