

Locke Lord QuickStudy: House Democrats Outline Health Care ?Legislative Priorities

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On September 9, 2021, the U.S. House of Representatives Energy and Commerce Committee released their [health care proposals](#) for the Build Back Better Act. On September 10, 2021, the Ways and Means Committee released a [summary of certain provisions](#) in their draft legislation. Taken together, the proposals seek to close the Medicaid coverage gap, add benefits to Medicare, and lower prescription drug prices, and make permanent the enhanced premium tax credits under the American Rescue Plan Act (ARPA).

While the policies proposed by Democrats in the House of Representatives are not presently expected to be passed as proposed, the changes being contemplated would have significant impacts on the health care industry.

The proposals provide the clearest insights into the Democratic legislative priorities heading into the 2022 midterm elections. It is expected that the budget reconciliation legislation in the Senate will need to be narrower and less expensive in order to obtain the requisite support for passage.

Notably, the proposals do not include a lowering of the Medicare eligibility age as some stakeholders have advocated for. The Energy and Commerce proposals include:

Medicaid/CHIP

- Closing the Medicaid Coverage Gap: A Medicaid program for individuals in non-expansion states beginning in 2025 that gives the Secretary of HHS authority to contract with third-parties to operate the program.
- Funding for expanding access to home and community based services for Medicaid enrollees.
- Twelve months of continuous Medicaid/CHIP eligibility to postpartum women.
- Permanent funding of the Children's Health Insurance Program (funding is currently available through 2027).
- Providing 30 days of coverage for justice-connected individuals prior to an individual's release from incarceration.

Medicare

- The addition of vision care benefits beginning October 1, 2022.

- The addition of hearing care benefits beginning October 1, 2023.
- The addition of dental and oral care benefits beginning January 1, 2028.

Affordable Care Act

- Providing premium tax credits and enhanced cost-sharing assistance to individuals in states that have not expanded Medicaid to purchase Exchange coverage from 2022-2024 (until the new Medicaid program to cover this population is established in 2025).
- Creating a Health Insurance Affordability Fund that would make available \$10 billion annually that states could use to establish a reinsurance fund or reduce out-of-pocket costs. CMS would be required to implement a reinsurance program for states that do not use these funds during 2023 and 2024 plan years.
- Making permanent the premium tax credit expansions under the ARPA that provided enhanced tax credits for individuals with household income up to 150 percent of the federal poverty level (“FPL”) and capped the premium contribution amount at 8.5% of household income, even for individuals with household income greater than 400% FPL.
- Modifying the affordability threshold of employer-sponsored coverage to permanently maintain a cap of 8.5% of household income. Employer-sponsored coverage that is more expensive would not be considered “affordable” and permits the employee to receive premium tax credits for coverage purchased through an Exchange.
- Extending the ARPA tax credits through 2025 for individuals receiving unemployment benefits to be eligible to receive premium tax credits as if their household income was no greater than 150% FPL.

Drug Pricing

- Requiring that the Secretary of HHS negotiate with drug manufacturers to determine the maximum fair price of certain prescription drugs and imposing a tax on noncompliant manufacturers.
- Providing for mandatory rebates for Part B and Part D drugs that increase prices faster than inflation with civil monetary penalties for non-compliant manufacturers.
- Establishing a \$2,000 out-of-pocket maximum for Part D enrollees.
- Prohibiting the implementation of the HHS Office of the Inspector General final rule [Removal of Safe Harbor Protection for Rebates Involving Prescription Pharmaceuticals and Creation of New Safe Harbor Protection for Certain Point-of-Sale Reductions in Price On Prescription Pharmaceuticals and Certain Pharmacy Benefit Manager Service Fees](#).

Funding for the establishment of the Advanced Research Projects Agency for Health to “make pivotal investments in breakthrough technologies and broadly applicable platforms, capabilities, resources, and solutions that have the potential to transform important areas of medicine and health that cannot readily be accomplished through traditional biomedical research or commercial activity.”

A Committee Memorandum may be found [here](#). A Fact Sheet may be found [here](#). Please look to Locke Lord to provide further updates of material developments as Congress considers these significant health care proposals.

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