



Issues for the week ending February 14, 2020

## Federal Issues

### Legislative

#### **BCBSA, Highmark Showcase Civica Rx Partnership on Capitol Hill**

In an effort to highlight **Blue plan leadership** on key initiatives to policy makers in Washington, BCBSA on Wednesday hosted a **Capitol Hill briefing** on the recently announced [partnership](#) between BCBSA, 18 participating BCBS Plans -- including **Highmark** -- and [Civica Rx](#).

The partnership involves **manufacturing a select set of outpatient generic drugs** to lower prices through increased completion – and committing to passing the savings on to consumers. The effort builds on a similar initiative created in 2018 by a group of health systems – including **Allegheny Health Network** – that has begun manufacturing generic inpatient drugs.

**Why it matters:** With Congressional efforts to enact a broader drug pricing package seemingly stalled, it is incumbent on the private sector to try to move the needle on this issue to help consumers afford critical medications.

**The audience:** More than 60 senior Hill staff and other health policy influencers attended the briefing and heard from House **Speaker Nancy Pelosi's** top

## In this Issue:

### Federal Issues

#### *Legislative*

- BCBSA, Highmark Showcase Civica RX Partnership on Capitol Hill
- House Committees Clear Surprise Billing Measures
- White House Releases President's Proposed Fiscal Year 2021 Budget

### State Issues

#### Pennsylvania

##### *Legislative*

- Drug-related Bills Among Measures Signed by Governor Wolf
- Public Hearing Slated for Frozen Formulary Bill

##### Regulatory

- Pennsylvania Submits Waiver Application to Develop State Health Reinsurance Program

#### West Virginia

##### *Legislative*

- Health Insurance/Health Care Bills Continue to Garner Attention in West Virginia

healthcare adviser, Wendell Primus, as well as the former senior **HHS Drug Pricing adviser** John O'Brien and panelists from Highmark, Civica Rx and the Arnold Foundation.

- The briefing opened with remarks from Mr. Primus and Mr. O'Brien, who congratulated BCBSA and participating Blue plans on our partnership with Civica, and highlighted various **proposals and approaches to lowering costs of prescription drugs**, including high-cost generics.
- A panel discussion then ensued, which was moderated by **BCBSA Senior Vice President Justine Handelman** and included **Highmark's Corey DeLuca, Civica Rx's Jennifer Spalding** and **Mark Miller of the Arnold Foundation**. The panel highlighted details of the partnership and explained the impact it will have on the generics market.

Many key House and Senate offices were represented and participated in a robust Q&A session, indicating a strong interest in creative private sector solutions addressing affordability for American consumers.

---

## House Committees Clear Surprise Billing Measures

Two key House committees focused on **surprise billing** this week, holding separate markup sessions in the House Education and Labor (E&L) and Ways and Means (W&M) Committees. On Tuesday, the E&L Committee passed [H.R. 5800](#), the "Ban Surprise Billing Act," while the W&M Committee passed [H.R. 5826](#), the "Consumer Protections Against Surprise Medical Bills Act."

**The dynamics:** Debate in both committees largely revolved around the best way to solve payment disputes between insurers and out-of-network providers – using a median private market **benchmark**, going to **arbitration** or a providing **a pathway that combines both**. Some committee members hailed **New York's arbitration-style solution** as a success that has saved millions of dollars for patients, while others favored **California's approach**, which relies on locally determined benchmark payments, prohibitions on billing over in-network rates and strong network adequacy protections.

### The results:

- E&L Committee – The committee [approved](#) the bill by a vote of 32-13. The legislation largely mirrors a bipartisan, bicameral agreement reached by the House Energy and Commerce and Senate HELP Committees in December, **which includes a benchmark based on the median in-network rate**. Any claims above \$750 would be allowed to be address by an independent dispute resolution process, with a **90 day "cooling off period"** during which a particular provider cannot seek another round of arbitration against a particular insurer for the same type of claim.
- W&M Committee – The committee unanimously [approved](#) its legislation, which requires health plans and providers to **attempt to resolve payment disputes on their own** for 30 days. If no resolution is reached, **either party can seek arbitration**. The bill does not include a threshold to go to arbitration or any measures to

discourage over use of arbitrations, such as the 90-day cooling off period. The bill also includes provisions to increase transparency by requiring health plans to provide **advanced estimates of costs and provider network status** as well as improve accuracy of health plan **provider directories**.

**The White House:** Prior to the W&M markup, the White House expressed opposition to H.R. 5826, expressing concern that the “push to overuse arbitration” would increase healthcare costs. After the markups, however, **President Trump tweeted** appreciation for both committees’ efforts and urged all parties to work together to send a bipartisan bill to his desk to “protect patients and end medical bill rip-offs!”

**Next steps:** House leaders will work with committee chairs to merge the legislation into a final product that is expected to be voted on by the House in the coming weeks with the goal of reaching final agreement ahead of a **May 22 fiscal deadline**.

The [Coalition Against Surprise Medical Billing](#) released a [statement](#) in opposition to the W&M proposal, calling it a “major step backwards.”

---

## White House Releases President's Proposed Fiscal Year 2021 Budget

The White House on Monday released the President’s fiscal year 2021 budget proposal – [A Budget for America’s Future](#) – along with an [overview](#) and [fact sheets](#) on key components of the \$4.8 trillion plan.

**Why it matters:** The proposal is nonbinding on Congress, but provides a roadmap for administration priorities. Congress will likely embrace parts of the proposal and reject others as it moves through its normal budget and appropriations cycle, cognizant of the fact that the president must sign any final product.

### Health-related highlights include:

- **Medicare Advantage (MA):** The budget proposes to remove the cap on MA benchmarks, which would allow plans to fully realize their quality bonus payments. However, this is paired with a proposal to remove double bonus counties, resulting in a net \$1.2 billion decrease in government spending. It also proposes accelerating the move to MA encounter data as a source for MA risk adjustment, which would result in a \$40.6 billion cut to MA over 10 years.
- **Drug Pricing/Part D Reform:** The budget supports creating an out-of-pocket maximum in Medicare Part D, improving incentives for lower list prices and reducing out-of-pocket expenses for seniors. It also supports support for bringing efficiencies to the FDA drug development and review process and providing lower-cost generic and biosimilar drugs to patients. It also wants to ensure manufacturers pay an appropriate share of Medicaid rebates, and it supports value-based Medicaid drug payment arrangements to lower costs for taxpayers.
- **Maternal Health:** The budget provides \$74 million in new resources to address maternal health, focusing on four strategic goals: (1) improving prevention and treatment for all women of reproductive age; (2) prioritizing quality improvement for pregnancies and births; (3) optimizing postpartum health; and (4) improving data/bolstering research to inform future interventions.
- **Drug Abuse/Opioids:** The budget invests \$5 billion to combat the opioid epidemic, including funding for research, surveillance, prevention, treatment, access to overdose reversal drugs and recovery support services. States are also given flexibility to use these funds to address psychostimulants, including methamphetamines.
- **Tobacco Products:** The budget proposes to move the Center for Tobacco Products out of the FDA and create a new agency within HHS to focus on tobacco regulation. This new agency, with the singular mission on tobacco, would have greater capacity to respond strategically to the growing complexity of new tobacco products.

**Related:** HHS Secretary Alex Azar [testified](#) on the proposal before the Senate Finance Committee on Thursday.

---

## State Issues

### Pennsylvania

Legislative

#### Drug-related Bills Among Measures Signed by Governor Wolf

On February 12, Gov. Tom Wolf signed several bills into law, including two that impact prescription drugs:

- [House Bill 427](#) (Act 6 of 2020) prohibits health insurers from restricting access to Stage IV metastatic cancer treatments if the drugs are approved by the U.S. Food and Drug Administration and consistent with Stage IV metastatic cancer best medical practices. Patients will not have to first prove that they failed to respond to a different drug or drugs before they are provided coverage. **Act 6 of 2020 is effective in 60 days.**
- [Senate Bill 432](#) (Act 8 of 2020) amends the Achieving Better Care by Monitoring All Prescriptions Program Act (ABC-MAP) to authorize employees of a county or municipal health department to query the system if they have a unique identifier when accessing the system. The employee would need data to develop educational programs for prescribing practices and controlled substance abuse, identifying at-risk individuals and compiling epidemiological data. **Section 9(D) of Act 8 of 2020 is effective February 12; the remaining sections are effective in 60 days.**

---

#### Public Hearing Slated for Frozen Formulary Bill

The House Consumer Affairs Committee will conduct a public hearing on Tuesday, February 18 on House Bill 853, legislation that would prohibit a health plan from making changes to its prescription drug formulary mid-contract or “freeze” the formulary. Michael Yantis, Highmark vice president for State Government Affairs, will present testimony in opposition to the legislation. He will be joined by representatives from Capital Blue Cross, Independence Blue Cross and the Insurance Federation of Pennsylvania (IFP).

---

## State Issues

### Pennsylvania

Regulatory

#### Pennsylvania Submits Waiver Application to Develop State Health Reinsurance Program

The Pennsylvania Insurance Department submitted the Commonwealth’s 1332 State Innovation Waiver application to the Center for Medicare and Medicaid Services (CMS) for a reinsurance program.

#### Background

- Pennsylvania has relied on the federal health insurance exchange since the implementation of the Affordable Care Act (ACA) in 2010.
- Gov. Wolf [signed historic legislation](#) creating the state-based health insurance exchange in July, which passed with significant bipartisan support.
- Savings from the decreased operational costs of the new exchange will be used to create a reinsurance fund.
- Through this federal waiver, the state’s reinsurance fund will directly pay some of the health care costs for high-cost individuals, which may result in lower premiums for other insured Pennsylvanians on the individual market, as well as reduce the costs for health care premium subsidies to assist low-income individuals.

**Why it matters:** By reimbursing insurance carriers for a portion of their higher-cost claims and spreading that risk across the broader marketplace, **a reinsurance program will help to stabilize or lower premiums for individual health insurance plans** from where they would otherwise be without reinsurance.

Pennsylvania's waiver request under Section 1332 is for a period of up to five years beginning in the 2021 plan year. The waiver will not affect benefits afforded to Pennsylvanians under the ACA, including coverage of required essential health benefits in individual and small group plans, and the prohibition of pre-existing condition exclusions in major medical plans. Pennsylvania's state-based exchange is on schedule to be fully operational in 2021.

---

## State Issues

### West Virginia

Legislative

#### **Health Insurance/Health Care Bills Continue to Garner Attention in West Virginia**

The West Virginia Legislature is nearly three-quarters through its 2020 legislative session. The following proposals received consideration this week:

**WV Healthcare Continuity Act, Senate Bill 284**—WV Attorney General Patrick Morrissey continues to promote his legislation that proposes to maintain sections of the Affordable Care Act (ACA) – such as protections for pre-existing conditions – should the law be ruled unconstitutional. The bill is pending action by the Senate Health Committee.

**Why it matters:** The challenge to the federal ACA was brought by 18 attorneys general, including Morrissey, and two governors. The appeal will likely be heard during the court's 2021 term.

**House Bill 4003, Telehealth Insurance Requirements**—House Bill 4003 would establish health insurance coverage parity between telehealth and in-person visits to a health provider. Telehealth payments would be open to negotiations between providers and health plans. The legislation is pending consideration by the Senate Health Committee. Health care providers dominate this panel, thus it is probable that payment parity language will not be removed. Negotiations between the House and Senate will be necessary to address any unresolved, including parity.

**Senate Bill 291, Mental Health Parity Requirements**—This proposal addresses mental health coverage provided by the Public Employee Insurance Agency (PEIA) and commercial health plans and their perceived limitations as compared to physical health benefits. Senate Bill 291 is slated for a floor vote in the Senate next week. The PEIA was seeking exemptions from some of the bill's provisions, however, has withdrawn the proposal.

**House Bill 4583, Pharmaceutical Transparency and Reporting**—House Bill 4583 would require pharmaceutical manufacturers and health plans to disclose and report data on prescription drug costs and utilization. The bill is currently under review by the House Government Organization Committee, however, there is a chance it may not consider it.

**House Bill 4061, Health Plan Network Access and Adequacy**—House Bill 4061 is a NAIC model law which proposes similar network adequacy reports and rules on health plans that are currently required of Medicaid MCOs and HMOs. The bill has passed the House of Delegates and is now assigned to the Senate Health and Judiciary committees. The OIC is indirectly advocating for this bill and there are likely no impediments to its ultimate passage.

**Senate Bill 279, Assignment of Dental Benefits**—The Senate Judiciary Committee has endorsed Senate Bill 279, which is scheduled for a floor vote next week. While the bill allows assignment or direct payment to non-participating or

out-of-network dentists, amendment language requires providers to notify patients about the repercussions associated with being treated by an out-of-network dentist, which includes being billed charges and balance billing.

**House Bill 4543, Insulin Cost Cap**—The House Judiciary Committee this week voted in favor of House Bill 4543, which would cap the cost of all forms of insulin at \$25 per month for each patient. The bill, which is scheduled for a House floor vote, also includes language to require PBMs to bear the cost of the capped insulin benefit versus pharmaceutical manufacturers. While approval is expected, it remains unclear whether the Senate will consider its version of the bill, which is viewed as price setting by some of its members.

**House Bill 4422, Patient Brokering**—This measure would put anti-patient brokering standards in state law – prohibiting any health care provider or health care facility from giving or receiving any form of remuneration in exchange for referrals. The House Judiciary Committee approved the bill which now goes to the full House for consideration.

---

The Pennsylvania General Assembly is in recess the week of February 17.

The Delaware Legislature returns to session March 17.

The West Virginia Legislature is in session January 8 - March 7.

#### Congress

The U.S. Congress is in recess the week of February 17.

**Interested in reviewing a copy of a bill(s)? Access the following web sites:**

Delaware State Legislation: <http://legis.delaware.gov/>.

Pennsylvania Legislation: [www.legis.state.pa.us](http://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/>.

The content of this email is confidential and intended for the recipient specified only. It is strictly forbidden to share any part of this message with any third party, without a written consent of the sender. If you received this message by mistake, please reply to this message and follow with its deletion, so that we can ensure such a mistake does not occur in the future.