

## Federal Issues

### Legislative

#### Senate Passes COVID-19 Relief Bill

The U.S. Senate [passed](#) the [American Rescue Plan Act of 2021](#) early Saturday by a vote of 50-49. The move came following a 219-212 vote on the \$1.9 trillion package by the House last week, clearing the path for Congress to deliver President Biden his first major victory.

Before taking up the measure, the Senate released a number of minor [changes](#) to the House-passed bill and eventually lost a high profile effort on Friday to add a minimum wage increase. Otherwise, the bill remained largely intact. One notable health care change was an increase in the amount of COBRA subsidies from 85% to 100%, a move being pushed by unions.

Additional health-related highlights of the legislation include funding for COVID-19 vaccines and testing, \$10 billion for infrastructure such as broadband internet, enhanced subsidies for the ACA premium tax credits (for two years), and \$8.5 billion in funding for rural providers.

**What's next:** The House plans to hold a final vote on Tuesday, which should allow President Biden to sign the bill into law this week.

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- Members of AHIP and BCBSA Announce Vaccine Community Connectors Initiative

AHIP and BCBSA sent a [letter](#) to Congressional Leadership supporting their efforts to keep Americans enrolled in affordable health coverage, stabilize coverage for those enrolled in Medicare and Medicaid, and promote equitable access to health care. In the letter, they reiterated members' commitment to providing Americans with access to the testing, treatment, vaccines, and other medical care they need. They also offer strong support for:

- Temporary funding to subsidize COBRA premiums;
- Expanding premium tax credit eligibility and enhancing the generosity of subsidies for those already enrolled in coverage;
- Providing opportunities for Americans receiving unemployment to qualify for robust premium tax credits and cost-sharing reductions in marketplace plans;
- Ensuring Medicare Advantage (MA) program stability;
- Enacting legislation to ease access to telehealth services for MA enrollees;
- Extending the Medicare sequester moratorium through the public health emergency;
- Enhancing federal financing of Medicaid by increasing each state's Federal Medical Assistance Percentage (FMAP) by at least 12 percentage points;
- Limiting Medicaid eligibility redeterminations to ensure access to available benefits and continuity of coverage;
- Funding for COVID-19 screening and public health surveillance and testing necessary for schools to safely re-open; and
- Federal outreach and communication to build public trust and confidence in the vaccines, and funding for interventions that will meet vaccine hesitant groups where they are.

The letter also urges Congress to examine how some diagnostic testing providers are charging exorbitant amounts taking advantage of the FFCRA requirement that health insurance providers' pay the cash price for out of network COVID-19 testing.

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## House Panel Examines the Future of Virtual Care

The House Energy and Commerce Committee's Subcommittee on Health heard from health care industry, business, and academic experts as well as patient advocates on how the advent of COVID-19 has advanced the use of virtual care, particularly telehealth, and what challenges remain to broadening access.

During the [hearing](#), "Future of Telehealth: How COVID-19 is Changing the Delivery of Virtual Care," subcommittee members and panelists acknowledged the vital role telehealth has played in providing primary and mental health care services to Americans of all ages and ZIP codes during the COVID-19 pandemic. **When examining the future of virtual care, several themes emerged among the panelists, including:**

- The need to expand access to broadband so more people can participate in video calls with their physicians;
- Continuing coverage of audio-only telehealth to bridge the gap for those with limited access or experience with video services;
- Licensing physicians to provide services across state lines; and
- Permanently covering mental health telehealth services—especially in rural areas where there is a serious lack of psychiatric and mental health providers.

Overutilization also was a key topic, with panelists agreeing that there is not yet enough evidence to determine if overutilization is occurring. It was recommended that telehealth flexibilities should be extended one to two years after the pandemic has ended to truly understand whether the services are being overly used.

**Insurer Perspective:** AHIP submitted a [statement for the record](#) highlighting how health insurance providers have committed to improving affordable access to quality health care through telehealth. AHIP also recommends that Congress make the flexibilities in benefit design instituted during the public health emergency permanent and encourage Congress to pass the *Ensuring Parity in MA for Audio-Only Telehealth Act*. AHIP along with 10 other organization representing health plans and providers also sent a [letter](#) to expressing strong support for the legislation.

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## Federal Issues

Regulatory

### CMS Reports 2021 ACA Marketplace Enrollment

President Biden issued a [statement](#) on the 2021 Marketplace Special Enrollment Period (SEP) for consumers in healthcare.gov states, encouraging Americans to sign up for coverage by the May 15 deadline. The Centers for Medicare & Medicaid Services (CMS) [reported](#) more than 206,000 Americans signed up for health insurance plans during the first two weeks of the 2021 Marketplace Special Enrollment Period (SEP) for consumers in healthcare.gov states.

Starting February 15, the open enrollment opportunity allows any individual to apply for and enroll in coverage (Exchange or Medicaid/CHIP) without additional documentation. Nearly all state Exchanges also currently have a similar open enrollment opportunity, and several states have announced open enrollment off-Exchange for individuals who may be seeking other individual market, unsubsidized plans that are not offered on the Exchange.

From the beginning of the SEP on February 15 through February 28, 76,000 consumers newly made plan selections, compared to the 60,000 consumers who signed up for health insurance using an SEP due to a qualifying life event during the same period in 2020 and 2019. CMS plans to release a report on new plan selections for each month of the 2021 SEP. New plan selections are a count of unique consumers who didn't have an active Marketplace plan as of February 14 and made a plan selection on or after February 15.

CMS also [announced](#) it is making approximately \$2.3 million in additional funding available to current Navigator grantees in healthcare.gov states to support outreach, education, and enrollment related to the 2021 SEP. Thirty organizations eligible to receive these funds operate across 28 states. CMS plans to increase funding significantly for the upcoming 2021 Navigator Notice of Funding Opportunity grants, which will be published this spring to allow time to award a new round of grants before the 2022 plan year open enrollment period.

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## Coronavirus Updates

- The Centers for Medicare & Medicaid Services (CMS) [announced](#) approximately \$2.3 million in additional funding for current Navigator grantees in Federally-facilitated Marketplace (FFM) states to support the outreach, education, and enrollment efforts around the 2021 Special Enrollment Period (SEP) that runs through May 15, 2021.
  - The FDA granted [emergency use authorization](#) for a prescription at-home rapid antigen test, called the QuickVue At-Home COVID-19 Test, made by San Diego-based Quidel. The test can be used by patients 14 years and older who are suspected to have COVID-19 within six days of symptom onset and adults also can administer the test to kids eight years or older.
  - President Biden [announced](#) that the country will have enough vaccine supply for every adult in America by the end of May.
  - President Joe Biden also [announced](#) that drug company Merck will manufacture doses of Johnson & Johnson's coronavirus shot, to help overcome production delays and try to fulfill a pledge to provide 12 million shots by the end of February.
  - The U.S. Food and Drug Administration (FDA) [issued](#) an Emergency Use Authorization (EUA) to Cue Health Inc. for its over-the-counter at-home diagnostic test for COVID-19. This is the first available molecular test available for at-home use without a prescription by people with or without COVID-19 symptoms. The test requires the use of a compatible smartphone and a downloadable app. The app provides testing instructions and works with the Cue Cartridge Reader (provided separately) and the Cue testing cartridge to perform the test (results in about 20 minutes).
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## State Issues

## Pennsylvania

Legislative

### Department of Human Services Identifies Priority Areas During Budget Hearing

Officials with the Pennsylvania Department of Human Services (DHS) appeared before the House Appropriations Committee on March 3 to discuss the department's 2021–2022 fiscal year budget and the vast network of services and programs the department oversees across Pennsylvania.

#### Among the important issues discussed:

- The Governor's proposal to increase the minimum wage
- The new DHS Racial Equity Report
- Pennsylvania's Rural Health Model to transform care and provide stability for the state's rural hospitals
- Efforts to improve health disparities related to maternal mortality
- The impact of additional Medicaid enrollment stemming from the COVID-19 pandemic
- A supplemental appropriation request for the current fiscal year
- Availability of ventilator beds at long-term care facilities

DHS officials also discussed a proposal to create a [Health Value Commission](#) that would look to establish a cost-growth benchmark to monitor payor and provider performance. The recommendation was one of a series of suggestions from the Interagency Health Reform Council to develop new health care payment models.

**Hospital industry position on the Health Value Commission:** Hospitals believe the affordability of health care is paramount to maintaining access to care and developing mechanisms to control the cost of health care in Pennsylvania is a worthy goal. However, the cost of health care is systemic and is not captured or reflected by hospital costs or charges. Hospitals and providers are the end users of services and products produced through an expensive medical education system, drug costs, medical liability and legal environment, and the continuous investment in technology and medical advancements. To create a commission that narrowly focuses on hospital costs will miss deeper, underlying structural issues—including socio-economic factors—that lead to the overall increased cost of health care.

The House Appropriations Committee concluded its budget hearings last week. The Budget Secretary/Governor's Executive Offices faced questions about increasing the minimum wage and also noted that revenue collections were above previous estimates for the year

The Senate Appropriations Committee's budget hearings begin this week.

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## State Issues

### Pennsylvania

Regulatory

## Wolf Administration Revises Mitigation Order on Gatherings and Lifts Out-of-State Travel Restrictions

Last week, the Wolf Administration [revised](#) maximum occupancy limits on indoor and outdoor events, and [lifted](#) out-of-state travel restrictions.

According to new orders from the Acting Secretary of Health:

- **Indoor occupancy limits** are revised to allow for 15 percent of maximum occupancy, regardless of venue size. The 15 percent of maximum occupancy is permitted only if attendees and workers are able to comply with the six-foot physical distancing requirement. Core public health measures such as face covering (mask-wearing), social distancing, and hand hygiene still must be enforced
  - **Outdoor occupancy limits** are revised to allow for 20 percent of maximum occupancy, regardless of venue size. The 20 percent of maximum occupancy is permitted only if attendees and workers are able to comply with the six-foot physical distancing requirement. Core public health measures such as face covering (mask-wearing), social distancing, and hand hygiene still must be enforced
  - **Out-of-state travel restrictions are lifted.** The new order rescinds the November 2020 [travel order](#) requiring anyone over the age of 11 who visits from another state to provide evidence of a negative COVID-19 test or place themselves in a travel quarantine for 14 days upon entering Pennsylvania.
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## State COVID-19 Task Force Announces Vaccination Plan for Teachers

Pennsylvania's COVID-19 Vaccine Task Force announced a plan to vaccinate pre-kindergarten through twelfth grade teachers and other school staff using the Johnson & Johnson vaccine.

Governor Tom Wolf and state lawmakers said the recently approved one-dose vaccine will help schools safely reopen as quickly as possible. The state will receive about 94,600 doses of the Johnson & Johnson vaccine last week, and the Federal Pharmacy Partnership will receive another 30,000 doses, Governor Wolf said.

State officials said there were about 200,000 eligible school employees, but some individuals from that group may have already received a COVID-19 vaccine. The task force hopes to vaccinate all eligible school employees by the end of the month. Public and private educators will be eligible.

The vaccination of educators is separate from the ongoing Phase 1A vaccine rollout.

### The state's school vaccination plan will:

- Collaborate with local Intermediate Units (IU) and other education partners to vaccinate all school employees and contracted staff;
- Create at least one vaccination site for each IU region, with most locations starting vaccinations between March 10 and 13;
- Deploy the Pennsylvania National Guard and AMI Expeditionary Healthcare to administer the vaccine;
- Give initial priority to school staff who have sustained in-person contact with students, including pre-kindergarten, special education, and elementary school employees; and
- Engage the retail pharmacy partnership to ensure early childhood education workers have access to the vaccine.



Eligible school staff will receive information about vaccine locations and registration instructions, state officials said. More information about the state's vaccination plan for schools is available [online](#).

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## Insurance Department Issues Guidance to Insurers for Consumer Protection, Calls for Clarity in Telehealth Policies

Pennsylvania Insurance Commissioner Jessica Altman announced that the department has issued guidance on health insurance-related services to protect consumers, and to call for clarity in insurers' telehealth policies during the ongoing COVID-19 pandemic. A [notice](#), which was included in the March 6 Pennsylvania Bulletin, outlines expectations regarding coverage by insurers of COVID-19 testing and vaccine administration to Pennsylvanians, and urges continued telehealth flexibility to make both COVID-related services and non-COVID-related services available to consumers.

### Why this matters:

- The notice highlights the expectation that insurers will continue to cover COVID testing and vaccination without cost-sharing as required under federal law. And the Department urges insurers to expeditiously work through any administrative or billing issues that may arise with respect to administration of vaccines by pharmacists.
- The notice also calls for health insurers to assist consumers in accessing in-network or publicly funded health services to avoid balance billing or surprise balance bills. Mechanisms should already be in place to prevent surprise balance billing for COVID-related services, but the department urges insurers to take steps now to make necessary changes to billing services in anticipation of the No Surprises Act, taking effect in 2022.
- A previous [notice](#) encouraged health insurers to allow for flexibility in telehealth services, and many insurers implemented flexibilities in their policies and coverage of telehealth services, some permanently. The Department, however, stated that the policies and flexibilities, have varied amongst insurers. **As such, the Department encourages health insurers to implement broader consistency across their telehealth flexibility policies, including consideration of, for example:**
  - Best practices for care management, including continuity of care as between telehealth and in-person care;
  - Network flexibility for providers that offer both telehealth and in-person services;
  - Language consistency and clarity so that providers and patients can easily understand the timing and substance of any changes in telehealth policies; and
  - 60 days' advance notice to providers and patients of any change in policy.

The Department notice encourages telehealth policy flexibilities to be extended through the end of the federal or Pennsylvania public health emergency and suggests a 60-day wind-down period for flexibilities to provide for an orderly transition for both providers and patients.

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## State Issues

### West Virginia Legislative

## **Governor Releases Plan to Eliminate State's Personal Income Tax**

Governor Jim Justice's long-awaited plan to "repeal and replace" the state's personal income tax has formally emerged.

### **Summary of the Governor's proposal**

- Reducing the personal income tax liability across all levels by 60% in the first year, eliminating slightly over \$1 billion in revenue from the state budget.
- 30% increase in the state's consumer sales tax up to a level of 7.9%.
- Repeal of approximately \$180 million in items that are currently exempt from sales tax—led by imposing taxes on legal and other professional services for the first time.
- Significant modification of the state's severance taxes on coal, oil and natural gas, raising nearly \$40 million.
- Increasing taxes on cigarettes, other tobacco products, soft drinks, beer, wine, and the state-controlled wholesale liquor sector.
- A \$52 million rebate for West Virginians who have little or no personal tax liability, to partially offset the negative effects of the general increase in the sales.

All told, Governor Justice's plan for reducing the personal income tax by slightly more than \$1 billion and replacing it with \$902.6 million in new revenue and adding in the \$52 million low-income rebate leaves the plan \$185 million short of balancing out—with the governor then indicating there needs to be \$25 million in spending cuts, a \$10 million savings from attrition in state employment and using projected natural revenue growth of \$60 million—leaving the plan still \$85 million short of being in balance.

### **Outlook**

- Governor Justice is deeply committed to the goal of eliminating the state's personal income tax by the end of his term in 2024 and he could keep the legislature in session or call them back into special session to address this issue.
- In short, tax issues are likely to consume a high volume of oxygen in Charleston for the remainder of the year.

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## **Legislature Focused on PBMs and Other Health Care Issues**

The 2021 Regular Session of the West Virginia Legislature passed the one-third point of completion in the 60-day term last week and major action continues to occur at a fast pace.

### **PBMs**

HB 2263, proposing new regulations on PBMs and health plans remains within the jurisdiction of the Senate Health Committee and is expected to be on the committee agenda for its next meeting on Tuesday, March 9.

The bill in its current form proposes to require pharmaceutical manufacturer rebates to be passed through to the customer at the point of sale. Legislation passed by the House of Delegates in 2020 but not acted on by the Senate would have allowed those rebates to be credited against future premiums rather than granted at the point of sale.



Additionally, there are significant cost concerns over the required \$10.49 dispensing fees mandated in the bill, along with a requirement for any provider to be included in a pharmacy network upon request. And, the applicability of the new bill to ERISA plans based on what appears to be a liberal reading of a recent Supreme Court decision is also a major concern.

### **Expanded Alternative Opioid Therapy Mandate**

HB 2634 is in the House Health Committee and proposes to clarify current law to require that up to 20 alternative therapy treatments for physical therapy, occupational therapy, chiropractic, and a range of other therapy modalities can be stacked and maximized at 20 visits for each therapy type rather than a simple total of 20 visits for all types of alternative opioid treatment. This mandate could significantly increase costs for members of private and public health plans.

### **Insulin Copay Cap**

There have been a number of bills introduced this session seeking to expand the coverage and costs to the patient associated with diabetic care, however, one bill, HB 2708, is the widest ranging and is constructed along the model enacted by Connecticut in 2020. Cost sharing would be limited to \$25 across a wide range of medications, therapies, equipment, and supplies in HB 2708, in contrast to the current state law limiting cost sharing to \$100 monthly for insulin only. There are no indications yet on whether the House will consider the bill.

### **Telehealth Payment Parity/ Certificate of Need Repeal**

SB 1 was passed by the Senate early in the session and referred to the House Health Committee for review. HB 2264 was passed early in the session by the House of Delegates and referred to the Senate Health Committee for review. Both bills remain in these respective committees and are the subject of a significant dispute between the bill sponsors and interested parties.

### **Prior Authorization**

SB 39, proposing a relaxing of prior authorization standards for screens to determine cancer staging is moving toward passage in the Senate this week.

### **Hospital Price Transparency/Surprise Billing**

HB 2005 was passed early in the session and is lodged in the Senate Health Committee. This bill proposes to require hospitals to fully disclose their prices on a granular basis and provide estimates for procedures in advance, as well as provisions exceeding the scope of recent federal action in the field of surprise billing and new requirements for health plan network disclosures that go beyond those changes adopted just last year.

### **Other Issues**

SB 390, making technical changes in the state's All Payer Claims Data Base is also rapidly moving toward passage in the Senate.

HB 2674, proposing a codification of a gubernatorial COVID-19 emergency order relative to the independent practice rights of CRNAs was favorably reported to the House by the Health Committee and is on the way to House passage. HB 2776, seeking to grant insurance coverage status to air medical aviation subscriptions also cleared committee and is moving toward passage this week in the House.

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## Industry Trends

Policy / Market Trends

### **Members of AHIP and BCBSA Announce Vaccine Community Connectors Initiative**

Members of AHIP and Blue Cross Blue Shield Association (BCBSA) [announced](#) the launch of the Vaccine Community Connectors pilot initiative, a concentrated effort to vaccinate two million seniors age 65+ in America's most at-risk, vulnerable, and underserved communities. The initiative was launched in concert with the Biden Administration, and announced by Andy Slavitt during Wednesday morning's White House virtual COVID-19 briefing.

**Why this matters:** The Vaccine Community Connectors program will support reducing COVID-19 vaccination disparities with a focus on seniors age 65+ in the most vulnerable communities as supplies increase. The effort aims to fully vaccinate two million people 65 and older from vulnerable communities over the next 100 days. The initiative will work by identifying those vulnerable to COVID-19, educating on the safety and value of the vaccine, facilitating appointment scheduling and transportation, reminding about required second doses, and answering any questions.

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The Pennsylvania General Assembly returns to session March 15.

The Delaware Legislature is in session March 9-11.

The West Virginia session runs from February 10 through April 10, 2021.

### Congress

The U.S. House - committee work only and the U.S. Senate is in session March 8-12.

**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/>.

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