

November 10, 2021: OCTOBER PUBLIC AFFAIRS COMMITTEE REPORT

FEDERAL POLICY UPDATES

Federal government likely to operate under another “continuing resolution” after December 3, 2021: Budget negotiations continue at a standstill. House and Senate leadership indicate that reconciliation and infrastructure must first be addressed before the spending bills are completed. Another short-term continuing resolution to keep the government funded beyond December 3, 2021 is likely.

Bipartisan infrastructure bill is ready for the President’s signature: Late evening on Friday, November 5, 2021, the bipartisan infrastructure bill passed the House of Representatives with bipartisan support. President Biden said he will sign this no later than the week of November 15 when Congress is back in session. The bill does not include any specific health center funding but may support projects that indirectly benefit health centers and their communities.

Social infrastructure bill update: On Wednesday, November 3, 2021, [updated text of the \\$1.75T framework](#) for the Build Back Better (BBB) Act was released as Speaker Nancy Pelosi (D-CA) continues to aim for a vote on the BBB Act. The new version of the legislation includes:

- \$2 billion for health center capital funding
- \$3.37 billion for Teaching Health Center GME
- \$2 billion for the National Health Service Corps
- \$500 million for Nurse Corps
- Significant strengthening of Medicaid and ACA benefits, including continuation of ACA tax credits (especially for people in non-expansion states); permanent expansion of the CHIP program; expanded investments in outreach and enrollment; 12 months continuous Medicaid coverage for pregnant/postpartum individuals and 1 year of continuous Medicaid coverage for children. More information on these provisions can be found at these blogs from [CCF](#) and [CBPP](#).

The current version of the BBB Act includes various Medicare drug pricing proposals. They include:

1. Reducing patients’ out-of-pocket costs under Part D.
2. Permitting Medicare to negotiate prices for up to 10 drugs starting in 2025, increasing to up to 20 drugs in 2028 and beyond. Insulin products will definitely be subject to negotiation; the other negotiated drugs will be chosen from ones that account for high spending, are single source, and are no longer protected from generic competition.

3. Instituting Medicare “inflation rebates.” We expect that drug manufacturers will be required to refund Medicare for any revenue they earn under Part D by raising a drug’s price faster than inflation. Here’s a simplified example:
- In 2021, a manufacturer charges \$100 for a drug.
 - Inflation in 2021 is 3%.
 - In 2022, the manufacturer raises the drug’s price to \$105. Of this \$5 increase, only \$3 is due to inflation, so the manufacturer must rebate Medicare the additional \$2.

Of these provisions, the Medicare inflation rebates are most likely to impact the 340B program. Drug makers have expressed concerns about “duplicate discounts” under Medicare, arguing that they should not be expected to offer both 340B discounts and inflationary rebates on the same drugs. Also, policies that impact how quickly drug makers raise prices could have an impact on the size of 340B discounts (and base prices).

The House took a procedural vote last week and the bill now awaits final passage. The path forward through the Senate is unclear as Senators Manchin and Sinema, who’s votes in favor are the BBB Act’s only hope of passage, continue to avoid compromise.

FEDERAL REGULATORY UPDATES

New “Good Faith Estimates” regulation to impact health centers; toolkit available: Health centers will be required to provide uninsured patients with a “Good Faith Estimate” (GFE) of costs of receiving care prior to a patient’s scheduled appointment or at the request of the patient. This requirement goes into effect January 1, 2022. Colleen Meiman has created [a thorough toolkit on this requirement](#) and is in the process of drafting template comments for health centers to submit on the Interim Final Rule (IFR). AUCH will be submitting comments on the IFR with a goal of easing implementation. Please submit concerns about implementing the GFE rule at your center to Rachel (rcraig@auch.org) for inclusion on AUCH’s comments on this IFR. **Suggestions or concerns should be sent to Rachel prior to December 3, 2021.**

National Health Service Corps applications to re-open soon; ALL interested providers encouraged to apply: The National Health Service Corps (NHSC) indicated that they plan to re-open applications by “late fall,” most likely sometime in late November. Due to the amount of available funding, NHSC expects that all providers who have a start date prior to July 15, 2021 to receive funding during this round of awards, regardless of HPSA score. NHSC indicated during the last round of funding a significant number of eligible providers were denied because they did not

respond to information requests from NHSC. Many of these follow-up emails from HRSA went to SPAM. **Any providers that are interested in applying for NHSC during this upcoming application round should be encouraged to regularly check their SPAM folders after submitting their application and to respond promptly to requests from NHSC.**

CMS COVID-19 vaccine mandate rule release: On November 4, 2021, CMS announced the rules surrounding the federal vaccine mandate. It applies to all health care workers, does not include a testing/masking option, and requires that **all** clinical and non-clinical staff, including Board members, students, and volunteers, to be fully vaccinated against COVID-19 by January 4, 2022. There is no exemption for those who have previously contracted COVID-19.

Utah Attorney General Sean Reyes has joined a lawsuit with 18 other states suing the Biden Administration over the vaccine mandate previously issued by OSHA. The Utah state legislature is expected to try to pass a bill during the November special legislative session that would expand exemptions allowed under the federal vaccine mandate. Although this action would be unenforceable due to the Constitution's supremacy clause, some bill on vaccine mandates is expected to pass. Governor Cox has been clear that he will veto any measure that restricts a private business from imposing its own mandate.

AUCH will continue to keep health centers informed of updates related to the vaccine mandates, Utah's response, and any additional materials or toolkits relevant to health centers.

Last week's 340B court ruling has silver linings: On October 29, 2021, the Federal district judge in Indianapolis hearing Eli Lilly's lawsuit on contract pharmacy issues ruled that HHS acted in an "arbitrary and capricious" manner when issuing the General Counsel advisory opinion and the May 17 letter ordering Lilly to ship 340B drugs to contract pharmacies. The judge therefore concluded that Lilly was not immediately required to resume 340B shipments to contract pharmacies.

Despite the concerning headlines, Friday's ruling had many positive aspects. For example, the judge's concerns with HHS' position were much more procedural than substantive. She argued that HRSA had changed its public position on its ability to enforce contract pharmacy rules, without providing adequately acknowledging or justifying for the change. HHS should be able to resolve this concern by publicly acknowledging and explaining its change of position, and then issuing an updated letter to Lilly and the other manufacturers.

Judge Barker also implied that she opposed Lilly's policy, writing that the 340B statute "does not permit drug manufacturers, such as Lilly, to impose unilateral extra- statutory restrictions on its offer to sell 340B drugs to covered entities utilizing multiple contract pharmacy arrangements."

Finally, Judge Barker stated that: “the 340B program can no longer be held together and implemented fairly for all concerned with non-binding interpretive guidelines and mixed, sometimes inconsistent messaging by the agency regarding the source and extent of its authority to enforce statutory compliance in the area of contract pharmacies.”

STATE POLICY UPDATES

State Loan Repayment Program funding to be sought by Utah’s Office of Primary Care and Rural Health: AUCH has received word that the Utah Office of Primary Care and Rural Health (OPCRH) is seeking \$1 million in State Loan Repayment Program (SLRP) funding to allocate to various workforce programs in Utah, including the Health Care Workforce Financial Assistance Program (HCWFAP). Normally, SLRP funds are allocated on a matching basis in accord with how much funding is allocated by individual states. However, under the American Rescue Plan Act, this special round of SLRP funding does not require a state match. While the OPCRH would like to apply for these funds, they will need final approval from UDOH to submit an application.

November special legislative session: On Friday, November 4, 2021, Governor Spencer Cox called the Utah Legislature into a special legislative session planned for this week with the main goal of finalizing redistricting maps. Other topics of legislation may include bills relating to the federal vaccine mandate, as discussed earlier in this report, and bail reform. A review of the November special session will be provided in the December PA Report.

Utah Redistricting Process to wrap-up during November special session: The Utah Independent Redistricting Commission has voted and approved their [final maps](#) and recommended them to the Utah Legislative Redistricting Committee. This Commission serves as an advisory body only, and the state legislature still holds final approval power for redistricting.

The Legislative Redistricting Committee did not adopt any of the maps recommended by the Independent Redistricting Committee, and despite extreme backlash, and has adopted [their proposed maps](#). These maps have passed through the House and await a vote in the Senate. Notably, the Legislative Redistricting Committee’s proposed Congressional map splits Salt Lake County into all four Congressional districts. All four districts are expected to be safe Republican seats under this map, removing the one swing seat Utah currently has.

Two resignations ahead of the November special session and 2022 General Legislative Session: State Representatives Francis Gibson (R-Mapleton) and Steve Christiansen (R- West Jordan) both resigned in late October ahead of the upcoming special session and 2022 general legislative session. State Rep. Gibson cited focusing on his family as his reason for resignation. His resignation will lead to a shake-up in State House GOP leadership, as Rep. Gibson was the House Majority Leader. State Rep. Christiansen resigned following backlash, allegedly aimed at both himself and his family, to his presentation to a legislative committee requesting an audit of Utah's 2020 election and severe restrictions on Utah's vote-by-mail option. Both seats will be temporarily filled by GOP delegates in those two legislative districts. Special elections will be held sometime early next year for both seats. State Rep. Christiansen represented the district home of UPFH's West Jordan location.

U.S. Department of Labor seeks to revoke Utah's occupational safety program: Last month, the U.S. Department of Labor put the State of Utah on notice that it will seek to revoke permission for Utah to operate its own occupation safety program. This is in response to Utah failing to adopt the [COVID-19 Healthcare Emergency Temporary Standard \(ETS\)](#). Because the state did not adopt the ETS, the federal government is now arguing that the Utah's occupational safety program is less effective than the federal program. This could possibly lead the federal government to temporarily or permanently take over Utah's occupational safety program. This warning has made state leaders somewhat wary to outright buck the federal vaccine mandate.

STATE MEDICAID UPDATE

Medicaid funding update: During the October Medical Care Advisory Committee (MCAC) meeting, there was an update on the Medicaid Expansion fund. The account currently has a balance of \$158.9 million with expenditures at \$73.3 million, assuring the funding for the expansion population is currently more than sufficient. AUCH has distributed the MCAC's presentation on the Medicaid Closeout for reference, with information on the Medicaid Expansion fund on slide 4.

Medical Respite 1115 Waiver public comments are open: During the 2021 General Legislative Session, H.B. 34 [\[link\]](#) was passed which directed the Utah Department of Health to seek 1115 waiver approval to establish a pilot program that would provide patients experiencing homelessness covered under the Medicaid expansion population with medical respite care. The final draft of the waiver is now available <https://medicaid.utah.gov/Documents/pdfs/HB34-Medical%20Respite.pdf> . As anticipated based on the legislative discussion, this waiver calls for UDOH to contract with a "single entity," which is expected to be the Inn Between in Salt Lake City. While health centers may not benefit from the pilot project, if the pilot project is successful, the state may choose to apply for a permanent waiver that would allow UDOH to contract with

more than one entity for medical respite services. AUCH has some concerns with language included in the waiver, including the requirement that the care must be provided in a “residential facility” and that eligible individuals must currently be homeless OR in permanent supportive housing.

ADVOCACY

Health Care Workforce call with Rep. Curtis’s office: On November 8, 2021, Rachel spoke with Brian at Representative Curtis’s office to discuss challenges around health center staffing in UT-3, along with possible policy solutions. One option that Rep. Curtis is interested in is more training in rural communities for younger teens and adults that encourage them to enter the health workforce, as well advocating for higher Medicare rates. Additionally, Brian will be leaving Rep. Curtis’s office within the next month and their office will have a new health care aide. Once the new aide starts, a meeting will be set up with UT-3 health centers and the new aide.

Health Center Day on the Hill 2022 planning begins and suggestions welcome: Health Center Day of the Hill is currently scheduled for February 14, 2022. It is expected that the bulk of the legislature will be attending the general session in person. As AUCH continues in the planning process, please send feedback and suggestions to better engage the Legislature for Day on the Hill to Rachel (rcraig@auch.org).

NACHC Policy and Issues Forum dates available, AUCH does not plan to attend: NACHC’s annual Policy and Issues Forum will this year be held in-person, with virtual attendance options, after its cancellation in 2020 and online-only option in 2021. The dates have changed slightly, with the conferences scheduled for February 14-17, 2022. This coincides with the 2022 General Legislative Session (DATES) and Health Center Day on the Hill (February 14, 2022). At this time, AUCH does not plan to attend in-person and will instead schedule virtual visits with congressional offices and health centers during the same week as P&I.