

JANUARY 11, 2022: PUBLIC AFFAIRS COMMITTEE REPORT

## FEDERAL POLICY UPDATES

**Congress extends funding for Federal government through February 18:** Last month, the House and Senate passed another Continuing Resolution (CR) to keep the Federal government running through February 19, 2022. There is indication that this CR may be extended through April.

Health centers whose BPHC budget periods begin in January, February, March, or April may receive Notices of Awards (NOAs) that contain somewhat less than the full annual amount for their Section 330 grant. This is because HRSA is unlikely to receive the predicted 12-months' worth of discretionary funding for these grants by the time they must issue these NOAs. Fortunately, mandatory funding for Section 330 (which account for roughly 70% of total 330 funding) has been provided for all FY2022, so the reductions in the initial NOAs should be relatively small.

In past years, all health centers who did not receive a full 12-months of funding in their initial NOAs were eventually made whole after Congress provided additional funding.

**Public health emergency expected to be renewed; telehealth provisions may last longer:** The current public health emergency (PHE) period expires January 15, 2022. Given the currently surge in COVID-19 cases across the nation, the PHE will be extended. The Biden Administration has also indicated that certain telehealth flexibility may be extended for a year or more after the end of the PHE, whenever that may be. The PHE has allowed for expanded social safety net programs, one of the most notable being continuous Medicaid coverage.

**Build Back Better Act stalled indefinitely:** In late December 2021, Senator Joe Manchin (D- WV) announced that he would not support the Build Back Better Act (BBB), otherwise known as the social infrastructure bill, in its current iteration. Without Senator Manchin's vote, Senate Democrats have no way of moving the BBB forward. Senate Majority Leader Chuck Schumer (D- NY) has stated that he will continue negotiations with Senator Manchin, as well as the BBB's other main roadblock, Senator Krystem Sinema (D-AZ), to pass "some version" of the BBB. Any new version of the BBB will likely have provisions around social programs significantly cut. In the meantime, Senate Democrats have pivoted to voting rights legislation.

**Federal Tort Claims Act coverage for health center volunteer health professionals:** [Federal Tort Claims Act \(FTCA\) coverage for health center volunteer health professionals \(VHP\)](#) is set to expire on September 22, 2022. NACHC and AUCH are both aware of this deadline and will work

together with other PCAs to ensure that this coverage is renewed. This is not expected to be a controversial action but there must be attention drawn to the issue to ensure Congress will act.

**Federal Health Center Policy Priorities for 2022:** Colleen Meiman and Steve Carey (National Policy Advisors to Community Health Centers and PCAs) in partnership with NACHC have released their 2022 Federal Policy Priorities. They include:

- Urge Congress to clarify that current 340B statute requires the drug manufacturers ship 340B-priced drug to contract pharmacies and pass the [PROTECT 340B Act](#).
- Encourage CMS to exempt FQHCs from the Good Faith Estimate requirement in the No Surprises Act
- Encourage Congress to provide permanent funding for medical services provided via telehealth to Medicare patients
- Encourage Congress to renew the program that provides Federal Torts Claims Act (FTCA) coverage to health professionals who volunteer at health centers, which is set to expire at the end of September 2022

## FEDERAL REGULATORY UPDATES

**OSHA Vaccine and Testing Emergency Temporary Standard (ETS) back in effect nationwide:** The [OSHA ETS](#) requiring all employers with 100+ employees be vaccinated against COVID-19 or be tested for COVID-19 weekly is now back in effect after being blocked from late-November through mid-December. Health centers with 100 or more employees are required to comply with this ETS. However, OSHA has states that they “will not issue citations or noncompliance with any requirements of the ETS before January 10 and will not issue citations for noncompliance with the standard’s testing requirements before February 9, *so long as the employer is exercising reasonable, good faith efforts to come into compliance.*”

The CMS vaccine mandate is still on hold in Utah, but this could change at any time. AUCH will be in contact with health centers with any developments.

**Eli Lilly offers to ship to multiple contract pharmacies if health centers provide data for “pickpocketing”:** On Thursday December 16, 2021, 340B providers around the country, including health centers, received a letter from drug manufacturer Eli Lilly offering to “expand” its policy on shipping 340B-priced drugs to contract pharmacies. As a reminder, since September 2020, Lilly has refused to ship 340B-priced drugs to any contract pharmacies on behalf of health centers with in-house pharmacies; health centers with no in-house pharmacies can have 340B-priced Lilly drugs shipped to only single contract pharmacy location.

In the letter, Lilly offers to resume shipping 340B-priced drugs to an “unlimited number of contract pharmacies” on behalf of each health center -- on the condition that the health centers submit claims-level data on all 340B drugs dispensed through contract pharmacies. This data is to be submitted at the 340B ESP website, which is managed by Second Sight Solutions.

Vacheria Tutson at NACHC and Colleen Meiman both **strongly discourage health centers from agreeing to Eli Lilly’s new option**, for the following reasons:

- **The data that CHCs would be required to submit is exactly the data that PBMs need to “pick-pocket” health centers’ savings.** Lilly makes clear in its letter that it wants claims-level data so it can avoid paying rebates to PBMs for drugs sold under 340B. However, when PBMs don’t receive a rebate for a 340B drug, they generally “make up for their losses” by pickpocketing the health center’s 340B savings.
- Since fall 2020, drug maker Sanofi has offered the same option to health centers – to lift all contract pharmacy restrictions in exchange for health centers providing claims-level data to [www.340BESP.com](http://www.340BESP.com). Health centers (and other 340B providers) have broadly rejected this option when offered by Sanofi, so **accepting Eli Lilly’s offer would be a step backwards in our efforts to protect 340B.**

Health centers in states like Utah that have enacted anti-pickpocketing laws would be partially protected from the pick-pocketing that this data sharing would produce. However, no state laws can prevent pick-pocketing of 340B savings for drugs dispensed to Medicare patients.

**Nurse Corps Loan Repayment Program and National Health Service Corps applications open, deadlines January 27 and February 3, 2022 respectively:** Applications for the [Nurse Corps Loan Repayment Program](#) and the [National Health Service Corps](#) are open. The deadline to apply to the Nurse Corps is January 27 and the deadline to apply to NHSC is February 3, 2022. Due to the amount of available funding, it is expected that all providers who are eligible for the programs will receive awards, regardless of HPSA score. During the last round of funding, a significant number of eligible providers were denied because they did not respond to information requests after submitting their applications. Many of these follow-up emails from HRSA went to SPAM. **Any providers that are interested in applying for the Nurse Corps or NHSC during this application round should be encouraged to regularly check their SPAM folders after submitting their application and to respond promptly to requests from the Nurse Corps/NHSC.**

**Good Faith Estimates/Surprise Billing Regulation now in effect:** On January 1, 2022, Good Faith Estimate (GFE) requirements went into effect. While there are no changes to the GFE requirement at this time, HHS has stated that it will use its enforcement discretion for the first year of the rule. This likely means that only those actively ignoring this requirement will be penalized. This will give health care providers more time to adjust to this new requirement. Additionally, AUCH, other PCAs, NACHC, and numerous health centers all submitted public comments urging

HHS to revise the rule to better accommodate the FQHC model. It will still be some time before any rule adjustments are announced- if HHS revises the rule at all. AUCH continues to monitor this rule closely.

Resources to assist health centers with understanding a complying with the Good Faith Estimate rule:

- [GFE Toolkit for health centers](#)
- [CMS FAQ on GFEs](#)

**CMS announces Medicaid option for community-based mobile crisis intervention services:** In late December, CMS announced that there will be a new Medicaid option for state to reimburse for community-based mobile crisis intervention services. In addition, Utah is one of 20 states that will receive a planning grant to implement this option. For more information, see [the official press release](#).

**Utah joins fourth lawsuit against vaccine mandates:** On December 21, 2022, Utah joined [a multi-state lawsuit](#) against the Biden administration's COVID-19 masking and vaccine mandate for children, staff and volunteers in the Head Start program. 24 other states are also included in this lawsuit.

**Pause on student loan payments continues through May:** On December 22, 2021, the Biden Administration announced that it will extend the pause on student loan payments and freeze on interest through May 1, 2022. The moratorium was set to expire on February 1, 2022.

## STATE POLICY UPDATES

**State legislative session to begin January 18:** The General Legislative Session will commence on January 18 and run through March 4, 2022. AUCH has finalized its legislative priorities and is closely monitoring bills as they become publicly available. AUCH will also be holding weekly legislative session update calls and circulating short weekly reports and an updated bill tracker every Friday throughout the session. A calendar invite for the weekly legislative session update calls has been sent to the Public Affairs Committee and Board of Directors. If you did not receive this calendar invite, please contact [Rachel](#).

Additionally, AUCH is asking the PA Committee to review and approve the document "2022 Health Center Policy Priorities" that has been uploaded to AUCH Connect as well as emailed to the PA Committee. **Please contact Rachel by Friday, February 14 if there are objections or concerns to any of the items listed in the document.**

**Mask mandates in Salt Lake and Summit Counties:** Currently, there are temporary mask mandates in both Salt Lake and Summit Counties. Masks are required for an individual over the age of 2 in public, indoor, spaces or when queuing outside. Governor Cox has exemption state government-owned buildings from these orders, which includes the Utah State Capitol Complex. However, health departments that perform COVID-19 testing may still require masks.

## STATE MEDICAID UPDATE

**New state Medicaid Director Named:** Last month, Governor Cox [announced that Jack Szczepanowski will serve as the Utah Medicaid Director](#). This appointment will need to be confirmed by the Utah Senate before Szczepanowski takes over the role. He currently serves at the vice president of Medicaid Networks, Vendors, and Value-Based Strategies at Humana.

## ADVOCACY

**Health Center Day on the Hill:** AUCH is recommending that Health Center Day on the Hill, which is currently scheduled for February 14, 2021, be cancelled in light of the surge of COVID-19 cases. In lieu of a Day on the Hill, AUCH is proposing a “sponsored snack” be distributed to all legislators along with literature on Utah’s health centers. **If opposed to this change, please contact Rachel by Friday, January 14.**

**NACHC Policy & Issues Forum State Delegation Meetings:** AUCH does not plan to attend NACHC’s Policy & Issues forum this year, annual state delegation meetings will still occur. AUCH plans to hold virtual meetings with the Utah U.S. Representatives and Senators during the week of P&I if possible (February 14-17, 2022). AUCH will provide updates to health centers about these meetings as they become available.

**New health care legislative aide for Representative John Curtis:** Last month, Rep. John Curtis hired a replacement health care legislative aide, Colleen White. Colleen previously worked in Rep. Cindy Hyde-Smith’s office (R- MS). Colleen replaced Brian Fahey, who was Rep. Curtis’s previous health care legislative aide. AUCH will be scheduling an introductory call with Colleen and health centers with locations in the 3<sup>rd</sup> Congressional District, likely to be during the time period of other state delegation meetings.