

30 March 2023

House Ways and Means Subcommittee, Appropriations Subcommittee, and Energy and Commerce Committee Hold Hearings on HHS FY 2024 Budget Request

This week, the House Ways and Means Subcommittee on Health; the House Appropriations Subcommittee on Labor, Health and Human Services, Education; and the House Energy and Commerce Committee held separate hearings to discuss President Biden's fiscal year (FY) 2024 budget proposal for the Department of Health and Human Services (HHS). The hearings follow those held in the Senate last week and mark the beginning of a months-long appropriations process to fund HHS before the end of the fiscal year.

Each committee heard testimony from HHS Secretary Xavier Becerra who defended the president's budget request and highlighted what he characterized as department successes, including record health coverage under the Affordable Care Act (ACA), investments in behavioral health services, and reducing out-of-pocket costs for Medicare beneficiaries. Overall, Becerra said Biden's budget represents a move toward wellness care and away from illness care.

During the hearings, Becerra responded to wide-ranging questions from committee members, including those related to the public health emergency (PHE) unwinding, HHS' handling of migrant children, HHS telework policies, proposed changes to the Medicare Advantage (MA) program, and more. Republicans at all three hearings raised concerns about the size of President Biden's \$6.8 trillion budget proposal and the impact on the federal deficit and inflation, with several members and chairmen questioning the budget's impact on the Medicare Trust Fund, calling the proposals a "budget gimmick." Democrats, meanwhile, criticized a recent House Freedom Caucus proposal to cap FY 2024 spending at FY 2022 levels, and asked Becerra to share how such a policy would impact HHS research programs and consumers.

- For more information on the hearings, including Secretary Becerra's testimony, visit the House Ways and Means Health Subcommittee [hearing landing page](#), the Appropriations Committee [hearing landing page](#), and the Energy and Commerce Committee [hearing landing page](#).

Discussion topics

During the hearings, discussion ranged from mental health to proposed changes to the Medicare Advantage program to the public health emergency winddown. Below is a high-level overview of the most-discussed health care topics.

Mental health and substance use disorders. Throughout the hearing lawmakers noted the rise in mental health and substance use disorders in the United States. Several lawmakers praised the 988-suicide and crisis lifeline, with Sen. Tony Cárdenas (D-CA) saying the U.S. now needs to go further and create a robust crisis care system with mobile response. Sen. Judy Chu (D-CA) shared how a community in her district is still recovering from gun violence and mental health crises and said she intends to introduce legislation to ensure immigrant and limited English proficiency (LEP) communities have access to gun safety information and mental health services.

In addition, lawmakers also pushed Becerra on HHS' commitment to addressing fentanyl-related deaths and the rise of a deadly drug, Xylazine, being added to illicit drugs. Becerra said that while HHS has allocated funding to combat fentanyl-related overdoses, a lot of response work is being handled by the Substance Abuse and Mental Health Services Administration (SAMHSA). He also noted that FDA on Wednesday (March 29) announced Narcan will be available over the counter. Rep. Jimmy Panetta (D-CA) said he recently introduced the bipartisan Combating Illicit Xylazine Act to halt the spread of illicit Xylazine.

Alzheimer's disease. At each hearing, Democrats and Republicans reiterated their support for Alzheimer's research and urged Becerra to urge the Centers for Medicare and Medicaid Services (CMS) to reverse its decision to narrowly cover two FDA-approved Alzheimer's treatments when they are used in clinical trials. Rep. Brian Fitzpatrick (R-PA) shared the story of a constituent who is receiving one of the Alzheimer's drugs in a trial but will have to pay full price using life savings when the trial ends. In response, Becerra said HHS is committed to increasing access to clinical trials, particularly for those in rural areas, but said both CMS and FDA have statutory requirements for their respective coverage and approval processes and that Congress would need to change the law.

Controlling prescription drug costs. The Inflation Reduction Act was a popular topic at all three hearings, with Republicans arguing the drug price negotiation provisions are hindering innovation and drug development for rare diseases, cancer, and Alzheimer's. Democrats, meanwhile, praised the law, asking Becerra to provide examples of how it is benefiting Medicare beneficiaries. Becerra said one individual told him when their insulin cost went down from \$117 to \$35, they called their insurer thinking it was a mistake.

Lawmakers also raised concerns with the lack of transparency around pharmacy benefit managers (PBMs) and the consolidated market. For example, Rep. Buddy Carter (R-GA) said, "We now have three PBMs who control 80% of the market, and all three of them are owned by an insurance company, that insurance company not only owns the PBM but also owns the pharmacy." In response to these queries, Becerra said the Department of Justice and Federal Trade Commission typically have jurisdiction over consolidation issues, but he said, HHS is working on rules to increase transparency among PBMs and responding to lawsuits in this space.

Medicare Advantage. At each hearing, Republicans and Democrats were divided in their stances on HHS' recent Rate Notice for Medicare Advantage (MA). Several Democrats praised HHS for addressing overpayments to MA plans and cracking down on misleading advertising. However, Republicans said the proposed changes would result in a pay cut for MA plans that could cause the plans to scale back offerings. Becerra repeatedly stressed that the HHS proposed rule increases the amount of money that insurance companies will get from the year prior, despite industry pushback.

Unwinding the public health emergency. While many lawmakers expressed their support for ending the COVID-19 public health emergency, some urged Becerra to take action to extend certain waivers set to end with the PHE and ensure eligible individuals do not lose Medicaid coverage. For example, Rep. Diana Harshbarger (R-TN) urged Becerra to extend a waiver allowing the mail order of oncology medication. Rep. Adrian Smith (R-NE) asked Becerra to extend the waiver for Medicare-certified critical access hospitals' 96-hour rule, the 3-day hospital stay rule for Skilled Nursing Facilities, and site-neutrality for long-term care hospitals. Becerra said a lot of these rules are required by statute and need congressional action to continue beyond May 11. Several lawmakers also asked about extending telehealth waivers and allowing providers to offer telehealth across state lines. Rep. Brad Schneider (D-IL) said he and his colleagues on Tuesday (March 28) introduced the Telehealth Expansion Act to permanently allow employers to offer telehealth before the deductible for those with certain high deductible health plans paired with health savings accounts. Becerra thanked Congress for their recent telehealth extensions but urged them to act fast. "The end of 2024 will come soon and the end of those extensions will come fast," Becerra said.

Health care workforce. Health care workforce constraints were another popular topic during the hearings. Rep. Clay Higgins (R-LA) spoke about the impact of contract labor, while Reps. Carol Miller (R-IL) and Claudia Tenney (R-NY) said the COVID-19 vaccine mandate for health care workers exacerbated workforce shortages and asked Becerra why the federal mandate will remain in place beyond of the end of the PHE. Meanwhile, Democrats praised the HHS budget proposal's investments in workforce and ways HHS is working with local areas to identify shortage areas.

No Surprises Act implementation. Throughout the hearings, both Republicans and Democrats criticized HHS' implementation of the No Surprises Act, saying it did not follow the intent of the law. For example, Rep. Brad Wenstrup (R-OH) said, "The original bill created an incentive for providers to be in network and for insurers to want them to be in network" but CMS' implementation unfairly favors insurers, directly violated the law, and caused the backlog. Rep. Michael Burgess (R-TX) criticized HHS for not anticipating a higher volume of claims. Ultimately, lawmakers urged Becerra to fix the problem going forward.

Medicare physician reimbursement. Medicare physician reimbursement was a popular topic at both the House Energy and Commerce and the House Ways and Means Subcommittee hearings. Both Republicans and Democrats raised concerns that low Medicare physician payments would force more physicians' offices to close or stop accepting Medicare, creating access to care issues. Rep. Raul Ruiz (D-CA) said he and Rep. Larry Bucshon (R-IN) are working on legislation to tie annual physician payment updates to the economic index - a proposal that Reps. Danny Davis (D-IL) and Panetta also mentioned in their questions. In response, Becerra said CMS is bound by law to update physician payments in a budget neutral manner and encouraged Congress to come up with a better system.

Site neutral payments. During the House Energy and Commerce Committee hearing Chair Cathy McMorris Rodgers (R-WA) said it appears she and Becerra are in "agreement" on site neutral payments, which McMorris Rodgers explained are a "bipartisan policy that would reduce Medicare spending and what seniors pay by having Medicare pay the same for services regardless of location." McMorris Rodgers said, "We are agreeing we are not cutting Medicare and it appears we can agree on some payment reductions that don't constitute cuts." When she asked Becerra to commit to working with Congress on ways to address unnecessarily high payments, he said, "absolutely."

TRAIN Act implementation. During the House Ways and Means Subcommittee hearing Rep. Darin LaHood (R-IL) criticized CMS' implementation of the TRAIN Act, which LaHood co-sponsored to address the issue of CMS recouping funds paid to nursing schools. LaHood told Becerra that CMS' implementation goes "against congressional intent." He added, "CMS has created a complicated formula to describe how these impacted schools would get their money back. The formula would not fully stop recoupment and return the funds, but instead only return between 29-76% of the funds owed back to the schools." Becerra committed to facilitating a call between LaHood and CMS officials to ensure proper implementation.

Other topics.

During the hearing, lawmakers discussed several other topics. Reps. Richard Hudson (R-NC) and Lori Trahan (D-MA) spoke about the importance of pandemic preparedness and reauthorizing the Pandemic and All-Hazards Preparedness Act (PAHPA); Rep. Mariannette Miller-Meeks (R-IA) said she is drafting legislation to use AI and predictive modelling to address waste, fraud and abuse in Medicare; Rep. Bucshon spoke about consolidation among 340B eligible entities and the need for better transparency into the drug pricing program; and Rep. Blake Moore (R-UT) spoke about streamlining provider quality measures to lower the administrative burden of quality programs, asked about quality measure activity spending and if it is or isn't meeting strategic objectives, and discussed the need to ensure measures are outcome oriented and transparent to help patients shop for care.

Several lawmakers raised concerns with for-profit hospice centers and private equity's involvement in nursing homes. Finally, at both the House Energy and Commerce Committee and House Ways and Means Subcommittee hearings Chairs Gutherie, McMorris Rodgers, and Smith spoke about the need to enforce price transparency rules, improve compliance, and ensure the data is usable for patients.

If you have questions, please contact [Heather Meade](#) or [Heather Bell](#).

Washington Council Ernst & Young

Washington Council Ernst & Young (WCEY) is a group within Ernst & Young LLP that combines the power of a leading professional services organization with on-the-ground knowledge, personal relationships and attention to detail of a boutique policy firm. We provide our clients with timely, relevant Washington insight and legislative advisory services customized to their needs. To learn more, contact wcey@ey.com.