April 28, 2023

House Energy and Commerce Health Subcommittee Considers 17 Bills To Lower Health Costs and Increase Transparency

On Wednesday (April 26), the House Committee on Energy and Commerce Health Subcommittee held a hearing entitled, "Lowering Unaffordable Costs: Legislative Solutions to Increase Transparency and Competition in Health Care." During the hearing, lawmakers discussed 17 bills to address rising health care costs in the United States. The bills covered a range of topics, including pharmacy benefit managers (PBMs), transparency of health care prices and ownership, site-neutral payments, physician-owned hospitals, unfair billing practices, and more.

Lawmakers heard from two panels. The first featured Centers for Medicare and Medicaid Services (CMS) Administrator Chiquita Brooks-LaSure, who spoke about CMS' efforts to implement policies to lower costs and increase transparency in health care and responded to member questions. The second panel featured a range of representatives from the hospital industry, the PBM industry, employers, patient advocates, as well as an accountable care organization leader and an economist.

The hearing was notable for its bipartisan tone, but lawmakers noted wide disagreement among industry representatives on how best to lower health care prices and the merit of the draft legislation before the subcommittee.

- *For more information*: https://energycommerce.house.gov/events/health-subcommittee-legislative-hearing-1

Opening statements

Subcommittee Chairman Brett Guthrie (R-KY): The subcommittee Chairman praised the bipartisan nature of the hearing, noting that lawmakers were "considering 17 bills and discussion drafts to advance price transparency and improve competition within the health care system to ultimately lower costs." He praised The Transparent PRICE Act, which would codify the Trump administration's price transparency rules, and expressed interest in other proposals to align health care costs in different settings and require CMS to consider consolidation in future rulemaking. Guthrie also spoke critically about PBM pricing practices and touted bills that would increase transparency for PBMs. Full statement.

Subcommittee Ranking Member Anna Eshoo (D-CA): In her testimony, Ranking Member Eshoo said in their last hearing on lowering health care prices the committee learned "we're not getting the best value for our health care dollar" and that now the subcommittee will consider proposals to address that. For example, she said the policies being considered include "how to implement targeted site neutral policies while protecting patient access and rural hospitals." She said lawmakers "should heed MedPAC's recommendation to prioritize safety and access when advancing our policy." In addition, she said the subcommittee is considering bills to bring more transparency to the 340B program without increasing barriers. She touted two bills; the PBM Accountability Act and the Medicaid VBPs for Patients (MVP) Act, the latter of which she said would help ensure Medicaid beneficiaries have access to gene therapies. Full statement.

Committee Chair Cathy McMorris Rodgers (R-WA): "Transparency is essential for patients and employers, to know and plan for their health care costs. It's foundational to rebuilding the doctor-patient relationship," McMorris

Rodgers said in her statement. She noted the subcommittee would consider seven bills on transparency, including her and Chair Pallone's Transparent PRICE Act. In addition, she said the subcommittee would consider bills that examine health care consolidation and spoke about the bipartisan nature of site-neutral payments. She said, "Let's be clear: Hospitals are integral parts of our communities, and we recognize the effects of high labor costs, inflation, and ever-increasing government regulation. But the question before us is: Should we support hospitals through a complex and opaque network of cross-subsidies with unintended consequences, like consolidation, that increase costs for patients? Or do we separately work on a transparent, accountable way to support hospitals that need it?" Full statement.

Committee Ranking Member Frank Pallone (D-NJ): The Ranking Member began by raising concerns about House Republican leadership's plans to "rush" the "irresponsible" debt limit package to the House floor for a vote, saying it will "kick millions of people off of health insurance and cut a hundred million dollars from the Medicaid program." He also raised concerns that Democrats were not given "adequate time" to fully review the policies being considered at the hearing. He praised the Transparent PRICE Act, noting concerns that hospitals remain noncompliant with price transparency rules and expressing support for codifying those rules, as well as two bills to increase transparency into pharmacy benefit managers. He also expressed support for legislation to cancel Medicaid Disproportionate Share Hospital (DSH) cuts and raised concerns about private equity and consolidation. Full statement.

Panel I: Witness testimony

Chiquita Brooks-LaSure, Administrator, U.S. Centers for Medicare and Medicaid Services: In her testimony, Brooks-LaSure spoke about CMS' implementation of the Inflation Reduction Act's drug pricing provisions and improving the long-term sustainability of Medicare and Medicaid. She touted recently finalized policies impacting Medicare Advantage, including policies to improve payment accuracy. As of April 2023, Brooks-LaSure said CMS has issued more than 730 warning notices, 269 corrective action plans, and four civil monetary penalties for hospital non-compliance with price transparency rules. Further, she announced, CMS is taking steps to expedite timeframes for hospitals to come into compliance. Brooks-LaSure also touched on other actions CMS has taken recently including publishing hospital and nursing home ownership data and working through a backlog of Independent Dispute Resolution cases. Brooks-LaSure said she looks forward to working with Congress and "finding ways to advance health equity, lower health care costs, and improve transparency across our nation's health care system." Full testimony.

Panel II: Witness testimony

Ashley Thompson, Senior Vice President, Public Policy Analysis and Development, American Hospital Association (AHA): Ms. Thompson spoke about the care hospitals provide to patients and their roles in developing innovative new health techniques and training the next generation of providers. However, she said hospitals today "are facing many significant challenges," including workforce shortages, rising costs, fractured supply chains, administrative and regulatory burdens and underpayment by Medicare and Medicaid. In response, she said, hospitals are having to close or reduce services in their communities, particularly in rural areas. She said AHA strongly opposes legislation to expand site-neutral payments, increase reporting burdens for 340B hospitals, and expand the number of physician-owned hospitals. She said AHA strongly supports legislation to prevent cuts to the Medicaid DSH Program. Full testimony.

Kristin Bass, Chief Policy and External Affairs Officer, Pharmaceutical Care Management Association: Ms. Bass spoke about the benefits PBMs provide to employers and patients and said PBMs are selected through a "transparent and highly competitive bidding process." She said it is important to understand PBMs' role, saying "plan sponsors choose how best to use the savings that PBMs deliver." She raised two major concerns with the

legislation being considered: "First, legislation would limit choice by dictating terms to the market, taking away flexibility that is needed for managing drug costs." Second, she said, "none of the legislation … would affect the price of prescription drugs but may instead increase costs" by giving pharmaceutical companies insight into confidential negotiated rates. She urged Congress instead to address drug prices and patent abuses. Full testimony.

Brian Connell, Executive Director, Federal Affairs, The Leukemia and Lymphoma Society: Mr. Connell spoke about the need to ensure "every patient can access the care they need–when they need it–and relieving patients and their families of the terrible financial burden of cancer." He said, "Cancer patients in America now pay over $16 billion in out-of-pocket costs for their health care each year." He added that "every stakeholder in health care bears responsibility for realigning the system's broken incentives and replacing them with new incentives that reward the behavior we want to see." He spoke in favor of policies to increase transparency into PBM practices, as well as health care prices and ownership. He also spoke about the need to develop "patient-centered valued-based payment models." Full testimony.

Sean Cavanaugh, Chief Policy Officer, Aledade: In his testimony, Mr. Cavanaugh spoke about Aledade and its "mission to bring the benefits of value-based care to communities all across the country." He spoke about the need for meaningful competition and transparency in health care and encouraged lawmakers to "eliminate existing Medicare policies that inhibit competition" by advancing site-neutral payments. He also recommended Congress address anti-competitive contracting, optimize accountable care organizations for rural providers, improve access to capital for independent practices, increase anti-trust enforcement, and reform certificate of need laws. Full testimony.

Ilyse Schuman, Senior Vice President, Health Policy, American Benefits Council: Ms. Schuman spoke about the "critical role employers play in the health care system" and their concerns with increasing health care costs. She said the Council supports policies to lower the cost of health care for all Americans, including those to expand site-neutral payments and increase transparency of PBMs and the broader health care industry. She also said the Council supports legislation to address dishonest billing practices at hospitals and other policies that drive consolidation in health care. Full testimony.

Loren Adler, Fellow and Associate Director, USC-Brookings Initiative for Health Policy, Economic Studies Program, Brookings Institution: Mr. Adler spoke about his research into "the effects of private equity, payer, and hospital acquisitions of physician practices." He spoke in favor of policies to remove incentives for hospital consolidation like site-neutral payment. He also spoke in favor of increased transparency into PBM practices, health care pricing and ownership to better identify and examine the impact of private equity and vertical integration. Full testimony.

Discussion topics

Drug Pricing/ Pharmacy Benefit Managers. Throughout the hearing, lawmakers spoke critically of PBM practices that can incentivize higher drug list prices and increase out-of-pocket costs for patients. Lawmakers across the aisle expressed their support for legislation being considered that would increase transparency into PBM practices, including the Drug Price Transparency in Medicaid Act of 2023, the PBM Accountability Act, and draft legislation to establish patient protections with respect to highly rebated drugs. Rep. Diana Harshbarger (R-TN) urged the subcommittee to take up her bill, the PBM Sunshine and Accountability Act, to require public reporting of certain PBM information to better understand rebates and fees. Similarly, Rep. Lisa Blunt Rochester (D-DE) said she is working on additional PBM reforms.

During her panel, Brooks-LaSure said CMS took steps to increase transparency in relation to fees to help pharmacists understand the rules and said CMS is working to meet the June 27th deadline in the No Surprises Act to make public a report on drug rebates, drug reimbursements and pricing trends in commercial health insurance.

Ms. Schuman told the Subcommittee that increased PBM transparency is important to employers. "Employers don't know what they don't know," Ms. Schuman said, adding that transparency into the drug price negotiation processes will improve employers' ability to lower costs for workers.

However, Ms. Bass spoke in defence of PBMs saying while they agree data that will help to lower costs should be transparent, she argued that sharing competitor data could cause prices to rise. In response to a question from Rep. Morgan Griffith (R-VA), Ms. Bass said PBMs are aware of instances in which patients could pay more for a drug by using their health insurance, but added that it is an "unusual situation" that is partly driven by the benefit designs of employers. She said PBMs are working to address those occurrences.

Transparency

Throughout the hearing, lawmakers discussed policies to improve transparency in the broader health care sector. Several lawmakers, including Committee Chair McMorris Rodgers, questioned whether CMS is using its full authority to implement and enforce hospital price transparency requirements. Brooks-LaSure said CMS' first step is not to fine hospitals, but to send a warning notice to encourage compliance and that moving forward the agency will be shortening timeframes for hospitals to respond. Rep. Tony Cárdenas (D-CA) spoke about the need for pricing information to be provided in multiple languages and Rep. Buddy Carter (R-GA) spoke critically about policies that prevent patients from using cost-sharing cards or coupons toward their co-pay or deductible.

Several lawmakers spoke about legislation to increase transparency into the 340B Drug Discount Program. However, Rep. Doris Matsui (D-CA) raised concerns that the proposals could reduce participation in 340B by adding burdensome reporting requirements. Mrs. Thompson said that 340B hospitals already report data to CMS, the Internal Revenue Service, and Health Resources and Services Administration, and raised concerns that the metrics specified in the legislation would "mask all of the good work being done by 340B hospitals." In response o a question from Vice Chair Larry Buschon (R-IN) on the status of 340B repayments instructed by a Supreme Court ruling negating cuts to the program advanced in prior rulemaking, Brooks-LaSure said CMS plans to issue a rule on reimbursing hospitals for 340B payments "very soon."

Both Chair Rodgers and Dave Joyce (R-OH) asked about CMS' authority to examine the impact of consolidation and vertical integration in health care on patients. Brooks-LaSure said CMS' authority around consolidation centers on transparency and ensuring ownership information is publicly available.

Rep. Gus Bilirakis (R-FL) also spoke about the bill to require CMS to consider regulatory changes' impact on consolidation, raising concerns about the Medicare Physician Fee Schedule's low reimbursement rate fuelling those trends. Rep. Kim Schrier (D-WA) raised similar concerns saying low reimbursement may accelerate consolidation when small practices struggle to keep their doors open.

Site Neutral Payments

Lawmakers and several witnesses spoke favorably about draft bills to expand site neutral payments and align Medicare payments across different sites of care for certain services, but noted the complexity of site neutral payments and the need to protect access to care in rural areas. Rep. Lori Trahan (D-MA) said, "While I am here to lower health care costs for patients, promote transparency and encourage competition among health care providers, I do want to make sure we are keeping in mind any unintended consequences that could limit access to care in the discussion drafts today."

During the discussion, Mr. Cavanaugh and Mr. Adler spoke about ways to funnel some of the savings generated by site neutral payments back to rural and safety-net facilities, without incentivizing consolidation.

Lawmakers on the panel shared several examples of payment differentials. For example, Rep. Mariannette Miller-Meeks (R-IA) said a level 2 nerve injection in 2023 done in a physician's office would result in a $226 payment from Medicare, but the same procedure would be reimbursed at $741 in an hospital outpatient department. In response, Mr. Adler and Mr. Connell said patients end up paying more because their out-of-pocket costs are based on the underlying payment.

Several lawmakers and Mr. Adler and Mr. Cavanaugh also noted that the current billing system drives consolidation. Vice Chair Bucshon shared a personal story of his medical practice being acquired by a health system in 2005, saying that acquisition was driven by site neutral billing. "Reimbursement had gone to where we couldn't recruit doctors because we couldn't afford it because we were getting paid a third of what the hospital three blocks away would be for the same test. The hospitals acquired the primary care doctors, forced them to send their ancillary services to the hospital so not only were we getting paid less but we didn't have the patients."

Rep. Harshbarger also spoke about ways to increase transparency into hospitals' billing to help CMS and payers determine whether a service was provided at an off-campus facility or an on-campus facility. Mr. Adler said such a proposal would be meaningful in the commercial market, but that lawmakers also needed to address the Medicare policy.

Physician-owned hospitals

Reps. Michael Burgess (R-TX) and Joyce spoke critically about law today that allows hospitals to own doctors but prevents doctors from owning hospitals. They spoke in support of HR 977 to repeal the restriction on physician-owned hospitals. In response to a question on ways allowing physician-owned hospitals could help to fill the need in rural areas, Mrs. Thompson said physician-owned hospitals are very different from free standing community hospitals and that data suggests they pick and choose wealthier and healthier patients and often do not have emergency services.

Safety Net Hospitals

During the hearing, Reps. Cárdenas, Trahan, Raul Ruiz (D-CA), and Dan Crenshaw (R-TZ) spoke favorably about the bill to eliminate Medicaid Disproportionate Share Hospital payment cuts and the need to support safety-net hospitals.

Medicaid work requirements

During the hearing, several lawmakers, including Reps. Annie Kuster (D-NH) and Cárdenas echoed Committee Ranking Member Pallone's concerns in his opening statement about House Republicans' debt limit plan, which passed the House later in the evening after the hearing, and proposals to add work requirements to Medicaid. During questioning, Brooks-LaSure said there is evidence that work requirements can present a barrier to people becoming insured while there is no evidence that they increase employment.

However, Chair McMorris Rodgers said that Republicans' debt limit plan aims to protect Medicaid and the vulnerable population it serves and encourage abled bodied adults to work or get some training.

Alzheimer's disease

During the first panel, several members took time to raise concerns about CMS' National Coverage Determination (NCD) for Alzheimer's drugs. Chair Guthrie asked Brooks-LaSure if Congress should clarify the phrase "reasonable and necessary" and Ranking Member Eshoo said there appears to be a "disconnect between CMS, the Food and Drug Administration, and the Department of Veterans Affairs on Alzheimer's treatment. Reps. Nanette Barragán

(D-CA) and Dave Joyce (R-OH) said they are working on legislation that would address the discrepancy and expand access under CMS' NCD. Brooks-LaSure clarified that CMS treats accelerated approval and FDA's traditional approval process differently as part of its NCD process.

If you have questions, please contact Heather Meade or Heather Bell.

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