

Special Bulletin

March 11, 2022

Senate Passes Omnibus Spending Package with Health Provisions

Package funds government through Sept. 30 and includes helpful provisions protecting 340B hospitals, extending telehealth flexibilities and improving maternal health, among others

The Senate last night passed a \$1.5 trillion omnibus appropriations bill that would fund the federal government through the end of the current fiscal year. The House of Representatives passed the bill the previous day. The legislation also includes provisions beneficial to hospitals and health systems.

The [omnibus spending bill](#), with Ukraine emergency spending attached, now goes to the President, who is expected to sign the bill into law.

House Democrats earlier this week pulled \$15 billion in COVID-19 preparedness funding that had been attached to the omnibus package when some lawmakers expressed concerns about spending offsets for the new funding. The House next week plans to vote on a separate bill with that COVID-19 preparedness funding, without the controversial offsets, but its prospects in the Senate are uncertain.

AHA Take: We appreciate that Congress included important provisions in the legislative package related to telehealth, 340B and maternal health that will help hospitals and health systems enhance the health of their patients and communities. However, we are disappointed that Congress did not provide additional COVID-19 relief. We will continue to urge Congress to provide additional support to hospitals and health systems and their front-line caregivers as we enter year three of the COVID-19 public health emergency.

Based on an initial review of the more than 2,000-page omnibus package, the following are highlights of provisions that affect hospitals and health systems.

Telehealth Service Extensions

The legislation includes provisions to extend and expand telehealth flexibilities for 151 days after the end of the COVID-19 public health emergency. These include:

- Expanding originating site to include any site at which the patient is located, including the patient's home;

- Expanding eligible practitioners to furnish telehealth services to include occupational therapist, physical therapist, speech-language pathologist and audiologist;
- Extending the ability for federally qualified health centers (FQHCs) and rural health clinics (RHCs) to furnish telehealth services;
- Delaying the 6-month in-person requirement for mental health services furnished through telehealth until 152 days after the emergency, including the in-person requirements for FQHCs and RHCs;
- Extending coverage and payment for audio-only telehealth services;
- Extending the ability to use telehealth services to meet the face-to-face recertification requirement for hospice care; and
- Requiring the Medicare Payment Advisory Commission to conduct a study on the expansion of telehealth services and to require the Department of Health and Human Services (HHS) Secretary to publicly post data with respect to telemedicine utilization.

Cybersecurity

The legislation would require critical infrastructure sectors, including hospitals and health systems, to report cyber incidents within 72 hours and any ransomware payments made within 24 hours to the Cybersecurity and Infrastructure Security Agency at the Department of Homeland Security. Currently, hospitals and health systems are required to report cyber breaches affecting more than 500 people to the Office of Civil Rights at HHS “without unreasonable delay” and “no later than 60 calendar days from the breach.” More time is provided for reporting incidents affecting less than 500 people. The legislation would allow for some exemptions for certain entities that already report similar information on a similar timeline.

Maternal Health

The legislation includes several important provisions to improve maternal health outcomes.

Maternal Health Quality Improvement. The legislation would provide for Public Health Service Act grants to develop and disseminate best practices with authorization of \$45 million for 2023-2027; accredit health professional schools to train health care professionals about perceptions and biases with authorization of \$15 million for 2023-2027; support states and tribal organizations for integrated health care services with authorization of \$50 million for 2023-2027; and instruct HHS to include pregnant and postpartum women as part of their public awareness campaign.

Improving Rural Maternal and Obstetric Care Data. This provision would amend the Public Health Service Act to improve rural maternal and obstetric care data collection and care networks with authorization of \$15 million for 2023-2027, as well as establishes grants to support health care professional training and telehealth resources with authorization of \$25 million for 2023-2027.

Medicaid Provisions

The legislation includes two Medicaid provisions.

Extended Increased FMAP for Territories. This provision would extend the increased Federal Medical Assistance Percentage (FMAP) for the five U.S. territories through Dec. 13, 2022. Historically, the territories FMAP was 55%. This provision would maintain Puerto Rico’s increased FMAP at 76%, and maintain increased FMAP for the Virgin Islands, Guam, Northern Mariana Islands and American Samoa at 86%. The section also would increase Puerto Rico’s federal allotment by \$200 million for fiscal year (FY) 2022.

Increasing State Flexibility with Respect to Third Party Liability. This provision would provide state Medicaid programs with an enforcement mechanism to address third party liability for care provided to a Medicaid beneficiary. A large proportion of Medicaid beneficiaries have third party sources of insurance coverage and for these beneficiaries the third party source of coverage must pay for care provided before the Medicaid program will pay. This provision strengthens the Medicaid program enforcement to seek recovery for issued Medicaid payments. In addition, this provision applies to all potential denials on the part of commercial plans, including prior authorization denials, by not allowing commercial health plans to avoid payment by saying that the service failed prior authorization if the state had waived prior authorization for the same service.

340B Eligibility Exceptions due to COVID-19 Public Health Emergency

The legislation would protect certain 340B hospitals that lost their 340B eligibility due to a drop in their disproportionate share hospitals (DSH) adjustment percentage below the required threshold for 340B eligibility to gain limited access to the program. Access to the 340B drug discounts would be available only from the date of the bill’s enactment through the end of 2022 and not retrospectively. This exception would apply only to 340B hospitals actively participating in the 340B program from the day prior to the start of the COVID-19 public health emergency (Jan. 31, 2020) and who subsequently lost eligibility during the cost reporting periods of 2020, 2021, and ending Dec. 31, 2022. Hospitals qualifying for the exception would be required to attest to the HHS Secretary that the reason for their loss of 340B eligibility was the result of “any actions taken by or other impact on such hospital in response to or as a result of the COVID-19 public health emergency that may have impacted the ability to meet the applicable requirement for the disproportionate share adjustment percentage.”

Health Care Appropriations

The omnibus appropriations bill would provide \$1.5 trillion in discretionary spending for FY 2022. The package would fund various health-related agencies at the following levels, many of which reflect new investments in areas of interest for hospitals and health systems:

- **HHS:** \$108.3 billion in total spending, an increase of \$11.3 billion. As part of this appropriation, Congress would establish and/or fund the following agencies, among others:
 - **Centers for Medicare & Medicaid Services:** \$4 billion in total spending, an increase of \$50 million.

- **Advanced Research Projects Agency for Health (ARPA-H):** \$1 billion to establish ARPA-H with the intent of accelerating the development of scientific breakthroughs for diseases such as ALS, Alzheimer’s disease, diabetes and cancer.
- **National Institutes of Health:** \$45 billion, an increase of \$2.25 billion with a particular focus on investments in research to address cancer, HIV and dementia, among other conditions.
- **Centers for Disease Control and Prevention:** \$8.5 billion, an increase of \$582 million, with a particular emphasis on improving the nation’s public health infrastructure, including data collection and monitoring.
- **Substance Abuse and Mental Health Services Administration:** \$6.5 billion, an increase of \$530 million to invest in a number of mental health programs, including those particularly targeted at children and youth.
- **Health Resources and Services Administration:** \$8.9 billion, an increase of \$1.4 billion, to improve access to care in underserved communities, develop the workforce, and improve maternal and child health outcomes.

Separately, the legislation also would increase funding for the Food and Drug Administration (FDA) and the Federal Emergency Management Agency (FEMA):

- **FDA:** \$3.3 billion, representing an increase of \$102 million with new investments to address the opioid crisis, improve medical supply chain surveillance, facilitate the development of treatments for rare cancers and accelerate medical product development as authorized in the 21st Century Cures Act.
- **FEMA:** \$23.9 billion, representing an increase of \$2.19 billion with a particular focus on disaster response and recovery efforts.

Further Questions

If you have further questions, please contact AHA at 800-424-4301.