

INSIGHTS

Senate Finance Committee Mark Up of the Better Mental Health Care, Lower- Cost Drugs and Extenders Act

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On November 8, 2023 the Senate Finance Committee held an [open executive session](#) to discuss and vote on a large multi-faceted package of bills designed to create more mental health access, lower the cost of drugs to Seniors, and extended a number of expired Medicare and Medicaid provisions. The mark-up session was very bipartisan. While many amendments were discussed, none were put forward for a vote and all were withdrawn. The final bill was voted out of the committee 26-0. Senator Ron Johnson (R-WI) was the only member with objections and refused to vote on the bill.

In addition to approving the bill, Chairman Ron Wyden (D-OR) and Ranking Member Mike Crapo (R-ID) pledged they would work to adopt many of the ideas set forth in the withdrawn amendments by the end of the year. Senators Wyden and Crapo said they would endeavor to pass the following in an end-of -year package:

- An Amendment by Senator James Lankford (R-OK) that would increase biosimilar drug access for Medicare beneficiaries. This amendment would ensure Part D plans and MA plans (that cover Part D) include lower-cost biosimilar drugs in their formularies. It would also prohibit biosimilars from being included in step therapy or prior authorization. All members were in favor of this amendment – and the only reason it was not included in the bill was it had not yet received a score from the Congressional Budget Office (CBO).
- An Amendment by Senator Bill Cassidy (R-LA) that would allow persons with mental health issues to keep their Medicaid coverage if they are placed in jail before being adjudicated. (The Chairman's Mark allows persons with substance abuse disorder to keep their Medicaid, but not those with mental health issues.)
- An Amendment by Senator Maggie Hassan (D-NH) that would extend the requirement that Medicaid programs cover medication-assisted treatment services for individuals with substance-abuse disorder.
- An Amendment by Senator Sheldon Whitehouse (D-RI) increasing funding for Alternative Payment Models. It would provide a 3.5% APM Incentive Payment for Qualifying APM Participants for 2026. An Amendment by Senator Catherine Cortez Masto (D-NV) that would require Medicare Advantage plans to submit encounter data to CMS that includes data on payments to providers, cost-sharing paid by beneficiaries, in-network vs. out-of-network payments and a host of other data provisions.

- An Amendment by Senator Catherine Cortez Masto (D-NV) that would require Medicare Advantage plans to submit encounter data to CMS that includes data on payments to providers, cost-sharing paid by beneficiaries, in-network vs. out-of-network payments and a host of other data provisions.
- An Amendment by Senator Elizabeth Warren (D-MA) to require CMS to collect and publish information on Medicare Advantage plan prior authorization practices.

We will continue to follow committee work in these areas.

SUMMARY OF THE PROVISIONS IN THE ADOPTED BILL

The bill had three major subjects: Expanding access to mental health services, lowering the price of drugs for seniors, and extending current provisions that are expiring under the law.

Mental Health: To increase access to mental health services, the bill creates additional payments for non-physician healthcare professionals who provide mental health and substance abuse counseling. It also expands Medicare coverage of health behavior assessment and intervention and increases reimbursement for these services by 175% of the normal physician fee rate in 2026. This bill also prohibits “ghost networks” in Medicare Advantage plans – ghost networks are when a plan outlines in-network mental health providers but when those providers are contacted, they are either no longer practicing or no longer taking patients – making beneficiaries unable to find a provider. This section of the bill also includes Medicaid studies on mental health service usage and multiple guidance to the states on mental health services and coverage.

Reducing prescription drug costs: The bill requires Medicare Part D plan sponsors to contract with any willing pharmacy. In addition, the bill creates a new designation for “essential retail pharmacies” which are defined as pharmacies not affiliated with a PBM or plan sponsor that are in a medically underserved area. Additionally, it requires plans to contract with a minimum percentage of these “essential retail pharmacies” in their network. The bill also creates a policy where HHS will collect monthly survey data from pharmacies on drug costs and then use it to create pricing benchmarks.

For drug pricing, the bill requires plans to include “discount-eligible drugs” in their formularies and then limits beneficiary coinsurance on these drugs to net, rather than list price, saving money for beneficiaries who use these drugs. It also limits beneficiary cost-sharing in plans to the net price for the product.

EXTENDING EXPIRING PROVISIONS

The bill extends the following expiring provisions (unless otherwise noted, provisions expired on September 30, 2023):

- Continues Medicaid Disproportionate Share Payments (DSH) to hospitals for two additional years (FY 2024 and FY 2025).
- Permanently allows Medicaid to cover treatment for persons with substance abuse disorder in an Institutions for Mental Disease (IMD).
- Extend funding for 1 year to HHS for Quality Measure Endorsement, Input, and Selection.
- Extension of funding for outreach and assistance for low-income programs through State Health Insurance Assistance Programs (SHIPs), Area Agencies on Aging (AAAs), and Aging and Disability Resource Centers (ADRCs) through September 2024.
- Extension of the floor value of 1.0 for the physician work geographic index used in the calculation of payments under the Medicare physician fee schedule through December 2024.
- Extension of 1.75% payment incentive for Medicare Advanced Payment Models (APM).
- Extends the 25/75 blend payment for durable medical equipment that applies to areas other than rural or noncontiguous areas through December 2024.
- Extends the Independence at Home Medical Practice Demonstration Program under the Medicare Program through December 2025.
- Blunts the scheduled physician fee cut by decreasing the cut by 1.25%.
- Revised Phase-In of Medicare Clinical Laboratory Test Payment Changes. Continue to limit payment reductions of up to 15% in the Medicare Clinical Laboratory Fee Schedule until January 1, 2025, by delaying the reporting and collecting of private insurance payments for clinical laboratory services through December 31, 2024, and by extending the zero-percent cap on payment reductions through 2024.
- Extension of Adjustment to Calculation of Hospice Cap Amount under Medicare. This would apply the hospice payment update percentage, rather than the medical expenditure component of the Consumer Price Index for Urban Consumers (CPI-U), to the hospice aggregate cap through FY 2033.

According to CBO, the various provisions listed above will make this bill budget neutral (as provisions increasing costs and provisions decreasing costs are equal).

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