THORN RUN PARTNERS
GOVERNMENT RELATIONS

Hearing Summary

September 14, 2022

E&C HEALTH SUBCOMMITTEE ADVANCES FIVE BILLS

EXECUTIVE SUMMARY

Today, the House Energy and Commerce Subcommittee on Health Subcommittee held a markup to consider five bills. Each piece of legislation was amended and passed the Subcommittee. Bills pertaining to prior authorization (PA) in Medicare Advantage (MA) plans, providing mobile health care funding, and reauthorizing grants to address trauma care services were all approved on a bipartisan basis. Notably, the Subcommittee's passage of the MA bill occurred just before the bill's unanimous passage by the full House. However, disagreements arose regarding a bill that would reauthorize the Flint, Michigan Lead Exposure Registry. Republicans offered a series of amendments that would expand funding for the registry to other communities experiencing similar water resource issues, as well as provisions that would require state and local funding to supplement federal funding. Despite these conflicts, the Republican amendments failed, and the underlying bill was passed — as amended — due to the Democrat's majority.

Specifically, the bills under the purview of yesterday's hearing included:

- **Improving Seniors' Timely Access to Care Act of 2021** (H.R. 3173) — This legislation would establish several requirements related to the PA process under the MA program. Specifically, MA plans must (1) establish an electronic PA program that meets specified standards, including the ability to provide real-time decisions in response to requests for items and services that are routinely approved; (2) improve transparency by requiring MA plans to report to the Department of Health and Human Services (HHS) on the extent of their use of PA and the rate of approvals or denials; and (3) meet other standards relating to the quality and timeliness of PA determinations.
- **Vaccine Injury Compensation Modernization Act of 2021** (H.R. 3655) — The legislation would make several changes to the Vaccine Injury Compensation Program (VICP), including: (1) removing the current cap of eight special masters and replacing it with a floor of at least ten Special Masters; (2) updating reporting requirements; requiring the table to be updated more quickly as new vaccines are recommended; increasing compensation caps; and (3) changing the statute of limitations from 36 months after the date of the occurrence of the first symptom or manifestation or significant aggravation of injury to five years after such date.
- **Maximizing Outcomes through Better Investments in Lifesaving Equipment for (MOBILE) Health Care Act** (H.R. 5141) — This legislation would allow Federally Qualified Health Centers (FQHC) to use New Access Point grants for establishing mobile health units, building renovation, and acquisition and construction costs to increase access to health care in rural and underserved communities.

- **Improving Trauma Systems and Emergency Care Act** (H.R. 8163) — The legislation reauthorizes grants through fiscal year (FY) 2027 for trauma care to support the improvement of emergency medical services and trauma care readiness and coordination. The bill requires the Office of the Assistant Secretary for Preparedness and Response (ASPR) to develop guidance for and otherwise support states—and consortia of states—to coordinate and improve emergency medical services and trauma care during declared emergencies. It also expands eligibility and revises grants for improving emergency medical services and trauma care in rural areas and competitive grants for improving regional emergency medical and trauma systems.
- **Flint Registry Reauthorization Act** (H.R. 6737) — The legislation would amend the Water Infrastructure Improvements for the Nation (WINN) Act, enacted in December 2016, to reauthorize the Lead Exposure Registry program at $5 million annually for FY 2023 through FY 2033.

OPENING STATEMENTS

Chair Anna Eshoo (D-CA) outlined provisions within the Improving Seniors' Timely Access to Care Act, adding that reforming the PA process would be helpful to patients. She also said that while vaccines are overwhelmingly safe and effective, those who are injured deserve compensation. The Chair then drew attention to — and supported — the MOBILE Health Care Act, Improving Trauma Systems and Emergency Care Act, and the Flint Registry Reauthorization Act. She characterized each piece of legislation as "clear and poignant."

Ranking Brett Guthrie (R-KY) (statement) reiterated the Chair's support of each bills up for the vote. However, he said that vaccine injury and PA should include funding offsets before they are passed. He also expressed some skepticism regarding the Flint Registry Reauthorization Act, stating that the Committee should hear from Dr. Rochelle Wilensky, Director of the Centers for Disease Control and Prevention (CDC), and suggesting that the registry eventually be transferred to state and local authorities. Ranking Member Guthrie expressed interest in the Subcommittee holding a hearing to discuss pandemic preparedness in the wake of the monkeypox outbreak. He also expressed disappointment that his bill, the Building America's Healthcare Workforce Act (H.R. 7744) — which would the Emergency Declaration Blanket Waiver relating to training and certification of nurse aides to alleviate burdens imposed on the staff of skilled nursing facilities and nursing facilities beyond the end of the COVID-19 public health emergency (PHE) — was not considered today.

Full Committee Chair Frank Pallone (D-NJ) (statement) provided a brief overview of each bill on the docket and expressed support for each piece of legislation. However, he argued that Republicans' suggestions to reform the Flint Registry Reauthorization Act would negate the positive impacts of the legislation.

Full Committee Ranking Member Cathy McMorris Rodgers (R-WA) (statement) supported the MOBILE Health Care Act, as well as the Vaccine Injury Compensation Modernization Act of 2021, though he noted that the vaccine modernization legislation should include a cost offset. She also

echoed support for the Improving Trauma Systems and Emergency Care Act, and she appreciated the Committee's work to resolve conflicts regarding the state matching requirements in the bill before a full Committee markup. The Ranking Member reiterated her desire for funding offsets regarding the Improving Seniors' Timely Access to Care Act, noting that the Congressional Budget Office's (CBO) recent scoring of the bill estimated billions in federal Medicare spending over the next ten years. She also expressed several concerns with the Flint Registry Reauthorization Act and urged for longer-term solutions to solve water crises, more oversight of such programs, and inclusion of other regions impacted by unclean drinking water.

Rep. Buddy Carter (R-GA) elaborated on the Improving Seniors' Timely Access to Care Act, though he was frustrated that the Biden administration has not created more specificity related to COVID-19 PHE unwinding policies. Specifically, he added that Medicare beneficiaries have been receiving oxygen therapy at home and are unsure of how this care will continue after unwinding.

DISCUSSION AND QUESTIONS

Improving Seniors' Timely Access to Care Act

- Chair Eshoo characterized PA as "overly burdensome" and "costly," highlighting support for the legislation from several physician stakeholder organizations.
- **Rep. Larry Bucshon (R-IN)** applauded this bill, emphasizing the importance of access to care and referring to the recent Department of Health and Human Services (HHS) Office of Inspector General (OIG) report detailing MA actions related to PA. He assured the Committee that CBO's scoring is preliminary, adding that MA plans often fail to adhere to statutory obligations, which he said should not be factored into scoring. Rep. Bucshon said that the Committee could find offsets, if required, though he promoted passage of the bill regardless of offsets.
- Chair Pallone acknowledged that MA plans do not always follow the law, citing the same OIG investigation as Rep. Bucshon and calling the findings "unacceptable."
- **Rep. Michael Burgess (R-TX)** supported the legislation, and he promoted his PA bill, Getting Over Lengthy Delays in Care As Required by Doctors (GOLD CARD) Act of 2022 (H.R. 7995), which would exempt physicians from PA if their PA requests were improved at a 95 percent rate in the previous year. Rep. Burgess specifically pointed to hip and knee surgeries as sometimes requiring inpatient care and should not be forced into an outpatient setting too early due to PA. Regarding the CBO scoring, he noted flaws in scoring the bill, such as a lack of understanding the cost savings associated with providing proactive care.
- **Reps. Annie Kuster (D-NH)**, **John Joyce (R-PA)**, **Neal Dunn (R-FL)**, and **Kim Schrier (D-WA)** advocated for the bill. Rep. Carter also reiterated his support of the legislation.
- Amendment in the Nature of a Substitute (AINS) filed by Chair Eshoo. This AINS would: (1) improve the electronic PA timeline; (2) create an exceptions process for extenuating circumstances with respect to real-time PA decisions; and (3) enhance transparency requirements with respect to MA plans. The AINS will also require HHS to make information on PA determinations public, including the rate of approvals and denials.
    - ***The amendment was adopted by voice vote.***

- ***The bill was forwarded as amended to the full Committee by voice vote.***

Vaccine Injury Compensation Modernization Act

- AINS filed by Chair Eshoo. This AINS would remove the cap on the Vaccine Claims Office of Special Masters and create a floor of ten Special Masters, report to Congress on the backlog of cases, and recommend any further policies that would improve the program.
    - ***The amendment was adopted by voice vote.***
- ***The bill was forwarded as amended to the full Committee by voice vote.***

MOBILE Health Care Act

- **Rep. Richard Hudson (R-NC)** elaborated on the bill's prospective positive impact this bill would have on access to primary care, dental services, and substance use disorder (SUD), among others. He noted that Community Health Centers (CHC) support the bill, adding that it would also help to remedy provider shortages. He then thanked the Senate for considering its companion bill (S. 958), which passed the chamber today by unanimous consent.
- Rep. Bucshon noted that Federally Qualified Health Centers (FQHC) in his state would benefit from this bill, and **Reps. Raul Ruiz (D-CA)** and Kuster spoke in favor of the bill.
- AINS filed by Rep. Hudson. This AINS would make several technical corrections and allow CHCs to have access to grants and improve their flexibility.
    - ***The amendment was adopted by voice vote.***
- ***The bill was forwarded as amended to the full Committee by a vote of 29-0.***

Improving Trauma Systems and Emergency Care Act

- AINS filed by Chair Eshoo. The AINS would make technical amendments, and Chair Eshoo noted that it would not change the underlying grants.
    - ***The amendment was adopted by voice vote.***
- ***The bill was forwarded as amended to the full Committee by voice vote.***

Flint Registry Reauthorization Act

- Chair Pallone reiterated his endorsement of the bill, noting that it can enhance lessons learned from the Flint water crisis by improving the registry. He was "disappointed" in some Republican disagreement with the underlying bill.
- Ranking Member McMorris Rodgers noted that the underlying bill would create a registry, which she noted is already established, and that bill does not improve outreach or other supports. Chair Eshoo disagreed, reiterating that the measure is a clean reauthorization of the initial funding.
- AINS filed by **Rep. Nannette Barragán (D-CA)**. This AINS would make technical changes to the underlying bill.
    - ***The amendment was adopted by voice vote.***
- ***The bill was forwarded as amended to the full Committee by a 16-12 vote.***
- AINS filed by Ranking Member Guthrie. The AINS would break the earmarking exclusivity and allow other affected communities to establish registries and benefit for federal funding in the bill.

    - Ranking Member McMorris Rodgers and **Rep. Morgan Griffith (R-VA)** supported the AINS.
    - ***The amendment failed by a 13-16 vote on party lines.***
- AINS filed by Rep. Carter. This AINS would allow other affected communities to establish their own registries.
    - Chair Pallone clarified that reauthorizing the Flint-specific program is "critical" to ensure the program can continue and yield results.
    - ***The amendment failed by a 13-15 vote on party lines.***
- AINS filed by **Rep. Gus Bilirakis (R-FL)**. This AINS would require non-federal matching funds for the Flint registry.
    - Democratic Committee leadership pushed back against this amendment, arguing that the local Flint community cannot afford to match federal funding.
    - ***The amendment failed by a 12-16 vote on party lines.***