



Policy, Personalities, and Payments: The Impact of Congress and the Biden Administration on Healthcare 2020-2022

By Mike Bertaut
Healthcare Economist, Exchange Coordinator
March 2022

2022 Major Issues To Be Resolved

- END of the Presidential Health Emergency
- Extensions of Enhanced Advanced Tax Credits
- Solving the 12-state low-income uninsured problem
- *Rules left for Healthcare.gov enrollment*
- Risk, Risk, Who's Got The Risk?
- The “No Surprises Act” and definitions of emergencies
- Testing and Costs

The “No Surprises Act” and the Logic Train

• STEP 1: EMERGENCY COVERAGE

- The NSA requires health plans to cover Emergency Services, without prior authorization, without respect to the provider’s network status, and apply in-network cost sharing based on a new standard, the Qualified Payment Amount.
- *The NSA also significantly expands the definition of EMERGENCY SERVICES (more to follow).*
- An Out-Of-Network provider working at an In-Network facility providing services must be covered by the health plan and apply the in-network cost sharing UNLESS the OON provider has fulfilled new notice and consent requirements
(Notice/consent not allowed for emergency medicine, anesthesiology, pathology, radiology, and neonatology).
- *Out-Of-Network Air Ambulance services MUST be covered for any service that WOULD have been covered if the AAS had been in-network. In-network cost sharing must be applied.*

Step 2: The Evolving Emergency

- In 1986 Congress enacted the “Emergency Medical Treatment and Labor Act” (EMTALA).
- Under EMTALA, a hospital had specific obligations that defined an emergency:
 - Individuals who requested a medical screening to determine whether an emergency condition existed must be accommodated regardless of their ability to pay.
 - If an emergency condition exists, treatment must be provided until the condition is resolved or the patient stabilized, regardless of ability to pay.
 - Hospitals with specialized capabilities are obligated to accept transfers from less capable facilities.
 - Once the patient is stabilized under EMTALA, the emergency is over.

EMTALA was put into law, but no funding for the care required was ever approved.

In the interim, many states have morphed the emergency definition into something much more comprehensive.

Step 2 (cont'd): What's an Emergency?

- In December 2021, the CAA redefined “emergency” and greatly expanded the obligation of the treating facility when dealing with patients with no or limited ability to pay.
- “*Emergency services*” are now defined according to a prudent layperson standard; i.e., “*whether a person without specialized medical knowledge would think that immediate medical attention is needed.*”
- In addition, the duration of emergency care has potentially been expanded. The new rule says:
- Emergency services include those needed to stabilize the patient, as well as post-stabilization services furnished as part of outpatient observation, or an inpatient or outpatient stay with respect to the visit in which the other emergency services are furnished.

Step 3: Getting Paid: The “Qualified Payment Amount”

- The CAA21 defines the QPA as: “as the median of contracted rates for a plan within a given market as of Jan. 31, 2019, for the same or similar service provided by a provider within the same or similar specialty within a specific geographic region.”
- In states that use an “All Payer Model” to regulate reimbursement (like Maryland), the APM is in effect not the QPA.
- The QPA is indexed to CPI-U with January 2019 as a baseline (the consumer price index for all urban consumers, not a medical or healthcare CPI standard).
- Some Docs in Congress and Medical societies have filed lawsuits to change the way arbitrators consider payment options, seeking to minimize or do away with the QPA methodology.
- The current definition, since the starting point is regional insurance company in-network payments, means several payment options should NOT be considered as a baseline:
 - Billed Charges/Chargemaster
 - Medicaid Rates
 - Medicare Rates

Who is Subject to the “No Surprises Act”?

- Everybody.
 - Grandfathered plans, Non-grandfathered plans, Self-Funded, Fully Insured, Association Plans, Group Plans, Individual Plans, government plans, private plans, student plans, church plans, indemnity plans.
- HRA plans, retiree-only plans, and STLDI plans are exempt.
- Facilities include hospitals, hospital outpatient departments, critical access hospitals, ambulatory surgery centers, free standing ED's.
- Urgent Care Centers are still being studied, not added to the CAA NSA yet....

Other new Federal Requirements that will impact Rates....

- Advanced EOB's (Time-Travel EOB's)
 - Requires issuers to provide an advance EOB at least 3 days prior to scheduled services, which should include the network status of provider, contracted rates for services, the good faith cost estimates provided by the provider, good faith estimates of cost-sharing, good faith estimates of progress towards meeting deductibles and out-of-pocket maximums, whether a service is subject to medical management and relevant disclaimers of estimates.
- ID Cards—
 - Must now include deductible, out-of-pocket maximum limitation, and a telephone number and website through which members may seek customer service assistance. (in addition to all existing info requirements)
- Provider Transparency
 - Requires providers to verify an individual's coverage status and provide good faith cost estimates to the issuer at least 3 days in advance of services.

More Cost/Complexity Drivers

- Provider Directory Requirements
 - Carriers must establish and require medical provider self-service directory updates and validate all data EVERY 90 DAYS.
 - Providers who refuse to update/validate their information must be removed
 - Member requests for provider info must be answered within 24 hours and kept on file for two years.
 - If the directory gives a member bad information, the member only pays the in-network cost sharing and amounts.
- Carrier Transparency and Pricing Tools
 - Requires issuers to maintain a price comparison tool available via phone and website that (to the extent practicable) allows members and participating providers to compare the cost-sharing amount for a particular service by any participating provider.
 - Carrier wide costs ~\$9B over 3 years to establish and maintain.
 - CBO says will save consumers \$154 million per year.
- Relationship to Transparency in Coverage Final Rule
 - Issuers are required to established a Self-Service Pricing Tool that allows members to compare cost-sharing information for 500 shoppable services by **January 1, 2023** and all items and services by **January 1, 2024**.
 - Must now include deductible, out-of-pocket maximum limitation, and a telephone number and website through which members may seek customer service assistance. (in addition to all existing info requirements)

Free At-Home OTC Covid Testing Challenges.

- Biden Administration ordered on Monday January 14, that all carriers had to provide FREE At-home OTC Covid-19 tests for all members up to 8 per month per person by Saturday January 19th.
- Medicare Plans were not required to do so, but now say they will (by May?)
- Medicaid remains state option.
- NO FEDERAL FUNDING to provide the tests.
- ***Cost concerns: IF all our Louisiana risk membership chose to take advantage of this program during 2022 (8 tests per month per person) cost would be almost \$700m. That's a 20% increase in claims.***



**The Personalities Implementing
the Policies:
Biden Administration Winter
2022**

Personalities: Xavier Becerra Sec of HHS

- Served California district of Los Angeles as Congressman for 20+ years
- Spent most of his time on Ways and Means committee
- Lawyer with a degree in Economics
- Leader of the House Hispanic Caucus (until his repeated visits with Fidel Castro alienated members)
- Rarely gives press conferences. Only 1 in 2021.
- Healthcare experience as AG of California he used his office in an anti-trust capacity to block hospital mergers in California.



“It’s important for people to know I’m not just a leader for Latinos. I want folks to know I can be influential and not just on immigration policy. If someone’s got a tax concern, they should come to me. If someone’s got a health concern, they should come to me.” (Becerra 2001)

Personalities: Chiquita Brooks-LaSure CMMS

- Leader of Center for Medicare and Medicaid Services including a \$1.3 Trillion annual budget and \$25+ Billion discretionary fund.
- Former Deputy Director of CCIIO (regulator for healthcare.gov, small group and individual market.)
- Instrumental in creation of ACA policy and guidance to industry, 50,000 pages plus since 2012.
- Priorities:
 - “Unwind Trump healthcare changes”
 - “Push Medicaid expansion into states not accepting it today (12)”
 - “Zero proof required to any special enrollment period”
 - “Quickly install Surprise Billing Law”
 - “Value-based payments Medicaid/care”



“States can guarantee health insurance coverage for their citizens if various groups that help people enroll are funded and aware of all the options in the health insurance safety net.” (Brooks-LaSure 2019)

Personalities: Rachel Levine Asst Sec of Health



“Everything is public health to me. Whether it’s the minimum wage, environmental law, public transportation, racism, equity, you name it. It all falls under my purview.” (Levine Fall 2020)

- First transgender woman to be anointed to a cabinet post by the US Senate.
- Position sets all healthcare policy for Medicare, Medicaid, FQHC’s.
- Strong advocate of the “full range of women’s healthcare services”.
- As Health Secretary of Pennsylvania, focused on adolescent and LGBTQ health issues.
- Made significant progress against the opioid epidemic in Pennsylvania
- Licensed pediatrician
- Graduate of Harvard University and Tulane Medical School.

Personalities: Jeff Zients C19 Response Leader

- Served on the National Economic Council (2010-2013), Director of the Office of Management and Budget (Obama Administration)
- Has a reputation in Washington DC as “Mr. Fix-IT”
- “Fixed” the broken roll-out of healthcare.gov in late 2013 very effectively.
- More progressive staff spoke against his nomination to the post.
- Zero healthcare experience but does have logistical and process management experience.
- Trusted Biden Adviser for decades.
- Renowned in DC for his ability to “calm down any frenzied situation”



"Jeff isn't a health care guru, and he's the first to say that, but he's a manager and a trusted player without an agenda other than outcomes. He has all the attributes you need to manage this across the board — a rare skill set in Washington." (Biden Admin staffer)

Personalities: Deb Haaland, Sec of Interior



“We know how to create good-paying union jobs through clean energy. We can put people to work to restore our lands and waters through a Civilian Climate Corps. We can work to ensure that communities have the right tools and resources to support families that have been hurt by the oil and coal busts.”
(Haaland, March 25, 2021, Environmental “Listening” Conference)

- Chairman of the New Mexico Democratic Party from 2015-2017 & Congressman from NM 1st District 2019-2021
- She is a Roman Catholic, a member of the Laguna Pueblo and the first native American to serve as a departmental Secretary in the US government.
- She now oversees the Bureau of Land Management, Environmental Enforcement, and the Bureau of Ocean Energy Management.
- Enforcing executive order 14008 freezing all new oil, gas, and mining leases on federal land (including Alaska) until.....???
- Tasked with all authority to cut US carbon emissions by 50% by 2030 (relative to 2005 levels) including blocking oil/gas exploration on federal lands.

Personalities: Marty Walsh, Sec of Labor



“Working people, labor unions, and those fighting every day for their shot at the middle class are the backbone of our economy and of this country. As Secretary of Labor, I’ll work just as hard for you as you do for your families and livelihoods. You have my word” (Walsh 4 Feb 2021)

- Former Mayor of Boston (since 2013)
- First Union Member as Sec of Labor in 50 years
- Long-time Biden ally
- Strong ties to organized labor, champion of \$15 minimum wage, federally mandated paid leave, even stricter workplace safety regulations.
- Oversaw Mass. Family and paid medical leave benefit requirements.
- Not the first (or second) choice of the Progressives in Biden’s cabinet, but the President insisted.

Personalities: Janet Yellen, Sec of the Treasury

- Lifelong Democrat, strong party supporter
- Served as Chairman of the Federal Reserve from 2014 to 2018
- First female Chairman of the Fed, and Secretary of the Treasury
- Believes “ignoring interest rates and inflation are essential in achieving full employment.”
- Says free markets are anathema to her core philosophy. Described as “Keynesian to her fingertips”.
- While at Federal Reserve, said new financial crisis not possible. After leaving, she warned of “gigantic holes in the Reserve System.”



“Some degree of inequality in income and wealth, of course, would occur even with completely equal opportunity because variations in effort, skill, and luck will produce variations in outcomes.”

(Yellen, 2019)

Personalities: Rosa DeLauro House W/M Chairman



“You really can’t talk about reopening the economy without a conversation about how children are going to be taken care of. We cannot let this pandemic set back the next generation.” (De Lauro on proposed \$50billion to childcare industry, March 2020)

- Committee chair on main healthcare spending group in Congress, from Connecticut
- All spending bills must originate in her committee
- Starting her 30th year in Congress in 2021
- Has indicated she wants to make a strong push to remove the Hyde Amendment
- Most of her campaign money comes from healthcare professionals, unions, and Yale University.
- Believes the federal government needs to borrow “much, much more money”. (January 2021)

“Get Your Shots Yet?”

Contact Me:

MICHAEL R. BERTAUT, MBA, AAP
Healthcare Economist

LinkedIn: Mike Bertaut

Blog:
www.straighttalkla.com

Michael.Bertaut@bcbsla.com

PHONE: (225) 573-2092

I'd love to hear from you!



“Why NOT?”