

A Health Policy Agenda for the 118th Congress

Key issues facing a new Congress

By Drew Keyes and Brian Blase, PhD

Setting the agenda for the new Congress is of the utmost importance, particularly given the new majority in the House of Representatives. While the 117th Congress and the Biden administration implemented an inflationary health care agenda that expanded federal power and increased subsidies to special interests, the 118th Congress has an opportunity to rein in the harmful effects of those policies. This policy brief will highlight policies that the 118th Congress should consider and address areas where the new Congress can responsibly legislate and conduct oversight.

Putting American Families First

Congress should advance solutions that put patients and families in control of their health care decisions. Codifying several Trump administration rules would allow more flexible and affordable coverage arrangements and empower Americans to better navigate the onerous health care bureaucracy. These rules include price transparency requirements on hospitals and health insurers to provide upfront and actionable price information, an expansion of Association Health Plans so small businesses can gain the same regulatory advantages in offering coverage that large employers receive, an expansion of affordable and flexible short-term health insurance plans, and flexibility to allow employers to offer health reimbursement arrangements through which workers use their employer contributions to purchase individual coverage that works best for them.

By increasing affordable coverage options, these solutions will help ease the burden of the current inflation crisis that American families now face.

KEY TAKEAWAYS

Congress should prioritize an **anti-inflationary agenda** that puts patients and families in control of their health care and reduces Washington's power.

Congress should **end the COVID-19 public health emergency** currently being used to expand the federal role in health care.

Congress should **focus oversight** on failures with the government's COVID-19 response, unlawful Biden administration executive actions, Medicaid improper enrollment and spending, and implementation of the Inflation Reduction Act.

The 118th Congress should begin the work of **restoring trust in public health agencies**, prioritizing substantive reform of the CDC and the NIH.

Tackling the growing consolidation in the health care industry could also alleviate high prices while maintaining or even improving quality of care. Hospital consolidation is particularly notable because it is not correlated with better care and often leads to higher prices.¹ Flawed federal programs have produced consolidation in the health care market, so Congress should ensure that any solutions address these root causes. For example, Congress should enact site neutral payments in Medicare, remove problematic programs like Obamacare's Medicare Shared Savings Program, and reform the 340b Drug Pricing Program.

A Responsible Oversight Agenda

COVID Oversight

The federal government's response to the COVID-19 pandemic failed in multiple respects, including the promulgation of policies not based in science, poor communication, and an unprecedented expansion of government authority like the eviction moratorium. School lockdowns, based in part on guidance from the Centers for Disease Control and Prevention (CDC), had disastrous results.² And social isolation, mental health problems, and drug overdoses have all soared as negative consequences of government-driven lockdowns. Unfortunately, control of the executive and legislative branches by the same party over the past two years hindered effective oversight of the administration's COVID-19 response.

The new Congress must hold the administration accountable and reform institutions to restore the American people's trust in federal public health agencies. Congress's initial focus should be on the CDC. Too often, the agency ignored science and common sense to push a political agenda.³ Public health guidance should be rooted in science rather than groupthink and should not squash dissenting views. However, such problems extend beyond the CDC. Public health officials from the CDC, the National Institutes of Health (NIH), and the Food and Drug Administration (FDA) have all spoken out about the politicization occurring within the federal public health bureaucracy.⁴

Congress has already taken a keen interest in the three agencies. Both the House and Senate minorities in the 117th Congress issued critical reports on the origins of COVID-19 and what role, if any, NIH-funded research played.^{5,6} Both reports underscore a more fundamental issue that currently plagues the agencies: dissent is too often quieted for political expediency. The 118th Congress should continue and broaden these oversight efforts.

Finally, it's long past time to end the COVID-19 public health emergency. The COVID-19 public health emergency has been extended repeatedly to maintain

an enormous federal role in health care, particularly a massively expanded Medicaid program.⁷ Under the Families First Coronavirus Response Act (FFCRA), Congress increased the federal matching rate for Medicaid payments to states by 6.2 percentage points as long as states took no action to remove people from Medicaid, even people who were no longer eligible for the program. According to Urban Institute projections, roughly 16 million people on Medicaid were ineligible as of the end of September.⁸ Moreover, according to the Congressional Budget Office, 19 million people have multiple sources of coverage—most of whom have both employer-provided coverage and Medicaid.⁹ While the huge growth of Medicaid has been a boon to health insurers, the higher spending has contributed to inflation, crowded out private coverage, and depleted resources for other state priorities like homeless services, crime prevention, and education.

Obamacare Oversight

The American Rescue Plan Act (ARPA) and the Inflation Reduction Act (IRA) significantly expanded Affordable Care Act (ACA) subsidies to insurance companies for people enrolled in exchange plans, including making the wealthy eligible for them. Moreover, the Biden administration used the Internal Revenue Service (IRS) to unlawfully expand ACA subsidies by closing the so-called "family glitch." The administration took this action contrary to the clear text of the ACA as well as an IRS regulation from the Obama administration that did follow the law. The main economic effect of the rule is that many dependents on employer-based coverage will replace that coverage with heavily subsidized exchange plans, transferring more costs to taxpayers.

Regardless of the policy ramifications, procedurally such a policy change must be enacted by Congress. The next Congress should conduct oversight of the illegal IRS rule and the White House pressure on the IRS to change its implementation of the tax code to further expand government control of health care. Further, Congress should consider taking or backing legal challenges to the administration's actions.

Medicaid Oversight

Medicaid enrollment and spending has exploded over the past decade.¹⁰ About half the growth has been from Obamacare's expansion of the program and the other half from the maintenance of effort provisions in FFCRA. A 2021 report from the Centers for Medicare and Medicaid Services (CMS), which primarily analyzed data from before the pandemic, estimated annual federal improper Medicaid payments at \$99 billion.¹¹

The need for Medicaid oversight is particularly great given that no other major federal program has improper payment amounts nearing those of the Medicaid program. In an October policy brief, Paragon provided Congress with oversight ideas regarding federal and state management of Medicaid managed care and insurers that participate in Medicaid managed care.¹² Congress should also make requests of the Government Accountability Office and the Inspector General at the Department of Health and Human Services (HHS) to better understand the reasons for the substantial waste, fraud, abuse, and misspending in Medicaid as well as to obtain ideas on how to protect the program for those who truly need it.

Congress also should consider problematic initiatives undertaken by the Biden administration. One such initiative is so-called express lane eligibility which allows states to enroll those eligible for other welfare programs, such as Head Start or Food Stamps, swiftly into Medicaid.¹³ Moreover, Congress should investigate recent waivers granted to states—to allow Medicaid coverage for non-medical services like air conditioning, food, and housing assistance—rather than health care services.¹⁴

Implementation of the Inflation Reduction Act

In addition to expanding ACA subsidies, the IRA also significantly changed how Medicare pays for pharmaceuticals. At the time, Paragon highlighted several concerns with those policies, but Congress must ensure HHS implementation of the law is conducted legally with minimal negative impact on the well-being of the American public.¹⁵

The law appropriated \$3 billion to CMS for implementation, largely to establish a massive bureaucracy to set pharmaceutical prices. In October, CMS announced it plans to fill more than 200 new positions for the drug price-setting regime.¹⁶

The IRA's price controls and inflation rebates will begin in 2024. Congress should ensure the rebates and price controls do not have unintended consequences, beyond the ill-effects of the policies themselves, on the ability of Americans to access innovative cures.

A Public Health Legislative Agenda

Trust in public health is at historic lows, given the growing belief the public health agencies have become overly political.^{17,18} This distrust undermines the work these agencies do and the effectiveness of their guidance. Multiple studies have shown that such distrust has increased hesitancy about not only the COVID-19 vaccine but other vaccines as well.¹⁹ While the CDC is engaging in damage control for its tarnished image, true reform must address the aforementioned mission creep at the agencies.^{20,21} Effective congressional oversight is just one step to restoring public trust in public health. A robust legislative reform agenda is also needed.

Next year, the Pandemics and All-Hazards Preparedness Act (PAHPA) will expire. PAHPA reauthorization will be a natural opportunity for a needed conversation about reforming our public health agencies. Congress should reform not only the agencies, but also the process by which those agencies are authorized and funded. The CDC has no single overall authorizing law, and the NIH has not been reauthorized since 2006, which was also the last time it underwent substantive congressional review and eventual reform. Instead Congress asserts control over the agencies through the appropriations process or occasional amendments to the Public Health Service Act and other statutes.

Congress should rethink these agencies from the ground up. The CDC should be reformed to be a more nimble, efficient, thoughtful agency that focuses on

reducing the risk of communicable disease. Only through such reform can the agency be restricted from advancing non-germane, woke priorities addressing everything from climate change to gender identity.²²

To accomplish such needed reform, Congress should ensure the CDC's role is properly defined. Further, Congress should lay out a center-by-center authorization of the agency, reform its emergency powers, cut redundant activities, and reassign functions that may be carried out better by other agencies. Activities that state and local governments are best equipped to do should not be crowded out by federal actions. States are often situated to respond to their citizens' public health needs more efficiently. The pandemic highlighted how broad federal recommendations are not always best for individual states.

Congress should also consider reforms needed at the NIH. What once started as a single institute has proliferated into 27. While the NIH has garnered bipartisan support for much of its existence, scientific groupthink has led to growing frustration and a centralization of public-funding.²³ Dissenting views are easily cast aside, which is unsurprising given that the most taxpayer dollars are granted to a small subset of educational institutions. The NIH should be reformed to ensure the science it funds efficiently serves the public interest.

Finally, the 118th Congress should prepare to engage on substantive FDA reforms. While such reforms will not be enacted for five years, the user-fee authorization process which forms the basis of the FDA's activities require an in-depth understanding and stakeholder buy-in. Policymakers should begin outlining a vision for what that reform will look like in the upcoming Congress.

Medicare's Looming Insolvency

The unsustainable trajectory of federal health programs—Medicare, Medicaid, and Obamacare—is one of the most important priorities for Congress to address. These programs are significantly contributing

to federal deficits and the national debt and thus higher interest rates and inflation now. And without reform, these programs will cause a much lower standard of living for Americans in the future.

While improper payments in Medicaid are a huge problem, the Medicare program faces the most severe financing challenges. The program is increasingly relying on general revenue, which now finances 46 percent of the program.²⁴

Moreover, the most recent Medicare Trustees report indicated that the Medicare Hospital Insurance (HI) Trust Fund is projected to be depleted in 2028, which would lead to a 10 percent payment cut in 2028 with rising payment reductions thereafter.²⁵ In other words, no plan means an across-the-board payment cut. Since the 1970s, Congress has always acted to address projected insolvency within five years of reaching such a projection, so Congress will almost certainly need to begin this discussion within the next two years.

Conclusion

The 118th Congress will have opportunities to reform government programs in ways that improve the experience of patients and their families. Congress should focus on an anti-inflationary agenda that incorporates lessons learned from the policy failures of the last two years and ensures that any solutions put the needs of patients and families above the bureaucracy and special interests. To do so will require effective oversight of both the government failures in its COVID-19 response and the growth of government control over Americans' health care. Effective oversight will help lay the groundwork for needed policy reforms.

About the Authors

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