



# House Rules Committee Print of Build Back Better: Initial Overview

On October 28, 2021 the Rules Committee released legislative language for the \$1.75 trillion Build Back Better Act (BBB). We would like to flag that this is likely not final bill language that will be passed into law. This bill was intended to allow for a vote on the bipartisan infrastructure package, but that vote has been delayed. Instead, this is now bill language for members to review. There are a number of new items included in this bill language and some noteworthy changes from the House Committees. We will continue to follow up with additional details. Please also note that the legislative text does have some drafting issues that were likely not resolved because of the timeline needed for release. That presents some challenges in interpretation as well. Please view the below as our initial reaction and highlights from the bill language released, and the below does not include all the health care provisions. Also attached is the Congressional section-by-section summary of the text.

## Medicaid and CHIP

### *Home and Community Based Services*

There is Home and Community Based Services (HCBS) funding, which is estimated to cost \$150 billion. The HCBS percentage point increase is 6% for HCBS Improvement States for a 10-year period, this is a decrease from the House Committee version of the text which contained a 7% increase for the program. States that implement these HCBS Improvement plans will receive an additional 2% increase for HCBS during the first six fiscal quarters throughout which the State has implemented and has in effect a program to support self-directed care. (This is a decrease in timeframe from eight fiscal quarters in the House Committee version.)

### *Money Follows the Person*

There continues to be a permanent extension of the Money Follows the Person program.

### *Continuous Eligibility*

There is a requirement for states to provide continuous eligibility for 12 months for pregnant women and children covered under Medicaid and/or the Children's Health Insurance Program (CHIP).

### *Medicaid Coverage for Justice Involved Individuals*

Medicaid coverage for inmates 30 day prior to release will begin two years after enactment.

### *Maternal Health*

New: A state plan amendment which would allow for states to provide for medical assistance to those who choose to enroll in a maternal health home and receive maternal health home services from a designated provider, a team of health professionals operating with such a provider, or a health team. A maternal health home, as established in the text, would coordinate all necessary services to support prenatal, labor and delivery, and postpartum care for eligible



individuals. This includes coordinating access to specialists, behavioral health providers, early intervention services, and pediatricians.

#### *Puerto Rico and Territory Medicaid Funding*

New: Permanent Medicaid funding for the territories and Puerto Rico. For years 2023 and beyond, Federal Medical Assistance Percentages (FMAP) for the territories and Puerto Rico will be 83%.

#### *Provisions to Encourage Medicaid Expansion*

New: The Disproportionate Share Hospital (DSH) allotment of every non-Medicaid expansion state would be cut. Until these states expand Medicaid, their allotment will be 87.5% of the FY 2023 allotment amount. There will also be no annual Consumer Price Index (CPI) growth in the allotment. The DSH allotment will stay at 87.5% of the 2023 amount. If they expand Medicaid in the future, then the allotment for the year they expand would be restored. If an expansion state terminates its expansion coverage, their DSH allotment would be cut to the 2023 amount. Additionally, the text includes cuts to uncompensated care pools in non-expansion states by codifying the Obama Administration policy of not paying for any uncompensated costs for individuals who could have been covered through expansion. The provision also increases FMAP in states that newly expand Medicaid. For these states, the FMAP percent would 93% for the expansion population costs from 2023-2025, and 90% for the years after that.

#### *Medicaid Eligibility and the Public Health Emergency*

The Families First Coronavirus Response Act increased Medicaid FMAP to states during the public health emergency (PHE) by 6.2%. Instead of that ending when the PHE ends, this provision phases out this FMAP increase. The FMAP bump would be phased down to 3% on April 1, 2022 and 1.5% beginning on July 1, 2022. The FMAP bump would end entirely on September 20, 2022. The bill also outlines requirements for conducting eligibility redeterminations. It outlines eligibility redetermination processes that states must use in order to maintain the increase in FMAP. Specifically, it requires that prior to disenrolling individuals pursuant to an eligibility redetermination, the state has to make two attempts to reach out to the individual, and on the second attempt provide a 30-day notice before disenrollment. In addition, the state can only initiate eligibility redeterminations for 1/12 of individuals enrolled in a state plan during any month from April 1, 2022 through September 30, 2022.

There is also a separate maintenance of effort provision as it relates to Medicaid eligibility and the PHE. The bill would impose a 3.1% FMAP penalty for states that reduce eligibility for Medicaid between September 1, 2022 and December 31, 2025, if these implement eligibility standards that are more restrictive than what was under their state plan as of October 1, 2021. However, states have the option to have that 3.1% decrease not apply to non-pregnant, non-disabled individuals with income above 133% of the Federal Poverty Line if the state can prove it has a budget deficit.

#### *Average Acquisition Cost Survey*

New: The bill requires the Secretary to conduct a survey of retail community pharmacy drug prices to determine the national average drug acquisition cost. States must require any retail community pharmacy that dispenses covered outpatient drugs paid by Medicaid or CHIP to respond to surveys. It also withholds federal payment to states for matching reimbursement to a



pharmacy unless the state requires the pharmacy to respond to the surveys. There are also civil monetary penalties for failing to respond to the survey.

### *Permanent Extension of CHIP*

As included in the previous House Committee version, the bill permanently authorizes CHIP and “makes such sums as necessary” available for 2027 and beyond and it also allows states the option to increase eligibility for children whose family income exceeds the maximum income level otherwise established for children under CHIP.

### *Pediatric Quality Measures*

The bill permanently extends the Pediatric Quality Measures Program and provides \$15 million in FY 2028 with a prescribed formula tied to the CPI for future years.

### *New CHIP Provisions*

New: The bill provides for permanent authorization of the child enrollment contingency fund. The text also provides stability for CHIP outreach and enrollment activities by authorizing \$60 million for fiscal years 2028, 2029, and 2030. The amount for FY 2031 – 2034 is determined by a formula tied to the consumer price index.

Beginning January 1, 2024, the bill newly adds provisions mandating the Secretary to develop or adapt processes and mechanisms as are necessary for drug rebates for covered outpatient drugs for which child health or pregnancy related services are covered under CHIP, including reporting and collecting of data to bill and track rebates.

## **Medicare**

The bill includes Medicare coverage for hearing services, beginning on January 1, 2024 (three months later than the October 1, 2023 date in the House Committee text). Specifically, the text provides Medicare coverage for aural rehabilitation and treatment services by qualified audiologists and the delivery of hearing assessment services by qualified hearing aid professionals. It also covers hearing aids (that are not over-the-counter) up to once every five years, per ear, for individuals with severe or profound hearing loss if furnished through a written order by a physician, qualified audiologist, qualified hearing aid professional, physician assistant, nurse practitioner, or clinical nurse specialist. The new text also clarifies coverage of audiology services at rural health clinics and federally qualified health centers.

The earlier House Committee versions of BBB included the creation of a new dental benefit under Medicare and coverage for vision services, along with hearing services, but the dental and vision provisions were not included in this bill.

## **Prescription Drug Pricing**

Though summary materials noted that the repeal of the Pharmacy Benefit Manager (PBM) rebate rule was to be included as a pay for, we could not find it in this bill. That may be because it has a dependency on passage of the Bipartisan Infrastructure Bill (BIF) first. No other prescription drug pricing provisions such as price negotiation, manufacturer taxes, inflationary rebates, and Part D benefit redesign are included in this bill at this time.



## Affordable Care Act (ACA)

### *Addressing Affordability*

As it relates to the Affordable Care Act, the expansion Advance Premium Tax Credits (APTCs) first passed in the American Rescue Plan (ARP) are extended through 2025. This is a decrease from the House Committee version that made these changes permanent. As included in the House Committee version, individuals receiving unemployment can receive APTCs and cost-sharing reductions as if their income was 150% of FPL. This policy is in place through 2025. It also excludes lump-sum Social Security payments from income/eligibility calculations for premium tax credits. It permanently changes the employer affordability threshold to 8.5% of Modified Adjusted Gross Income (MAGI) when determining eligibility for APTCs when an individual has access to employer-sponsored coverage.

Individuals with incomes up to 138% of the federal poverty level (FPL) in 2022 and reside in states that have not expanded Medicaid will have access to no-premium Qualified Health Plans (QHPs) through 2025. From 2023-2025, those plans must cover 99% of benefits without cost-sharing. There will be a continuous special enrollment period during which these individuals can purchase coverage from a Marketplace.

### *Non-Emergency Medical Transportation*

For 2024 and 2025, qualified health plans (QHPs) serving low-income individuals must cover non-emergency medical transportation and the federal government will make payments for those services.

### *Outreach and Education Efforts*

The bill appropriates \$105 billion for education and outreach activities for individuals in non-expansion states that might now be available for coverage. Also appropriates an additional \$65 million for ACA Navigator programs. It also provides \$100 million from 2022 to 2025 for the ACA's consumer health information program.

### *Health Insurance Affordability Fund*

It also establishes the "Improve Health Insurance Affordability Fund" and provides \$10 billion annually to this fund. These funds can be used for reinsurance payments to insurers or reduce cost sharing for beneficiaries. States must submit a plan on how they will use their allocated funds.

## Public Health and Workforce

### *Public Health*

The bill includes \$7 billion in funding for public health infrastructure modernization (including data systems and laboratory improvements). The bill authorizes \$110 billion for maternal/perinatal health initiatives, which include research grants, workforce development, equity and diversification policies, and substance abuse programs.

### *Digital/Maternal Health*



The bill includes \$30 million for a grant program to expand the use of technology-enabled collaborative learning and capacity building models for pregnant and postpartum individuals and \$30 million for a grant program to utilize telehealth and digital tools that could improve maternal health outcomes, such as wearable technologies, patient portals, web-based and mobile phone applications, digital health services, and secure text messaging.

### *Workforce*

Career pathway grants through new Health Profession Opportunity Grants are included in the bill. The Rural and Underserved Pathway to Practice is also included. New to this bill, from the House Committee bill, is \$40 million in funding to support the development of the hospice and palliative care workforce.

The bill includes \$3.37 billion in funding for payments to teaching health centers that operate graduate medical education programs and for the awarding of teaching health center development grants. In making such grants, the Secretary of Health and Human Services (HHS) is directed to take into account states or territories in which there is no existing qualified teaching health center.

The bill provides \$150 million in funding for the Children's Hospital Graduate Medical Education program, which supports the training of pediatric primary care, specialty, and dental residents.

The Department of Veterans Affairs (VA) will receive \$268 million to invest in its statutory mission to conduct an education and training program for health professional students and residents by authorizing VA to increase the number of health professions residency positions at its medical facilities by up to 500 positions over a 7-year period.

Funding of \$650 million for the National Health Service Corps (Title VII), which provides scholarships and loan repayment to qualified health care providers in exchange for their service in underserved areas across the country is included in the bill. In addition, the bill provides for \$200 million in funding for the Nurse Corps (Title VIII), which provides scholarships and loan repayment assistance to registered nurses (RNs) and advanced practice registered nurses (APRNs), in return for a commitment to work at eligible health care facilities with a critical shortage of nurses or serve as nurse faculty in eligible schools of nursing.

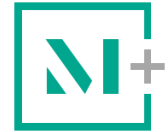
### *Provisions from the House Committee Text That were Excluded*

A few notable public health provisions from the House committees bill have not been included. This includes the capital improvement grants for hospitals and funding to establish the Advanced Research Projects Agency for Health (ARPA-H).

## **Tax**

### *Corporate Taxes*

Beginning January 1, 2023, the bill proposes a rate structure of a 15% minimum tax on corporations making over \$1 billion in annual adjusted income, averaged over a three-year period. It also includes a provision which would create a 1% surcharge on corporate stock buybacks on stocks purchased beginning January 1, 2022.



### *Child Tax Credit*

The bill includes a one-year extension of the Child Tax Credit (CTC), as enacted in the American Rescue Plan. The extension would allow for a non-refundable credit of up to \$3,000 (or \$3,600 for children under the age of 6). The child tax credit begins to phase out for households with income above \$150,000 for joint filers, \$112,500 for heads of household and \$75,000 for all other filers with the framework instituting income limits for advanced payments.

### *Orphan Drug Tax*

The bill includes limitations on utilizing the credit for qualified clinical testing expenses to expenses related to the first use or indication for an orphan drug as designated under section 526 of the Federal Food, Drug, and Cosmetic Act.

### *Taxes on Wealthy Individuals*

Beginning January 1, 2022, the bill increases the top income tax rate to 39.6%, which applies to individuals with incomes over \$400,000, married filing jointly over \$450,000, and heads of household making over \$425,000. The bill proposes an additional 5% applying to income over \$10 million and an additional 3% surtax on income over \$25 million.

Beginning January 1, 2022, the bill closes the Medicare Self-Employment Tax Loophole by increasing the Net Investment Income Tax for those making more than \$400,000.

## **Other**

### *Protecting the Right to Organize (PRO) Act Provisions*

The bill sets civil penalties under the National Labor Relations Act on employers that commit unfair labor practices related to collective bargaining and workers' rights to form a union. Penalties are to be determined based on the gravity of the employer's actions, the size of the employer, the employer's history regarding unfair labor practices, and public interest. Employers will be subject to civil penalties of up to \$50,000 for each violation, and up to \$100,000 for repeat violations and/or violations that result in termination or serious economic harm, beginning January 1, 2022.

### *Parity Violations*

The bill sets civil penalties for violations of the Mental Health Parity and Addiction Equity Act (MHPAEA) through the application of existing civil monetary penalties available under the Genetic Information Nondiscrimination Act to such violations. This provision applies to group health plans or any health insurance issuer offering health insurance coverage in connection with such plan, and would take effect for plan years beginning after the date that is one year after the date of enactment of the BBB legislation.