The health care issue Democrats can't solve: hospital reform

By Rachel Cohrs Oct. 26, 2023 STAT News

WASHINGTON — Democrats unilaterally drove major reforms to the health insurance and the pharmaceutical industries without a single Republican vote in recent years. But hospitals may be a health care giant they're unable to confront alone.

Unlike Republicans, Democrats have seized on lowering health care costs as a politically winning issue in one election cycle after another. They have campaigned on passing health insurance reform, and then protecting it. And after 20 years, they finally delivered on a promise to empower the federal government to lower drug prices in 2022.

But the remaining elephant in the room is hospital costs, which make up the biggest share of U.S. health care spending. And Democratic leaders in Congress have shown this year that they are unable to agree on even the most incremental steps toward addressing the cost of hospital care.

While hospitals haven't traditionally faced the same public antipathy directed toward large pharmaceutical companies, medical debt is a massive health care affordability issue that Congress has been slow to address.

KFF, formerly known as the Kaiser Family Foundation, estimates that more than 100 million people in the United States are facing medical debt, and that more than half of U.S. adults report going into debt because of medical and dental bills. Medical debt is the largest source of debt in collections for Americans, and it's disproportionately carried by Black and Hispanic adults. That debt isn't limited to the uninsured — a new Commonwealth Fund survey published Thursday estimated that roughly one-third of people with employer coverage, individual-market plans, and Medicare are paying off debt from medical or dental care.

While that debt comes from various sources including doctor visits and diagnostic tests, debt from hospitalizations and emergency room visits make up the largest share of what participants in the KFF survey owed.

The statistics are part of the rude awakening facing the Democratic Party: that their decadelong push to expand insurance coverage through the Affordable Care Act still has not made health care affordable for many.

"Health care costs are, many would argue, the most destabilizing financial burden on families because they come out of nowhere. You're insured. You think you're protected. And all of a sudden, these huge bills come in," said Frederick Isasi, the executive director of the liberal-leaning consumer health advocacy group Families USA.

The biggest efforts to rein in major health care industry players in recent years have become law through a united effort by the Democratic Party. Unless Democratic leadership decides to act, advocates for payment reforms would have to forge a bipartisan solution in an increasingly polarized Washington.

So far, Democrats have defended not-for-profit hospitals because they view them as charitable entities providing safety-net care to low-income patients. They've pushed to maintain government subsidies, advocated for more slots to train doctors at hospitals, and protected a ballooning program that provides discounted medications to safety-net providers.

"There's a perception on the left, that hospitals are non-profit, so they are good guys, while pharma is for-profit, but it is not factually true on multiple levels," said Avik Roy, the president of the Foundation for Research on Equal Opportunity.

Hospital lobbyists have done their best to preserve that image. They claim that any payment cuts could reduce access to health care services, and they spend big on lobbying to get their message out. The American Hospital Association was the fourth-highest spending lobbying organization this quarter, outspending Facebook's parent company, Meta.

Beyond their lobbying might, hospitals are major employers in many congressional districts, said Emily Gee, senior vice president for inclusive growth at the left-leaning Center for American Progress. Pharmaceutical and health insurance companies, in contrast, are usually concentrated in certain geographic areas.

"The thing about hospitals is that they are everywhere," Gee said.

Major hospital systems have consolidated significantly in recent years into larger corporations, and administrators have started to run them more like for-profit companies. Bed capacity under multi-hospital systems increased from 58% to 81% over the past 20 years. Not-for-profit hospitals are forming complex investment strategies, they're presenting at major investor conferences, paying their executives millions, suing poor patients, and taking advantage of a drug discount program meant to benefit safety-net providers — all while providing substantively similar levels of charity care to their for-profit counterparts.

The most progressive wing of the Democratic Party has warmed up to the idea of taking on hospitals, much as it has challenged other large corporations. Senate health committee Chair Bernie Sanders (I-Vt.) recently bashed not-for-profit hospitals over the levels of charity care they provide, and how much their executives get paid. Sen. Elizabeth Warren (D-Mass.) wants the Internal Revenue Service to investigate hospitals' financial reporting practices. Rep. Pramila Jayapal (D-Wash.) has pushed to allow the Federal Trade Commission to police anticompetitive behavior by not-for-profit hospitals.

"I feel that Democrats are starting to come around to this. This isn't an issue that anyone on the other side of the aisle is going to be able to run from much longer," said Lauren Stewart, a senior federal affairs liaison for Americans for Prosperity, a conservative advocacy group with close ties to billionaire donor Charles Koch.

But Democratic leadership is not yet on board. Democratic leaders in the House this year couldn't even agree to support modest legislation that would codify health care price transparency regulations that already exist, or to enforce a small-scale hospital payment reform that would only apply to payments for prescription drugs in outpatient departments. The Senate hasn't gotten any further along.

Isasi's Families USA has launched a new coalition targeting hospital pricing. He said most Democratic offices are moving quickly toward understanding that large, not-for-profit hospitals have started behaving like corporate entities. But the might of the hospital lobby is going to be a hurdle, he admitted.

"The [lawmakers] who aren't moving quickly, typically what we're seeing is these are people who are pretty dependent on the hospital lobby for funding their campaigns," Isasi said.

Gee sees a similar dynamic play out in her antitrust work.

"There are great proponents of anti-monopoly policy in Congress who are not necessarily outspoken when it comes to hospitals. I think a lot of it has to do with who's in your district," Gee said.

This Congress has served as a test case for lawmakers' willingness to address hospital costs to the Medicare program — and Democratic leaders in the House of Representatives have watered down hospital payment reforms, and blockaded even an incremental reform package.

The hottest policy debate has been over hospital payments that some experts argue are inflated. Medicare pays hospitals and hospital-owned outpatient departments more

than doctors' offices for the exact same services. Some health policy budget experts and Medicare advisers have argued that should change — that the government should adopt a so-called "site-neutral" payment approach instead. Hospitals, on the other hand, argue they should get paid more, since they have to accept every patient who walks through their doors, and they keep the lights on 24/7 for emergency rooms.

Adopting a site-neutral payment approach could save a hefty $150 billion for the government over a decade, according to recent estimates. And a powerful House Republican earlier this year floated an aggressive measure along those lines.

But when the top Democrat on the panel, Rep. Frank Pallone (N.J.), came on board, that measure was scaled back to save the government only $3 billion. At the time, Pallone said he wanted to ensure that hospital payment changes didn't "jeopardize patients' access to care."

"Ranking Member Pallone has a long record of supporting legislation to rein in health care costs for the American people. And he'll continue to work with members on both sides of the aisle to further lower prices for patients, including site neutral policies," a Democratic Energy & Commerce Committee spokesperson said.

It is true that some hospitals are having trouble making ends meet — particularly rural hospitals, or those that serve disproportionately high numbers of low-income patients. But it's also true that equalizing payments regardless of site of service would affect hospitals in Democratic-controlled states more.

The states facing the biggest cuts under site-neutral policies include California, New York, and Massachusetts, according to an analysis paid for by a lobbying firm that works for hospitals.

Then, even the watered-down package ran into another Democratic brick wall. While other House leaders on both sides of the aisle were able to agree on the measure, Rep. Richard Neal (D-Mass.) refused to support it, saying publicly that he was upset the bill left out disclosure requirements for private equity-owned health care providers.

It's no secret that Neal in recent years has gotten significant support from both hospitals and private equity firms, especially ahead of his competitive re-election race in 2020. His donors included private equity firm Capital Group Companies, and he also got money from the investment firm Carlyle and investment groups' trade association. Hospitals pitched in too, as the American Hospital Association ran more than $200,000 worth of pro-Neal ads.

That being said, Neal did introduce private equity ownership transparency measures in February 2020. While he was willing to abandon them to achieve a bipartisan compromise on legislation to ban surprise medical billing practices that stuck consumers with expensive out-of-network bills, he seems unwilling to do so now.

A spokesperson for Neal said he opposed the current House legislation because the private equity transparency provisions were left out, and he would have supported the provision equalizing hospital outpatient department and physician payments for administering medicines. The spokesperson also said Neal believes that hospitals shouldn't be singled out in legislation, and that the impact of insurers' decisions should be considered, too.

"Lowering health care costs and mitigating medical debt are kitchen table issues that the American people can only count on Democrats for solutions. Any workable legislation must comprehensively address the many factors at play in rising costs without jeopardizing accessibility or quality of care," Neal said in a written statement.

House Republicans tried to put the pressure on by scheduling a vote on the House floor. But without Neal's support — he told reporters he believed no Democratic member of his committee planned to vote for the bill — GOP leaders canceled the vote, leaving its fate uncertain.

"I remain optimistic that that can get done," Gee said. "I think there are transparency things which hopefully should have broad support on both sides of the aisle."

The prospects for reform seem even dimmer in the Senate, where Democratic leadership hasn't even tried to hold a floor vote on a legislative package that includes even more moderate measures regulating hospitals.

Sanders has been the only chairman to push for any type of hospital payment reform; he included several policies on site-neutral payments, contracting reform, and banning hospitals from charging facility fees for certain services in a big legislative package on health care workforce issues. When he decided to make a bipartisan deal instead, the more aggressive site-neutral pay policies were stripped out entirely.

However, the bill still included a facility fee ban and contracting reforms. Those did pass out of the committee, along with a provision Sen. Mike Braun (R-Ind.) added that would codify price transparency measures.

The package's prospects are uncertain in the full chamber, and paying for the package is in part dependent on other committees' policies that Sanders has no control over.

"The solutions to many of our pressing health care challenges are in hand. The question is whether we can find a bipartisan commitment to move them forward. I hope we can," Senate Majority Whip Dick Durbin (D-Ill.) said.

The Senate Finance Committee, with authority over the Medicare program, hasn't touched hospital reforms this Congress.

The chamber's leader, Sen. Chuck Schumer (D-N.Y.), has promised again and again to bring legislation capping insulin costs for patients with private insurance, and regulate pharmacy benefit managers, and speed generic drugs to market to a vote. That hasn't progressed at all yet, and Schumer hasn't even mentioned interest in the workforce or hospital regulations.

Schumer is a longtime, well-known ally of the hospitals in New York. The state hospital lobby is influential and powerful, and New York is a big hub for medical training in the country. Despite criticism of New York hospitals suing patients, giving preferential treatment to donors in the emergency room (including, reportedly, to Schumer himself), and New York City's action on hospital price transparency, Schumer hasn't shown interest in engaging on the issue.

"Hospitals are a powerful interest group in the typical congressional district, certainly on the Democratic side and with Schumer in particular," Roy said.

In the face of entrenched hospital interests, the drumbeat has started from outside organizations and other parts of the health care system to build pressure on politicians to act.

For example, Families USA is spearheading a new partnership with state partners called the Consumers for Fair Hospital Pricing Coalition. The group pushed to protect the Affordable Care Act, was an important voice at the table on drug pricing reform, and is now looking to the next frontier: ending price gouging, promoting competition, and strengthening transparency.

"Everything's changed. Those individual county hospitals merged or were bought... and became these giant corporate conglomerates. And those corporations now are being run by very sophisticated C-suites. And they're using a tremendous amount of focus and discipline to figure out how to increase their margins and their profits," Isasi said.

Billionaire philanthropists with an interest in health care policy are getting in on the effort, too. Laura and John Arnold, whose fortune came from John's work as an energy trader at Enron and as a hedge fund manager, helped to push prescription drug

pricing reform across the finish line. This Congress, they have also partnered with think tanks on the right and left to push for site-neutral reforms. Both the Arnolds and Patient Rights Advocate, a nonprofit backed by biotech entrepreneur and Boston Beer Company board member Cynthia Fisher, have endorsed the stalled House legislation. Insurance companies and employers have also joined the push.

The liberal Center for American Progress also supports site-neutral pay reforms, and has also proposed improving oversight of charity care requirements for hospitals, cracking down on debt collection practices, and empowering the FTC to police consolidation in the space.

"Slowing the increase in health care costs will be impossible without reforms to the largest component of health care expenditures: hospital-based care," Gee wrote.

Several Republicans are open to some changes to hospital payment policy — Indiana lawmakers Braun and Reps. Victoria Spartz and Jim Banks, and Sen. John Kennedy of Louisiana, to name a few — but that doesn't necessarily mean smooth sailing on the GOP side, either.

Think tanks on the right side of the aisle like the Koch-backed Americans for Prosperity, and right-leaning researchers for the American Action Forum and the American Enterprise Institute have joined Families USA, the Brookings Institution, and the Bipartisan Policy Center to back policies to ensure Medicare is paying the same price for the same services, regardless of whether the services are provided in hospital outpatient departments or doctors' offices. Two Senate Republicans and one Democrat introduced legislation to advance the policy.

But Loren Adler, associate director of the Brookings Schaeffer Initiative on Health Policy, pointed out that Republicans tend to be against price regulations or Medicare Advantage benchmarks that could make a bigger dent in hospital spending. And Stewart, of Americans for Prosperity, said there are disagreements among the parties among how the hefty savings to the government should be reinvested.

The engine of any potential changes to how hospitals get paid in this country could be public willpower. There's the fact that campaigning to lower health care costs has been a winning strategy for Democrats. In a June Pew Research poll, respondents put the affordability of health care as the second-biggest problem the country faces, behind inflation.

"We've got higher levels of insurance coverage than we've ever had, but we have all this financial insecurity," Isasi said.

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