Policy Brief

May 28, 2021

Senate Hearing on Hospital Consolidation: Hospitals Under Fire

Last week, the Senate Judiciary Committee held a hearing about hospital consolidation, which is gaining more bipartisan criticism. While a representative from the American Hospital Association (AHA) was at the hearing to represent the work of hospitals, both Senators and testifying stakeholders made arguments that consolidation has negative impacts on patient care, depresses workers' wages and increases health care prices. Top ideas proposed by the panelist that garnered support from Senators were site-neutral payments, physician-owned hospitals and reforming regulations. In the hearing, Senators made it clear that they are skeptical of the value that hospital consolidations add; we anticipate future legislation.

Arguments Against Hospital Consolidation

Consolidation of hospitals was under fire for the entire hearing from every panelist except the AHA. Central to the criticisms are studies indicating that hospital consolidation raises health care prices in their respective service area because hospitals gained more negotiating power. There were also concerns on its impact on quality of care, illustrated by a cancer patient that testified about how a consolidation dispute between Highmark Health and UMPC in Pennsylvania caused her to lose access to her doctors and interrupt her care. A representative from the Service Employees International Union also presented evidence that hospital consolidation depressed wages and reduced working conditions.

Recommendations Made to Reduce the Occurrence of Hospital Consolidation

Experts on the panel recommended reforms that they believe would reduce hospitals' desire to consolidate. These included reducing the amount of regulations, including hospital-friendly reforms to the Stark Law and antitrust guidance, as they are more burdensome for small

hospitals. Recommendations also included ways to raise competition, including removing Certificate of Need laws and prohibitions on physician-owned hospitals. Both experts on the panel and members of Congress highlighted site-neutral payments as a way to correct a "payment error" that incentivizes hospitals to buy physician practices, indicating that the push from CMS to implement site-neutral payments has bipartisan support and will likely continue.

Noteworthy Stances Taken by Members of Congress

Members of the committee expressed their stance on hospital consolidation during the hearing; most were not favorable to hospitals but can help us predict future actions on this issue:

- **Senator Klobuchar (D-MN)** is concerned with market concentration in metropolitan areas and high prices in monopoly markets. She is in favor of increasing antitrust enforcement resources and reforms.
- **Senator Lee (R-UT)** is concerned with hospitals buying physician practices and ACA incentives for integration and growth, like ACOs. He believes in allowing physicians to own hospitals and site-neutral payments.
- **Senator Grassley (R-IA)** is concerned with high hospital prices and debt collection practices of not-for-profit hospitals. The AHA representative did push back that hospitals have and are implementing billing and collection standards.
- **Senator Blackburn (R-TN)** is concerned with rural hospital survivability and workforce shortages. He believes that large systems should offer more resources and solutions for rural communities.

Meet H.R. 3: The Latest Drug Pricing Reform

As President Biden continues to release infrastructure spending packages, Democrats are asking the President to consider including many of their health policy priorities in the packages. One of their most prominent requests is for the inclusion of aspects of H.R. 3, the Elijah Cummings Lower Drug Costs Now bill. The bill gained national attention last spring, after President Trump failed to mention it in a speech about tackling "big pharma," particularly its proposal to allow the federal government to negotiate drug prices directly. Opponents of H.R. 3 raise many concerns, including that it could stifle drug innovations by depressing pharmaceutical company profits. With

a new Administration, Democrats hope that many of the bill's tenets will be signed into law. For more on how the bill tries to control drug costs, keep reading.

What solutions does H.R. 3 propose to decrease the price of prescription drugs?

The most notable idea included in H.R. 3 is to allow the Secretary of HHS to directly negotiate the prices HHS pays for 50 to 250 prescription drugs, significantly increasing its influence over drug costs. This increased authority could result in $450 billion in savings for the Medicare program alone, according to a projection from the Congressional Budget Office. Many industry stakeholders, including AARP, have issued letters of support for this proposal. The bill also includes provisions that would place penalties on drug companies that raise their prices faster than inflation and additional coverage of dental, vision and hearing under traditional Medicare.

What concerns do opponents have with the bill's proposals?

While direct negotiation of drug prices would significantly benefit Medicare's balance sheet, the addition of dental, vision and hearing benefits would also raise spending for the program. In addition, Medicaid's current drug pricing structure means that lower drug prices could cause enrollees to receive lower rebates for prescription purchases. Medicaid beneficiaries currently receive purchasing rebates to help them afford necessary medications, but these rebates are based on drug companies' list prices.

Drug companies also worry that the monetary gains Medicare would see come at their expense. The pharmaceutical industry proports that the resulting lost revenue would cause drug companies to do less research and development, potentially reducing the public's access to new innovations. By their analyses, the proposals would cause the average biopharmaceutical company to have their earnings reduced by more than 60 percent. Despite these concerns, Congress has reiterated that controlling the cost of prescriptions will continue to be a priority.

Programs in Motion:

Big Developments for 340B Drug Pricing and Site-Neutral Payments

Over the past days, there have been considerable developments in two key health policies: the 340B drug pricing program and site-neutral payments. The Health Resources and Service

Administration (HRSA) has begun sending letters to drug manufactures informing them they are in direct violation of the 340B statute. Meanwhile, Health and Human Services (HHS) has sent a brief to the Supreme Court urging the SCOTUS to uphold site-neutral payments as established in the 2017 Outpatient Prospective Payment System, after a lawsuit brought on by a hospital group challenged the validity of the regulation. For an overview of the 340B program and site-neutral payment systems, their current legal hurdles and what recent developments mean moving forward, keep reading.

What is the 340B drug pricing program?

In a nutshell, the 340B drug pricing program provides safety-net hospitals and communities with access to life-saving outpatient drugs at a discount from manufacturers at no cost to taxpayers. Drug manufacturers are required to participate in the 340B program to be included on Medicaid and Medicare's covered drug list.

What issues are we seeing with 340B drug pricing?

In the summer of 2020, drug manufacturers implemented plans to restrict or halt the sale of 340B drugs shipped to contract pharmacies for dispensing, inferring that contract pharmacies are not authorized to dispense drugs under the 340B program. As a result, HRSA sent letters to six drug manufactures informing them they "*are in direct violation of the 340B statute*" and that "*nothing in the 340B statute grants a manufacturer the right to place conditions on its fulfillment of its statutory obligation to offer 340B pricing."* HRSA instructed the manufacturers to update their plans to lift restrictions on covered entities access to drugs or face civil monetary penalties.

What are site-neutral payments?

Following the Bipartisan Budget Act of 2015, CMS began to incorporate site-neutral payments into their payment policies. The goal was to lower hospital outpatient department spending by tethering the fees for service to that of a physician's office or ambulatory surgery center. CMS hoped that the aligning of payment policies would create a more equitable financial situation for patients that often pay more for the same services depending on the setting. However, critics of site-neutral payments say that the policy negatively impacts hospitals' ability to provide access to resources that are not explicitly funded.

What is the status of the legal actions surrounding site-neutral payments?

The 2019 Outpatient Prospective Payment System (OPPS) final rule made payment cuts to hospital-owned outpatient clinics, including a reduced payment rate for evaluation and management services of 60 percent. This sparked backlash from the AHA and dozens of hospitals that filed a lawsuit against HHS, arguing that CMS exceeded its authority and that the policy violates Medicare's mandate of budget neutrality. A Washington D.C. federal judge sided with the plaintiffs, agreeing that CMS overstepped its authority. HHS filed an appeal,

and the appellate court reversed the lower court's decision in July 2020. If the Supreme Court picks up the case, they will have the final say. However, if the Supreme Court decides not to hear the case, the site-neutral payment rule will remain. Earlier this month, HHS issued a brief to the Supreme Court arguing that it did not act beyond the powers delegated to it by Congress to enact the payment reductions.

Updates to COVID-19 Regulations

AHPA continues to follow new COVID-19 regulations, guidance and other government actions. The updates below are the latest guidance and other developments since May 17th to help mitigate the impacts of COVID-19. For earlier COVID-19 regulations and guidance, visit the previous Policy Briefs.

CDC Updates Guidance for Fully Vaccinated Individuals

According to the CDC, fully vaccinated people can now resume activities without wearing a mask or staying six feet apart, except where required by federal, state or local law.

HHS to Reimburse Health Care Providers for COVID-19 Treatment of the Uninsured

HHS announced that it is dedicating $4.8 billion from the American Rescue Plan to support the Health Resources and Services Administration (HRSA) COVID-19 Uninsured Program. The funding will be allocated to health care providers for testing, treating and administering COVID-19 vaccines to uninsured individuals.

AHPA Resources

Rule Summary: IPPS FY 2022

- IPPS FY 2022 Proposed Rule

  *AHPA is hosting a webinar on **Friday, June 4th** to discuss the top proposals included in this year's rule. To request a calendar invitation, click here!*

Presidential Proposal Summary: The American Families Plan

- President Biden's American Families Plan

Need an easy way to keep tabs on President Biden's Executive Orders? AHPA is keeping a running list of the latest Executive Orders coming out of the White House. Click here to download.

WHAT WE'RE READING…

What Happened to the $45 Billion in Rent Relief? – Vox

The Winners (and Losers) in Medicare's 2021 Inpatient Proposed Rule – Advisory Board

Wall Street CEOs Testify in Congress on Pandemic Response – The Wall Street Journal

"Better Than the Hospital": Pandemic Boosts Care for Serious Illness at Home – KHN

Texas Records Zero COVID-19 Deaths for the First Time in a Year – Forbes