



U.S. Senate Committee on Finance

Nomination of Xavier Becerra to Serve as Secretary of Health and Human Services

February 24, 2021

2:00PM Hybrid in person/remote hearing

106 Dirksen Senate Office Building

Purpose

The purpose of this hearing is to consider the nomination of Xavier Becerra, of California, to be Secretary of Health and Human Services.

Members Present

- Chairman Wyden
- Ranking Member Crapo
- Senators Feinstein and Padilla (For Introductions)
- Senators Stabenow, Grassley, Cantwell, Menendez, Thune, Carper, Cardin, Brown, Toomey, Bennet, Casey, Cassidy, Lankford, Whitehouse, Daines, Young, Cortez Masto, Sasse, Warren, and Barrasso (Committee Members)

Absent Committee Members

- Senators Cornyn, Burr, Portman, Scott, Warner, and Hassan

Witness

Xavier Becerra, Attorney General of California, nominee for Secretary of Health and Human Services

Opening Statements

Chairman Wyden (D-OR) said that there may not be a higher stakes job. Attorney General (AG) Becerra was a senior member of House Ways and Means, and was closely involved in health care. He defended the Affordable Care Act (ACA) from attacks. He went to bat to for Californians. A special focus of our work will be tackling inequality; inequality is a killer. Federal policies have not done enough to protect vulnerable people. There needs to be more focus on mental health. Mental health has gotten short-changed for far too long. The pandemic has shown disparities in health care. Another important issue is maternal health care. This issue is especially serious for black and Native American women. We need to expand and improve women's health care issues. The past decades have been a women's health care nightmare. AG Becerra is highly qualified, and this is an historic nomination. Today, he won in Federal Court defending California's (CA) net neutrality law.

Ranking Member Crapo (R-ID) said HHS is a sprawling department. HHS directly affects everyday life. HHS Secretary will shape many important programs. The pandemic has made HHS's mission even more critical. The pandemic has threatened both physical and economic health. The pandemic has brought opportunities for innovation, including waivers and telehealth. Medicare and Medicaid beneficiaries should have the same access to telehealth services as those with commercial insurance. Medicare financing remains unsettled; the trust fund will go broke in 2026. I am concerned about CA's rules during the pandemic, including bans on in-house worship. I am concerned about religious and conscientious objections. I am concerned about fraud against CA's unemployment programs. I strongly support private insurance so people can chose the coverage they want and need.

Introductions

Sen. Feinstein (D-CA) said I am so proud to have known AG Becerra as a friend and colleague. He was the first in his family to get a college degree, and then law degree. As CA AG, he has defended the ACA. He also worked with Nebraska AG to lead bi-partisan coalition to reduce youth exposure to tobacco products. He worked on other health priorities, including increasing access to COVID treatments and the opioid epidemic. He led nation's second-largest department of justice. As HHS Secretary, he will oversee the Biden Administration's national response to COVID. He will be the first Latino to manage the department, at a time when communities of color are being affected disproportionately by COVID. AG Becerra is the right candidate, and I give my strongest recommendation.

Sen. Padilla (D-CA) said we are going through one of the toughest times. The pandemic has taken an incredible toll, and deaths have surpassed 500,000. The devastation has disproportionately impacted working class families and people of color. We need someone who knows these communities. AG Becerra has shown his passion for people, and his commitment to improving the lives of those he represents. He was elected to Congress in 1992, and worked for reproductive health, mental health parity, and CHIP. He was instrumental in the ACA passing. As CA AG, has he tackled structural inequality in the health care system. He is a proven leader.

Testimony

Xavier Becerra said the pandemic has killed 500,000 and many have lost their jobs. We need strong federal leadership, and I am humbled by the task. The HHS mission is core to who I am. I helped write and pass the ACA, and worked to modernize Medicare. As AG, I cracked down on fraud, took on unfair drug pricing, and defended patient privacy rights. I am ready to work with Congress and across government on the pandemic response, and to strengthen Medicare and Medicaid lifelines. I will look for common cause and will work to protect the health and dignity of the American people.

Questions and Answers

Chairman Wyden (D-OR)

Q: The pandemic has compounded disparities. Many communities face health care deserts, which is especially true in mental health. Is extending Medicaid from 60 days to 12 months post-partum necessary? If confirmed, would you support this?

A: Absolutely. We need better data. We need to collect good data. We need to reach out to communities. We have to train a better and bigger workforce. We have to tackle the social determinants of health.

Q: Communities are reporting that mental health demands have soared for virtually every group. Do you look to mental health counselors or law enforcement? We have come up with program [called CAHOOTS] to respond to people experiencing mental health crisis. The approach deploys Medicaid to set up mobile crisis response teams to respond. Would you support these efforts and implement nationally?

A: Yes. It is not a good use of resources to use officers to respond. They are trained to do public safety; they would love to have people working with them to make sure the right responder is helping.

Ranking Member Crapo (R-ID)

Q: I support commercial insurance. What assurance will you give to people that they will not lose their coverage?

A: The most important thing is good coverage. President Biden wants to build on the ACA. We will achieve goals to build on ACA.

Q: What are your feelings on Medicare Advantage (MA)?

A: Millions depend on MA. It gives us a chance to do more wrap-around programs, and is about getting more health care to more people.

Q: The Medicare trust fund is in dire status. The Congressional Budget Office takes into account many factors. There is uncertainty over projections that the trust fund will run out in 2026. Will you commit CMS to provide an update that shows the current status of insolvency taking into account the pandemic? What policies should Congress consider to extend the life of the trust fund? How soon can we have a proposal from HHS?

A: Yes. Will work with you to get you the right data. Seniors who paid into Medicare should not be harmed. Our beneficiaries must come first. President Biden is prepared to tackle this because seniors depended on it. Medicare has done much to pull seniors out of poverty. We will discuss this with you.

Senator Stabenow (D-MI)

Q: More than half of adults report mental health being negatively impacted due to pandemic. Drug overdoses have accelerated. We want to make sure that people with mental health disorders are not left behind. Could you discuss some goals on ensuring coverage for mental/behavioral health?

A: Many people feel like no one cares. We can elevate this issue. The law is there: we are supposed to treat mental health services with parity. These community health centers help us do that.

Senator Grassley (R-IA)

Q: During late-term abortions, should fetuses get anesthesia (as they do for fetal surgery?)

A: This is a very technical question. I respect the law and the science. I would follow the law and expect others to follow the law. I would look to reach common ground. I would rely on science and the experts.

Q: Is putting a cap on prescription drug increases the best way to control costs? Or should we have the government negotiate prices? Is the Biden Administration interested in a bipartisan drug pricing bill (along the lines of the Wyden-Grassley bill)? Or do you think they want something stronger?

A: There is no doubt that President Biden wants to lower the price of prescription medicine.

Q: You will be in a position to make regulations for the Rural Emergency Hospital Program. A critical access hospital (CAH) would have the option to give up their residential beds (and preserve other things that hospitals would do) they could do that. There is only 4% occupancy is most of these CAHs. It is very expensive to operate. It is very critical. The AHA worked with us on the bill, and we want to get the program up and running.

A: I am looking forward to working with you. CA has very large rural areas. I have tried to tackle the issue of hospital over consolidation. And state legislators said to be careful because in some rural areas they may only have one facility, but to have a major player come and take them over, so please don't think that a hospital in a rural area is the same as those in urban areas... [Time expires.]

Senator Cantwell (D-WA)

Q: Is there more FDA and FTC can do regarding drug shortages? [refers particularly to increases in insulin prices]

A: Yes. We need to work on supply chains. Sometimes prices are artificially created.

Q: Is insurance bundling something we should continue to look at? We have allowed states to be in charge of the end product, but allowed discounted rate. We need to be getting more out of providers on discounts.

A: Yes, Minnesota has also done this. We need more coverage, better coverage, at lower cost.

Q: We need a task force for n95 mask fraud. Have given FTC authority to fine immediately for overcharging. What will you do to help?

A: We [HHS] fall more on certifying what the requirements are for masks. I have gone after fraud and price gauging in CA. I am willing to work with you. We will partner with different agencies to address this.

Senator Thune (R-SD)

Q: You spent a lot of time suing pro-life organizations. How will you assure us you will not be focused on restricting abortion?

A: I understand Americans have deeply held beliefs. I respect that. I have never sued the nuns; I have taken on the federal government. My actions have always been directed at federal agencies because they have been trying to do things that are contrary to the law. It is my job to defend the rights of my state and defend the law. I recognize that people look at these things differently.

Q: Many Indian Health Service (IHS) facilities have lost accreditation. We have to address the management failures that led to this. What actions would take to hold the IHS accountable?

A: Transparency. We must provide better data. It is mostly accountability. We owe it to tribal governments to be there. We will work with you. HIS has been getting vaccines in arms, and we do need to applaud them when they have done something well.

Q: The key to 340B is that it enables hospitals and covered entities to provide community benefits that may otherwise not be available. If confirmed, will you ensure the strength of the 340B program and the community it supports?

A: Absolutely. I have had inner city communities that I represent that rely on 340B.

Q: The one bright spot of the pandemic has been telehealth. As we continue to look at options to expand telehealth, what will your approach be to taking administrative action at HHS, and what approaches from the Congress would you support?

A: Mostly what we can do is talk to the communities who are benefiting from it and find out what we can do to do it better. I don't think we are going back to the old days when it comes to telehealth.

Senator Menendez (D-NJ)

Q: Will you work to improve diversity in clinical trials?

A: Absolutely. If studies are to reflect the American people, we need to have better inputs into studies.

Q: Will you work to enhance diagnoses of black and Latino dementia patients as we address Alzheimer's disparities in communities of color?

A: Absolutely.

Q: The pandemic has magnified disparities in terms of health care of minority communities. Will you commit to work to reduce the disparity?

A: Yes.

Q: We have had bipartisan support of Maternal Infant Early Childhood Home Visiting programs. Do you support expansion of this valuable program?

A: My wife is maternal-fetal health specialist. Yes, looking forward to working with you.

Senator Carper (D-DE)

Q: Has anyone raised the question whether you have the experience to run HHS? What have you done in your life that would make you up to that task? On the administrative side?

A: I ran the second largest department of justice in the land. We protect the largest state in the nation.

Q: Why are federally qualified community health centers (CHCs) important?

A: People fall through the cracks. CHCs are often the only available facility. CHCs being available to provide vaccines has made it easier to help families who are often left behind to get the care and protection they need. They have been indispensable. Thank you for the work you and others have done to recognize how important they are during COVID.

Q: There were House hearings yesterday on the development of vaccines, with respect to AstraZeneca and Johnson and Johnson. Have you been keeping up with that?

A: I do know HHS will be on top of whatever happens with future vaccines because those trials would run through our different agencies.

Q: Please describe the process for next steps for emergency approval for AstraZeneca and Johnson and Johnson.

A: The FDA and CDC play crucial roles, and other HHS agencies. HHS will make sure it is working with due speed because we know how important it is to have the vaccine available. We have secured up 600 million shots of the vaccine, and will continue to make sure we are on top of it and ahead of the game to protect all Americans.

Q: Would you work with governors in distributing vaccine?

A: Yes, of course. It will be important to establish a partnership with the states.

Q: Johnson and Johnson reported they were close to getting emergency approval. AstraZeneca could receive approval in April. We have been starved for vaccine for several months. We could get more vaccines, and I am asking that you be thinking about that. Make sure that we are ready.

A: We will make sure we are prepared to save lives.

Senator Cardin (D-MD)

Q: What strategy do you have to reinforce the offices that currently exist within HHS to deal with health disparities?

A: The Office of Minority Health [among others] is critical. I intend to make it a more prominent office. It will prove indispensable to tackle disparities after COVID. I want to empower them.

Q: One positive impact on the pandemic is telehealth, how will we expand access to telehealth?

A: We can't go back to the old days. We have learned so much during COVID about how important telehealth is to rural communities and inner-city communities. If you do not have broadband, you are in trouble. Still, there are parts of America that do not have it. Flexibility has been necessary; I look forward to working with you to see how we can make telehealth accessible to everyone.

Q: On oral health, we have made progress with pediatric dental care, which is included under the ACA as an essential service, but still our seniors lack access to certain dental care. Private insurance does not necessarily provide routine dental care. We still have a gap. Do you have a strategy to expand access to dental health care, as good oral health care is essential to good general health? [Follow-up statement: I ask that you appoint a Chief Dental Officer, which was left vacant during the previous Administration.]

A: Who can forget Deamonte Driver, who died because his parents didn't have access to dental care that they needed. What was an infection turned into an abscess, turned into a lost life. Dental health can be critical. I look forward to working with you to expand access to dental health care, vision care, the types of things that sometimes we take for granted. It is so critical. And the family of Deamonte Driver can tell you that.

Q: We have drug shortages because some drugs are not profitable. I urge you to make it a priority issue to not have shortages due to this.

A: I agree that we should not have shortages of drugs because of profitability.

Senator Lankford (R-OK)

Q: Will you continue to enforce existing federal laws on conscience protection?

A: I believe deeply in religious freedom. As HHS Secretary, I will respect the law when it comes to these issues.

Q: When you were attorney general, you had suits that went to the Supreme Court on conscience issues, specifically on a law requiring pro-life facilities to post information on how to obtain an abortion, and you lost because you cannot require someone to post something they disagree with. Help me understand the disparity.

A: In these cases, my job was to defend the laws of our state. Up until the Supreme Court, I had been defending the law of our state. We will always abide by the law, but it was my obligation to defend the laws.

Q: You litigated against these areas. Is there a conflict of interest?

A: I will be abiding by ethics rules. I will have to recuse myself from certain cases where I was involved at the state level. There will always be a check on what I am doing.

Q: This conscience issue is really important for providers who believe a child is a child. It is important to honor these conscience rights, and that they not be compelled to perform an abortion, or participate in an assisted suicide, where they have a conscience issue with that. This will be a significant issue.

A: I will respect the law.

Q: There are HHS grants and aid where it will need to be determined if faith-based entities can get funding at the same level as non-faith-based entities. Previous administrations have said you could not participate as a faith-based entity. Supreme Court decisions have made it clear you cannot discriminate based on faith. Will you ensure that entities are equal [with respect to available HHS grants]?

A: I will follow the law. We will make sure that we follow the law.

Senator Brown (D-OH)

Q: Will you work to ensure that CDC National Institute of Occupational Safety and Health programs (in Cincinnati) that address occupational injury and occupational health receive HHS support?

A: You have my commitment.

Q: There are expanded Medicare Advantage benefits without doing the same for traditional Medicare. The growing imbalance between the programs concerns me. Will you hold private insurers accountable for overpayments to ensure all Medicare beneficiaries are getting their money's worth?

A: You have my commitment. We do not have the dollars to spare. We need oversight and to keep people accountable.

Q: We need to bring down the high cost of prescription drugs. [Shares story about constituent forced to leave college due to increase in cost for infusion drugs.] Will you commit to making prescription drugs more affordable?

A: You have my commitment.

Senator Daines (R-MT)

Q: Can you name an abortion restriction you would support?

A: I have tried to make sure I am abiding by the law. I am the spouse of an OB-GYN. I know how hard women struggle to save the life of their baby.

Q: How about a ban on discrimination against babies based on Down Syndrome? What about gender based abortion? A partial birth abortion ban?

A: I understand people have different views. What I can say is that I am respecting the law on those issues.

Q: Will you defend the existing regulatory exemptions to the contraception mandate, or will you seek to eliminate the exemption?

A: The Supreme Court issued a ruling. We will abide by the law as it stands. I will defend the law and support the law that is in place.

Q: Should HHS provide additional vaccines to states like Montana that have been able to quickly get vaccines in the arms of people?

A: We applaud states getting their people vaccinated. We will work to make sure the vaccines are available to the people in your state when they need them, and will do the same for all the people in this country.

Q: Will you attempt to use waiver authority in the ACA to grant health care benefits to illegal immigrants?

A: The law, as it stands, does not allow unauthorized immigrants to have taxpayer-based health care, except in certain circumstances. It will be my job to make sure we are following the law.

Senator Bennet (D-CO)

Q: What are your thoughts on a public option? And how do we get it across the finish line?

A: My job will be to implement the President's priorities. We need to have options, including the public option available. The goal has to be to make things better and more affordable.

Senator Young (R-IN)

Q: Can you commit to working with states before creating more programs to roll out vaccines [highlighting confusion with having multiple programs]? Would you allow states to opt out of these federal programs?

A: We need to work together. I would consider it; we can go to your office and talk about it. I don't understand why we would not want to coordinate, but we want to make sure we are reaching everyone.

Q: We have an organ shortage due to organ procurement organizations (OPO). Will you commit to enforcing the OPO final rule?

A: We need to increase the supply, and we have to do the oversight. We will work with you on that rule and your legislation.

Senator Casey (D-PA)

Q: Upon passage of the emergency COVID funding legislation, and funding for home and community based services, will you work to distribute this to the states as quickly as possible?

A: You have my commitment.

Q: Will you work on the “Build Back Better” plan to focus on home and community based services, to secure that funding?

A: You have my commitment.

Q: How will you use your authority as HHS Secretary to utilize waiver authority and other tools to strengthen Medicaid and to ensure coverage to uninsured and underinsured Americans?

A: Medicaid is a lifeline. It has kept many Americans from losing hope. I am prepared to work with you to strengthen Medicaid, especially for children.

Senator Whitehouse (D-RI)

Q: Rhode Island has two of the best Accountable Care Organizations (ACOs) in the nation. These are primary care provider groups that got together early, signed up as ACOs under the ACA and have changed the way they practice. As a result their cost per patient is coming down, their patient satisfaction is through the roof, their outcomes are improving, and they are sending checks back to the federal government out of the shared savings that they have been able to obtain. [Shows graph that shows achievements in cost savings]. The savings in the next ten years will be 6 trillion dollars. Something changed from what was anticipate from the time was passed Obamacare and the savings will be 6 trillion dollars from whatever is was that changed. I think that what changed was getting away from fee-for-service, getting providers engaged in accountable care organizations, and the emphasis on quality and reducing medical errors and dealing with patients better. I want to work with you to make sure these organizations that are basically breaking trail for the rest of the health care system, these leadership ACOs, are forgetting the support and encouragement that they need because when they win, we win. With the Medicare trust fund starting to hit its limit, we need to get serious about that. I want to make sure you are aware of the opportunity for delivery system reform. [Follow-up statement: It is a political win-win. I don't know anyone on either side of the aisle who doesn't want better care, lower costs, and happier patients.]

A: I look forward to working with you on that.

Q: I also am in favor of a pilot program [have worked with CMMI in the past] to improve end of life care and how we treat people at the end of their life.

A: [Recounts father's death at home.] Absolutely.

Senator Warren (D-MA)

Q: Will you commit to prioritizing collecting and reporting demographic data related to the pandemic so we can understand how COVID is affecting all Americans?

A: Yes. We need that information.

Q: Will you also commit to collecting demographic [racial health disparity] data on vaccines?

A: Yes.

Q: Will you commit to collecting data so we can see racial disparities in our health care system?

A: Yes. I look forward to working with you.

Senator Cortez Masto (D-NV)

Q: Can we count on you to protect COBRA benefits that will help families stay afloat during the pandemic and beyond?

A: You have my commitment.

Q: Can I count on your support to address behavioral health and mental health services?

A: I look forward to working with you on these issues.

Q: Can I get a commitment from you to work with us to address how we can improve the Indian Health Service (IHS)?

A: Absolutely.

Senator Cassidy (R-LA)

Q: TANF is a program that will be under your administration. What can we do to address goals in the statute for TANF? The statute has goals to reduce out-of-wedlock pregnancies, to promote the foundation and maintenance of two-parent families, to end dependence on government benefits through work, job preparation, and marriage, and to provide assistance to needy families of children. What about those goals would you bring to the table as a policy solution?

A: There is always a need to improve on programs as we learn about inefficiencies. I hope that we can improve the programs with the goals roadmaps.

Q: What steps will HHS take to protect patients when drug companies raise drug prices and PBMs are able to negotiate rebates, but patients do not benefit from lower drug prices?

A: We have to look at this from the perspective of the patient. Rather than allow patients to get caught up in the food fight between PBMs and drug makers, we agree that we will fight to lower the price. I can tell you we will do the oversight. There are some existing regulations that tell us how to proceed, with rebates, there is existing authority. We can make sure no one is trying to game the system. At the end of the day, we are looking for lower prices for drugs that our seniors count on.

Senator Sasse (R-NE)

Q: [Explains history of CA lawsuit involving the organization]. Can you explain what the Little Sisters of the Poor were doing wrong?

A: We sued the federal government. We never said that the Little Sisters of the Poor were doing anything wrong. We said the federal government was not abiding by the law as we saw it. We took action so that CA could administer its program.

Q: What were the nuns doing that made it impossible for CA to administer its program?

A: Our action was against the way the federal government was applying the law. I was defending the actions of our state and the laws that were in place. The federal changed the way we would have administered programs under the ACA. When the federal government took action that we thought was unlawful, we took action to defend the people of CA. My action was to follow the law.

Q: Instead of investigating claims that babies who survived abortions were left to die by Planned Parenthood, you raided the houses of the people who brought these atrocities to light. Why?

A: It is clear that we look at this differently. We have privacy laws in CA that we were enforcing. You have described it differently, but I will say my job is to follow the law and to make sure other do as well.

Q: I think what you are saying is the baby body parts weren't interesting, but the filming of it was? In 2014 and 2015, filmmakers investigated poultry farms in CA. Did you investigate those filmmakers?

A: I was not the Attorney General in 2014 and 2015.

Senator Barrasso [R-WY]

Q: The ban on oil and gas leasing is killing jobs in my state. These industries create thousands of jobs. The money is used to help hospitals and will have a terrible impact on health in rural communities. Do you agree that cutting money [like this] will have harmful impacts?

A: We want to make sure everyone has opportunities and access.

Q: New York failed to report accurate data on nursing home deaths and likely deliberately misled the public. According to the Attorney General of New York, the state undercounted deaths from coronavirus in nursing homes by up to 50 percent. Do you believe it is important for states to accurately report public health data, especially deaths from coronavirus?

A: We should all do the work to make sure our data reflects the facts and that data is used in appropriate ways.

Senator Toomey (R-PA)

Q: Do you acknowledge that the Administration does not have the legal authority to use march-in rights as a mechanism to try to lower drug prices? [Urges AG Becerra to reconsider whether the

Bayh-Dole Act allows the federal government to take the intellectual property of private companies.]

A: What we were seeing at the time was that people were dying [explains history of bipartisan letter addressing Remdesivir, in particular].

Chairman Wyden

Q: Will you devote staff to work with bipartisan leadership in this Committee [on the issue of transforming Medicare to address chronic care, instead of just acute care]?

A: I look forward to that.

Q: There were stark differences of opinion today on women's health care issues. I want to emphasize that, if confirmed, you will follow the law on women's health and all other issues. The differences of opinion should not be used as a rationale to prevent confirmation of a qualified person.

[Committee adjourns.]