

The First 100 Days: House Health Policy Recap

Let me count the ways to 100. 1. Affordable Care Act. 2. Insurance Expansion. 3. Drug Pricing. 4. Surprise Billing. 5... Ok, maybe let me count to four.



It's been 100 days since Democrats took over the majority in the House. It had been eight years since they wielded the speaker's gavel, and they were eager to hit the ground running. But the 116th congressional session started under unusual circumstances: an unexpected and unexpectedly prolonged partial government shutdown stunted rollout of the Democrats' agenda, with the caucus showing signs of particular disagreement on health policy priorities. They have since regained their footing and, as they head into a two-week recess, seem to be hitting their stride.

So, what has been done in the first 100 days on health policy? Quite a lot, actually. Hearings. Mark-ups. Letters. Investigations. More hearings. More mark-ups. More letters. More investigations. While most of this has emerged from the House Energy and Commerce Committee, we also saw the Oversight and Reform, Ways and Means, and Education and Labor Committees put stakes in the ground. Following is a brief round-up of the top issues and major developments, and outlook of where we go from here.

Affordable Care Act

Democrats have been advancing a series of bills that support and stabilize the Affordable Care Act (ACA). Most of these are partisan, as Republicans have generally been reluctant to engage in what they see as pure political moves. Many of the bills respond to actions taken by the administration.

- + **Pre-existing conditions.** This is how the Democrats kicked off their health care platform in the 116th. Three committees held hearings on this topic in an attempt to follow through on their 2018 campaign promises. While there is no one particular bill on this issue, Democrats have made clear that their policies would protect those with pre-existing conditions as they seek to expand, not contract or eliminate, ACA programs.
- + **Short-term, limited duration insurance (STLDI) plans.** The Trump Administration finalized a rule in August 2018 to expand STLDI plans, which lack ACA consumer protection requirements. The Democratic legislation ([HR 1010](#)) would rescind the rule. The bill has passed out of two committees, both on party-line votes. Leading Democrats also sent a [letter](#) in January 2019 to three cabinet secretaries and the director of the Office of Management and Budget seeking more answers on this policy. Expect this bill to move to the House floor and be approved as a standalone or part of a larger package, but to stall there.
- + **1332 waivers.** The ACA created 1332 waivers for states to seek additional flexibility to pursue alternative strategies to provide high quality and affordable health coverage within a defined set of guardrails. The administration loosened those guardrails in new guidance for states that outlined the administration's interpretation of the 1332 waiver guardrails and set out four concepts that states can utilize in 1332 waivers. The Democrats responded with legislation ([HR 986](#)) that would roll back this guidance. Like HR 1010, this legislation has passed out of committee and is expected to be considered and approved by the full House. Senate consideration is unlikely.
- + **1115 waivers.** 1115 waivers allows states to seek experimental, pilot or demonstration projects that are found to be likely to assist in promoting the objectives of the Medicaid program. The administration has used this authority to approve work requirements and partial Medicaid

expansions, and to waive the Institutions for Mental Disease Medicaid exclusion and other provisions relating to coverage, cost-sharing and premiums. To date, nine states have received Centers for Medicare & Medicaid Services approval to implement Medicaid work requirements, and six states have a pending work requirement waiver application. Many of these waivers have been challenged in court, and federal courts have invalidated two such waivers. Nevertheless, states continue to seek approval, and the administration continues to grant permission, through the 1115 waivers. The Democrats used the annual budget process to put the Secretary of Health and Human Services on the hot seat during [several hearings](#) for these policy decisions. As these waivers continue to be approved and challenged, we can expect more state applications, as well as ongoing court scrutiny of Medicaid work requirements.

- + **Reinsurance.** This used to be a bipartisan topic (anyone remember Alexander/Murray stabilization efforts?). Republicans do not discuss it often now, but Democrats have included it as a central component to buttressing the ACA. While there is no standalone legislation on reinsurance, it is part of other bills (including HR 1884, discussed below).
- + **Education and outreach funds.** The administration has reduced spending on education and outreach efforts supporting the health insurance marketplace open enrollment. Democrats are none too pleased about this and have sent a [letter](#) asking for specific information on where the money went and documents relating to the decision to redirect funding.
- + **Transition to state-based exchange.** One of the only bipartisan bills in this space, [HR 1385](#), would provide \$200 million for states to explore exchange transition options. New Jersey may be the first state to move from a federally run health insurance exchange to a state-based one, but Democrats are trying to encourage more states to consider this through increased funding. This bill has passed out of the Energy and Commerce Committee and is likely to be rolled up into a larger package.

With the exception of the 1115 waivers, all of the other policies here are included as part of the Democrats' signature, comprehensive bill ([HR 1884](#)) to protect and stabilize the ACA. It seems they may use HR 1884 as the vehicle to bundle everything together and bring these issues to the floor.

Reality Check: None of these policies will pass muster in the Senate, nor will they likely even see any committee time in the upper chamber. Democrats in the House, however, likely will seek to use this to their advantage in the 2020 elections . . . if they are not sidetracked by Medicare for All.

Insurance Expansion

We have learned that “universal coverage” means different things to different people (to wit, lawmakers and the public). Surprised? Democrats have introduced a wide range of insurance coverage expansion proposals, from modestly building on existing programs to a fully government-run, universal health care system.

- + **Medicare for All.** The legislative effort to move to universal health coverage is being led by Representative Pramila Jayapal (D-WA) in the House. (Senator Bernie Sanders (I-VT) is the lead on the Senate side). [HR 1384](#) would effectively end the private insurance market within two years by transitioning all Americans into a government-run health insurance program. The bill includes no offsets. Rep. Jayapal has indicated that leadership has committed to hearings on this bill, but none have been scheduled yet. If they are, we probably won't see much beyond that, particularly as we get into presidential primaries.
- + **Medicare public option.** The Medicare-X Choice Act ([HR 2000](#)) combines Medicare physician networks and reimbursement rates with ACA coverage standards to create a new public health insurance option available to all Americans. The bill also includes some ACA stabilization provisions, including increasing the tax credit for individuals below 400 percent of the poverty line and appropriating \$30 billion over three years for a reinsurance program.

- + **Public option.** The Consumer Health Options and Insurance Competition Enhancement (CHOICE) Act ([HR 2085](#)) would create a public option, to be offered in the individual marketplace, subject to all the same requirements that apply to other plans offered on ACA exchanges. It would offer the same tax credits available to individual marketplace consumers as well as enhanced, comprehensive benefits.
- + **Medicaid buy-in.** The State Public Option Act ([HR 1277](#)), which is similar to previously introduced legislation, would allow states to create a Medicaid buy-in option for all residents regardless of income.

Reality Check: Head spinning yet? A likely approach may be hearings on the variety of proposals to expand insurance coverage. There will be pressure to have an actual vote on something on the House floor in the run up to the 2020 election. This will continue to be a sticky subject among the caucus and a tricky balancing act for Democratic leaders.

Drug Pricing

If the Democrats are not talking about the ACA or health insurance coverage, they are most likely talking about drug pricing. While the ACA has been strictly partisan in tone, drug pricing legislation has seen instances of bipartisan approaches and progress. There have been 11 hearings on drug pricing in the House and Senate, and a number of bills are advancing through the legislative process—representing significant committee resources dedicated to this issue.

The hearings have shown that no stakeholder is immune (except patients and consumers, of course). Drug manufacturers and pharmacy benefit managers have drawn the ire of lawmakers from both sides of the aisle for what appears to be finger pointing and lack of accountability. And, when that happens . . . Congress decides to do something itself.

The Energy and Commerce and Ways and Means Committees have teed up a series of bipartisan bills that now await time on the floor. It is unclear what their path forward in the Senate will be, however, given that the Senate is undertaking its own efforts to lower health care costs, bring transparency to the marketplace, and address the rising cost of prescription drugs (see Chairman of the Senate HELP Committee Lamar Alexander's (R-TN) effort to lower health care costs that he wants to be bipartisan and released in the summer, and bipartisan efforts from the leaders of the Senate Finance Committee on drug pricing.)

Let's not forget that the Oversight and Reform Committee was quick out of the gate in January with [letters](#) to major drug companies on pricing practices. We have yet to see the outcome of these.

Reality Check: A package of bipartisan bills intended to lower the cost of prescription drugs has a good chance of passing both chambers and being signed into law by the president. All parties can claim victory. Simple, right?

Surprise Billing

This is the issue that will not go quietly into the night. News stories pop up daily. An increasing number of states have passed bills, and more are advancing legislation this year. This issue is ripe for congressional action. While the House has not yet focused much on this issue, the Senate is making progress, with Senators Bill Cassidy (R-LA) and Maggie Hassan (D-NH) taking the lead. But, not to be fully shut out, the House secured its seat at the table with the first hearing of the 116th Congress on surprising billing in the Education and Labor Committee. And the chairman of the Energy and Commerce Committee recently indicated that he hopes his committee can work with Republicans to tackle surprise billing.

Reality Check: Addressing surprise billing will most likely be part of a larger package (perhaps Senator Alexander's "lowering health care costs" efforts). Regardless of the vehicle, bipartisan action is likely on this issue.

What's Next?

Things are just getting started in the House. It is going to be a wild ride through the 2020 election. In addition to the issues outlined here, there are at least 15 health programs (including Medicaid disproportionate share hospital payments, community health centers, and the National Health Service Corps) that will face cuts, expire or run out of funding by the end of 2019, and therefore will soon need attention in the House. The balance for House Democrats will be working across the aisle when they can (drug pricing, surprise billing, programmatic and funding extensions) and using their power in the majority when they need to (ACA, insurance expansion).

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