[**Build Back Better Act**](https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-117HR5376RH-RCP117-18.pdf)**’s Impact on Medicaid, Medicare, and Commercial Plans**

**Overbrief**

The Build Back Better Act, H.R. 5376, (BBBA) was adopted by the House of Representatives on November 19, 2021. The act includes a broad package of health, social, climate change, and revenue provisions. The bill allocates roughly $1.7 trillion in spending, with $165 billion for healthcare and $150 billion to expand affordable home care.

**Major Health Care Components to the Bill**

* Affordable Care Act Marketplace Subsidies
* New Medicare Hearing Benefit
* Lowering Prescription Drug Prices and Spending
* Medicare Part D Benefit Redesign
* Medicaid Coverage Gap
* Maternal Care and Postpartum Coverage
* Other Medicaid/Children’s Health Insurance Changes
* Other Medicaid Financing and Benefit Changes
* Medicaid Home and Community Based Services and the Direct Care Workforce
* Paid Family and Medical Leave

**Medicaid**

In response to the states that have not expanded Medicaid to adults with incomes of 138% of the federal poverty line, section 137304 of the BBBA would allow people in those 12 states to purchase subsidized coverage on the ACA marketplace for 2022 – 2025. The federal government would fully subsidize the premium for a benchmark plan. Those individuals would also be eligible for cost sharing subsidies that would reduce their out-of-pocket costs. Section 30608 has adjustments to uncompensated care (UCC) pools and disproportionate share hospital (DSH) payments for non-expansion states. Non-expansion states would not be allowed to draw down federal matching funds for UCC amounts for individuals who could otherwise qualify for Medicaid expansion, and their DSH allotments would be reduced by 12.5% starting in 2023. Section 30609 would increase the federal match rate for states that have expanded Medicaid from 90% to 93% through 2025.

The American Rescue Plan Act (ARPA) gave states the option to extend Medicaid postpartum coverage from 60 days to 12 months. Section 30721 of the BBBA would *require* states to extend Medicaid postpartum coverage from 60 days to 12 months. The requirement would take effect in the first fiscal quarter beginning one year after enactment and applies to state CHIP programs that cover pregnant individuals. Sections 30722 would create an option for states to coordinate care to Medicaid-enrolled pregnant and post-partum individuals through a maternal health home model. States that opt into the model would receive a 15% increase in federal medical assistance percentage (FMAP) for the first 2 years. Sections 31031 – 31048 provide federal grants to improve other aspects of maternal health care.

Section 30741 of the BBBA would require states to extend 12-month continuous coverage for children on Medicaid and CHIP. In the light of the COVID-19 pandemic, the Families First Coronavirus Response Act (FFRCA) provided a 6.2%-point increase in the federal share of Medicaid funding to states, but §30741 would phase that funding out – states would receive the 6.2% increase through 3/31/22; 3% increase from 4/1/22 through 6/30/22; and 1.5% increase from 7/1/22 through 9/30/22. Finally, §30741 would allow states, from 4/1/22 to 9/30/22, to continue receiving the enhanced federal matching funds if they only terminate coverage for individuals who are determined no longer eligible for Medicaid and have not been enrolled at least 12 consecutive months.

Section 30741 would also provide Medicaid coverage of health services to people during the 30-day period preceding their release from jail or prison. In addition, it makes the express lane eligibility (E.L.E.) option, which is set to expire on September 30, 2027, permanent.

Section 30801 of the BBBA would permanently extend the CHIP program – it is currently only funded through September 30, 2027.

Section 139405 of the BBBA would require state Medicaid programs to cover all approved vaccines recommended by the Advisory Committee on Immunization Practices (ACIP) and vaccine administration, without cost sharing, for categorically and medically needy adults. States that implement this as of the date of enactment would receive a 1%-point FMAP increase for 8 quarters.

Sections 30711 – 30713 of the BBBA would create the HCBS Improvement Program, which would provide a permanent 6%-point increase in federal Medicaid matching funds for home and community-based services (HCBS), to states that qualify for such funds.

Section 30714 of the BBBA would require states to report HCBS quality measures to HHS, beginning 2 years after the Secretary publishes HCBS quality measures. The section also provides states with an enhanced 80% federal matching rate for adopting and reporting these measures.

Sections 30715 and 30716 of the BBBA would make the Affordable Care Act HCBS spousal impoverishment protections and the Money Follows the Person program permanent – both provisions set to expire September 30, 2023.

Sections 22301 and 22302 of the BBBA would provide $1 billion in grants to states, community-based organizations, educational institutions, and other entities by the Department of Labor Secretary to develop and implement strategies for direct service workforce recruitment, retention, and/or education and training.

Section 25006 of the BBBA would provide $40 million for the HHS Secretary to award states, nonprofits, educational institutions, and other entities to address the behavioral health needs of unpaid caregivers of older individuals and older relative caregivers.

**Medicare**

Medicare currently does not cover hearing services, except under limited circumstances. Hearing services are typically offered as an extra benefit by Medicare Advantage plans, but the extent of that coverage and value of the benefits varies. Section 30901 of the BBBA would add coverage of hearing services to Medicare Part B beginning in 2023. The coverage would include hearing rehabilitation and treatment services, as well as hearing aids. Hearing aids would be available once per year, every 5 years, to individuals diagnosed with moderately severe, severe, or profound hearing loss. Hearing services and hearing aids would be subject to the Medicare Part B deductible and 20% coinsurance. Medicare Advantage plans would also be required to cover these hearing benefits.

Currently under the Medicare Part D program, Medicare contracts with private plan sponsors to provide a prescription drug benefit. For drugs administered by physicians that are covered under Medicare Part B, Medicare reimburses providers 106% of the Average Sales Price (ASP). Medicare does not have the ability to negotiate drug prices under Part D and lacks the ability to limit annual price increases for drugs covered under Part B and Part D. Sections 139001, 139002, and 139003 of the BBBA would add an exception to the non-interference clause that would allow the federal government to negotiate prices with drug companies for a small number of high-cost drugs lacking generic or biosimilar competitors covered under Medicare Part B and Part D. The negotiation process would apply to no more than 10 (in 2025), 15 (in 2026 and 2027), and 20 (in 2028 and later years) single-source brand-name drugs lacking generic or biosimilar competitors, selected from among the 50 drugs with the highest total Medicare Part D spending and the 50 drugs with the highest total Medicare Part B spending. This negotiation process would also apply to all insulin products. Drugs that are less than 9 years (for small-molecule drugs) or 13 years (for biological products) from their FDA-approval or licensure date are exempt from negotiation. “Small biotech drugs,” are also exempt from negotiation until 2028. There is an upper limit for the negotiated price, which is equal to a percentage of the non-federal average manufacturer price – 75% for small-molecule drugs between 9 and 12 years beyond approval; 65% for drugs between 12 and 16 years beyond approval or licensure; and 40% for drugs more than 16 years beyond approval or licensure. The legislation would require Part D drugs with prices negotiated under this process to be covered by all Part D plans. Drug companies that do not comply with the negotiation process will have an excise tax levied on them; there will be civil monetary penalties on companies that do not offer the agreed-upon negotiated prices to eligible purchasers.

Sections 139101 and 139102 of the BBBA would require drug manufacturers to pay a rebate to the federal government if their prices for single-source drugs and biologicals covered under Medicare Part B, and nearly all covered drugs under Part D, increase faster than the rate of inflation. Rebate dollars would be deposited in the Medicare Supplementary Medical Insurance trust fund. Manufacturers that do not pay the requisite rebate amount would be required to pay a penalty equal to at least 125% of the original rebate amount.

Sections 139201 and 139202 of the BBBA would add a hard cap on out-of-pocket spending set at $2,000 in 2024, increasing each year based on the rate of increase in per capita Part D costs. It would lower beneficiaries’ share of total drug costs below the spending cap from 25% to 23%. It would lower Medicare’s share of total costs above the spending cap from 80% to 20% for brand-name drugs and 40% for generic drugs; increases plans’ share of costs from 15% to 60% for both brand-name and generics; and adds a 20% manufacturer price discount on brand-name drugs. Manufacturers would also be required to provide a 10% discount on brand-name drugs in the initial coverage phase, instead of a 70% price discount. Finally, it would increase Medicare’s premium subsidy for the cost of standard drug coverage to 76.5% and reduces the beneficiary’s share of the cost to 23.5%.

Sections 27001, 30604, 137308, and 139401 would require insurers, including Medicare Part D plans and private group or individual health plan, to cap the price of insulin products to no more than $35 for a 30-day supply. Part D plans would be required to apply the cap to whichever insulin products they cover for 2023 and 2024, but coverage for all insulin products would be required beginning in 2025. Private group or individual plans do not have to cover all insulin products, just one of each dosage form and insulin type for no more than $35.

Section 139402 would require all adult vaccines covered under Medicare Part D that are recommended by the Advisory Committee on Immunization Practices be covered at no cost.

**Commercial**

The American Rescue Plan Act (ARPA) temporarily expanded eligibility for subsidies by removing the upper income threshold while also temporarily increasing the dollar value of premium subsidies. The ARPA also allowed for individuals who receive unemployment insurance (UI) benefits during 2021 to be eligible for zero-premium, low-deductible plans. However, the ARPA provisions removing the income threshold and increasing the tax credits are only in effect for 2021 and 2022; the unemployment insurance provision is only in effect for 2021. Section 137301 of the BBBA would extend the ARPA subsidy changes and increase in tax credits for individuals across the board through the end of 2025. The Congressional Budget Office (CBO) projects that §137301 would reduce the number of uninsured by 1.2 million people. Section 30605 of the BBBA would extend the subsidy rule for those receiving UI benefits through the end of 2025.

For purposes of determining eligibility for premium tax credits, section 137303 would disregard any lump sum Social Security benefit payments in a year – a permanent provision and effective starting in the 2022 tax year. Starting in 2026, individuals would have the option to include the lump sum benefit in their income for purpose of determining tax credit eligibility.

The Affordable Care Act (ACA) makes people ineligible for marketplace subsidies if they have an offer of affordable coverage from an employer, currently requiring an employee contribution of no more than $9.61% of household income in 2022. Section 137302 of the BBBA would reduce the affordability threshold to 8.5% of income, which is the maximum contribution required to enroll in the benchmark marketplace place. This provision would be in effect for tax years starting in 2022 through 2025. After 2025, the affordability threshold would be set at 9.5% of household income with no indexing.

**Other**

Section 130001 of the BBBA would guarantee 4 weeks/year of paid family and medical leave to all workers in the U.S. who need time off work for a new child in their family, recovering from a serious illness, or caring for a seriously ill family member. Annual earnings up to $15,080 would be replaced at approximately 90% of average weekly earnings; about 73% of average weekly earnings for annual wages between $15,080 and $32,249; and 53% of average weekly earnings for annual wages between $32,248 and $62,000.