

Summary: House Energy & Commerce Full Committee Markup of Forty-Four Bills

December 5-6, 2023

Topline Summary

On Tuesday, December 5, 2023 and Wednesday, December 6, 2023, the House Energy and Commerce (E&C) Full Committee held a markup of 44 bills dealing with establishment of critical supply chain, Medicare Part D design, Medicare biosimilar payment, Medicare's National Coverage Determination (NCD) process and review of Local Coverage Determinations (LCDs), Medicare coverage of devices and durable medical equipment, physician fee schedule, and several other issues.

Of the 44 bills discussed at the markup, 20 bills that are relevant to the healthcare industry are tracked below. All 20 bills passed unanimously or near unanimously, despite the strong opposition from Ranking Member Pallone against H.R. 5555, DMEPOS Relief Act of 2023.

Other notable points from the hearing included:

- Chair Rodgers gave her express commitment to continue working on H.R. 2880, Protecting Patients Against PBM Abuses Act, and H.R. 4881, bill limiting cost sharing for drugs under the Medicare program.
- Democratic members expressed frustration that the markup did not include extensions of programs to help seniors navigate Medicare, such as State Health Insurance Programs (SHIPs), that expired in September.
- Although both sides of the aisle showed strong support for H.R. 6545, Physician Fee Schedule Update and Improvements Act, Democratic members expressed hesitancy with adopting the amendment that decreased the conversion factor from 3% to 2.5%.

Opening Statements from Committee

Below are notable points of emphasis from committee leaders' opening statements.

House E&C Chair Cathy McMorris Rodgers (R-WA)

- Chair Rodgers raised concerns that United States distinctly spends more on health care as a percentage of economy than any developed nation.

E&C Ranking Member Frank Pallone (D-NJ)

- Pallone noted support for critical programs: ensuring payment stability for doctors, while lowering health care costs for Medicare beneficiaries; improving transparency of CMS' pathways to coverage for new technologies and treatments; and reigning in practices of PBMs.
- Pallone stated that while **H.R. 4881 needs substantial work** before the bill is ready for floor consideration, Mr. Pallone is willing to move forward with the bill so long as he receives commitment that the technical and implementation issues of the bill will be worked out.
- Pallone **highlighted specific bills**: H.R. 2365 and H.R. 5386

- Pallone **expressed opposition to all bills** that increase out-of-pocket costs for Medicare beneficiaries and policies that CMS cannot implement.

Discussion of the Twenty Bills Before the E&C Full Committee

H.R. 6571, Promoting Resilient Supply Chains Act (Reps. Bucshon and Blunt Rochester)

Bill content: Establishes a critical supply chain resiliency and crisis response program in the Department of Commerce, and secures American leadership in deploying emerging technologies, and for other purposes.

- Rep. Rochester introduced an amendment in the nature of the substitute (AINS) that strikes all after enacting clause and adding some technical changes.
 - Rep. Bucshon and Rep. Dingell spoke in favor of the bill and AINS.
- Chair Rodgers and Rep. Kuster spoke in favor of the bill, noting that it builds upon the **American Compete Act**.

*Vote: AINS and bill **passed** by voice vote.*

H.R. 2365, National Plan to End Parkinson’s Act (Reps. Bilirakis and Tonko)

Bill content: Directs Secretary of HHS to unite public-private partnership to carry out a national project to prevent and cure Parkinson’s.

- Rep. Bilirakis introduced bipartisan AINS and in favor of the bill, emphasizing on the importance of research efforts to encourage development of treatments and in setting up a diverse advisory council.
- Rep. Tonko spoke in support of the bill.
- Rep. Tonko asked that statement shared by Congresswoman Jennifer Wexton supporting the bill and AINS be incorporated into record.
- Ranking Member Pallone spoke in support of the bill and AINS that incorporates language ensuring minority and underrepresented communities are included in the advisory council.

*Vote: AINS and bill **passed** by voice vote.*

H.R. 5372, Expanding Seniors’ Access to Lower Cost Medicines Act of 2023 (Reps. Joyce and Peters)

Bill content: Allows for mid-year changes in insurance plan formularies for certain biosimilar products starting in 2025.

- Rep. Joyce introduced AINS, noting that the legislation will drive down costs for eligible seniors and avoid undue exclusions.

- Rep. Peters spoke in favor of the bill and AINS, highlighting that greater flexibility to substitute biosimilars in Part D formularies will lower costs and increase utilization of biosimilars.
- Ranking Member Pallone spoke in favor of the bill and AINS but remarked that it continues to need further refinement.
- Pallone noted that CMS put forth similar regulations for CY 2025 and that the statute should align with the CMS regulations.

*Vote: AINS and bill **passed** by voice vote.*

H.R. 2880, Protecting Patients Against PBM Abuses Act (Reps. Carter and Blunt Rochester)

Bill content: Establishes new requirements for PBMs under Part D, including a policy to de-link PBM compensation from drug costs; prohibiting spread pricing in which a PBM charges a sponsor a different amount for the drug’s ingredient cost or dispensing fee than the amount the PBM reimburses the pharmacy; prohibiting PBMs from compensating a network pharmacy less than affiliated pharmacies; and transparency provisions related to the PBM rebates and administrative fees.

- Rep. Carter introduced AINS, noting that the legislation will protect seniors from harmful PBM practices that make healthcare inaccessible and costly.
 - Rep. Rochester spoke in favor of the bill and AINS.
- Chair Rodgers spoke in support of the bill and agreed that “more needs to be done” to lower drug costs.
 - Chair Rodgers expressed commitment to continue moving the bill forward to the floor.
- Rep. Palmer, Rep. Bucshon, Rep. Kuster, Rep. Allen spoke in favor of the bill.
- Rep. Johnson spoke in support of the bill but cautioned against focusing too narrowly on PBMs as PBMs are a small percentage of the overall drug cost.
- Rep. Miller-Meeks spoke in support of the bill but noted that Medicare is not the only avenue for lowering drug prices and indicated that reforms in commercial markets are needed as well.

*Vote: AINS and bill **passed** by voice vote.*

H.R. 5393, To amend title XVIII of the Social Security Act to ensure fair assessment of pharmacy performance and quality under Medicare part D, and for other purposes (Reps. Griffith and Carter)

Bill content: Standardize pharmacy performance measures in Part D that assess network pharmacy performance by requiring prescription drug plans (PDPs) to only use pharmacy performance measures from HHS and that are relevant to a particular pharmacy; establish a process for PDPs to provide network pharmacies with information about pricing drug claims.

- Rep. Griffith spoke in favor of the bill, noting that quality measures used by PBMs are subjective and not transparent.
- Rep. Carter spoke in favor of the bill.

*Vote: **Passed** by voice vote.*

H.R. 5385, Medicare PBM Accountability Act (Reps. Landsman and Harshbarger)

Bill content: Requires PBMs to report more detail on rebates to plan sponsors.

- Rep. Harshbarger spoke in support of the bill, noting that the bill mirrors legislation passed by the Senate Finance Committee in July 2023.
- Rep. Dingell introduced bipartisan AINS to will help better understand the “true cost” of drugs and address “predatory practices” of PBMs.

*Vote: AINS and bill **passed** by voice vote.*

H.R. 5386, Cutting Copays Act (Reps. McGarvey and Bilirakis)

Bill content: Provides for zero cost-sharing for generic drugs in Medicare Part D for Low-Income Seniors and limits other cost-sharing.

- Ranking Member Pallone introduced AINS with technical and conforming changes and spoke in favor of the bill.
 - Rep. Bilirakis spoke in favor of the bill and AINS.

*Vote: AINS and bill **passed** by voice vote.*

H.R. 4881, To amend title XVIII of the Social Security Act to limit cost sharing for drugs under the Medicare program. (Reps. Malliotakis and Wenstrup)

Bill content: Limits cost-sharing in Part D to no more than the net price of a product.

- Rep. Carter spoke in favor of the bill.
- Rep. Harshbarger introduced AINS with technical changes and spoke in favor of the bill.
- Ranking Member Pallone spoke in support of the bill but remarked that the policy needs further refinement in order to be operational as there are delays in data and information provided to the agency.
 - Pallone stated that he will support the bill if Chair Rodgers gives commitment that she will work to refine the bill to ensure it becomes implementable.
 - Chair Rodgers gave commitment to continue working on the technical edits to the bill.
- Rep. Griffith spoke in support of the bill but noted that cost-sharing limitation should apply to “all insurers” since all insurance companies have fiduciary duty to their insured.

*Vote: AINS and bill **passed** by voice vote.*

H.R. 5389, National Coverage Determination Transparency Act, as amended (Reps. Guthrie and Kelly)

Bill content: Requires CMS to respond to National Coverage Determination (NCD) requests and reconsideration requests within certain timeframes and in certain circumstances.

- Rep. Guthrie introduced AINS granting CMS a longer runway to implement the changes to the NCD process.
- Rep. Guthrie emphasized that the bill streamlines the process that CMS must follow whenever the agency is making coverage determination for a product.
- Rep. Guthrie also spoke in support of **H.R. 1691**, which is not included in the current markup.

*Vote: AINS and bill **passed** by voice vote.*

H.R. 133, Mandating Exclusive Review of Individual Treatments (MERIT) Act, as amended (Reps. Buchanan and Barragan)

Bill content: Prevents CMS from assessing whole classes of drugs or biologics in NCDs.

- Rep. Barragan introduced AINS that incorporates feedback from CMS and removes duplicative language.
- Rep. Barragan highlighted the difficulty in accessing FDA-approved treatment for Alzheimer's resulting from a broad NCD that effectively denies coverage.
- Rep. Barragan also flagged **H.R. 2408, the Access to Innovative Treatments Act**, which would accomplish the same goal as the MERIT Act while including a timeline CMS must follow to reconsider drugs for Medicare coverage when enough data is collected on drug effectiveness.

*Vote: AINS and bill **passed** by voice vote.*

H.R. 5396, Coverage Determination Clarity Act of 2023 (Rep. Bucshon)

Bill content: Allows the HHS Secretary to review Local Coverage Determinations (LCDs) to see whether they conflict with NCDs.

- Rep. Bucshon introduced AINS with minor changes and spoke in favor of the bill.

*Vote: AINS and bill **passed** by voice vote.*

H.R. 5371, Choices for Increased Mobility Act of 2023 (Reps. Joyce and Phillips)

Bill content: Changes Medicare Part B payment rules for payment of particular types of wheelchairs, permitting out-of-pocket spending for certain modifications.

- Rep. Joyce introduced AINS establishing separate HCPCS for ultra lightweight manual wheelchairs by creating new code under Medicare Part B.

*Vote: AINS and bill **passed** by voice vote.*

H.R. 5388, Supporting Innovation for Seniors Act (Reps. Balderson and Buchanan)

Bill content: Enables Medicare Advantage (MA) plans to cover medical devices before or for different indications than fee-for-service Medicare.

- Rep. Balderson introduced AINS and spoke in favor of the bill.

*Vote: AINS and bill **passed** by voice vote.*

H.R. 5380, To amend title XVIII of the Social Security Act to increase data transparency for supplemental benefits under Medicare Advantage (Rep. Sarbanes)

Bill content: Requires MA plans to report certain data on offering and update of supplemental benefits and put the data online.

- Rep. Sarbanes introduced AINS with technical changes and spoke in favor of the bill.

*Vote: AINS and bill **passed** by voice vote.*

H.R. 3842, Expanding Access to Diabetes Self-Management Training Act of 2023, as amended (Reps. Schrier, Bilirakis, and Bucshon)

Bill content: Loosens certain restrictions around Medicare coverage of diabetes self-management training.

- Rep. Schrier introduced AINS and spoke in favor of the bill.
- Rep. DeGette and Rep. Ruiz spoke in support of the bill as the co-chairs of the Diabetes Caucus.
- Rep. Bilirakis spoke in support of the bill as the co-chair of Congressional Diabetes Caucus, noting the widespread and costly nature of diabetes.
- Rep. Bucshon spoke in support of the bill.

*Vote: AINS and bill **passed** by voice vote.*

H.R. 5397, Joe Fiandra Access to Home Infusion Act of 2023, as amended (Reps. Fitzpatrick, Dunn and Soto)

Bill content: Expands the range of drugs eligible for home infusion.

- Rep. Dingell spoke in favor of the bill but lamented that the markup did not consider the **Preserving Patient Access to Home Infusion Act**, which would have provided

clarification to the home infusion benefit to remove the physical presence requirement in the reimbursement structure.

- Rep. Guthrie introduced AINS to the bill.
- Rep. Carter and Rep. Soto spoke in support of the bill and AINS.

*Vote: AINS and bill **passed** by voice vote.*

H.R. 5555, DMEPOS Relief Act of 2023 (Reps. Miller-Meeks and Tonko)

Bill content: Provides one-year extension of current payment rates for DME for rural areas and certain other areas, avoiding expected cuts in rates.

- Rep. Miller-Meeks introduced AINS and spoke in favor of the bill, remarking that the past implementation of DMEPOS Competitive Bidding Program resulted in significant number of DMEPOS closures.
- Ranking Member Pallone spoke **against** the bill, arguing that it may increase OOP costs for Medicare beneficiaries by extending the temporary relief exempting DME from the full effect of the DME Competitive Bidding Program.
 - Pallone criticized the introduction of the bill when the markup did not include bills, such as **H.R. 5360**, to reauthorize efforts such as SHIP that help seniors navigate Medicare and sign up for certain programs.
- Rep. Tonko spoke in favor of the bill.

*Vote: AINS and bill **passed** by voice vote, with Ranking Member Pallone voting No.*

H.R. 6545, Physician Fee Schedule Update and Improvements Act (Reps. Miller-Meeks, Schrier, Bucshon, Kelly)

Bill content: Makes improvement to the PFS under the Medicare program by extending floor for work geographic index, extending incentive payments for participation in eligible alternative payment models (APMs), increasing conversion factor, updating the budget neutrality threshold, and requiring timely updates to direct costs used to calculate practice expense RVUs.

- Rep. Burgess spoke in favor of the bill, noting that budget neutrality threshold had not been updated since 1992 and is overdue for update.
- Rep. Kuster spoke in favor of the bill.
- Rep. Miller-Meeks introduced AINS changing the conversion factor from 3% to 2.5% and updating the alternative payment model language.
 - Rep. Miller-Meeks stated that she believes the original conversion factor of 3% is more appropriate, considering the high inflation rate, but supported AINS regardless.
- Ranking Member Pallone spoke in favor of the bill and AINS.
 - Pallone also supported the inclusion of **H.R. 6369**, legislation extending bonuses for providers participating in advanced APMs and providers taking on higher risk. However, Pallone expressed disappointment that the bill H.R. 6545 does not include the full APM bonus of 3.5%.

- Rep. Bucshon spoke in support of the bill but against the AINS that decreased the conversion factor by 0.5%.
- Rep. Cardenas and Rep. Joyce spoke in support of the bill.
- Rep. Ruiz spoke in support of the bill but asked the Committee to include in future markups **H.R. 2474, Strengthening Medicare for Patients and Providers Act**, which will adjust Medicare physician reimbursement rate based on inflation.
- Rep. Schrier spoke in favor of the bill and AINS.

*Vote: AINS and bill **passed** by voice vote.*

H.R. 6364, Medicare Telehealth Privacy Act of 2023 (Reps. Balderson, Dunn, Schweikert, and Carey)

Bill content: Prevents CMS from publishing home addresses of providers who deliver telehealth from their homes.

- Rep. Balderson introduced AINS and spoke in favor of the bill.

*Vote: AINS and bill **passed** by voice vote.*

H.R. 1352, Increasing Access to Biosimilars Act of 2023 (Rep. Hudson)

Bill content: Creates demonstration project for providers to receive shared savings payments for biosimilar use.

- Rep. Hudson introduced AINS with technical changes and clarification that the project is budget neutral and spoke in favor of the bill.
- Ranking Member Pallone introduced amendment to the AINS that extends the temporary payment increase of ASP plus 8% for biosimilar products in Part B for additional 5 years.
- Rep. Cardenas spoke in support of amendment to the AINS.
- Rep. Eshoo spoke in support of the bill.

*Vote: AINS as amended and bill **passed** by voice vote.*