

# Health Care in Motion

Timely, Substantive Updates on Policy Shifts · Actionable Advocacy to Protect Health Care

August 15, 2022

## Inflation Reduction Act: A Really Big Deal

Analysis of the healthcare provisions in the Democrats' ambitious reconciliation package

On August 7, after over a [year of congressional strife](#), Senate Democrats passed the [Inflation Reduction Act \(IRA\)](#) with a razor-thin majority and Vice President Kamala Harris casting the 51<sup>st</sup> vote. The bill – which includes significant investments to combat climate change, invest in clean energy, and ensure access to affordable health care – was passed using the budget reconciliation process. This [wonky process](#) allowed Democrats to pass the bill with a simple majority in the Senate instead of the 60-vote filibuster-proof majority required for regular order legislation. With the House of Representatives passing the bill on August 12 along a straight party line vote, the IRA is expected to be signed by President Biden this week. This brief will focus on the healthcare provisions included (and ultimately not included) in the new package.

### IRA Health Provisions: What's In

While the IRA is a far cry from the original sweeping [Build Back Better](#) package passed by the House last fall and dramatically killed by Senator Joe Manchin (D-WV) in December, it still packs a punch when it comes to healthcare access and affordability provisions.

#### *Expansion of the ARPA ACA subsidies*

Close watchers of the Affordable Care Act (ACA) marketplaces will remember that enhanced subsidies for ACA coverage were enacted as part of the American Rescue Plan Act (ARPA) in 2021. The IRA will extend these subsidies, meaning that millions of Americans will continue to be eligible for zero or very low premium plans through the Marketplace. These subsidies have contributed to a [record number](#) of people enrolled in Marketplace coverage in recent months. The 2021 ARPA also removed the so-called “subsidy cliff,” so instead of losing eligibility for any Marketplace subsidies when someone is over 400% FPL, people with higher incomes pay no more than 8.5% of their income for a silver plan premium. However, the ARPA only provided these enhanced subsidies for 2021 and 2022. The IRA expands the enhanced subsidies for another three years, through 2025.

Continuation of the ARPA subsidies is particularly important given the anticipated end of the federal Public Health Emergency (PHE). The PHE was declared on January 31, 2020, in response to the onset of the COVID-19 pandemic. The PHE is now expected to expire sometime in 2023. Once the PHE ends, the federal requirement for states to pause Medicaid redeterminations and ensure continuous coverage will also end, meaning that millions of people

could lose Medicaid coverage. Many of the individuals who will no longer be eligible for Medicaid may be eligible for subsidized Marketplace coverage. Watch this space for more updates on the [PHE unwinding](#).

*Medicare drug pricing and affordability provisions*

The IRA also includes historic provisions allowing the Secretary of Health and Human Services (HHS) to negotiate the price of drugs provided through the Medicare Part D program. The bill also redesigns the cost-sharing protections for Medicare Part D benefits. The major provisions and their corresponding effective dates are included in the chart below.

<b>Drug pricing and affordability provision</b>	<b>Effective date</b>
Medicare Part D \$2,000 annual out-of-pocket cap	2025
Elimination of 5% coinsurance for Part D catastrophic coverage	2024
\$35/month cap on insulin prices in Medicare	2023
Expansion of full low-income Medicare subsidy to individuals making up to 150% FPL	2024
Federal negotiation authority for Medicare Part D and B drug prices	10 Part D drugs in 2026; 15 Part D drugs in 2027; 15 Part B or D drugs in 2028; 20 Part B or D drugs in 2029
Penalties for drug manufacturers that hike Medicare Part B and D drug prices faster than rate of inflation	2022

[Policy analysts estimate](#) that the Part D out-of-pocket cap could save millions of Medicare beneficiaries – particularly those with chronic conditions – a significant amount of money every year. Kaiser Family Foundation has also [released an analysis](#) projecting significant cost savings for consumers as a result of both the elimination of the 5% coinsurance for Part D catastrophic coverage and the expansion of the full low-income subsidy to individuals with incomes up to 150% FPL.

The new authority for HHS to negotiate the price of drugs will likely have a slower and more limited impact. The provision does not kick in until 2026 and is limited to only a handful of drugs (Avalere has done [extensive analyses](#) of the drugs likely to be considered first, including drugs used to treat oncology, autoimmune, pulmonary, diabetes, anti-infectives, and cardiovascular conditions). The penalties for manufacturers that raise Medicare prices on drugs faster than the rate of inflation goes into effect in October 2022 and could have more immediate benefits for Medicare beneficiaries, particularly given the recent trend of year-on-year Medicare price increases. In addition to the negotiation authority, the IRA includes several provisions that support generic or biosimilar competition in another push to bring down the overall price of drugs. (Note that [some industry voices share concerns](#) about how price controls and revenue loss may impact future drug innovation.)

Perhaps the most significant take-away for these provisions is that, more than 16 years after enactment of the Medicare Part D program, the camel’s nose may be under the tent when it comes to a more aggressive federal role in reigning in drug prices. Indeed, this could be the beginning of a new federal approach to what consumers

and policymakers on both sides of the aisle have increasingly named as a persistent access and affordability problem.

## IRA Health Provisions: What's Out

After many months of fierce Medicaid advocacy – including a [significant push led by CHLPI](#) –Congress’s failure to include a federal fix for the Medicaid coverage gap in the IRA is a bitter pill to swallow. The Medicaid coverage gap exists in states that have strict Medicaid eligibility criteria and have opted not to expand Medicaid. Many low-income, non-disabled individuals living in these states are both denied access to Medicaid and ineligible for subsidies to purchase private insurance on the Marketplace. Advocates urged Congress to include a provision that would allow individuals who live in the 12 non-expansion states to purchase heavily subsidized Marketplace coverage with benefits that align with Medicaid. This provision was included in the original Build Back Better package, but was ultimately axed in the smaller IRA package and [not successfully included](#) as an amendment during [vote-a-rama](#). The failure of Congress to act to close the Medicaid coverage gap will worsen health disparities in those states and disproportionately harm people with HIV and other chronic conditions.

The Medicaid coverage gap wasn’t the only reform that failed to make it into the final bill. Because the IRA was passed through the budget reconciliation process, it had to meet the strict parameters known as the “Byrd Rule.” The Byrd Rule require bills passed through reconciliation to have a direct relationship to the budget. (Senators can [waive application](#) of the Byrd Rule with a three-fifths, or 60 person, vote.) The IRA went through the “Byrd Bath” process, where the Senate Parliamentarian reviewed each and every provision to determine if it met the Byrd Rule. Several provisions had to be altered or scrapped as a result of this process. For instance, the original bill had included a cap on out-of-pocket insulin costs for private insurance coverage in addition to Medicare, but this provision was deemed too attenuated from a direct budget impact. The bill had also envisioned penalties on drug manufacturers who raise drug prices faster than the rate of inflation in the private insurance market in addition to Medicare. The Parliamentarian ruled that in order to meet the Byrd Rule, the bill could only impose penalties for drugs available through Medicare.

In short, passage of the IRA is a big deal. Millions of consumers will benefit from the affordability provisions across Marketplace and Medicare coverage. Democrats have renewed wind in their sails heading into what will be a tough midterm election season. The devil, as always, will be in the implementation details. Watch this space for more updates as the final passage and implementation of the IRA unfolds.

## Subscribe to all Health Care in Motion Updates

*Health Care in Motion is written by Robert Greenwald, Faculty Director; Kevin Costello, Litigation Director and Associate Director; Elizabeth Kaplan, Director of Health Care Access; Maryanne Tomazic, Clinical Instructor; Rachel Landauer, Clinical Instructor; and Suzanne Davies, Clinical Fellow. This issue was written with the assistance of Amy Killelea of Killelea Consulting.*

*For further questions or inquiries please contact us at [chlpi@law.harvard.edu](mailto:chlpi@law.harvard.edu).*