

LAW & POLICY GROUP | [GRIST](#)

## 2019 OUTLOOK FOR HEALTHCARE LEGISLATION BEYOND ACA REFORMS

*By Mercer's Geoff Manville and Dorian Z. Smith*  
*Feb. 6, 2019*

Although major Affordable Care Act (ACA) reforms are unlikely, proposals to create a single-payer healthcare system will get debated in the House as Democrats polish their platform for the 2020 elections. Legislation to curb drug prices has decent prospects, given bipartisan support in Congress and President Trump's backing. Proposals from the last Congress likely to see a revival include measures to curtail "surprise" medical bills, expand the availability and use of health savings accounts (HSAs), and provide paid family and medical leave.

### MEDICARE FOR ALL

A variety of Democratic proposals reflect different points along the single-payer spectrum and have different implications for employer-sponsored health coverage. Several House committees are expected to hold hearings on the issue, though no bill is likely to pass in the next two years. However, the measures bear watching to see if Democrats can unify around a single proposal ahead of the 2020 election.

At one end of the spectrum is Sen. Bernie Sanders, I-VT, who advocates a government-run, "Medicare-for-All" [program](#). This proposal would eliminate employer-sponsored health coverage and get some funding from higher taxes on employers. More incremental approaches would create a Medicare-based option for individuals and some — or even all — employers on the public marketplaces. Even narrower proposals would offer a Medicare buy-in option to older individuals — for example, starting at age 55 — who are not yet eligible for "free" Medicare under current rules.

### MORE SCRUTINY OF DRUG PRICES

Drug pricing is an area where Democrats and Republicans in Congress could find common ground with the White House's [drug blueprint](#). Leaders of some key Senate and House healthcare committees are concerned about high drug costs and are encouraging generic drug development. The two parties could agree, for example, on bipartisan proposals to boost generics. These proposals would prevent brand-name drug companies from paying potential generic competitors to delay their product's market entry ([S 64](#)) or blocking the sale of samples that generic drugmakers need to get their products approved.

Agreement on more ambitious proposals will be difficult but possible. Key Democratic [priorities](#) include allowing the Medicare Part D program to negotiate drug prices, permitting importation of less-expensive drugs from abroad and basing US drug prices on the prices paid in other major global economies. Like [President Trump](#), new Senate Finance Committee Chairman Chuck Grassley, R-IA, has [criticized](#) rising drug prices and may align with Democrats on some issues. Grassley is opposed to letting the federal government negotiate drug prices and basing US prices on what other countries pay. However, he has

teamed with Democrats to sponsor legislation ([S 61](#)) allowing importation of certain drugs from Canada and wants to step up oversight of drug pricing.

Congress and President Trump last year enacted legislation ([PL 115-262](#) and [115-263](#)) to ban “gag clauses” that stop pharmacists from telling customers when they could save money by paying for a drug outside their plan rather than using their insurance benefits. The Trump administration is also aggressively pursuing a number of regulatory reforms aimed at reining in drug prices, including a recently [proposed rule](#) to restrict drugmakers’ rebates to pharmacy benefit managers (PBMs).

Congress may also consider revising or reversing changes to the Part D coverage gap (the donut hole) made by February 2018 budget legislation ([PL 115-123](#)). That measure closed the donut hole one year earlier (in 2019) than scheduled, saving seniors and health insurers money. Because much of the cost shifted to brand-name drugmakers, they are urging Congress to roll back the change. Senior groups and insurers are certain to push back, but how lawmakers respond remains to be seen.

#### SURPRISE MEDICAL BILLS

Alarmingly high and unexpected medical bills have drawn headlines and garnered interest in Congress, where the parties could agree on a response. Bipartisan [draft legislation](#) floated last year and expected to be reintroduced would amend existing ACA protections to cover not only out-of-network emergency services but also nonemergency services received from out-of-network providers at in-network facilities. The beefed-up protections would apply broadly to nongrandfathered group health plans — whether insured or self-funded — and individual policies.

Addressing surprise costs and balance billing is a goal supported by plan sponsor groups and insurers, but the legislation will need careful drafting. Otherwise, these reforms could increase employers’ costs by making it difficult to design health plans with networks attractive to participants and providers. A number of states have already enacted similar patient protections.

#### HSA ENHANCEMENTS

A handful of employer health policy priorities embraced in the previous Congress face an uncertain future. These priorities include more flexible rules for HSAs and high-deductible health plans (HDHPs).

An extensive Republican package of HSA reforms that passed the House last year included bipartisan provisions to promote value-based care ([HR 6311](#), [HR 6199](#)). These proposals would have allowed participants in HSA-qualifying HDHPs who have yet to meet their deductible to receive more coverage of chronic conditions, telemedicine services or employer onsite medical clinics, without risking HSA eligibility.

Whether lawmakers will revisit HSA issues this year is unclear, but employers will continue to advocate for these and other updates to the rules. In addition, the Internal Revenue Service (IRS) has invited comments — and White House officials informally have indicated their intent — to expand the types of preventive care that HSA-qualifying HDHPs can cover on a predeductible basis ([Notice 2018-12](#)). In the proposed [Notice of Benefit and Payment Parameters for 2020](#), the Department of Health and Human Services (HHS) also invites input on how to increase access to HSA-qualifying HDHPs on the public marketplaces.

## PAID LEAVE

Federal legislation to mandate or encourage paid family leave will continue to receive strong interest from both parties. However, the wide partisan divide over how to approach the issue probably will prevent any measure from getting much traction in Congress. Many Democrats have lined up behind last year's proposal, the Family and Medical Insurance Leave (FAMILY) Act ([HR 947](#), [S 337](#)). That measure calls for a new payroll tax, split between employers and employees, to fund up to 12 weeks of paid family and medical leave. However, the measure has little chance in the Senate.

Republicans are expected to continue exploring a variety of paid leave proposals. GOP lawmakers included a temporary tax credit for qualifying employers providing paid family and medical leave in tax cut legislation enacted in December 2017. The lead author of that provision, Sen. Deb Fischer, R-NE, may again offer a bill ([S 3412](#)) to extend the credit three more years through 2022, but support from Democrats is unlikely.

Another idea floated last year ([S 3345](#)) would let people draw Social Security benefits to take family or medical leave, and then delay their checks past retirement age. Another business-friendly proposal from last year — the Workflex in the 21st Century Act ([HR 4219](#)) — would relieve multistate employers from tracking and complying with ever-growing state and local paid leave and work-scheduling laws by establishing a voluntary, national standard under ERISA. Even if reintroduced this year, however, the bill would face long odds in the House.

## ACTION STEPS

Employers should monitor congressional developments and consider engaging in advocacy activities through their representatives in Washington or plan sponsor trade groups.

## RELATED RESOURCES

### Non-Mercer Resources

- [Proposed Rule to Restrict Drugmaker Rebates to PBMs](#) (Federal Register, Feb. 6, 2019)
- [Committee Hearing: Drug Pricing in America: A Prescription for Change, Part I](#) (Senate Finance Committee, Jan. 29, 2019)
- [HHS Proposed Notice of Benefit and Payment Parameters for 2020](#) (Federal Register, Jan. 24, 2019)
- [Press Release: Grassley Announces First Finance Committee Hearing of 116th Congress](#) (Senate Finance Committee, Jan. 23, 2019)
- [S 64](#), Preserve Access to Affordable Generics and Biosimilars Act (Congress, Jan. 9, 2019)
- [S 61](#), Safe and Affordable Drugs from Canada Act (Congress, Jan. 9, 2019)
- [PL 115-263](#), Patient Right to Know Drug Prices Act (Congress, Oct. 10, 2018)
- [PL 115-262](#), Know the Lowest Price Act (Congress, Oct. 10, 2018)

- [Discussion Draft](#), Protecting Patients From Surprise Medical Bills Act (Sen. Bill Cassidy, Sept. 28, 2018)
- [S 3412](#), Paid Family Leave Pilot Extension Act of 2018 (Congress, Sept. 6, 2018)
- [S 3345](#), Economic Security for New Parents Act (Senate, Aug. 1, 2018)
- [HR 6311](#), Increasing Access to Lower Premium Plans and Expanding HSAs Act (Congress, July 25, 2018)
- [HR 6199](#), Restoring Access to Medication and Modernizing Health (Congress, July 25, 2018)
- [HR 4219](#), Workflex in the 21st Century Act (House, July 24, 2018)
- [Drug Pricing Blueprint and Updates](#) (HHS, June 14, 2018)
- [American Patients First: Trump Administration Blueprint to Lower Drug Prices and Reduce Out-of-Pocket Costs](#) (White House, May 11, 2018)
- [Press Release: President Donald J. Trump's Blueprint To Lower Drug Prices](#) (White House, May 11, 2018)
- [Notice 2018-12](#) (IRS, March 5, 2018)
- [PL 115-123](#), Bipartisan Budget Act of 2018 (Congress, Feb. 9, 2018)
- [A Better Deal — Lowering the Costs of Prescription Drugs](#) (House Democrats, July 24, 2017)
- [HR 947](#) and [S 337](#), the Family and Medical Insurance Leave (FAMILY) Act (Congress, Feb. 7, 2017)
- [Universal Access, Lower Cost — Why the US Needs a Single-Payer Health Care System](#) (Sen. Sanders, May 21, 2014)

#### Related Mercer Content

- [Trends in Disability and Leaves of Absence — New Solutions to Old Problems](#) (Jan. 24, 2019)
- [The Pressure Is on to Modernize Time-Off Benefits: 6 Survey Findings](#) (Jan. 16, 2019)
- [Employers Stepping Up, Not Stepping Away From, CDHPs](#) (Nov. 8, 2018)
- [Bipartisan Opioids, Pharmacy 'Gag Clause' Bills Advancing in Congress](#) (Sept. 20, 2018)
- [5 Things to Know About 'Medicare For All'](#) (Aug. 2, 2018)

- [3 Things You Need to Know About Congress' Effort to Expand HSAs](#) (July 25, 2018)
- [How HSAs Bend the Cost Curve — Making the Case to Congress](#) (June 8, 2018)

*Note: Mercer is not engaged in the practice of law, accounting or medicine, and this article, which may contain commentary on legal, tax or medical issues or regulations, does not constitute and is not a substitute for legal, tax or medical advice. Mercer recommends that readers of this article secure the advice of legal or tax counsel or a medical expert regarding any legal, tax or medical matters related to this article or otherwise.*