

Healthcare & Life Sciences Practice

Drug Pricing Digest

September 27, 2021 | Number 11

Drug Pricing Initiatives: Democrats are continuing to debate the reconciliation package that contains many of President Biden's domestic policy initiatives, including with respect to drug pricing. The budget reconciliation process allows passage in both chambers of Congress by a simple majority, but some Democratic Senators, including Joe Manchin of West Virginia and Kyrsten Sinema of Arizona, oppose the measure's \$3.5 trillion price tag. All 50 Democratic votes in the Senate would be needed for passage, with Vice President Kamala Harris casting the tie-breaking vote. A vote on the reconciliation package was scheduled for today, September 27, but whether the vote will proceed as scheduled is unclear.

Sources: [Bloomberg Law](#), Politico ([link](#), [link](#)), InsideHealthPolicy ([link](#), [link](#), [link](#), [link](#))

Some Democratic Representatives, including Kurt Schrader of Oregon and Scott Peters of California, introduced their own drug pricing [legislation](#) as an alternative to [H.R. 3](#) (the Elijah E. Cummings Lower Drug Costs Now Act), the Democratic drug pricing measure that would, among other things, empower the Department of Health and Human Services (HHS) to negotiate drug prices directly with manufacturers, subject to a cap based on international reference pricing.

Sources: [Pink Sheet](#), InsideHealthPolicy ([link](#), [link](#)), Bloomberg Law ([link](#), [link](#)), Politico ([link](#), [link](#), [link](#))

While much of the conversation in Congress is focused on how to pay for various Democratic policy initiatives, such as expanding Medicare benefits, other stakeholders continue to debate the merits and implications of H.R. 3.

Sources: [Politico](#), [BioWorld](#), [Bloomberg Law](#)

MEDICAID DRUG REBATE PROGRAM (MDRP)

No developments to report.

340B PROGRAM

Contract Pharmacy Updates: The Health Resources and Services Administration (HRSA) has invoked the 2019 Civil Monetary Penalties [regulation](#) and referred six manufacturers that have adopted contract pharmacy policies to the HHS Office of the Inspector General (OIG). HRSA posted the letters it sent to the manufacturers on its [website](#).

Sources: [Bloomberg Law](#), [InsideHealthPolicy](#), [340B Report](#)

Report Points to High Drug Costs at 340B Hospitals: The Community Oncology Alliance (COA) released a [report](#) that examined drug prices charged by 340B hospitals. Among other findings, the report noted that the "spread" between the discounted 340B purchase price and the price charged to insurers or patients in 340B hospitals "is 3.8 times the median," and that these hospitals "are not reducing prices they charge insurers or patients when their acquisition prices decline, negating efforts to reduce prices at the manufacturer level." The report also noted that "340B hospitals charge cash-paying customers the same as the median price of insurers, i.e., 3.8 times their acquisition costs to patients paying cash."

In short, to the extent 340B institutions fulfill their mission of providing lower cost care, we are not seeing it reflected in their drug prices.”

Source: [Pink Sheet](#)

MEDICARE PART B

No developments to report.

STATE LAW DEVELOPMENTS

North Carolina Enacts Law Regulating PBMs: North Carolina is the latest state to enact legislation seeking to regulate pharmacy benefit managers (PBMs), including in relation to 340B covered entities and their contract pharmacies.

Source: [340B Report](#)

If you have questions about the Drug Pricing Digest, please contact the Government Price Reporting team listed below or the Latham lawyer with whom you normally consult:

Christopher H. Schott

chris.schott@lw.com
+1.202.637.2208
Washington, D.C.

Stuart S. Kurlander

stuart.kurlander@lw.com
+1.202.637.2169
Washington, D.C.

Eric C. Greig

eric.greig@lw.com
+1.202.637.3330
Washington, D.C.

James M. Deal

jamie.deal@lw.com
+1.202.637.2290
Washington, D.C.

Ali Lakhani

ali.lakhani@lw.com
+1.202.637.2271
Washington, D.C.

Maria Malas

maria.malas@lw.com
+1.202.637.2334
Washington, D.C.

Lee B. Staley

lee.staley@lw.com
+1.617.880.4663
Boston

The Drug Pricing Digest is published by Latham & Watkins as a news reporting service to clients and other friends. Sources listed in this digest cannot be supplied by Latham & Watkins LLP and may require subscription access. The information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the lawyer with whom you normally consult. The invitation to contact is not a solicitation for legal work under the laws of any jurisdiction in which Latham lawyers are not authorized to practice. A complete list of Latham’s thought leadership publications can be found at www.lw.com. If you wish to update your contact details or customize the information you receive from Latham, [visit our subscriber page](#).
