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POLITICO Pulse

Examining the latest in health care policy every weekday morning

About The Author



Dan Diamond is the author of [“Politico Pulse,”](#) the must-read morning briefing on health care politics and policy. He's also the creator of [PULSE CHECK](#), the popular podcast that features weekly conversations with some of the most interesting and influential people in health care.

Before joining POLITICO, Diamond edited the Advisory Board Daily Briefing, served as the Advisory Board's senior director of news and communications and created and hosted the popular Weekly Briefing health care podcast. He also covered health care policy, business, and strategy for FORBES. His work has appeared at Vox, Kaiser Health News and other publications.

Diamond is a graduate of the University of Pennsylvania and has been a guest on NPR's "All Things Considered," the BBC, the NBC Nightly News, the Dan Patrick Show, KQED's "Forum" and other programs. He was recently named a 2015-2016 fellow of the Association of Health Care Journalists.

Senate agrees: Tom Price is right for HHS Secretary

By Dan Diamond

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SENATE AGREES: PRICE IS RIGHT FOR HHS — Tom Price is officially HHS Secretary, after the Senate voted 52 to 47 along party-lines to confirm him early this morning.

Democrats spent weeks raising [questions](#) about Price's ethics — after his stock trades were linked to his legislative actions — and warning that he would cut Medicare, but their arguments didn't slow Republicans.

— **What the industry is saying.** Price was widely supported by trade associations, who say they're looking forward to working with him on health reforms.

"We congratulate Rep. Price on his confirmation," said Scott Serota, the CEO of the Blue Cross and Blue Shield Association, in a statement. "Given the problems in the current individual market, we will work to ensure a smooth transition to a better, more competitive private marketplace with minimal disruption for our members."

"His experience as a thoughtful detailed-oriented legislator, combined with his decades working in the medical field make him uniquely qualified," added Chip Kahn, head of the Federation of American Hospitals. "We look forward to working with Secretary Price to make sure hospitals have the resources to provide access to essential health services in the communities we serve."

But many patient advocacy groups were alarmed. "Secretary Price [seems] to support every policy change that would enrich doctors, even if it means exposing patients to surprise medical bills or spiking premiums and cost-sharing," Anthony Wright of Health Access California said. "Consumers should be concerned."

— **What's waiting for Price at HHS.** The Georgia Republican has been positioned as a key figure in the ACA repeal-and-replace effort, with President Donald Trump pledging to release his own health plan after Price's confirmation.

Congressional Republicans are hoping Price's arrival at HHS will bring some direction to their efforts, and clarity about what's coming out of the White House. Pro's Adam Cancryn has [more](#).

... But within HHS, there's a possible culture clash looming. Many career staffers who worked on expanding coverage and executing on other ACA priorities are awaiting instructions from Price to potentially reverse course and dismantle elements of the health law.

... POLITICO eHealth's David Pittman also [details](#) some of the challenges that the new HHS Secretary is facing in health IT and with Medicare's physician payment law.

"A Price-led HHS won't have a great deal of time before it needs to alert providers as to what the 2018 version of the MACRA law will look like," David writes. "CMS bent over backward to make it easy for doctors in 2017 by offering them a 'pick-your-pace' format."

Price was confirmed on the 21st day of Trump's presidency. Kathleen Sebelius, meanwhile, wasn't confirmed until the 98th day of President Barack Obama's first term, after Obama's first pick for HHS Secretary — Tom Daschle — withdrew his nomination over unpaid taxes.

MEANWHILE: SEEMA VERMA HEARING SCHEDULED FOR FEB. 16 — Verma, who's tapped to be CMS administrator and would be a key partner to Price in efforts to reform Medicare, Medicaid and the Affordable Care Act, will face the Senate Finance Committee at 10 a.m. next Thursday.

THANK GOODNESS IT'S FRIDAY PULSE — Where we discovered [this](#) rare story of a schemer trying to get *into* a hospital, not out of it. (All to sit by a window and watch a soccer game next door.) The would-be patient may have hit on an accidental strategy for hospitals trying to lower their bed count — start increasing your window occupancy instead.

TOWN HALLS

In Tennessee, Diane Black faces tough ACA questions. One questioner flustered the congresswoman, CNN's MJ Lee reports, by pushing her on the need for the individual mandate and whether more Americans would be covered if not for the "political game" being played with ACA coverage expansion. Black was booed by constituents as she left. [More](#).

In Utah, Jason Chaffetz booed at rowdy town hall too. One woman who said she depended on Planned Parenthood for regular cancer screenings [pressed](#) the congressman on his plans to defund the organization. "Why are you trying to take that vital health provider away from women like me?" she asked.

Chaffetz, who first spent nearly two minutes talking about his family's own brushes with cancer, eventually said that he thought there were better and less controversial ways to direct that funding, prompting [boos](#) from the crowd.

How one GOP congressman tamed pro-Obamacare protesters. Rep. Justin Amash (R-Mich.) kept his cool amid an angry crowd that largely wanted to keep the ACA, Pro's Rachael Bade reports.

After one constituent pressed Amash to commit to safeguarding protections for people with pre-existing conditions, the congressman said he wouldn't do it, leading to angry shouting. Amash at that moment had to pause the conversation, telling the crowd that "yelling at each other does not resolve the problem." [More](#).

THE ECONOMY

FIRST IN PULSE: Health care price growth in 2016 doubled from 2012. Health care prices last year were up 2.1 percent, the second straight year of at least 2.0 percent growth, according to new Altarum Institute briefs out this morning. In 2012, price growth was only 1.1 percent — the all-time low rate, Altarum notes.

Says Altarum's Paul Hughes-Cromwick: "Following a period of extraordinarily low health care price growth — partly because of special health factors such as Affordable Care Act payment policies and the sequester, and partly because of downward price pressure from the economy writ large — we now see a more normal 2 percent rate."

— **Is health care hiring slowing down?** Altarum also notes that the health care sector only added 18,000 jobs in January, down from the 12-month average of 31,000 jobs and one of the lowest figures since the ACA passed. However, January's numbers are only an initial estimate, which means the number could be revised up.

"We can't call the low January growth a slowdown yet, although it's interesting that slower growth was seen in both hospitals and ambulatory care settings, both of which grew at half their usual pace," Hughes-Cromwick said. More: <http://www.altarum.org/HealthIndicators>

EYE ON PHARMA

Double whammy? New drug approval raises concerns about pricing, abuse of rare disease incentives. The FDA approved Marathon Pharmaceutical's Emflaza (deflazacort) to treat patients age five and older with Duchenne muscular dystrophy, a rare genetic disorder that typically kills patients in early adulthood.

... This is the first time the drug has been approved for any use in the U.S., however FDA and Marathon note that steroids like Emflaza are commonly used around the world to treat the disease. The approval is raising red flags among health policy experts who say this looks like another case of a drug company abusing incentives designed to encourage new innovations for patients.

... But a company spokesperson said it would be unfair to compare the drug's U.S. price to its cost overseas, where there are generic alternatives and Emflaza can be sold to treat multiple conditions. The company also argues that only 50 percent of people with Duchenne are currently treated with steroids, and that 90 percent of U.S. patients are not able to access the overseas version of Emflaza.

Keep reading: [More for Pros](#).

Regeneron probed by DOJ for drug coupon program. The company became the latest drugmaker to [announce](#) it has received a subpoena from the Justice Department related to its support of nonprofits that provide financial assistance to patients seeking the company's drugs. The U.S. Attorney's Office for the District of Massachusetts requested documentation related to its patient support efforts in January, Regeneron said yesterday in a financial filing.

Patient assistance programs have come under scrutiny as part of the drug pricing discussion. Payers allege the programs can be used to steer patients to costlier drugs when cheaper options are available, creating a heavier burden for the entire healthcare system as the coupons only cover copays, not the remainder paid by insurance companies. Drug companies have to be careful how they administer these coupons when they are provided to patients on federal health care programs or they can risk anti-kickback charges.

IN THE COURTS

Risk corridors cases will likely be decided by appellate court. Moda Health won a big legal victory yesterday when a judge in the U.S. Court of Federal Claims [ruled](#) that the insurer is entitled to \$214 million in risk corridor payments. But whether the federal government is ultimately on the hook for that money — and potentially billions more owed to other health plans — will almost certainly be determined on appeal, Pro's Paul Demko notes.

That's because there have already been conflicting rulings by judges in the federal claims court. In November, a judge ruled that Land of Lincoln Health was not entitled to unpaid risk corridors funds and dismissed its lawsuit. That case is now on appeal and is likely to be the first one heard by the U.S. Court of Appeals for the Federal Circuit. Whatever happens there will be binding for

judges handling other risk corridors lawsuits, according to Tim Jost, an expert on Obamacare legal issues.

... The stakes are huge for health plans. Because Republicans required the program to be budget neutral, there was a more than \$8 billion shortfall in funding for the first two years.

There are at least a dozen cases pending before the federal claims court, including a class-action lawsuit filed by Health Republic Insurance of Oregon, a nonprofit plan that is no longer in business. "I think this bodes incredibly well," said Dawn Bonder, Health Republic's former CEO, of the Moda Health ruling. "I still see a long road ahead."

AROUND THE NATION

California: Most residents want the ACA to stay. Just over half of Californians — 53 percent — are against repealing Obamacare, according to a new statewide survey from the Public Policy Institute of California. About a quarter want Congress to wait to repeal it until details of a replacement plan can be announced, while 16 percent want the health law to be nixed immediately, Pro's Victoria Colliver reports.

The poll of more than 1,700 adults, conducted Jan. 22-31, found the state's residents gave the new president generally low marks across the board on a variety of key issues including health, immigration and the environment. There were some stark partisan differences on some issues (80 percent of Republicans want the ACA repealed) but abortion rights had solid bipartisan support.

Overall, 71 percent of Californians said the government should not interfere with a woman's access to abortion. Here's the breakdown of Roe. V. Wade support by party lines: 87 percent of Democrats, 75 percent of independents and 60 percent of Republicans.

California: Plans may be failing at providing timely access. While state law requires insurers to provide patients with timely access to care, a new [report](#) from the Department of Managed Health Care found that most plans aren't complying.

The DMHC requires that plans provide no more than a 48-hour wait for urgent appointment and 10 business days for a non-urgent primary-care visit, for example. But the report found that 90 percent of reporting health plans — 36 out of 40 — failed to submit accurate timely access compliance data for 2015, or failed to follow the mandatory methodology. The DMHC's enforcement unit plans to investigate, Pro's Victoria Colliver reports.

Advocacy: Safety-net groups push to save Medicaid. Several nationwide organizations representing the interests of low-income Americans, mental health patients, recovering addicts, the homeless, institutionalized and disabled are rallying their supporters to fight federal cuts to Medicaid and other ACA changes. The National Alliance on Mental Illness, the US Conference of Mayors, the Arc, the National Mental Health Association, the National Council on Independent Living, Disability Policy Collaboration, and the Corporation for Supportive Housing, to name a few, are undertaking grass-roots campaigns to convince Congress to reject efforts to reduce Medicaid benefits and coverage.

WHAT WE'RE READING

The Trump administration has stripped positive references to the ACA from HealthCare.gov, Paige Winfield Cunningham reports at the Washington Examiner. [More](#).

The Heritage Foundation is out with its latest look at repealing and replacing Obamacare. [More](#).

Lanhee Chen and Micah Weinberg argue in Health Affairs that California stands to gain from working with Trump on health care issues. [More](#).

Writing in Health Affairs, Elaine Schattner opens up on her truncated career as a doctor and why the health of physicians needs more protections. [More](#).

In the Daily Briefing, Josh Zeitlin examines — and dismantles — Steven Brill's argument purporting to measure health care executive pay by the number of patient stays. [More](#).

Professor Nick Bagley isn't shocked that Moda Health won a \$214 million judgment against the government for failing to pay up its risk corridor money. [More](#).