



## The Daily Dish

# Health Policy and Build Back Better

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The 2020 presidential campaign featured many enormous health proposals – Medicare for All, public options, and others. The early versions of what has become the Build Back Better Act (BBBA) featured expanding Affordable Care Act (ACA) subsidies and making them permanent, new benefits (hearing, dental, and vision) for traditional Medicare, negotiating drug prices, and more.

But with the passage of time, and the emergence of political opposition, the House is planning to vote on a much slimmer set of proposals. As [detailed](#) by Chris Holt, the BBBA: (a) expands eligibility for ACA subsidies and makes those subsidies more generous – but only until 2026. AAF’s Center for Health and Economy [estimates](#) this would increase the number of insured individuals by 2.2 million in 2022, increasing to 3.9 million in 2025 – at a cost of \$272 billion; (b) includes some hastily agreed-upon drug price “negotiation” provisions that are thinly disguised price-fixing; and (c) redesigns the Part D benefit to cap beneficiaries’ out-of-pocket spending on drugs.

Of these, the two most interesting are the drug provisions. The redesign of the Part D benefit is something that Tara O’Neill Hayes of AAF first [proposed](#) in 2018. Capping the maximum financial exposure for a senior should be part of any insurance and, thus, is long overdue. In addition, the combination of insurers and prescription drug manufacturers would be on the hook for more of the costs – thus sharpening the incentives to bargain low prices for drugs.

The drug pricing ideas are simply dangerous. The BBBA sets a ceiling for negotiated price of between 40-75 percent of the non-federal average manufacturer price (AMP), scaling down depending on how far the drug is past its initial exclusivity period. (The astute reader will note that one cannot know the outcome of a negotiation in advance, so these are not really negotiations.) But the really important feature is an excise tax of up to 95 percent on sales of a drug where the manufacturer has not agreed to the Secretary of the Department of

Health and Human Services' (HHS) target price.

What drugs face negotiated prices? As noted by Holt, "Under the proposal, beginning in 2025, the Secretary of HHS would be authorized to "negotiate" the prices of up to 10 "negotiation-eligible drugs." In 2026 and 2027, the cap increases to 15 drugs annually, and rises to 20 drugs in 2028 and beyond. Part B drugs would be exempt until 2027. All insulin products would be able to be negotiated in addition to the stated yearly caps." Finally, eligible drugs are those with high spending (defined in the bill) that have had 7 (drugs) or 11 (biologics) years of exclusivity.

Notice, however, that if these provisions are in place it would be relatively easy to expand the number of drugs per year and the eligibility of drugs for negotiation. These provisions are as much a threat to biopharmaceutical innovation as the original legislation [H.R. 3](#).