Health Industry Alert

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Getting to Know Chiquita Brooks-LaSure, Reported Administrator-designate of the Centers for Medicare & Medicaid Services

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On February 17, 2021, it was reported that President Biden would nominate Chiquita Brooks-LaSure as Administrator of the Centers for Medicare & Medicaid Services (CMS), the largest operating division of the U.S. Department of Health and Human Services (HHS).

The CMS Administrator enjoys considerable influence. Administrator-designate Brooks-LaSure, if confirmed, will run the largest HHS operating division with more than $1 trillion in annual expenditures, more than 6,000 employees, 10 offices around the country, regulatory oversight of nearly all health care providers in the nation and control of federal health programs covering 145 million Americans, including Medicare, Medicaid, the Children's Health Insurance Program (CHIP) and the Affordable Care Act (ACA) marketplaces. Because of this role, the Administrator and her actions often have wide-reaching effects on health care, even beyond the programs CMS administers.

The position of CMS Administrator affords the holder incredible influence in and out of government. As such, stakeholders will be interested to learn about Administrator-designate LaSure's past policy positions in order to understand the expertise and skills she will bring to bear, as well as her potential priorities. This alert is a high-level review of Brooks-LaSure's publicly available writings and testimony, as well as important preexisting statutory obligations for CMS, and is designed to help stakeholders understand areas she might prioritize if confirmed.

Biography

Administrator-designate Brooks-LaSure earned an A.B. in Politics from Princeton University in 1996 and a Master of Public Policy from Georgetown University in 1999. She began her career at the Office of Management and Budget (OMB) as a program examiner and lead Medicaid analyst. She then moved to the U.S. House Committee on Ways and Means' Democratic staff, where she worked on the ACA and the Medicare Improvements for Patients and Providers Act (MIPPA) of 2008. Brooks-LaSure then joined the Center for Consumer Information and Insurance Oversight (CCIIO) within CMS, which oversees federal health insurance-related laws and the

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ACA. There, she led ACA implementation with respect to coverage and insurance reform during the Obama-Biden administration.

Currently, she is Managing Director of Manatt Health at Manatt, Phelps & Phillips, LLP, where she consults on health care financing issues. She also serves on the board of FAIRHealth, a nonprofit working to increase health care cost transparency. Additionally, she was a consultant for The Commonwealth Fund, a private foundation that aims to improve access, quality and efficiency in health care, especially for vulnerable populations (including low-income individuals, the uninsured and people of color). In September 2020, Virginia Governor Ralph Northam appointed Brooks-LaSure to the Virginia Health Benefit Exchange Advisory Council. Brooks-LaSure also led the HHS agency review team during the Biden-Harris transition.

Health Care Coverage Expansion

Consistent with the health policy priorities of the Obama-Biden Administration – and now the Biden-Harris administration – Brooks-LaSure has been most active on issues related to the expansion of health care coverage. Since she moved to the private sector, she has been a thought-leader on ways to expand coverage through the ACA and novel state-based innovations.

Most recently, Brooks-LaSure authored a paper for *Health Affairs* defending the ACA's record in increasing health care coverage. She noted that coverage for the poor "remains the most significant unfinished business of the ACA," which she said is the result of 14 states declining to expand Medicaid in the years since the law was passed. She described several possible policy proposals to address this lack of coverage among some segments of the population. Among these is to financially encourage states to expand Medicaid by temporarily increasing the Federal Medical Assistance Percentage (FMAP) to 100 percent and to expand eligibility for marketplace subsidies. The House Committee on Energy and Commerce included provisions in its budget reconciliation package to increase the FMAP for expansion states to 95 percent over a two-year period.

In June 2019, Brooks-LaSure testified before the U.S. House Committee on Ways and Means in a hearing titled "Hearing on Pathways to Universal Health Coverage." The hearing was reportedly designed to respond to pressure from House Democratic Caucus progressives supporting Medicare-for-All proposals and was described by one media outlet as "the second ever hearing on Medicare for All." At the hearing, Chairman Richard Neal (D-MA), introduced Brooks-LaSure as an expert who "examines State and Federal health reform policy and proposals, including the buy-in and public option opportunities."

In her testimony, Brooks-LaSure lauded the ACA for its expansion of health care coverage, but cautioned that she believed more must be done, saying, "14 States have not expanded Medicaid, leaving 2.5 million Americans in the coverage gap." She provided an overview of proposals that would retain the existing health insurance paradigm while expanding coverage, including a Medicare buy-in option for non-eligible individuals while keeping the current program intact.

Under questioning at the 2019 hearing from Rep. Dan Kildee (D-MI) regarding a Medicare buy-in option, Brooks-LaSure emphasized Medicare's popularity and the fact that existing buy-in proposals keep Medicare program funding separate, in order "to preserve the Medicare program as it is and make sure it is sustainable." She identified

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the target for this policy as individuals who are just below the Medicare age and right above the ACA subsidy level, saying “having a stable option across the country would be helpful,” and that it “would help the individual market.” This, she argued, would move older people out of the ACA marketplaces and reduce costs for younger people.

This Medicare buy-in proposal is similar to proposals supported by Ways & Means Democratic Members, namely Rep Brian Higgins (D-NY), who introduced H.R. 1346, Medicare Buy-In and Health Care Stabilization Act of 2019 in the 116th Congress with 51 Democratic cosponsors, including other Committee Members. This appears to go beyond Biden campaign literature, which promises an option “like Medicare,” as opposed to a Medicare buy-in, strictly speaking.

Brooks-LaSure has done extensive work on buy-in proposals. For example, in 2018, she co-authored a presentation to the New Mexico Legislative Health and Human Services Committee titled “Evaluating Medicaid Buy-in Options for New Mexico.” The presentation lays out four options for buy-in plans, ranked from lowest potential enrollment (targeted Medicaid Buy-in) to highest (Medicaid Buy-in for All), with the latter appearing to be the recommended path. Additionally, Brooks-LaSure and her colleagues at Manatt Health authored a Medicaid buy-in issue brief that describes in great detail several considerations for states considering a buy-in and called Medicaid buy-in “chief among the emerging state-based solutions.”

Brooks-LaSure seems a proponent of state-based innovations, saying their advantage is that they can be tailored to the needs of a state and function as an experiment for national reforms. The federal government should, however, support state innovation through “additional authority, funding, or the ability to intersect with existing Federal programs,” she has said.

At the 2019 Ways & Means hearing, Rep. Brad Schneider (D-IL) asked her opinion on a so-called “public option.” Brooks-LaSure was open to a public option, saying it “could go a long way to lowering premiums and making coverage more affordable” and “having a stable option across the country is a very important measure.” Also in 2019, in an article describing various public option proposals, Brooks-LaSure characterized the public option as meaning “the government being more prescriptive…there’s more of the state weighing in.”

Equity

A common theme in both the Biden administration’s early efforts and Administrator-designate Brooks LaSure’s publications and testimony is a connection between health care equity – particularly for mothers – and increased enrollment in federal programs, such as Medicaid. Stakeholders can expect Brooks-LaSure to prioritize equity and potentially propose to collect data regarding equity and impose new or enhanced requirements promoting equity.

In the 2019 Ways and Means Committee hearing on universal health care, Brooks-LaSure emphasized inequities in the health care system. She cited maternal mortality statistics, indicating “African American women, regardless of insurance status, are four times more likely to die in childbirth than white women.” In her view, the COVID-19 pandemic has illustrated underlying “cracks in our health system,” that could be corrected by Medicaid expansion, saying poor individuals have “no access to coverage because their states have not expanded Medicaid.”

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In a 2020 article on maternal health disparities, Brooks-LaSure emphasized that key challenges facing many pregnant women are complex and changing benefits eligibility and maintaining continuity of coverage. Brooks-LaSure's preferred solution is to ensure enrollment through health care navigators: "This is clearly an area where states can help make sure that the various groups that help people enroll in coverage today are funded and be aware of this issue." Also in 2020, she stated that she favored data collection from "providers and health insurers in Medicare, Medicaid, and private insurance," which is "a critical component to identifying and solving health inequities."

Administrator-designate Brooks-LaSure co-authored an issue brief in early 2020 describing barriers to coverage for pregnant and postpartum women in various situations, prescribing the following policy remedies: Medicaid expansion, continuing Medicaid/CHIP coverage for 12 months postpartum, cover otherwise ineligible immigrant women through CHIP, expedite enrollment for pregnant and postpartum women, cover and integrate doula services, cover and expand access to home visiting services, cover enhanced dental services for pregnant and postpartum women, promote statewide maternity levels of care framework, implement enhanced prenatal care models, integrate maternal behavioral screenings in prenatal, postpartum and pediatric services, prioritize engagement in state maternal health quality improvement initiatives, and measure, report, and assess maternal care measures for outcome disparities. The House Energy and Commerce Committee included a five-year authorization for states to extend Medicaid eligibility to women for 12 months postpartum in its 2021 budget reconciliation package.

Surprise Billing

CMS will be one of three federal agencies issuing regulations to implement provisions of the No Surprises Act included in the Consolidated Appropriations Act, 2021 (P.L. 116-260). These regulations will, among other things, establish a new independent dispute resolution process, through which issuers and non-contracted providers can resolve disputes over the appropriate rate of reimbursement. The regulations will also establish a methodology for issuers to determine a qualifying payment amount (QPA), which will serve as a benchmark for arbitrators in determining the reasonableness of provider reimbursement rates. CMS will certainly hear from both sides of this debate, and its challenge will be to create a process that is equitable and transparent.

FairHealth, where Brooks-LaSure serves on the Board of Directors, has engaged in educational discussions with federal and state lawmakers on approaches to banning surprise billing. In an issue brief on various policy solutions, FairHealth concludes, "Designing the best solution for every jurisdiction requires a nuanced evaluation of different options and a realistic appreciation of the implications of different legislative paths. Toward that end, it is critically important to use real-world data, reflecting actual healthcare economics in local markets, as a flashlight to shine in the corners of legislative discussions." If FairHealth's positions are any indication, we expect Brooks-LaSure to afford a level playing field for both providers and insurers in implementing a ban on surprise billing.

Financing and Offsets

With the desire for more coverage necessarily come questions about offsetting costs associated with that coverage, both to patients and the government. Administrator-designate Brooks-LaSure has proposed state-based reinsurance programs and

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subsidies, seemingly aligning herself with congressional Democrats, who passed legislation providing for such programs in the 116thCongress. To offset the cost of such programs, Brooks-LaSure has advocated for state-level taxes on health insurance, leveraging the recent repeal of the ACA's $8 billion Health Insurance Tax. She has identified funding as "the biggest issue" for states seeking 1332 reinsurance waivers, but said "it is a policy that is beneficial for everyone."

Other Priorities

Brooks-LaSure's has a limited public record on some key issues, and it is yet unclear how she would direct the agency to act with respect to these. First is telehealth, which has been the subject of a blanket waiver from CMS resulting from the Public Health Emergency as well as a permanent expansion of some key provisions. Stakeholders will be interested to know how Brooks-LaSure will work with Congress as it considers further telehealth expansion beyond CMS' existing statutory authority.

The second issue is pharmaceutical issues like drug pricing. Brooks-LaSure and her colleagues at Manatt have penned alerts regarding developments on the issue of drug pricing, but her policy positions on the matter are not evident from these publications. This area is one ripe for action during the Biden administration, as House Democrats set down their marker with H.R. 3 in the 116th Congress, and the Trump administration has previously proposed the hotly-debated Most Favored Nations Model. However, Biden-Harris Campaign literature is clear on the topic, decrying "abuse of power by prescription drug corporations." One early test for the CMS Administrator will be how to deal with the litigation over the Most Favored Nations Model. The model is currently enjoined, and the new administration will need to quickly decide whether to move forward with the model through issuance of a new rule, or take it back to the drawing table.

Another test will be whether the new Administrator supports the rebate rule. Of all of the drug pricing proposals, the rebate rule has the potential to be the most disruptive to the existing prescription drug pricing system. A mere nine days after inauguration, the new administration buckled under pressure from the pharmaceutical benefit manager (PBM) industry, who sued in DC District Court to delay the rule's effect. But the suspension is only temporary, and the new CMS Administrator may be asked to weigh in on the question of whether to move forward with the rule for 2023, and take on the PBM industry, or shelve the rule permanently.

Conclusion

CMS Administrator-designate Brooks-LaSure has been keenly focused on boosting health coverage and has been a thought leader, educating others about ways to expand coverage in innovative ways. She is expected to prioritize coverage during her term in the Humphrey Building. At the same time, she will face a lengthy "to-do" list including regulatory priorities advanced by the Biden-Harris administration, implementation of COVID-19 relief and other recent legislation, annual rulemakings and reconsideration of policies advanced under the prior administration. Stakeholders and policyholders alike will be interested to know how her focus will translate these many competing priorities into reality.

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