



## **U.S. Senate Committee on Health, Education, Labor & Pensions**

Nomination of Xavier Becerra to serve as Secretary of Health and Human Services

February 23, 2021

10:00 AM Hybrid in person/remote hearing

430 Dirksen Senate Office Building

### Purpose

*The purpose of this hearing is to examine the nomination of Xavier Becerra, of California, to be Secretary of Health and Human Services.*

### Members Present

- Chairman Murray
- Ranking Member Burr
- Senators Feinstein and Padilla (For Introductions)
- Senators Sanders, Casey, Collins, Baldwin, Cassidy, Murphy, Murkowski, Kaine, Braun, Hassan, Marshall, Smith, Rosen, Romney, Tuberville, Hickenlooper, and Moran (Committee Members)

### Absent Committee Members

- Senators Paul, Scott, and Lujan

### Witness

**Xavier Becerra**, Attorney General of California, nominee for Secretary of Health and Human Services

### Opening Statements

**Chairman Murray** said we have a lot of work to do and no time to waste. During President Trump's administration, the uninsured rate has gone up, as have prescription drug prices. Meanwhile, health inequities have grown deeper. President Trump allowed the COVID-19 pandemic to spiral out of control. We need to work with President Biden to take steps on COVID-19 relief and work swiftly to make sure HHS leaders are in place. I am hopeful the Senate will move quickly to confirm AG Becerra.

AG Becerra knows how to work with Congress; he served in the House for 24 years. There, he worked to pass laws that expanded coverage like CHIP and the Affordable Care Act (ACA). As California's AG, he has proven himself as executive leader by overseeing one of nation's largest justice departments. AG Becerra has fought for patients, not pharmaceutical companies, and won

settlements against drug companies for blocking cheaper generics. He will work with Congress to make sure every patient can get quality, affordable healthcare.

AG Becerra has held health companies accountable for putting workers at risk during the pandemic. He has also established an environmental justice unit in California's Department of Justice. He advocates on behalf of communities of color and is committed to fighting against pharma, opioids, tobacco, and polluters and for more affordable and quality healthcare for all communities. As Secretary of HHS, he will put special interest groups on notice and put science, data, and experts in the driver's seat.

AG Becerra is a first generation college student and would be the first Latino Secretary of HHS.

I look forward to working with him to get the pandemic under control and make progress on so many other fronts, including: reversing attacks on women's health, helping every family get quality/affordable healthcare, reunifying families separated at the border, rooting out systemic racism in our healthcare system, and building a strong public health system to tackle future pandemics, maternal mortality, mental health issues, and the opioid epidemic

**Ranking Member Burr** began his remarks by stating that we need experience at the helm to address today's health challenges.

My constituents are still burdened by ACA, but AG Becerra has supported expansion of the ACA and more government interference between patients and doctors. He supports Medicare For All, which would deny the American people the innovation and affordable options private sector offers

Additionally, incentives to innovate are the lynchpin to bringing hope to patients. As a congressional representative, AG Becerra advocated for march-in rights. The Secretary of HHS should not be someone who discourages development of treatments; march-in rights can have a chilling effect on countermeasure development.

To address our complex health challenges, we need sound policy experience. Members of Congress do not become subject matter experts and I am concerned AG Becerra does not have the necessary skills to do this. He doesn't have the appropriate respect for the private sector. He needs to prove his expertise in these hearings.

### Introductions

**Sen. Feinstein** said AG Becerra was a strong healthcare advocate for his constituents when we was in Congress. As AG, he has been staunch defender of the ACA, leading 20 states and DC in defense of the ACA before the Supreme Court. As part of his focus on protecting the health of Americans, he worked with the Nebraska AG, a Republican, to lead a bipartisan coalition of AGs to reduce youth exposure to tobacco products. He has also worked on a bipartisan basis with a multistate coalition of AGs to increase access to COVID-19 treatments and address the opioid epidemic. AG Becerra leads the second largest DOJ in the country and has major experience leading large and diverse organizations. He is well positioned to lead HHS successfully.

**Sen. Padilla** said, the pandemic has taken an incredible toll on our lives and communities, with deaths just surpassing half a million people. The devastation has disproportionately impacted working class communities and communities of color, similar to the one where AG Becerra grew up. These communities need someone who knows them. A recent LA Times news article showed the disparity in vaccination rates across Los Angeles (LA) county – wealthy neighborhoods being vaccinated at 5 times the rate of minority communities.

In Congress, AG Becerra was a strong supporter of reproductive health, protections for seniors, mental health parity, and CHIP. He was instrumental in drafting/passing the ACA, which helped provide healthcare access to millions of previously uninsured Americans.

As California AG, his mission has been to tackle structural inequalities. He was the leading force behind a lawsuit to protect ACA. Over past year, he has fought to protect frontline healthcare workers and stood up for homeowners struggling with mortgage payments. He is qualified to take on the challenges of this moment with equity and compassion

### Testimony

**Xavier Becerra** said the pandemic has killed 500,000 Americans, and many have had to die alone. Millions more have lost their jobs and healthcare. We need strong federal leadership to meet this moment. The mission of HHS is to advance the health and wellbeing of all Americans and that is core to who I am. My mom had a medical emergency as a child; the image is seared in my memory. We had insurance so we didn't have to face the threat of unpaid medical bills.

While in Congress, I worked to ensure everyone had insurance. As the AG of California, I created the healthcare rights and access unit as the Department of Justice, held opioid manufacturers accountable, took on hospitals and drug makers, and protected patient privacy. If confirmed, I will continue this type of work.

President Biden has ambitious goals when it comes to vaccines, testing, sequencing variants of the virus, and opening schools/business. As AG, I made COVID-19 treatments more readily available. I am ready to work with you to get this right.

We need access to quality affordable healthcare – I will work to strengthen Medicare and Medicaid and reduce the costs of healthcare and prescription drugs.

Human services are an essential component of HHS. I will work to support vulnerable children, strengthen Head Start, and expand access to childcare. We need to restore faith in public health institutions. I will always listen, keep an open mind, and look for common cause to improve the health and dignity of the American people.

### Questions and Answers

#### **Chairman Murray**

**Q:** More than 28 million people have been diagnosed with COVID-19 and more than 500,000 have died. The pandemic was made worse by a failure of leadership by the Trump administration. The Trump administration refused to stand up an adequate testing strategy, left states and tribes to

compete for limited supplies, failed to provide sufficient guidance, muzzled scientists, misled the public, and promulgated conspiracy theories. Will you empower HHS scientists and experts to be leaders in the nation's COVID-19 response?

**A:** Science must come first. We need to earn respect and trust.

**Q:** What can we do to make sure the public has trust and confidence in the vaccine?

**A:** People need to believe what we are asking them to do is the best course of action for their health. If we let experts lead, soon people will see the positive results. If we are transparent and accountable, we will earn their respect and make progress.

**Q:** In addition to trusting government, people should be able to trust that they have healthcare available when they need it. The Trump administration sabotaged the ACA through executive action and made healthcare harder to get/more expensive. We need to reverse the damage. Will you help ensure everyone has access?

**A:** Yes, this is part of my core mission – we will make sure we close all gaps and make sure everyone is covered.

### **Senator Collins**

**Q:** I want to talk about schools. About half of K-12 students are not spending anytime in classrooms. This is leading to losses in academic achievement, literacy, and social and emotional development, as well as putting stress on parents. Extended absences are causing large learning problems, especially for lower income students. In the Washington Post, two public health experts were critical of the school reopening guidelines – they suggested for students to be kept three feet apart with masks. The American academy of pediatrics has similarly said schools should weigh the benefits of 6 feet distancing with the downsides of remote learning. Won't maintaining this 6 foot recommendation prevent many schools from resuming full time learning?

**A:** The preeminent concern is safety of families. We will let science guide us and let experts determine when it is safe. Schools and education are a local issue. The federal government provides guidance but does not make the final decision.

**Q:** I held the first congressional hearing on the impact of COVID-19 on seniors living in nursing homes and congregate care facilities. We heard from numerous providers about the difficulty and expense of paying for additional staff. In my state, more than 12 nursing homes have closed in the past six years and more are struggling to keep open. The Biden administration did not include any money in the provider relief fund to help nursing homes. Do you support additional assistance to LTC Facilities, community health centers, and other providers?

**A:** We will support these providers.

### **Senator Sanders**

**Q:** The US is the only major country in the world that doesn't guarantee healthcare to all people. Ninety million Americans are uninsured or underinsured. We pay the highest prices in the world

for prescription drugs. What will you do to move this country forward to provide healthcare to all people and lower cost of prescription drugs?

**A:** We are going to build on the ACA. There is unanimous support for tackling high prescription drug costs – that will be one of my priorities.

**Q:** I want more specificity as to how we lower the cost of prescription drugs. We have been talking about this for decades

**A:** We can all agree we are paying too much. We need to go behind the curtain of how the drug companies reach pricing and prove collusion is going on. Then, we can undercut antitrust activity.

**Q:** We have a dysfunctional healthcare system. The primary healthcare system is awful, even people with insurance can't find a doctor when they need to. Are you supportive of FQHCs so we can make sure every American has access to decent health care?

**A:** Yes, we reduced the uninsured rate in my former congressional district because of community health centers.

**Q:** There are not enough providers in underserved areas. Are you supportive of expanding the National Health Service Corp?

**A:** Yes, we will place doctors where they are needed most.

**Q:** Life expectancy has gone down due to the pandemic, especially among the African American community. What can we do to improve healthcare access in minority communities?

**A:** We need to collect better data to find out where shortages are and provide better treatment. We need to reach out to these communities through local civic and religious leaders.

### **Senator Cassidy**

**Q:** I am concerned about your credentials. As to the 340B program, should we have a statutory definition of contract pharmacy or patient?

**A:** 340B is indispensable for underserved communities. It works with our safety net providers to make sure people have access to essential medications. We need to make sure the law is followed

**Q:** Are these definitions important?

**A:** I am willing to work with you to see if we have to move in that direction.

**Q:** Should we counter insulin price increases by requiring health plans to provide rebates to consumers?

**A:** We must continue to see the cost of prescription drug medications go down. The rebate program must be enforced.

**Q:** Should 100% of rebates go back to patient?

**A:** The rebate-ban rule was rushed. I will work with you.

**Senator Casey**

**Q:** The last administration took no action to stand up national advisory committees on seniors and disasters and the on people with disabilities and disasters. Further, an advisory committee on children and disasters has not been reestablished. Will you ensure HHS is fulfilling its obligation under the law to establish and maintain these three advisory committees?

**A:** Absolutely. My first job as an attorney was representing Americans who needed disability services. I established a disability rights bureau at the CA Department of Justice.

**Q:** Throughout your career, you've been interested in the social determinants of health. COVID-19 has shown we have a lot of work to do. How has your work prepared you to address health disparities?

**A:** We need to address them.

**Senator Murkowski**

**Q:** You represented a dense urban congressional district. How will you champion policies focused on rural communities?

**A:** We must make sure we are prepared to meet the unique needs of rural communities, including transportation obstacles and access to broadband for telehealth.

**Q:** Will you make sure funding for rural areas is prioritized?

**A:** I commit to talking with you and those who understand rural America. We will address disparities in an aggressive manner.

**Senator Baldwin**

**Q:** The previous administration never put a priority on public health and did not protect those with preexisting health conditions. They doubled down on efforts to sabotage the healthcare system. How would you repair our healthcare system and build back better?

**A:** We will strengthen the ACA. As the Biden administration has already started, we need an open enrollment period for Americans who have lost insurance. We also need to deal with the cliff Americans face if their income gets too high for tax credits under the ACA marketplace.

**Q:** We need funding to track emerging variants. How will you ensure all federal health agencies are working track mutations?

**A:** We need to coordinate, including with the Departments of Labor and Education.

**Senator Braun**

**Q:** Will you commit to not using taxpayer money for abortions?

**A:** We will follow the law when it comes to the use of federal resources.

**Q:** Do you agree galvanizing pharma was important to get vaccines?

**A:** We needed to get everyone to the table – private sector and the government. We have learned from COVID-19 that we can do things with a fast pace and still ensure safety

**Q:** Credit to the Trump administration?

**A:** Yes. It was the whole of government and private sector.

**Q:** The healthcare system is broken. Do you want to throw more government into a broken system? Will you push transparency before throwing more government?

**A:** The American people are entitled to know what they are buying. We will do robust enforcement to ensure price transparency.

**Senator Murphy**

**Q:** The real problem is price. You've done a lot of work in this area. Specifically in the Sutter Health case, you challenged the provider that had cornered the market to drive up the cost of baby deliveries. From your experience in ensuring competition to drive down prices, what can the federal government do?

**A:** We will work with Congress. We want to spur innovation and need the pharma industry to feel like we have their back to innovate, but we have to make sure we are getting our dollars' worth.

**Q:** Insurers have to cover mental health like they cover physical health, but it doesn't work that way. How can HHS push this issue forward and make sure insurance companies are providing the benefit they have promised?

**A:** We have to enforce the laws we have in place. We will coordinate with Department of Labor because they have a lot to do with implementation.

**Senator Romney**

**Q:** Most people agree partial birth abortion is awful. You voted against a ban on that – why?

**A:** People have different beliefs on this.

**Q:** How do we expand Medicare that is already on track to go bankrupt?

**A:** Medicare beneficiaries should not be the ones who suffer. Biden has proposed buying into Medicare at an earlier age and bringing in revenue from outside the Medicare fund.

**Q:** CA is known for high taxes and high regulation, and businesses have been leaving CA. Is CA working? Or making a mess of things?

**A:** CA is the fifth largest economic power in the world. We graduate more people from college than any other state. We have the #1 industry in tech, agriculture, manufacturing, entertainment, and tourism.

**Senator Kaine**

**Q:** I am concerned about the mental health needs of healthcare workers. Healthcare workers are worried about seeking counseling because of stigma. How would you prioritize the mental health of healthcare professionals?

**A:** We need to provide them with resources, make sure they are compensated appropriately, and make sure there is no stigma to getting mental health services.

**Q:** It is likely the public health emergency will extend throughout 2021. How will you work with governors to give them planning time?

**A:** Science and data will drive our decisions. We have to be in partnership with the folks who have to implement it. We will bring information to them early so they are part of the data-driven solution.

**Senator Hassan**

**Q:** I am concerned that progress on the opioid epidemic is in jeopardy because of a cut in state opioid response funding. Will you work with SAMHSA to make sure states don't experience a dramatic cut in state opioid response funding?

**A:** Yes.

**Q:** One hurdle to accessing support is the requirement that doctors receive permission to prescribe buprenorphine. Forty percent of counties lack a waiver practitioner. Will you work to eliminate the waiver?

**A:** Biden is supportive of moving forward.

**Q:** Surprise billing legislation has been signed into law. Responsibility to implement it will fall to HHS. We will need to implement this quickly – will you work with us on a bipartisan basis to ensure that one year from now, rules include strong protections for consumers?

**B:** Yes.

**Q:** What do we need to do to respond to new COVID-19 variants?

**A:** Sequencing is critical. We have to have scientists tell us what the next iteration of the virus may look like.

**Senator Rosen**

**Q:** Will you ensure data is up to date for making vaccine allocation decisions?

**A:** Yes, the data will be accurate. We want to send the vaccine where it is needed most.

**Q:** We have a provider shortage issues. Will you ensure states receive new graduate medical education slots? How do we improve provider shortages?

**A:** Biden is committed to adding 100,000 new public health workers to help states reach all communities and protect them with vaccines. We also have to be there long-term.

**Q:** What should we do in minority communities?

**A:** I'm committed to this issue.

**Senator Smith**

**Q:** What are your childcare priorities?

**A:** America realizes how important childcare workers are. We will use HHS tools to help stabilize the childcare system.

**Senator Tuberville**

**Q:** I am concerned about the freeze on Trump regulations. How do we get price of insulin down?

**A:** As to the freeze, every administration looks at the landscape to see where things are. We will get back to moving forward on insulin prices; patients have to come first.

**Q:** We are losing rural pharmacies because of PBMs. What is your plan with PBMs?

**A:** PBMs have a role but they can't gauge the price. They do play an indispensable part in dispensing medications. We have to keep them on their toes. They are supposed to get a good price for drugs people need.

**Senator Marshall**

**Q:** I will submit vaccine plans for the record; each state plan came in October 2020 in case anyone has forgotten. Pharmacy prices have stabilized over the past several years. What stabilized the price? What role do PBMs play? How many are there and what percent of the market do they control?

**A:** PBMs make sure we get prescription drugs to consumers. I will look into how many PBMs there are.

**Q:** There are 4 PBMs and they control over 80% of the market. What percentage of HHS staff are medical professionals?

**A:** A great number of them are. The team in place at HHS will have the expertise we need to do all the work.

**Q:** Value-based health care has been a priority of mine, between the regulatory sprint to coordinated care and prior authorization issue. How do you feel about value-based healthcare?

**A:** It will reduce visits and provide quality.

**Senator Moran**

**Q:** How will you protect integrity of the 340B program and make sure it works for providers and patients?

**A:** We will build on work done in the past. We cannot sacrifice patients. We will work with you and others to protect this indispensable program.

**Q:** Should HHS increase the number of kidney transplants?

**A:** Yes.

**Q:** Will you act against policies to reduce the number of kidney transplants?

**A:** We will work with you.

**Q:** The United Network for Organ Sharing is under bipartisan investigation, but there is still a policy set to be implemented mid-March that a large majority of transplant professionals oppose. Will you work with others to see the transplant program is improved, not harmed, and that organs donated in a region stay in that region?

**A:** Yes.

**Q:** There are a number of provisions in CARES and other legislation that waive requirements for telehealth, including reimbursement rates. Those, I hope, will garner your support. They are not just necessary during COVID-19, but after.

**A:** We will expand and advance telehealth.

**Senator Murray**

**Q:** How will you address health inequities?

**A:** There is a team at HHS that focuses on health equity. We will make sure NIH and CDC surveys include populations that are often left behind. We will reach out to these communities. The President's COVID-19 task force is focused on health equity.

**Q:** What actions will you take for affordable childcare?

**A:** I am committed to this.

**Senator Hickenlooper**

**Q:** How will you support small businesses in accessing the health insurance they need at affordable cost?

**A:** We can make sure our agencies are looking to hire small business to do contracting work.

**Q:** Many providers are small businesses. There is a projection that by 2033, we will have a physician shortage of upwards of 100,000. How do we increase primary care practices in underserved areas?

**A:** Reward PCPs.

**Q:** How would you respond to the health impacts of climate change?

**A:** I established an environmental justice bureau at CA's Department of Justice. We will work to address the health effects of climate change.

**Senator Marshall, round 2**

**Q:** Will you remove safety regulations for the abortion pill mifepristone?

**A:** As AG, I tried to make sure people had access to care without worrying about COVID-19 and that obstacles to getting safe care should be removed.

**Q:** The Office of Global Affairs is the diplomatic voice of HHS. I have concern with WHO. Specifically they have helped cover up the origins of this virus. Do you support being part of WHO?

**A:** President Biden is committed to being part of the WHO. Our security depends on controlling COVID-19 within our borders and outside them. We need to engage with global partners and make sure everyone is held accountable when we participate globally.

**Q:** We can have herd immunity in April or May if the president and governors do their jobs. What is your goal to have herd immunity?

**A:** President Biden is clear, we will push the limit in making us get there safely. 100 million shots within 100 days, but if trends continue that does bode well. President Biden has secured another 100 million doses so on course to have 600 million vaccines.

**Senator Burr**

I will submit my questions for the record.

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