

FINANCE COMMITTEE QUESTIONS FOR THE RECORD

**“Hearing to Consider the Nominations of Jay Curtis Shambaugh, of Maryland, to be an Under Secretary of the Treasury and Rebecca Lee Haffajee, of Massachusetts, to be an Assistant Secretary of Health and Human Services”
July 12, 2022**

Questions for the Record for Dr. Rebecca Haffajee

Chairman Ron Wyden (D-OR)

Question 1: Child Welfare Data Reporting

Dr. Haffajee, I'd like to raise a data-focused question concerning the Adoption and Foster Care Analysis and Reporting System—better known as AFCARS—which is housed in the Administration for Children and Families at HHS. I know this system is not squarely in ASPE's purview, but given your role, if confirmed, leading data analysis efforts across HHS, I feel this question deserves your attention.

The AFCARS system requires state foster care agencies to report on several key metrics, including how many youth are in foster care, when they enter and exit, what demographics of youth enter foster care, and placement details.

For years, I have been pushing for a meaningful modernization of this system. In 2020, the Trump Administration finalized an AFCARS rule that removed several important data elements that the Obama Administration was trying to include in a modernization effort. Included among the data elements that were removed were those related to LGBTQ+ youth.

I was thrilled to see President Biden issue an Executive Order last month that, among other things, directs HHS to study the disproportionate rates of removals that LGBTQ+ families face.

Dr. Haffajee, in line with those goals, what is your plan to pursue a meaningful modernization of AFCARS that captures key demographic information, like LGBTQ+ identity?

Answer: I strongly believe in the importance of data and evidence in driving decisions in the child welfare system and doing what is in the best interests of children. I understand the critical importance of AFCARS and I would, if confirmed, be happy to work with ACF and you to ensure that AFCARS is collecting and reporting demographic data that will help us to keep all children safe and move us towards a system of child and family wellbeing.

Question 2: Mental Health

Dr. Haffajee, mental health is an area that I know we both care about deeply. Disruption, grief, and economic uncertainty during COVID-19 mean access to mental health and substance use disorder care is more important than ever.

While mental health parity has been the law since 2008, I hear a great deal about administrative barriers to delay or discourage access to mental health care. For example, provider directories are often riddled with errors and include doctors who have been retired for years.

Dr. Haffajee, what are your top priorities for addressing access to mental health care?

Answer: Mental health and substance use challenges have been exacerbated by COVID-19. But even before the pandemic, this area of health was under-emphasized and under-funded. ASPE can play a critical role in strengthening our nation's behavioral health infrastructure and has demonstrated this already through its work on the HHS Overdose Prevention Strategy. If confirmed, I will continue to prioritize behavioral health, including supporting programs and initiatives across the continuum of prevention, intervention, treatment, and recovery support services; supporting the recruitment, training, and retention of culturally-competent and representative practitioners; offering support for family members whose loved ones may be in crisis; as well as strengthening enforcement of this country's mental health parity laws.

If confirmed, can you commit to publishing studies on how failure to comply with mental health parity affects access to necessary mental health and substance use disorder services?

Answer: Expanding access to medically necessary mental health and substance use disorder services is a priority for HHS and the Administration as a whole. I agree that the mental health parity law is an important policy tool to achieve this goal. HHS has actively supported implementation of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 through its operational divisions, such as SAMHSA and CMS, and across the government with the Departments of Labor and Treasury, as well as ONDCP. If confirmed, I will ensure that ASPE continues to provide the Secretary with the best available evidence to inform and strengthen HHS's many efforts to connect people who have mental health conditions and substance use disorders with the care they need in addition to other supportive social services.

Senator Chuck Grassley (R-IA)

Question 1:

The Finance Committee has had several Department of Health and Human Services (HHS) nominees commit to being responsive to Congress. Sadly, their words have not matched action. In 2021, it took Secretary Becerra 237 days to answer budget questions. I submitted questions to him again this year on April 12 and still awaiting answers. In February, I asked Surgeon General Murthy for follow-up answers to my questions on rural mental health policy and I'm still awaiting answers. **If you are confirmed, will you commit to providing timely responses to requests for information from all members of this Committee?**

Answer: I deeply respect the oversight function of this Committee for improving current policies and programs. If confirmed, I am committed to ensuring that the Department is responsive to oversight requests and provides Congress with the information that it needs consistent with appropriate law and regulation.

Question 2:

Last month, the Senate Drug Caucus held a hearing on the Administration's 2022 Drug Control Policy Strategy. The Centers for Disease Control and Prevention (CDC) reports that nearly 108,000 Americans died last year from a drug overdose. This is staggering and unacceptable. Iowa is no stranger to the drug crisis. Our communities have been hit hard by the impact of lethal drugs. This includes meth, fentanyl, and now the spread of deadly counterfeit pills. I believe the Biden administration's drug control policy could do a better job of focusing on the most lethal drugs facing us rather than making drugs more accessible. The permanent scheduling of all fentanyl related substances would be a start. **Should Congress permanently place fentanyl analogues in Schedule I while continuing research on the class?**

Answer: The overdose crisis plaguing our nation requires a forceful response that is rooted in evidence about what works to save lives, reduce the spread of disease, and address the underlying issue by engaging individuals in treatment productively so they achieve long-term recovery. The President put forward a proposal to permanently place fentanyl-related substances on Schedule I precisely because of their risks to public health. If confirmed, I will follow the law and commit to working with federal, state, tribal, local, and territorial public health leaders to address this deadly epidemic and its key drivers by deploying evidence-informed practices.

Question 3:

Earlier this year, I became concerned the Administration was permitting "smoking kits", which includes crack pipes, to be funded as part of a harm reduction grant program at the Department of Health and Human Services (HHS). Fortunately, the Administration called this effort off. However, a news report last week suggests that a New York City grantee is receiving approximately \$400,000 in HHS funding while offering smoking kits to addicts. An HHS spokesperson says that "no federal funding is used directly or through subsequent reimbursement of grantees to purchase pipes in safer smoking kits."

a. Do you believe "smoking kits" are an effective harm reduction strategy?

- b. The Biden administration is on the record against funding crack pipes with federal dollars. However, organizations receiving federal dollars are still providing “smoking kits.” How can the Biden administration ensure federal dollars aren’t funding “smoking kits” or “crack pipes”?**

Answer: As Secretary Becerra [stated](#) in clear terms: no federal funding will be used directly or through subsequent reimbursement of grantees to put pipes in safe smoking kits. I support evidence-based practical strategies that prevent deadly overdoses, reduce the spread of disease associated with drug use, and engage individuals that use drugs in treatment productively. If confirmed, I will work with the appropriate subject-matter experts on this issue and follow the law.

Question 4:

Last month, the Centers for Medicare & Medicaid Services (CMS) issued the first proposed regulations to implement the Rural Emergency Hospital (REH) Medicare designation. This is a new and voluntary Medicare program. It lets hospitals maintain essential medical services in their communities like 24/7 emergency care and outpatient care. I ask that CMS issue the rest of the proposed regulations timely and fairly. Rural hospitals cannot wait any longer. It’s important that CMS work closely with rural hospitals to ensure the regulations don’t hinder already struggling hospitals.

- a. Should CMS hold specific listening sessions with rural hospitals to ensure the REH regulations are fair and reasonable?**
- b. Should CMS issue the least administratively burden regulations for REH?**
- c. Do you have concerns about the current administrative and financial burdens rural hospitals face from federal regulations and how that may impact their ability to provide care? I want to note, I’m committed to ensuring hospitals provide high-quality and safe health care.**

Answer: Section 1861(kkk) of the Social Security Act, as added by the Consolidated Appropriations Act, 2021, provides for Medicare payment for items and services furnished by REHs on or after January 1, 2023, and CMS continues to work diligently to ensure that this provision is implemented by this date. REHs will offer the opportunity for current Critical Access Hospitals and rural hospitals with fewer than 50 beds to seek REH designation. In accordance with this provision, REHs are required to furnish emergency services and observation care, and they may elect to provide additional specified medical and health services on an outpatient basis.

By providing these services, rural communities will maintain access to health care that otherwise may not be available. CMS remains steadfast in its commitment to rural communities’ access to health care services and is focused on implementing the REH provision through rulemaking by January 1, 2023.

CMS will continue to engage stakeholders regarding the REH provision to ensure implementation consistent with the commitment above by seeking input from the rural community on specific proposed REH standards, including the ability of an REH to provide low-

risk childbirth-related labor and delivery services and whether CMS should require that an REH also provide outpatient surgical services in the event that surgical labor and delivery intervention is necessary. CMS is also requesting comments regarding whether it is appropriate for an REH to allow a doctor of medicine or osteopathy, a physician assistant, a nurse practitioner, or a clinical nurse specialist, with training or experience in emergency medicine, to be on call and immediately available by telephone or radio contact and available on site within specified timeframes.

Senator Rob Portman (R-OH)

Question 1: Fentanyl and Overdose Deaths

Dr. Haffajee – thank you for being with us today. The United States experienced an estimated 107,622 drug overdose deaths during 2021, an increase of nearly 15 percent from the 93,655 deaths estimated in 2020. The majority of these deaths are caused by fentanyl that can be laced into other drugs or even masked as other substances like pain medication or anti-anxiety medications. I understand that you have focused much of your career on the response to the opioid epidemic. I particularly appreciate your work on prescription drug monitoring programs and other ways to limit exposure to medications that are very addictive. I understand the Biden Administration is emphasizing harm reduction as a means to reduce the number of overdose deaths.

- **Aside from harm reduction efforts, what other steps would you take in this role to lower the number of people who are exposed to fentanyl and are losing their lives across the country?**
- **Do you think that the federal government should lead a clear campaign to get the message out that fentanyl is deadly and could be in any drug that doesn't come from a pharmacist?**

Answer: The overdose crisis plaguing our nation requires a forceful response that is rooted in evidence about what works to save lives, reduce the spread of disease, and address the underlying issue by engaging individuals in treatment productively so they achieve long-term recovery. The HHS Overdose Prevention Strategy includes prevention, harm reduction, evidence-based treatment, and recovery efforts, and includes steps to raise public awareness about overdose risks and prevention. If confirmed, I will follow the law and commit to working with federal, state, tribal, local, and territorial public health leaders to address this deadly epidemic and its key drivers by deploying evidence-informed practices.

Question 2 – Medication-Assisted Treatment (MAT) and TREATS Act

Next, I'd like to talk about increasing access to addiction treatment. As you know, the COVID-19 pandemic has tolled heavily on Americans' mental health. Given the latest overdose numbers, we need to continue to explore and pursue evidence-based policies that support access to treatment for substance use disorders, such as Medication-Assisted Treatment or MAT. That is why I introduced the TREATS Act with Senator Whitehouse to codify the flexibilities enacted during COVID to allow for the prescribing of MAT through a telehealth visit. I have heard from behavioral health providers throughout the pandemic that this flexibility has been particularly useful in treating patients living in rural areas, and has strengthened patient retention. The HHS ASPE published a report in July 2020 that acknowledged that retention in MAT for substance use disorder resulted in better outcomes, reduced rates of mortality, and reduced utilization of high-intensity treatment.

- **If you are confirmed, will you commit to exploring evidence-based solutions, including the expanded role of telehealth in addiction treatment?**

Answer: The substance use disorder crisis demands a comprehensive, multifaceted evidence-based approach to include prevention, intervention, treatment, and recovery support services. I

share President Biden's and Secretary Becerra's commitment to addressing this epidemic and making sure patients can get the treatment they need, which includes increasing access to medication-assisted treatment, which, when administered by trained professionals, reduces the risks of overdose and continued substance use. I appreciate your leadership on this issue and look forward to partnering with you, if I am confirmed, to continue to inform this important issue with data and evidence.

Senator James Lankford (R-OK)

Question 1:

As you may be aware, this Committee has been working on several mental health proposals. In my opinion, one of the many ways in which the mental health of Americans is impacted is through substance abuse. In my state of Oklahoma, the opioid crisis is a primary perpetrator of this.

- a) **Due to your extensive work on the opioid crisis across America, do you believe that opioid prevention strategies should be included in Congress' work on mental health?**
- b) **What are some examples of effective strategies you have seen in your work to address this ongoing crisis?**

Answer: Mental health and substance use challenges, often co-occurring, have a strong relationship to physical health outcomes. This area of health has historically been under-emphasized and under-funded. ASPE can continue to play a critical role in strengthening our nation's behavioral health, including by informing evidence-based ways to treat substance use disorders in coordination with mental health conditions. If confirmed, I will continue to prioritize this issue, including by supporting programs and initiatives across the continuum of prevention, intervention, treatment, and recovery supports; by informing care integration across disorders, settings, and providers; and by enhancing access to other supportive social services.

Question 2

The Monitoring the Future Survey is funded by NIDA and measures drug and alcohol use in adolescents nationwide. In 2021, and likely because of the pandemic and lack of social interaction, overall substance abuse dropped among adolescents. The notable and concerning outlier was marijuana. Marijuana vapes and marijuana smoking were the only substances to report an increase in use among students. This is not surprising to me because we know marijuana is addictive and has a high potential for abuse. With the aggressive wave of marijuana legalization and the availability of highly potent and often candy-flavored THC products, I'm very concerned about the negative effects this has and will continue to have on our children.

Currently on the Surgeon General's website, there is an advisory on marijuana and the developing brain. The advisory states that marijuana works by binding to receptors in the brain to produce euphoria, intoxication, memory and motor impairments. These same receptors are critical for brain development including the formation of brain circuits important for decision making, mood, and responding to stress.

Additionally, a 2002 study posted on NIH's website found that daily use of marijuana in young women was associated with an over fivefold increase in the odds of reporting a state of depression and anxiety. Weekly marijuana use was associated with a twofold increased risk of depression and anxiety.

- a) **As you have done much research on marijuana's impact on our society's youth and have noted that more research is needed for effective policy solutions, can you**

expand on the link between adolescent marijuana consumption and mental health, both what we know already and what still needs to be researched?

- b) Will you commit to not supporting marijuana policy initiatives that are not adequately linked to scientific evidence?**

Answer: Marijuana use among adolescents happens at a time when the brain is still developing, placing young people at particular risk for cognitive consequences and addiction. Additional evidence is needed to continue to understand these impacts, particularly in light of the legalization of marijuana for adult use in many states and the range in current products and regulatory environments. FDA has also issued warning letters to companies illegally selling CBD and Delta-8 THC products, to ensure that consumers can make informed choices about products. If confirmed, I will work with federal partners as well as states on this issue to identify high quality data and evidence to inform policies that will prioritize the health of our nation's youth.

Question 3

ASPE is a member of the Interagency Group on Alzheimer's Disease and Related Dementias per the National Alzheimer's Project Act (NAPA). HHS updated its NAPA plans this January to include a goal of "Promoting Healthy Aging and Reducing Risk Factors." As you know, Americans impacted by Alzheimer's and Dementia-related diseases are growing, with studies showing that over 150 million people will have Alzheimer's by 2050. This new goal was put in place largely due to the several studies showing ways to prevent Alzheimer's with certain lifestyle changes.

- a) How involved have you been in Alzheimer's research planning in your current role at ASPE, and will you commit, if confirmed, to staying the course on tracking down how we can best prevent, treat, and cure the public health crisis that is Alzheimer's?**

Answer: Alzheimer's disease and other dementias affect a growing proportion of our older populations, which makes the work of the Interagency Group on Alzheimer's Disease and Related Dementias under the NAPA critically important. If confirmed, ASPE will continue to play an important coordination and contributory role in this Interagency Group, as well as continue to work with partners on how to best address this public health crisis using data and evidence.

Question 4

As you know, Congress has continued to maintain the Hyde Amendment on a bipartisan basis each year in annual funding bills since 1976.

- a) If confirmed, will you continue to uphold and enforce the restrictions of the Hyde amendment – that no federal funding can pay for abortions except in the case of rape, incest or to protect the life of the mother – as enacted by Congress, as well as other prolife protections currently in federal law without misinterpreting or applying such laws to allow coverage for travel to obtain abortion?**

Answer: If confirmed as Assistant Secretary for Planning and Evaluation, I will follow the law.

Question 5

Will you commit to not attempting to weaken the Hyde amendment and similar prolife policies or strip them from future budgets or appropriations bills?

Answer: If confirmed, I will follow the law.

Question 6

Congress has also continued to include conscience protections for individuals who have a religious or moral objection to participating in certain medical procedures. Specifically, the Weldon amendment, which has been included in funding bills since 2004, restricts federal funding from going to agencies or programs that discriminate against health care providers that do not provide, pay for, provide coverage of or refer for abortions. Unfortunately, this administration has walked back enforcement of the Weldon amendment, including rescinding enforcement action on California for violating Weldon.

- a) If confirmed, will you continue to uphold and enforce the Weldon amendment and all other conscience protections enacted by Congress to ensure that no health care providers are discriminated against with federal dollars because of their personal or professional view on abortion, gender transitions, or other procedures?**

Answer: If confirmed, I will follow the law.

Question 7

A [report](#) from the Obama administration in 2010 reinforced the importance of faith-based partnerships. Among the recommendations put forward in the report was to draw more on the local expertise and relationships of faith-based organizations as a way of filling gaps in the provision of essential services. Faith-based organizations are excellent, effective, and efficient at meeting the needs of our most at-risk populations. The report also highlighted the need to ease overly-burdensome reporting and regulation requirements placed on social service agencies.

- a) Do you agree that it is important to continue pursuing ways to engage and expand faith-based partnerships as a way of effectively addressing some of the most critical social service needs in our country?**

Answer: We should be working with all types of providers and grantees to fulfill ACF's mission of supporting children and families. If confirmed, I look forward to listening to and working closely with faith-based providers.

Question 8

The Supreme Court has, in multiple decisions, reiterated that religious organizations cannot be discriminated against in the distribution of a public benefit for which they otherwise qualify because of their religious beliefs or identity.

- a) **Will you commit to ensuring that no policy in HHS will disqualify a religious organization from receiving aid or participating in grant programs simply because of the organization's religious beliefs or because the organization receives statutory protections for religious freedom like those in Title VII and Title IX?**

Answer: If confirmed, I will follow the law.

Question 9

Faith-based child welfare providers perform vital services for hundreds of thousands of foster children nationwide and are often the best at finding forever homes for children in need. According to HHS' AFCARS report, 407,493 children are in foster care, 117,470 of whom are waiting to be adopted. Unfortunately, HHS continues to take steps to put religious child welfare providers in the untenable position of choosing between serving children or operating in accordance with the tenets of their faith, despite the unanimous Supreme Court decision in *Fulton v. Philadelphia*, which validated the principle that religious adoption agencies have a right to be free from discriminatory exclusion from adoption and foster care programs because of their beliefs.

- a) **If confirmed, will you commit to ensuring that religious child welfare organizations can continue to serve families in accordance with their sincerely held religious beliefs?**

Answer: Faith-based providers are critical to the child welfare system. If confirmed, I look forward to listening to and working closely with faith-based providers. More broadly, I will work to ensure that ASPE provides the Secretary with timely evidence to support HHS's ongoing efforts around child welfare and foster care.

Question 10

As I similarly shared with the Surgeon General and Secretary Becerra, other countries are seeing the effects of experimental medical treatments on children with gender dysphoria and are reversing course. For example, in May 2021, Sweden ended the use of puberty blockers and cross-sex hormones for most minors. Finland also began prioritizing psychological interventions and support over medical interventions. Similarly, in the UK, litigation, which suspended medical intervention on children under 16 for a time, has sparked a national conversation about the effects of surgical procedures on minors. Nevertheless, I'm concerned by the direction the Administration and HHS seems to be going to encourage children with gender dysphoria to medically transition, regardless of parental involvement.

- a) **Based on the medical evidence that exists, do you believe that it is appropriate for children to receive such treatment?**
- b) **If so, at what age do you think it is medically and ethically appropriate for a child to give consent to receive a treatment with such lasting and adverse effects such as permanent damage to brain development or infertility?**
- c) **Do you agree that at a minimum, parents need to provide consent for their children to receive such care?**

- d) **Would you agree that no taxpayer dollars should be used to perform a transition procedure on a child who cannot reasonably provide informed consent?**
- e) **Would you agree that medical professionals should not be compelled to participate in such treatment if it goes against their sincerely held religious beliefs, conscience or best medical judgement?**

Answer: All young Americans, including transgender youth, should have access to the care and treatment they need. If confirmed, I will follow the law. It is not ASPE's role to evaluate specific medical treatments, but if confirmed, I will ensure that ASPE works closely with Departmental leadership to support the President's and the Secretary's vision of an equitable and high-quality health care system for all Americans.

Question 11

If confirmed in this role, you will have the responsibility to review regulations, including considering the cost and benefits of regulatory policies. I am incredibly concerned by a number of regulatory actions that the Administration is expected to take in the coming months that could place medical professionals in a position to either violate their conscience or lose their job. Specifically, I am concerned by the proposed rescission of the Conscience rule as well as the proposed rule that would expand discrimination on the basis of sex under Sec. 1557 of the Affordable Care Act to include discrimination on the basis of sexual orientation, gender identity and termination of pregnancy.

- a) **If confirmed, will you commit to evaluating the impact that such rules would have on access to quality medical care if medical professionals were forced to choose between their conscience and their job?**

Answer: If confirmed, I will follow the law. ASPE plays an important role in the regulatory process, and if confirmed, I will ensure that ASPE relies on rigorous and objective policy analysis to assess the costs and benefits of all proposed regulations that we review.

Senator Todd Young (R-IN)

Question 1:

I appreciated reading in your testimony your commitment to ensuring those “across HHS have the best available data and evidence when they are making decisions.” I’ve long been an advocate in Congress for the use of outcomes-driven, evidence-based policy solutions.

- **How will you ensure ASPE uses an evidence-based approach for analysis and recommendations?**

Answer: ASPE’s greatest resource is the expertise of its career staff, who provide independent, data-driven information to support policymaking by HHS. If confirmed, I will ensure that ASPE continues to empower its subject matter experts to provide their input, and that I communicate clearly with HHS leadership what the evidence tells us about the policies we consider. I can also commit that ASPE will continue to closely track the latest developments in research methods and build improved data capacity to answer the key policy challenges that face the Department.

Senator John Barrasso (R-WY)

Question 1:

Twenty-five of my colleagues and I sent a letter to the Department of Health and Human Services on June 9th requesting information on the Department's progress in transitioning beyond policies tied to the public health emergency. While I understand that in your current role, and if confirmed, in your future role, you do not have direct decision-making power over the status of these policies, your office still provides critical analysis for future policy development within HHS.

- **If confirmed, to what extent would you focus ASPE's resources on studying the effects of temporary, pandemic-related policies implemented in the Medicare, Medicaid, and CHIP programs over the past two+ years?**
- **Similarly, and if confirmed, are there specific research questions or policy issues stemming from these temporary policies that you anticipate ASPE would analyze, such as the long-run considerations of making certain COVID-19 flexibilities permanent?**

Answer: If confirmed, I will work closely with our subject matter experts to evaluate the effects of pandemic policies including telehealth, the continuous enrollment provision in Medicaid during the PHE, and other emergency authorities that have been implemented. In these areas, ASPE's role is to assess the research evidence on effects of these policies to date, consider the potential consequences of their future extension, and examine policy alternatives to support the Secretary's decision-making in these areas.

Question 2:

As a doctor, I am proud to help lead the Senate Comprehensive Care Caucus. The focus of this group is to improve palliative care and hospice services. We must ensure federal policies are helping patients achieve the highest quality of life possible, especially for those who are facing terminal illnesses.

- **If confirmed, can you comment on how you would prioritize the use of ASPE's resources to study hospice and palliative care issues?**
- **What do you believe are the most important gaps in data or research related to hospice and palliative care?**

Answer: ASPE staff have substantial expertise in Medicare policy, long-term care services, the direct care workforce, hospice, and end-of-life care. If confirmed, I would emphasize the importance of research and evaluation in these domains that focuses on equitable access to high quality end-of-life care, including in rural areas and in home and community settings, as well as policy levers that can improve well-being for both patients and their families facing terminal illnesses.