

## HHS Report Card: Attys Grade Health Secretary's 1st Year

This article by Jeff Overley was published by [Law360](#) on January 29, 2019.

Attorneys  
[Thomas N. Bulleit](#)

After 365 days atop the U.S. Department of Health and Human Services, Alex Azar is getting grades that range from satisfactory to sterling, with health care attorneys crediting the HHS secretary for battling high drug prices despite his Big Pharma background.

Azar, a former Eli Lilly & Co. executive who early in his career worked at a Wiley Rein LLP predecessor and Kirkland & Ellis LLP, took the reins at HHS on Jan. 29, 2018. Since then, he has helped to chart the Trump administration's course on drug prices, the opioid crisis, health insurance and rewarding doctors and hospitals for high-quality care.

So far, Azar has avoided the ethical lapses of his predecessor, Tom Price, who was forced out in 2017 after racking up \$400,000 in taxpayer-funded travel on private jets. But clearing that low bar for rectitude only goes so far; Azar has upset some observers with actions that appear likely to damage the Affordable Care Act and policies on immigrant detentions.

Here, legal and lobbying pros score the HHS boss' first year.

### **Delphine O'Rourke, Duane Morris LLP**

#### **Grade: B**

O'Rourke, a Philadelphia-based partner at Duane Morris, singled out Azar's proposal for an "International Pricing Index" that would set drug prices in much of Medicare Part B by referencing prices in other advanced economies.

That move has exposed the Republican administration to charges of embracing "socialist price controls." It's all the more remarkable because Azar, during his time at Eli Lilly, argued that reducing drug prices could "stifle cost-effective innovation in the long-term."

"Despite his longtime pharma industry ties, Secretary Azar is actually pushing his reference drug pricing model on both sides of the aisle despite significant industry pushback," O'Rourke said.

O'Rourke also noted that Azar has pushed for disclosure of drug prices in television ads, and she said he's made progress on combating the opioid crisis. But O'Rourke cautioned that Azar's standing has been jeopardized by HHS' role in the separation of migrant families at the U.S.-Mexico border.

Azar's work, she said, has been somewhat "overshadowed by his support of the administration's child separation policy."

### **Jesse Neil, Waller Lansden Dortch & Davis LLP**

#### **Grade: B+**

Neil, a Nashville, Tennessee-based partner at Waller, spotlighted Azar's lower-profile efforts to minimize paperwork headaches for providers and let states decide which insurance policies are eligible for ACA subsidies.

"These aren't the big-ticket items that get all the headlines, but they have a big impact," Neil said.

Neil also mentioned Azar's endorsement of Medicaid funding for housing assistance, saying it indicates that the secretary can't be caricatured as a doctrinaire conservative.

“Reforming Medicaid to include housing isn’t a traditional Republican position, and he probably got some pushback,” Neil said.

At the same time, Azar has pleased right-leaning observers by aiding the development of alternatives to ACA insurance policies. One such alternative is ostensibly short-term coverage that can last for three years and is cheaper than ACA coverage because its benefits are usually meager.

“I was disappointed in the secretary’s role in expanding short-term, limited duration health insurance policies that are cheaper but do not meet traditional coverage standards,” Neil said. “This hurt the struggling individual market for ACA-compliant plans, and I suspect consumers will be frustrated when it comes time to submit a claim.”

### **Philo Hall, Epstein Becker Green**

#### **Grade: A**

Hall, senior counsel in D.C. at Epstein Becker, told Law360 that the health secretary deserves top marks for his freshman performance.

“Alex Azar has succeeded in the primary tasks for any HHS secretary’s first year: outline a robust policy agenda, minimize distractions and maintain White House confidence,” Hall said.

Hall worked at HHS during the George W. Bush administration, when Azar served as HHS general counsel and a deputy HHS secretary. Hall said he never reported directly to Azar but did interact with him at times.

During his inaugural year as HHS secretary, Azar has deftly steered clear of unnecessary controversies, Hall said.

“HHS and its agencies will always be among the most politically contentious in government, but he has instituted a culture demanding that those agencies [operate] competently and make news only on the substance of policy,” Hall said.

The year ahead heralds new challenges, Hall added, noting that the administration will need to turn its drug pricing ideas into realities and that congressional Democrats will be licking their chops to investigate HHS. Probes could target the department’s actions on the ACA, abortion rights and birth control, among other things.

“In 2019, he will be judged on how much of his drug price agenda can be implemented and whether HHS can maintain operational momentum when subject to time-consuming oversight hearings in the House of Representatives,” Hall said.

### **Tom Bulleit, Ropes & Gray LLP**

#### **Grade: B-**

Bulleit, a D.C.-based partner at Ropes & Gray, praised Azar for adopting “a welcome change in attitude toward value-based health care and innovation.”

Azar’s immediate predecessor, Price, was not exactly gung-ho about pilot projects aimed at rewarding high-quality care and penalizing lower-quality care. Under Azar, the Center for Medicare & Medicaid Innovation at HHS has “resumed its Obama-era approach toward demonstration projects around bundled payments,” Bulleit noted.

Bulleit was less impressed with HHS’ work on drug prices, arguing that its splashy blueprint for lowering drug prices “so far has produced little but debate.” Moreover, some of HHS’ concrete proposals for easing drug costs “certainly will be the subject of litigation if they proceed,” Bulleit added.

Azar has also championed work requirements for Medicaid participants, sparking a war of words over whether employment improves health or, instead, if access to health care helps people thrive in their professional lives.

“Debate continues on whether this is a step forward or backward for health care policy,” Bulleit noted.

**Miranda Franco, Holland & Knight LLP**

**Grade: B**

Franco, a senior policy adviser in the D.C. office of Holland & Knight, applauded Azar’s prioritization of value-based reimbursement. She highlighted the Accountable Health Communities model, which looks not only at patients’ access to physicians but also their access to housing, food, transportation and reliable utilities.

“It is encouraging to see HHS committed to testing new approaches and models to pay for and deliver health care — specifically, Secretary Azar’s plan to better address social determinants of health,” Franco said. “We need to address the unique needs of patients instead of offering a one-size-fits-all approach.”

She expressed reservations, however, about the extent to which Azar is forcing providers to participate in certain demonstration projects.

“The statute authorized the secretary to ‘test innovative payment and service delivery models’ — not mandate them for all providers,” Franco said. “Voluntary demonstrations will allow providers to select models most appropriate for their patient populations.”

**Juliet McBride, King & Spalding LLP**

**Grade: Incomplete**

McBride, a Houston-based partner at King & Spalding, assigned a grade of “incomplete” to Azar. On the bright side, HHS, through the Centers for Medicare & Medicaid Services, has cut what it perceives as red tape, McBride said. She cited the example of CMS no longer demanding signed physician certifications in a patient’s chart when comparable information already exists in the patient’s file.

On the other hand, some of CMS’ efforts to streamline policies could have actually hit doctors in the pocketbook, McBride noted, citing a recent proposal to collapse multiple billing codes. That plan, which has been scaled back, probably would have made billing simpler. But it also could have reduced income for specialists, who often bill at high rates for the most complex levels of care.

“While the more recent reforms are a welcome shift to many, there are a number of burden-reducing initiatives that will come at a financial cost to providers,” McBride said. “The final impact of these changes and proposed changes [remains] unclear.”

--Editing by Kelly Duncan and Alanna Weissman.