



## **H&K Health Dose– May 11, 2021** *A weekly dose of healthcare policy news*

### **Congress Comes Back Swinging**

The House and Senate are back for the next three weeks and will resume votes this week.

Tomorrow, the House Republican conference is expected to remove Liz Cheney (R-WY) from her leadership role. Troy Carter (D-LA) was sworn in today, slightly increasing Democrats' edge in the House to 219-212.

Tomorrow, HHS Secretary Xavier Becerra will continue his rounds on Capitol Hill and will testify before the House Energy and Commerce Committee Subcommittee on Health on the President's fiscal year 2022 budget request for HHS. His advance written statement may be found [here](#).

The Senate HELP Committee held a hearing today on the federal response to Covid-19 with Dr. Anthony Fauci and CDC Director Rochelle Walensky. Two House and Senate subcommittees will hold hearings on mental health and addiction. On Thursday, a Senate panel will review Homeland Security actions to address unaccompanied minors at the U.S. Mexico border.

In the House, Majority Leader Steny Hoyer (D-MD) announced that lawmakers would take up a series of bipartisan suspension bills that seek to address several mental health needs.

### **Infrastructure Negotiations and Debt Limit Projections**

President Biden met this week with bipartisan House and Senate leadership to negotiate his two infrastructure packages – the American Jobs Plan and the American Families Plan. Expect lawmakers to actively begin turning President Biden's proposals into legislative text in the weeks while addressing the debt ceiling and other pressing issues.

Last week, U.S. Treasury Secretary Janet Yellen indicated that the "extraordinary measures" for addressing the debt ceiling could run out "this summer." While the debt ceiling is due to be re-instated as of July 31st, traditionally, the Department of Treasury has certain tools it can deploy to give Congress more time – up to several months -- to address the situation. Democrats are expected to use the budget reconciliation process to raise the ceiling, possibly tying it to the President's infrastructure packages.

### **House to Move FY 2022 Spending Bills in June and July**

House Appropriations Committee Chair Rosa DeLauro (D-CT) announced that her committee would mark up the 12 annual spending bills for fiscal year (FY) 2022 in June, ahead of July floor votes. Lawmakers in the House of Representatives had until April 30 to submit earmark requests, which are now listed on the committee's website. Congress has until the end of the fiscal year on September 30 to pass appropriations legislation or to rely on a stopgap spending measure to avoid a shutdown of the federal government. Neither Budget Committee chairs Rep. John Yarmuth (D-KY) nor Sen. Bernie Sanders (I-VT) has released FY22 budget resolutions, which set top-line spending levels and could set up the reconciliation process for the President's infrastructure proposals.

### **Action on Senior Healthcare Nominations Expected This Week**

Andrea Palm is expected to be confirmed by the full Senate as Deputy HHS Secretary on Wednesday. It is also possible that Senate Majority Leader Chuck Schumer (D-NY) will move to discharge Chiquita Brooks-LaSure to be Administrator of the Centers for Medicare and Medicaid Services (CMS) from the Finance Committee, followed by consideration of her nomination on the floor sometime later in the week.



Nominees for directors of the Center for Medicare, Center for Medicaid and CHIP Services, and Center for Consumer Information and Insurance Oversight are among positions not yet announced.

## **CMS Brings Hammer Down on Price Transparency Evaders**

CMS is sending warning letters to hospitals violating new federal price transparency rules requiring them to make public the prices they negotiate with insurers. Hospitals will have up to 90 days to correct identified issues and be subject to a follow-up review. If still out of compliance, hospitals will receive a final warning letter plus up to \$300 per day fine. A March Health Affairs study found that two-thirds of large hospitals are non-compliant with the new price transparency regulations, which took effect Jan. 1. Under the new rules, hospitals must publish a machine-readable file with their negotiated rates and make available either a customer-friendly display of at least 300 services or a price estimator tool for out-of-pocket costs.

## **HHS To Distribute \$1 Billion For Community Health Center Infrastructure**

On April 27, HHS announced a \$1 billion capital improvement fund grant with money from the American Rescue Plan so all 1,376 community health centers can expand, renovate or build a new facility to grow their patient base, which is typically communities disproportionately affected by COVID-19. For more information, please visit [here](#).

## **Treasury Launches Coronavirus State and Local Fiscal Recovery Funds to Deliver \$350 Billion**

The Treasury Department opened the submission portal for \$350 billion in grants for states, local, territorial, and tribal governments to rebuild from the COVID pandemic and adopted an interim final rule with requirements for disbursing those funds on May 10. More information can be found [here](#).

## **GAO Announces New MACPAC Appointments**

The Government Accountability Office (GAO) announced five new members to the Medicaid and CHIP Payment and Access Commission (MACPAC). Comptroller General Gene Dodaro also reappointed current MACPAC Chairwoman Melanie Bella and named Commissioner Kisha Davis, M.D. of Aledade Health, as the new Commission Vice-Chair.

MACPAC will reconvene in September of this year. The Commission will likely focus on the expanded utilization of telehealth. Commissioners are also likely to discuss high-cost drugs, rebalancing long-term services and supports (LTSS) services away from institutional settings, and addressing Dual Eligible Special Needs Plans (D-SNPs).

## **New Guidance for Interoperability and Patient Access Rule**

CMS released new FAQs outlining the new requirements for admission, discharge, and transfer of electronic patient event notifications under the Interoperability and Patient Access final rule.

## **Unclear Path Forward for Trump-Era Patient Engagement Rule**

Comments were due last week on a Trump-era rule that would make modifications to the HIPAA Privacy Rule to reduce barriers to patients accessing their medical records. Overall, patient and provider groups were generally supportive of the intent behind the changes but were concerned about potential inconsistencies between new policies proposed in the rule and existing laws and regulations and some possible unintended consequences. It is unclear if or when the Biden administration would finalize the rule.



## **COVID Update**

On Friday, the CDC released updated guidance about how the virus spreads, emphasizing airborne transmission.

The Biden administration has set a goal of having 70% of Americans partially vaccinated by July 4. That number currently stands at 56%. As vaccine rates fell sharply in the U.S. over the last month, the Biden administration continues to pivot to a local strategy to reach new populations, including younger and hesitant to get the vaccine, including mobile vaccination clinics and even patient incentives. This week, Biden is seeking to get the vaccine into physician's offices and will speak with a bipartisan group of U.S. governors about other strategies to vaccinate more Americans. In an April Kaiser Family Foundation poll, less than 10% of respondents who had not yet been vaccinated said they intended to do so. The temporary pause of the Johnson & Johnson vaccine contributed to vaccine hesitancy in those surveyed.

Progress has similarly slowed in narrowing racial and ethnic gaps. In the last few weeks, the rate of improvement in getting a proportional share of Black and Hispanic people vaccinated has slowed by more than half.

According to employment law experts, more employers will likely require their workers to be inoculated as vaccines transition from emergency approval to standard FDA approval. Full FDA approval typically takes one year, but COVID vaccines are expected to be expedited to a few months. Another potentially complicated factor: a handful of states are currently pursuing legislation that would block employers from firing workers who refuse to be vaccinated. Other states like New York are requiring public college and university students to be vaccinated before returning to in-person classes this fall.

The FDA authorized the use of Pfizer's vaccine for ages 12 to 15, making it the first shot authorized for that age group. Immunizations could begin as soon as tomorrow. Authorization for younger groups is expected to be sought in the coming weeks.

Federal health officials formally decided to limit how they monitor the small number of vaccinated Americans who've been infected with COVID, prompting concern among some.

After President Biden came out in support of easing patents to speed global vaccine availability, experts warn this could take months. Foreign leaders urged ramping up U.S. production and shipments to developing countries in the short term.

## **Biden Re-instates Protections for Transgender Patients**

The Biden administration announced Monday that it would formally reverse a Trump administration policy that many claim would have allowed health care providers and insurers to deny medical services to transgender people. The new policy precludes discrimination based on gender and sexual orientation by any health program that receives HHS.

## **HHS to Enforce Trump-Era Abortion Non-Referral Rule (For Now)**

HHS will continue enforcing a rule prohibiting family planning grant recipients from referring clients for abortion until a new proposed rule takes effect. The rule is expected to be finalized this fall.

## **Democrats Get Creative on Medicaid Expansion**

So far, no holdout states have taken up the offer of added federal money to expand their Medicaid programs. The Center on Budget and Policy Priorities released a [report](#) outlining two viable alternatives. The first is to direct CMS to run a federalized Medicaid program for non-expansion states. The second allows individuals to purchase fully subsidized coverage under the ACA exchanges. Some Democrats have called for similar approaches- a new type of ACA marketplace



plan or government-run insurance to cover those that make too much to qualify for Medicaid but too little to be eligible for private insurance subsidies. Others have suggested allowing cities or counties the option to expand Medicaid.

## **Ventilator Shortages Add New Fuel to “Right to Repair” Fire**

Ventilator shortages are drawing new attention to requirements on a large portion of medical equipment today; this is sold with the stipulation that only the manufacturer can make repairs. Legislation has been introduced in a handful of states that would reverse proprietary repair policies. A bill advancing in the California legislature would require medical manufacturers to make parts and training accessible to hospitals and third-party repair providers. If it passes, it would be the first such law passed by a state legislature in almost a decade.

## **FDA Releases Inspection Roadmap for Backlogged Inspections**

The FDA released a new report outlining the status of the inspection backlog due to the pandemic. The FDA will continue prioritizing “mission-critical” inspections and outlines a “multi-year modernization effort” to streamline inspections, including allowing longer intervals of time between inspections for low-risk facilities and leveraging virtual inspections. Currently, over 15,000 domestic facilities are awaiting inspection. According to the best-case scenario, the Agency expects to make it through 27% of these before the end of the year.

## **New Industry Trends on Vertical Integration**

A new Health Affairs study revealed a possible shifting of imaging and lab tests to higher-cost settings once hospitals acquire practices. Just under half (49%) of doctors worked in private practice in 2020, a 5% drop from 2018 based on AMA data. Meanwhile, the share of physicians who practiced in hospital-owned groups rose more than 16% over three years.