



## H&K Health Dose July 26, 2022 A weekly dose of healthcare policy news

### Legislative Updates

#### Congressional Countdown to August Recess

The House is currently scheduled to adjourn for August recess at the end of this week, while the Senate is scheduled to be in session until Aug. 5, 2022. However, House Speaker Nancy Pelosi (D-Calif.) extended the ability for House members to vote remotely through Aug. 12, indicating that the House could be called back for votes (potentially on reconciliation). Senate Majority Leader Chuck Schumer (D-N.Y.) wants to pass a reconciliation package focused on prescription drug pricing reform and an extension of the Affordable Care Act (ACA) Marketplace advanced premium tax credits before the August recess. The parliamentarian is reviewing provisions of the package to ensure that it meets reconciliation rules. A Congressional Budget Office (CBO) [analysis](#) notes that permanently extending the ACA Marketplace advanced premium tax credits will cost an average of \$25 billion per year. The subsidies are set to expire this year if Congress does not act to extend them. Stakeholders continue working on adding provisions to the reconciliation package, but it remains likely to be a narrow bill to achieve 50 votes to pass the Senate. A final agreement may not make it to the Senate floor until the first week in August. This means the House will likely be called back into session to consider the reconciliation bill.

#### Telehealth on the Floor This Week

The House is scheduled to consider the Advancing Telehealth Beyond COVID-19 Act ([H.R. 4040](#)) this week. The bill would further expand telehealth flexibilities beyond the COVID-19 public health emergency (PHE) and includes measures to remove geographic requirements, expand originating sites of telehealth services, allow for the furnishing of audio-only telehealth services and permit telehealth face-to-face hospice recertification encounters. In the omnibus spending bill in March, Congress granted a five-month (151 days) extension to telehealth flexibilities created during the pandemic. This bill extends those flexibilities through Dec. 31, 2024. The legislation is offset by reducing funds in the Medicare Improvement Fund. The bill will likely advance in the House this week; however, it is unlikely to move in the Senate until the lame duck session.

#### Lawmakers Plan to Unveil Mental Health Legislation

Telehealth and pediatric elements of a prospective mental health package were included in the gun safety bill that President Joe Biden signed into law earlier this month. Notably, Senate Finance Chair Ron Wyden (D-Ore.) confirmed that his committee is still working to accomplish its initial policy goals, which will be released in the coming days. Sens. Debbie Stabenow (D-Mich.) and Steve Daines (R-Mont.) are working on policies to improve the behavioral healthcare workforce. In addition, Sens. Michael Bennet (D-Colo.) and Richard Burr (R-N.C.) are crafting policies to ensure behavioral and physical health parity, and Sens. Catherine Cortez Masto (D-Nev.) and John Cornyn (R-Texas) continue to explore policies to improve coordinated care through integrated systems.

#### Appropriations Bills Move Forward

The House passed six of the 12 annual appropriations bills last week. The package ([H.R. 8294](#)) – which included Agriculture-Food and Drug Administration, Energy-Water, Financial Services, Interior-Environment, Military Construction-VA, and Transportation-Housing and Urban Development programs – passed by a 220-207 party-line vote. It remains unclear whether the six remaining fiscal year (FY) 2023 spending bills can be advanced before the August recess. Meanwhile, Senate appropriators are expected to release their spending bills before the recess, and no markups have been scheduled, increasing the likelihood of lawmakers relying on a continuing resolution to fund the federal government beyond the end of the fiscal year on Sept. 30, 2022.



## Regulatory Updates

### **HRSA To Unveil Provider Relief Fund Recoupment Appeals Process**

The Health Resources and Services Administration (HRSA) is setting up a dispute and appeals process for provider relief fund (PRF) recipients whose funds are being recouped. More information about the process is expected in the coming weeks. Providers who received \$10,000 or more in COVID-19 relief have one year to spend it all and must report to U.S. Department of Health and Human Services (HHS) on how they used the relief for expenses and losses attributed to the pandemic. The third reporting period opened July 1, 2022, for those who received relief between Jan. 1, 2021, and June 30, 2021. These providers will have through September to submit their report and 30 days after to return unused funds or overpayments.

### **Final Surprise Billing Rulemaking Forthcoming**

A highly anticipated third interim final rule is predicted to be published in the coming weeks pertaining to the No Surprises Act. This rule is expected to address advanced explanation of benefits (EOB) requirements for insured patients, which was deferred in earlier rulemaking. Also at issue is whether this final rule will modify previously finalized language directing independent dispute resolution (IDR) entities to consider the qualifying payment amount (QPA) – (i.e., median in-network rate) essentially the default amount for a service – versus weighting other criteria included in the original legislation after a district court ruling that took issue with HHS' original interpretation.

### **Federal Government Takes Unified Action Against Fraudulent Telehealth Companies**

The U.S. Department of Justice on July 20, 2022, announced charges against 36 providers for telehealth, genetic testing and durable medical equipment fraud amounting to \$1.2 billion. In addition, the Centers for Medicare & Medicaid Services' (CMS) Center for Program Integrity (CPI) announced separately that it took adverse administrative actions against 52 providers involved in similar schemes. According to the DOJ press release, the investigations primarily targeted alleged schemes involving the payment of illegal kickbacks and bribes by laboratory owners and operators in exchange for the referral of patients by medical professionals working with fraudulent telemedicine and digital medical technology companies. This round of charges brings the total amount of fraudulent telehealth activity prosecuted to more than \$8 billion. HHS' Office of Inspector General released a new special alert warning providers to exercise caution when entering arrangements with telemedicine companies.

### **Administration Takes Action to Protect Abortions as Emergency Stabilizing Treatments**

Last week, U.S. Attorney General Merrick Garland said that the U.S. Department of Justice (DOJ) would ask a judge to throw out a Texas lawsuit aiming to block recent HHS guidance requiring physicians to perform abortions in cases of emergency. He added that the federal government would consider suing states that have banned or limited such abortions noting it "could not be more straightforward" that hospitals "must provide" abortions when the procedure is a "stabilizing treatment."



## **Tale of Two Pandemics: U.S. Weighs Declaring Public Health Emergency as Monkeypox Concerns Grow**

HHS is weighing whether to formally declare monkeypox a national public health emergency after the World Health Organization on July 23, 2022, labeled it a global health emergency as more than 16,500 cases have been reported in 74 countries. The first U.S. cases of monkeypox in children were also reported on July 22, adding to a handful impacting adolescents under 17 worldwide. The White House is planning to name a dedicated national monkeypox coordinator. The U.S. expects to have an additional 800,000 monkeypox vaccine doses by week's end. However, the Centers for Disease Control and Prevention (CDC) Director Rochelle Walensky said that the CDC's lack of authority to collect information about vaccinations limits their ability to understand their effectiveness, and the demographics of those getting vaccinated (and those that are not).

## **Federal COVID-19 Response Shows No Signs of Slowing as HHS Creates Independent Division; Kicks Off Vaccine Initiative**

HHS [announced](#) that it would create a new independent division tasked with coordinating the federal response to the COVID-19 pandemic called the Administration of Strategic Preparedness and Response, which will be phased in over two years and led by Dawn O'Connell, who oversees the current Office of the Assistant Secretary for Preparedness and Response. The announcement comes amid mounting frustrations with the CDC's response.

The White House will also host a summit today (July 26), kicking off a formal initiative by top federal officials and senior representatives from Pfizer Inc. and Moderna Inc. to establish a roadmap for developing vaccines targeting new variants. The new initiative will require additional funding from Congress.

## **HHS Reinstates ACA Nondiscrimination Provisions**

HHS [proposed](#) to reinstate and expand ACA nondiscrimination protections on the basis of race, color, national origin, sex, age and disability that were previously axed two years ago under the Trump Administration. The announcement also clarifies that discrimination on the basis of sex includes discrimination on the basis of pregnancy or related conditions, including "pregnancy termination." The rule will be open for a 60-day comment period.