



H&K Health Dose: November 22, 2022

A weekly dose of healthcare policy news

LEGISLATIVE UPDATES

Midterm Election Update

Democrats will retain control of the Senate in the 118th Congress, after key races in Arizona and Nevada were called in their favor. The Georgia runoff between incumbent Sen. Raphael Warnock (D) and Challenger Herschel Walker (R) on Dec. 6, 2022, will determine whether Democrats have a 51- or 50-seat majority in the Senate next year (with Vice President Kamala Harris to cast a tie-breaking vote). After a handful of pending House races were called last week, Republicans will take narrow control of the House.

Congressional Leadership Updates

Congressional Republicans held their party leadership elections last week. Minority Leader Mitch McConnell (Ky.) overcame a challenge from Sen. Rick Scott (Fla.) to remain the Republican party's leader in the Senate. Senate Republicans also elected Sen. John Thune (S.D.) as Senate minority whip, Sen. John Barrasso (Wyo.) as chairman of the Senate Republican Conference, Sen. Joni Ernst (Iowa) to run the Senate Republican Policy Committee, Sen. Shelley Moore Capito (W. Va.) to serve as vice chair of the Senate Republican Conference, and Sen. Steve Daines (Mont.) to replace Scott at the top of the National Republican Senatorial Committee.

In the House of Representatives, current Minority Leader Kevin McCarthy (Calif.) was voted the Republican nominee for Speaker of the House. McCarthy received only 188 votes – short of the 218 that he would need during the formal House speaker vote in January. Many conservative members of the Freedom Caucus backed Rep. Andy Biggs (Ariz.), who received 31 votes. Republicans also reelected Rep. Steve Scalise (La.) as the party's No. 2 leader. Rep. Tom Emmer was elected whip of the House Republican Conference. Rep. Elise Stefanik (N.Y.) was reelected conference chair and Rep. Richard Hudson (N.C.) will serve as the National Republican Congressional Committee Chair.

Senate Democrats will hold their leadership elections the week of Dec. 5, and House Democratic leadership elections are expected to take place on Nov. 30. Current House Speaker Nancy Pelosi (Calif.), who has served as the Democratic House leader for nearly two decades and is the only woman to ever serve as speaker, announced her exit from congressional leadership last week. She will retain her seat in the House. Majority Leader Steny Hoyer (Md.) announced that he would step down from his leadership role. Rep. Jim Clyburn (S.C.), who serves as the Democrats' No. 3 position in leadership, is expected to continue as assistant leader. Rep. Hakeem Jeffries (N.Y.) is widely considered the choice to become the new Democratic leader. Rep. Katherine Clark (Mass.) is running to be the Democratic whip, and Rep. Pete Aguilar (Calif.) is running for caucus chair.

In committee leadership news, Sen. Rand Paul (R-Ky.) stated that he would not seek the top Republican position on the Senate Health, Education, Labor and Pensions (HELP) Committee, instead choosing to pursue the top Republican spot on the Senate Homeland Security and Governmental Affairs Committee. Paul's decision clears the way for Sen. Bill Cassidy (R-La.) to be the ranking Republican on the HELP Committee in the 118th Congress.

Sen. Patty Murray (D-Wash.) officially announced that she would step down as chair of the HELP Committee to seek the gavel on the Appropriations Committee following the retirement of Sen. Patrick Leahy (D-Vt.). As



a result, Sen. Bernie Sanders (I-Vt.) will seek to chair the HELP Committee next year. While, Sen. Susan Collins (R-Maine) is expected to replace retiring Sen. Richard Shelby (R-Ala.) as the top Republican on the Appropriations panel.

Healthcare Professionals in the 118th Congress

- **Retiring healthcare professionals:** Rep. Karen Bass, PA, MSW (D-Calif.) – Los Angeles Mayor-Elect; Rep. Eddie Bernice Johnson, RN (D-Texas) – retiring; Rep. Alan Lowenthal, PhD, psychologist (D-Calif.) – retiring; Rep. Kurt Schrader, DVM (D-Ore.) – defeated in the primary.
- **Healthcare professionals joining the 118th Congress:** Rep.-Elect Jen Kiggans, RN, AGNP (R-Va.) – geriatric nurse practitioner; Rep.-Elect Rich McCormick, MD (R-Ga.) – emergency physician; and Rep.-Elect Yadira Caraveo, MD (D-Colo.) – pediatrician.
- **Not yet called: (although leans Republican):** Kermit Jones, MD, JD, MPH (D-Calif.) – family physician.

REGULATORY UPDATES

Bumpy Surprise Billing Implementation Continues

House Ways and Means Committee Chairman Richard Neal (D-Mass.) and Ranking Member Kevin Brady (R-Texas) recently sent a letter to the Biden Administration taking issue with the most recent rule implementing the No Surprises Act. In the letter, they argue that the latest August rule "follows neither the letter nor the intent of the law" and raise specific concerns with the administration's verbiage around "double counting" certain criteria. Meanwhile, several insurer, consumer and employer groups filed amicus briefs supporting the administration's interpretation of the rule in response to the Texas Medical Association lawsuit, which the American Medical Association and American Hospital Association also supported.

In hopes of reducing the backlog because of the high volume of cases, the U.S. Department of Health and Human Services (HHS) [announced](#) that it would increase the maximum allowable certified entity fee to \$700 for 2023 (\$938 for batched claims), up from \$500 (and \$670) for 2022. The administrative fee will remain at \$50. Independent dispute resolution (IDR) entities have until Nov. 18 to inform HHS of any changes to their fees, which will go into effect on Jan. 1, 2023. Centers for Medicare & Medicaid Services (CMS) also added three new approved entities to its approved [list of certified IDR entities](#).

HHS Evaluating Medicare Advantage Reforms as Plans Continue to Face Scrutiny

U.S. Department of Health and Human Services (HHS) Secretary Xavier Becerra made public comments last week saying that the Department is currently evaluating future policy changes to improve oversight of Medicare Advantage (MA) plans, which have come under scrutiny for alleged "up-coding," increased market consolidation, and increased use of prior authorization. A recent American Medical Association [survey](#) found that increased consolidation had hindered competition – 79 percent of Metropolitan Statistical Areas had MA markets with low levels of competition, according to the survey, and were ranked "highly concentrated" by federal standards. A recent American Hospital Association [report](#) found that prior authorization requirements delayed care, increased administrative burden and added costs. The Improving Seniors' Timely Access To Care Act aims to institute guardrails on using prior authorization requirements by MA plans. The bill unanimously passed the House in September and is vying for consideration in an increasingly crowded possible year-end healthcare agenda. This follows as Senate Finance Committee Democrats [sent a letter](#) to



HHS and CMS, asking that Centers for Medicare & Medicaid Services (CMS) take additional steps to implement consumer protections in MA.

Medicaid Directors Call for Increased Predictability/Certainty for PHE Wind Down

In a recent [letter](#) to Congress, the National Association of Medicaid Directors said that U.S. Department of Health and Human Services' (HHS) lack of transparency over when the COVID-19 Public Health Emergency (PHE) will end had hindered planning for state Medicaid programs, thereby increasing the risk of Medicaid beneficiaries losing coverage unnecessarily. The letter asks for 120 days of advance notice, double the 60 days that the Biden Administration had previously promised, as well as increased certainty by maintaining the current 6.2 percent Federal Medical Assistance Percentage enhancement through the first quarter of redeterminations and phasing the enhancement down gradually over the subsequent year, plus a guarantee that underlying Medicaid eligibility rules would not change during this time.

Seniors HHS Officials Expect Value-Based Transformation to Pick Up Post-COVID-19

In recent remarks, both U.S. Department of Health and Human Services (HHS) Secretary Xavier Becerra and Centers for Medicare & Medicaid Innovation (CMMI) Director Liz Fowler acknowledged that the transition to value-based payment had been slowed by the COVID-19 pandemic and lawsuits. Still, both reiterated it remained a priority and expected the pace to pick up. Fowler went on to say that the CMMI would consider mandatory demonstrations post-Public Health Emergency (PHE).

Administration Hones Artificial Intelligence Strategy

U.S. Department of Health and Human Services (HHS) released a [document](#) outlining eight of the most common ways that artificial intelligence (AI) is currently being used, along with a detailed [inventory](#) of all the uses. Uses included U.S. Food and Drug Administration (FDA) counterfeit drug detection, fraud prevention and responding to public assistance requests. The documents were released to increase transparency, encourage AI's usage by other federal agencies and build on a recent White House [blueprint](#) for an AI bill of rights.