



H&K Health Dose: January 5, 2023

A weekly dose of healthcare policy news

LEGISLATIVE UPDATES

Congress This Week: 118th Congress Convenes

Welcome to the 118th Congress. This session of Congress is convening on the heels of the enactment of the Consolidated Appropriations Act (CAA), 2023, which was signed into law on Dec. 29, 2022. The Act included numerous healthcare provisions; however, there is no shortage of potential healthcare issues on the agenda for the 118th Congress.

The House of Representatives is having an interesting first week of the year. Republican leader Kevin McCarthy made fresh concessions to a group of 20 lawmakers on Jan. 4 hoping to end their blockade of his speakership; we will see if that's enough for him to gain the votes he needs to become Speaker. House Republicans have a slim majority, with only 222 seats to the Democrats' 212. One vacancy currently exists due to the death of Rep. Donald McEachin (D-Va.). A special election will be held to fill his seat on Feb. 21, 2023.

The House is expected to return to pre-pandemic operations as House Republicans have made clear that they will reopen the House buildings to the public and eliminate proxy voting. We will also be closely watching new committee assignments and how the makeup of the committees may impact legislation in the 118th Congress.

The Senate is out. The chamber will hold only pro forma sessions until Jan. 23, 2023, the first day senators may introduce legislation. Sen. Kyrsten Sinema (I-Ariz.) left the Democratic party to become an independent but has retained her committee assignments alongside Democrats in the chamber, giving Democrats a 51-49 working majority. Senate Democrats will likely be less progressive in legislating in this Congress, as the Senate 2024 election cycle will probably have some difficult races for Democrats.

Healthcare in the 118th Congress

What kind of healthcare reforms can we expect from the 118th Congress? Here's a look.

Unwinding the Public Health Emergency (PHE)

The end of the COVID-19 public health emergency (PHE) continues to be of significant interest to Congress and stakeholders. It is currently set to expire on Jan. 11, 2023, but will likely be extended again for 90 days until April 11. Once it expires, some of the flexibilities that Congress and federal agencies have will end. Other flexibilities, such as telehealth, follow a different timeline, thanks to recent action from Congress. Additionally, the omnibus package provided certainty on when the Medicaid maintenance of effort and enhanced federal match policies related to the PHE will end. Further, scrutiny of the administration's handling of the PHE is expected to increase as the House Republicans implement their healthcare oversight agenda.



Pandemic and All-Hazards Preparedness Act (PAHPA)

Also on the agenda is the reauthorization of PAHPA. This reauthorization will be an opportunity for a conversation about reforming our public health agencies. Reps. Richard Hudson (R-N.C.) and Anna Eshoo (D-Calif.) are expected to lead the effort to reauthorize PAHPA in the House. Sen. Bob Casey (D-Pa.) is expected to partner with Sen. Bill Cassidy (R-La.) on the Senate's PAHPA reauthorization bill. Rep. Brett Guthrie (R-Ky.), who is in line to chair the Energy & Commerce Committee Health Subcommittee, has indicated that the Committee should review the U.S. Food and Drug Administration's emergency use authorization process as part of the PAHPA reauthorization.

Health Program Reauthorizations

Several reauthorizations that have historically held bipartisan support are set to expire in 2023 and, therefore, will require congressional intervention to be sustained. See the chart below.

Pandemic and All-Hazards Preparedness Act	Sept. 30, 2023
FDA User Fee Programs (Animal Drug, Animal Generic Drug)	Sept. 30, 2023
Funding for Quality Measure Endorsement, Input, and Selection	Sept. 30, 2023
Funding Outreach and Assistance for Low-Income Programs	Sept. 30, 2023
Community Mental Health Services Demonstration Program	Sept. 30, 2023
Medicaid Disproportionate Share Hospital (DHS) reimbursement cuts begin through FY 2027	Oct. 1, 2023 (effective date)
Extension of the Medicare Work Geographic Index Floor	Dec. 31, 2023
Independence at Home Medical Practice Demonstration Program	Dec. 31, 2023
Moratorium on Medicare Physician Fee Schedule Payment for the Add On Code for Inherently Complex Evaluation and Management Services (HCPCS code G2211)	Dec. 31, 2023
Home Health 1% Medicare Add-On Payment	Dec. 31, 2023
Blended Medicare Payment Rates for DMEPOS in Certain Non-Competitive Bidding Areas	Dec. 31, 2023



Health Insurance Portability and Accountability Act (HIPAA)

HIPAA privacy is also on the agenda with the failed effort to advance broad privacy legislation. Additionally, there is a final HIPAA regulation pending at HHS/Office for Civil Rights (OCR). House Republicans may pursue hearings to examine healthcare privacy laws and whether revisions are warranted.

Prior Authorization

The Improving Seniors' Access to Timely Care Act passed the House in September 2022 with broad bipartisan support. However, the bill was not included in the CAA 2023. CMS has also proposed new regulations that implement some of the Improving Seniors' Access to Timely Care Act provisions. If Congress chooses to pursue this legislation in 2023, the change in the regulatory environment may lower the package's cost and increase the chances of passage.

Medicaid

Rep. Cathy McMorris Rodgers (R-Wash.), chair of the House Energy and Commerce Committee, is interested in examining home and community-based services policies. In 2022, she issued a report and request for information (RFI) on disability policies, which included a focus on ensuring access to Medicaid long-term services and supports. The Committee may also broadly consider Medicaid issues, including access to innovative therapies.

Medicare

In its 2022 report, the Medicare Trustees projected that assets in the Part A trust fund will be depleted in 2028, absent action from Congress. For example, the Healthy Future Task Force Affordability Subcommittee calls for site-neutral payments in physician offices and hospitals and addresses consolidation that increases costs. Additionally, in the hospital space, Republicans are likely to consider hospitals' roles as potential cost drivers. They will examine industry consolidation, nonprofit status, site-neutral payment policy and the 340B drug discount policy. In the physician space, Congress may seek to tackle perennial problems with the Medicare Physician Fee Schedule conversion factor and shortcomings in the Medicare Access and CHIP Reauthorization Act (MACRA).

Oversight

House Republicans will flex new oversight muscles. They have already made clear they intend to conduct intensive oversight of the executive branch, including healthcare issues such as pharmacy benefit managers (PBMs), the 340B program, Medicare Advantage, health system non-for-profit status and consolidation. Possible reviews on provider relief funds and other COVID-related funding may also be examined.

REGULATORY UPDATES

Surprise Billing

On Dec. 27, 2022, CMS released additional [guidance](#) regarding the good faith estimates (GFE) for uninsured (or self-pay) individuals as established in the No Surprises Act (NSA). The FAQs cover how federally qualified health centers with sliding fee discounts can comply with GFE requirements, when an abbreviated GFE can be used and what types of contact information providers should include in a GFE. CMS includes a sample template that group practices can utilize for abbreviated GFEs.



Additionally, NSA requires that the U.S. Department of Health and Human Services, Department of Labor, and Department of the Treasury publish certain information relating to the Federal Independent Dispute Resolution (IDR) process every calendar quarter as of 2022. As part of this requirement, the aforementioned departments on Dec. 27, 2022, released the [Initial Report on the Independent Dispute Resolution \(IDR\) Process](#). The report represents data from the initial reporting period (April 15- Sept. 30, 2022), stating, "because this first report requires substantial manual processing by both certified IDR entities and the Departments, the Departments are limiting the scope of this report to a partial report of the first and second calendar quarters (2022 Q2 and 2022 Q3)." Consequently, the departments have decided to release a preliminary report and follow up with a full report at a later date to allow certified IDR entities to focus on determinations, and the Departments to focus on continuing to automate the portal to improve dispute processing speeds.

CMS Releases Ownership Data for All Medicare-Certified Hospitals

On Dec. 20, 2022, the Centers for Medicare & Medicaid Services (CMS) [released](#) ownership data for all Medicare-certified hospitals. This action supports the Biden Administration's commitment to transparency and the president's [executive order](#) on promoting competition. The public can now review detailed information on the ownership of more than 7,000 hospitals certified to participate in the Medicare program on the [data page](#) of CMS's website.