



H&K Health Dose: February 28, 2023

A weekly dose of healthcare policy news

LEGISLATIVE UPDATES

This Week: The House and Senate Return to Discuss CDS and FY 24 Earmark Process

The U.S. House of Representatives and U.S. Senate returned this week as the appropriations process for congressionally directed spending (CDS) gets underway. Last week, the U.S. Senate Committee on Appropriations released information on appropriations requests and CDS for fiscal year 2024 (FY 24), including a guidance document for senators. The committee confirmed that, in addition to accepting programmatic and language requests, it will again accept requests for CDS on a bipartisan basis.

The House Committee on Appropriations is working out the details of its FY 24 earmark process. It has been reported that potentially all CDS in the Labor, Health and Human Services, and Education (Labor-HHS-Education) Appropriations Bill may be prohibited, and limitations could expand further. Prohibiting Labor-HHS-Education CDS in the House earmark process would result in restrictions on healthcare-related projects being funded through members of Congress in the House, leaving the Senate as the sole source for such community priorities. Earmark guidance from the House may be provided later this week. Next week will bring President Joe Biden's FY 24 budget.

PAHPA Reauthorization RFI: Responses Due in Two Weeks

Rep. Richard Hudson (R-N.C.) and Rep. Anna Eshoo (D-Calif.) are leading the effort to reauthorize the Pandemic and All-Hazards Preparedness Act (PAHPA) reauthorization in the House. Yesterday, [an RFI was released](#) asking for input to help guide the development of this year's reauthorization. Responses are due March 13, 2023. This is an opportunity for stakeholders to weigh in on how bipartisan legislation builds on the preparedness reforms enacted at the end of the last U.S. Congress.

Capitol Hill's Push for PBM Reform

The U.S. Senate Committee on Commerce, Science, and Transportation recently held a [full committee hearing](#) on bringing transparency and accountability to pharmacy benefit managers (PBMs). PBMs are responsible for making determinations as to what medicines and treatments will be covered under health plans. Members of Congress on both sides of the aisle have taken aim at reforming how the industry operates and want to take advantage of the momentum generated from recent drug pricing reform victories.

The Senate hearing focused on the [PBM Transparency Act](#), a bipartisan bill introduced by Senate Commerce Chairwoman Maria Cantwell (D-Wash.) and Sen. Chuck Grassley (R-Iowa). The bill seeks to prevent PBMs from engaging in unfair and deceptive practices that drive up the cost of prescriptions for consumers. On the House side, legislators are also making PBM reform a focal point. Former pharmacist Rep. Buddy Carter (R-Ga.) recently reintroduced a [bipartisan bill](#) to require PBMs to count copay assistance towards a patient's cost-sharing requirements. House Energy and Commerce Committee Chair Cathy McMorris Rodgers (R-Wash.) has also indicated interest in the committee taking up legislation on PBMs.



REGULATORY UPDATES

DEA Releases Proposed Rule to Scale Back COVID-Era Telehealth Policies

The U.S. Drug Enforcement Administration (DEA) has released a [proposed rule](#) to reinstate requirements that a patient see a doctor in person before being prescribed certain controlled substances like Adderall and OxyContin. These requirements had been waived for the duration of the COVID-19 pandemic. Providers would be permitted to prescribe an initial 30-day supply of buprenorphine for opioid use disorder, testosterone for gender-affirming care and ketamine for depression, but patients would then need to visit the provider in person to continue their medications. Patients who began a covered medication during the pandemic would be given a 180-day grace period to comply with the in-person visit requirements. If finalized, the new regulation would go into effect when the COVID-19 public health emergency (PHE) ends on May 11, 2023. The proposed rule will be open for public comment for 30 days.

BPCI Advanced Model 2024 Application Portal Open

On Feb. 21, 2023, the Centers for Medicare & Medicaid Services (CMS) opened the application portal for the Bundled Payments for Care Improvement Advanced (BPCI Advanced) Model. This model was set to end on Dec. 31, 2023, but CMS announced a two-year extension last October. CMS has requested applications from Medicare Accountable Care Organizations (ACOs), suppliers and Medicare-enrolled entities for participation in the model starting Jan. 1, 2024.

New convener applicants must be an ACO or Medicare-enrolled entity, while current model participants can continue participation by signing an amended and restated participation agreement for model year seven. Former participants can apply as a convener, non-convener or episode initiator under a convener. The application portal will stay open for 100 days and close on May 31, 2023, at 5 p.m. ET. More information is available on the [BPCI Advanced applicant resources webpage](#).

PHE Expiration

The U.S. Department of Health and Human Services (HHS) [renewed](#) the COVID-19 PHE for 90 days and told states to expect the PHE and certain flexibilities to end May 11, 2023. As part of ongoing efforts to provide up-to-date information to prepare for [the end of the COVID-19 PHE](#), CMS has crafted a new overview fact sheet on [CMS Waivers, Flexibilities, and the Transition Forward from the COVID-19 PHE](#), which provides clarity on several topics, including:

- COVID-19 vaccines, testing and treatments
- telehealth services
- healthcare access

In the coming weeks, CMS will host stakeholder calls and office hours to provide additional information. Please visit the [CMS Emergencies webpage](#) for continuous updates regarding PHE sunseting guidance as information becomes available to the public.