



H&K Health Dose: July 18, 2023

A weekly dose of healthcare policy news

LEGISLATIVE UPDATES

This Week: Legislative Push Before August Recess

As the August 2023 recess rapidly approaches, there is a push to move legislation before the break. The Senate Committee on Health, Education, Labor, and Pensions (HELP) is moving forward with its version of the Pandemic and All-Hazards Preparedness and Response Act (PAHPA) this week with a markup on July 20, 2023. The House Committee on Energy and Commerce is marking up 15 bills (of which PAHPA is one) that the Subcommittee on Health marked up last week.

The Energy and Commerce Subcommittee on Health will also hold a hearing July 18, 2023, following the recent release of the Centers for Medicare & Medicaid Services (CMS) [Notice with Comment Period](#) of its proposed transitional coverage for emerging technologies (TCET) policy and the coverage policy of Alzheimer's treatments, to discuss coverage pathways for innovative drugs, medical devices and technology.

Next week, on July 26, 2023, the Senate Committee on Finance will hold a markup of legislative proposals to increase transparency and accountability in the pharmacy benefit manager (PBM) industry. Last week, the Finance Committee released a [draft bill](#) requiring expanded disclosures by PBMs about their business practices. The Chairman's Mark will be released 48 hours before the markup.

Appropriations Work Continues in House and Senate

The House and Senate Committees on Appropriations continued to advance their 12 annual appropriations bills for fiscal year (FY) 2024. The House Appropriations Committee held a markup of the Labor, Health and Human Services, Education and Related Agencies (Labor-HHS) [bill](#) on July 14, 2023, at the subcommittee level. The bill would provide \$147 billion for programs under the jurisdiction of the subcommittee, which is \$60.3 billion (29 percent) below the FY 2023 enacted level and \$73 billion below the president's budget request.

Of note, funding for the Centers for Disease Control and Prevention (CDC) would be cut by \$1.6 billion, funding for the National Institutes of Health (NIH) would be cut by \$3.8 billion, and funding for the Advanced Research Projects Agency for Health (ARPA-H) would be cut by \$1 billion. Appropriations for the Agency for Healthcare Research and Quality (AHRQ) would be cut altogether, with appropriators arguing the agency is duplicative of other HHS programs. Title X family planning grants would also be eliminated. The bill includes several contentious policy riders, including requiring that the U.S. Department of Health and Human Services (HHS) report to Congress how many abortions are provided under exceptions to the Hyde Amendment. Differing funding levels and policy priorities will further complicate Congress' ability to finalize FY 2024 appropriations bills before the end of the FY.

The Senate's Labor-HHS bill is expected next week.



Education Workforce Panel Considers Health Transparency Measures

The House Committee on Education and the Workforce advanced four bipartisan healthcare transparency measures out of committee last week:

- [H.R. 4509](#), the Transparency in Billing Act, would require accurate billing practices by hospitals to ensure that group health plans pay for appropriately billed services.
- [H.R. 4507](#), the Transparency in Coverage Act, codifies the "Transparency in Coverage" final rule, which provides consumers with price transparency for medical services and prescription drugs.
- [H.R. 4527](#), the Health DATA Act, to ensure health plan fiduciaries are not contractually restricted from receiving cost or quality of care information about their plan.
- [H.R. 4508](#), the Hidden Fee Disclosure Act, would strengthen requirements for PBMs and third-party administrators to disclose compensation to plan fiduciaries.

Additional details on this markup are available on the [committee website](#).

REGULATORY UPDATES

CMS Releases the Medicare Physician Fee Schedule Proposed Rule

CMS [released](#) the proposed rule Calendar Year (CY) 2024 Revisions to Payment Policies Under the Medicare Physician Fee Schedule (MPFS) and Other Changes to Part B Payment Policies on July 13, 2023, which includes changes related to Medicare physician payment and the Quality Payment Program (QPP). The proposed CY 2024 physician conversion factor (CF) is \$32.7476. This represents a decrease of 3.36 percent from the final CY 2023 physician CF of \$33.8872.

Building on CMS' goal of increasing health equity, the agency has proposed coding and payment for several new services to help underserved communities. These include certain caregiver training programs, separate coding and payment for community health integration services, payment for principal illness navigation services, and coding and payment for social determinants of health risk assessments.

Comments on the proposed rule are due by Sept. 11, 2023.

Other proposals include:

- extending flexibilities to permit split/shared Evaluation and Management (E/M) visits to be billed based on one of three components (history, exam or medical decision-making) or time through at least 2024
- the list of telehealth practitioners is amended to recognize marriage and family therapists and mental health counselors as telehealth practitioners effective Jan. 1, 2024
- reimbursing telehealth services furnished to patients in their homes at the typically higher, non-facility progression-free survival (PFS) rate
- continuing to allow direct supervision by a supervising practitioner through real-time audio and video interaction telecommunications through 2024, including for Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs)
- continuing coverage and payment of telehealth services included on the Medicare Telehealth Services List through 2024
- pausing implementation and rescinding the Appropriate Use Criteria program regulations
- increasing the performance threshold from 75 points to 82 points for all three Merit-Based Incentive Payment System (MIPS) reporting options



- adding five new MIPS Value Pathways related to women's health, prevention and treatment of infectious disease, quality care in mental health/substance use disorder, quality care for ear, nose and throat, and rehabilitative support for musculoskeletal care
- ending the 3.5 percent Alternative Payment Model (APM) Incentive Payment after the 2023 performance year/2025 payment year and transitioning to a Qualifying APM Conversion Factor in the 2024 performance year/2026 payment year

CMS Releases the Outpatient Prospective Payment System Proposed Rule

CMS [released](#) the proposed rule CY 2024 Medicare Hospital Outpatient Prospective Payment System (OPPS) and Ambulatory Surgical Center (ASC) Payment System on July 13, 2023, which includes proposals related to Medicare hospital outpatient and ambulatory surgical center payment. For CY 2024, CMS proposes to increase payment rates under the OPSS and ASC Payment Systems by a factor of 2.8 percent. This increase is based on a hospital market basket percentage increase of 3 percent, reduced by a productivity adjustment of a 0.2 percentage points.

CMS also proposed several changes to hospital transparency requirements. These proposals include requirements for standardized formats for machine-readable files, revisions to the oversight and enforcement process, and new website requirements to improve navigation.

Comments on the proposed rule are due by Sept. 11, 2023.

Other proposals include:

- to continue exempting excepted off-campus provider-based departments (PBDs) of rural sole community hospitals (SCHs) from site-neutral clinic visit payment reductions; this means that CMS will pay the full OPSS payment rate, rather than the physician fee schedule-equivalent rate when a clinic visit is provided in a rural SCH excepted off-campus PBD
- adding nine services and corresponding Current Procedural Terminology (CPT) codes to the inpatient-only (IPO) list for CY 2024 and soliciting comments on the appropriateness of adding these codes to the list
- requiring Hospital Outpatient Departments (HOPDs) and ASCs to report discarded amounts of specific single-dose or single-use package drugs
- resuming usual reference data sets for the cost report update process primarily used for pre-COVID data in CYs 2022 and 2023
- extending coverage of cardiac rehabilitation, intensive cardiac rehabilitation and pulmonary rehabilitation to allow supervision by qualified providers other than physicians, including physician assistants, nurse practitioners and clinical nurse supervisors – both in-person and remotely
- issuing a request for public comment on the establishment of a separate payment for future years to subsidize a requirement for hospitals to establish and maintain access to a buffer stock of three months of essential medicines to enable a more robust and consistent supply of these medicines