



H&K Health Dose: December 6, 2022

A weekly dose of healthcare policy news

LEGISLATIVE UPDATES

Negotiations on Year-End Omnibus Continue

The Dec. 16, 2022, expiration of the continuing resolution (CR) is approaching. Congressional leaders of the House and Senate Appropriations Committees are expected to resume their deliberations over the next few days to strike a deal on topline funding figures for fiscal year (FY) 2023. If negotiators do not make significant progress over the next week, Congress will consider a short-term CR (likely until Dec. 23) to provide more time to compromise and finalize end-of-the-year priorities. There are several year-end healthcare priorities under consideration.

There is a strong push to address impending cuts to Medicare physician reimbursement. Providers face nearly a 4.5 percent cut to their Part B reimbursement rates and a potential additional 4 percent cut under "PAYGO" rules effective Jan. 1, 2023, if Congress doesn't intervene. Senate Health, Education, Labor, and Pensions (HELP) Committee Ranking Member Richard Burr (R-N.C.) has indicated that it is unlikely that reform of dietary supplements regulations will be included but he believes the outlook for an overhaul of laboratory diagnostics and cosmetics regulations will advance. There is also a push to include the Healthcare Cybersecurity Act to strengthen cybersecurity cross-Department coordination. Senate Finance Committee Chair Ron Wyden's (D-Ore.) top priorities include a longer term extension of telehealth flexibilities and a series of mental health policies (see below).

Finance Leadership Release Final Mental Health Proposal

The Senate Finance Committee on Dec. 1, 2022, released the committee's fifth [discussion draft](#) to address mental health policy challenges, this one focused on improving parity. The committee has compiled a [summary of all mental health drafts](#) released by the committee throughout the year, including this most recent.

Policies in the discussion draft include:

- strengthening the accuracy of provider directories for Medicare Advantage (MA) and Medicaid plans, including behavioral health providers
- federal studies on the differences in enrollee cost-sharing and utilization management between behavioral and non-behavioral health services in MA and compared to traditional Medicare, and
- requiring guidance on coverage of partial hospitalization services for Medicare beneficiaries with substance use disorders

Senators Move to Advance Legislation to Improve Dual-Eligible Care

As noted in last week's [Health Dose](#), a bipartisan group of U.S. senators who sit on the Senate Finance Committee are working to develop legislation to improve how individuals dually enrolled in Medicare and Medicaid are cared for and covered. The group of lawmakers, led by Sen. Bill Cassidy (R-La.), recently sent a letter to healthcare and patient communities seeking information that would help Congress craft a bill to fix the structural problems plaguing the "dual-eligible" population. Responses to the [letter](#) are due by Jan. 13, 2023, by email to dualeligibles@cassidy.senate.gov.



Earmarks in 118th Congress

Republicans in the House of Representatives – in a 158-52 closed-door vote on Nov. 30, 2022 – agreed to retain the use of spending earmarks when they control the chamber during the 118th Congress. Notably, in the FYI 2022 spending bill, there were \$9.1 billion in such earmarks from members of both parties, according to an [analysis](#) from the U.S. Government Accountability Office (GAO).

The process will, however, undergo some changes under Republican leadership, according to incoming House Appropriations Chair Kay Granger (R-Texas), who said in a brief interview following the closed-door vote that she plans to "tweak" the way the House earmarks.

While the House and Senate have different rules for their spending process, the two chambers currently have similar restrictions on when and how members can request and receive earmarked funds. Both chambers prohibit earmarks from going to for-profit entities, limit which of the dozen annual appropriations bills are eligible for earmark requests, require members to publicly post their requests on their official website and call on the GAO to audit a sample of the approved earmarks annually. The federal dollars flowing to member-requested projects can be at most 1 percent of discretionary spending, which totals about \$1.5 trillion for the current fiscal year. In the House, members cannot request more than 10 projects, though there's no such cap in the Senate.

Senate Democratic Leadership

The Senate Democratic caucus is scheduled to hold its leadership elections on Dec. 8, 2022. Majority Leader Chuck Schumer (D-N.Y.) plans to nominate Sen. Patty Murray (D-Wash.) as Senate president pro tempore to replace the retiring Patrick Leahy (D-Vt.). The rest of the Democratic leadership team is expected to run unopposed and remain in place.

2023 Calendar for U.S. House of Representatives

Majority Leader-Elect Steve Scalise (R-La.) released the House of Representatives [calendar](#) for the first session of the 118th Congress last week.

REGULATORY UPDATES

340B Administrative Dispute Resolution Process Overhaul Proposed Rule: New Summary Available

As [reported](#) last week's Health Dose, the U.S. Department of Health and Human Services' (HHS) Health Resources and Services Administration recently issued a proposed rule to overhaul the 340B Administrative Dispute Resolution Process. Holland & Knight has compiled a summary of the rule, "[HHS Issues Proposed Rule to Overhaul 340B Administrative Dispute Resolution Process](#)," (Dec. 6, 2022). [Comments](#) on the rule will be accepted through Jan. 30, 2023.

CMS to Hold Meetings with Drugmakers on Implementation of Drug Pricing Reform

The Centers for Medicare & Medicaid Services (CMS) will hold monthly meetings with drugmakers as it works to implement the Medicare drug pricing reform provisions included in the Inflation Reduction Act to give drugmakers an opportunity to provide feedback and ask questions. The first call is scheduled for Dec. 13. Registration is available [online](#).



Highly Anticipated Rule on Prior Authorization for Medicare Advantage Plans

A highly anticipated proposed rule is expected any day that would streamline prior authorization requirements for Medicare Advantage (MA), exchange, and Medicaid and CHIP managed care plans. In addition to the direct regulatory implications, the proposed rule may have additional implications for pending MA prior authorization reform [legislation](#) in that it could lower the estimated cost, which would improve its chances of being included in a year-end package.

ACA Open Enrollment Off to Strong Start for 2023

President Joe Biden announced that enrollment in state-based exchanges or Healthcare.gov exchange plans by new enrollees is up nearly 40 percent compared to last year. In total, more than 3.4 million Americans have signed up so far. The administration credited the uptick in part to [several changes](#) it finalized in April 2022 that were intended to make coverage more accessible and affordable. Open enrollment runs through Jan. 15, 2023.