



H&K Health Dose: March 7, 2023

A weekly dose of healthcare policy news

LEGISLATIVE UPDATES

Congress This Week: President to Release FY 2024 Budget Request

The U.S. House of Representatives and U.S. Senate are in session this week, and both chambers eagerly await the release of President Joe Biden's fiscal year 2024 (FY 24) budget request. President Biden will release the main summary volume of the budget request on March 9, 2023, and is expected to release the remaining explanatory documents on March 13, 2023. As part of the forthcoming budget plan, President Biden unveiled a [proposal](#) on March 7, 2023, around Medicare solvency that would further reduce what Medicare pays for prescription drugs and raise taxes on Americans earning more than \$400,000. The president's budget request is the first step in the federal budget process. Over the next few weeks, Biden Administration officials will testify before several congressional committees to present and discuss the proposed budget.

Meanwhile, relevant congressional committees are already discussing the FY 24 budget and appropriations, as time is limited between now and the end of the current FY (Sept. 30, 2023). Additionally, the House Committee on Appropriations released its [guidance](#) for FY 24 Community Project Funding, also known as earmarks. As expected, House Republicans have included a ban on earmarks in the Labor, Health and Human Services, and Education (Labor-HHS-Education) bill. This means that the Senate will be the focus for most health-related projects in FY 24. However, the Subcommittee on Labor, Health and Human Services, Education, and Related Agencies is still accepting requests for report language (directing actions by federal agencies) and programmatic requests.

Healthcare Workforce RFI: Responses Due March 20, 2023

The Senate Committee on Health, Education, Labor and Pensions recently held a [hearing](#) examining the root causes of the nation's healthcare workforce shortages, and Chairman Bernie Sanders (I-Vt.) and Ranking Member Bill Cassidy (R-La.) are now seeking input from healthcare stakeholders regarding their views on the drivers of healthcare workforce shortages and potential solutions. This is an opportunity for stakeholders to engage with the committee as it seeks to identify bipartisan solutions and craft legislation. Responses to [the request for information](#) (RFI) are due March 20, 2023.

Ways and Means Republicans Release Oversight Priorities

House Committee on Ways and Means Chair Jason Smith (R-Mo.) released his [priorities](#) for oversight hearings and related activities that the committee and its subcommittees plan to conduct over the course of the 118th Congress. Matters under the committee's healthcare jurisdiction include oversight of the No Surprises Act implementation, oversight of the implementation of prescription drug provisions in the Inflation Reduction Act (IRA), adequacy and appropriateness of Medicare provider reimbursements, oversight of graduate medical education policies and oversight of existing and proposed healthcare price transparency requirements.

Senate Advances ASPE Health Nominee

The Senate Committee on Finance advanced President Biden's nomination of Rebecca Haffajee to serve as U.S. Department of Health and Human Services (HHS) Assistant Secretary for Planning and Evaluation (ASPE). Haffajee, an attorney and public health researcher, currently serves as ASPE's principal deputy assistant secretary. Her nomination will now be sent to the full Senate for a vote.



Bipartisan Pushback on the DEA's Newly Proposed Rule on Telehealth Policies

Last week, the U.S. Drug Enforcement Administration (DEA) 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. The effort to scale back telehealth flexibilities put in place during the pandemic has met pushback from lawmakers on both side of the aisle. Sen. Sheldon Whitehouse (D-R.I.) contended that "We learned in the pandemic that telehealth treatment for opioid addiction can be done safely and effectively," and David Schweikert (R-Ariz.), co-chair of the Telehealth Caucus, similarly voiced skepticism regarding the DEA's new proposal. Members have voiced concerns regarding the impact of the rule on denying patients access to treatment may counterproductively worsen the opioid crisis given the shortage of mental health providers. The DEA is accepting comments on the proposed rule until March 31, 2023.

In light of the DEA's rule, 30 House members sent [a letter](#) to the U.S. Department of Labor (DOL) requesting guidance from the Employee Benefits Security Administration (EBSA) regarding parity enforcement for mental health and substance use disorder services delivered via telehealth. The letter reflects a growing concern about the effect of telehealth curtailment and mental health health workforce shortages.

House Oversight Launches Investigation into PBMs

Last week, Chairman of the House Committee on Oversight and Accountability James Comer (R-Ky.) [announced](#) that the committee will be launching an investigation into the practices of pharmacy benefit managers (PBMs) and the effect they have on driving up the costs of prescription drugs and harming patient care. Specifically, the committee will focus its attention on the three largest PBMs that control roughly 80 percent of the prescription drug market.

The committee's investigation is the most recent congressional action aimed at PBM reform. PBMs have come under fire and continue to be a focal point for both chambers, with the House and Senate taking up hearings on the issue and introducing legislation on PBM transparency and reform.

REGULATORY UPDATES

New Prior Authorization Policy Effective on July 1, 2023

Effective for dates of service beginning July 1, 2023, the Centers for Medicare & Medicaid Services (CMS) will [require](#) prior authorization for facet joint interventions (CPT 64490-64495 and 64633-64636) when performed in a hospital outpatient department (OPD) place of service 19 (off-campus outpatient hospital) or 22 (on-campus outpatient hospital). CMS plans to mail introductory letters to help educate providers about this change in May 2023. This change was a part of the 2023 Outpatient Prospective Payment System and Ambulatory Surgical Center final [rule](#).

DSH Proposed Rules

CMS released a [proposed rule](#) to update the Disproportionate Share Hospital (DSH) regulatory requirements in response to the Consolidated Appropriations Act of 2021, including implementing provisions related to including third-party payments for calculating Medicaid hospital-specific DSH caps. The Consolidated Appropriations Act of 2021 modified the Medicaid portion of the hospital-specific DSH limit calculation to include only costs and payments for services delivered to patients for whom Medicaid is the primary payer for such services. The updated hospital-specific DSH cap calculation applies to all qualifying hospitals except those in the 97th percentile of all hospitals for inpatient days made up of patients who, for such days, were entitled to benefits from Medicare Part A and supplemental security income. These hospitals will receive a higher hospital-specific limit.



The federal law enacted the changes to the Medicaid DSH program on Oct. 1, 2021. However, CMS said in the proposed rule that data limitations prevented the agency from clarifying which hospitals qualify for the exception for the 97th percentile. Comments are due April 25, 2023.

CMS also released a [proposed rule](#) impacting Medicaid DSH payments to revise regulations on counting days associated with individuals eligible for certain benefits provided by Section 1115 demonstrations in the Medicaid fraction of a hospital's disproportionate patient percentage. This builds on previously proposed rules that were withdrawn. Comments are due by May 1, 2023.

MedPAC and MACPAC Public Meetings

The Medicare Payment Advisory Commission (MedPAC) held a [public meeting](#) on March 2-3, 2023, focusing on Medicare wage index reforms, Part B drug prices, a post-acute care prospective payment system, Medicare Advantage payment policy and aligning fee-for-service payment rates across ambulatory settings. Also, the Medicaid and Children's Health Insurance Program (CHIP) Payment and Access Commission (MACPAC) held a [public meeting](#) on March 2, 2023. The commission discussed unwinding the continuous coverage requirements in Medicaid and other flexibilities, and experiences of full-benefit dually eligible beneficiaries in integrated care models, among other topics.