



## H&K Health Dose: June 20, 2023

A weekly dose of healthcare policy news

### LEGISLATIVE UPDATES

#### **This Week: Senate to Release First Spending Bills and Healthcare Activity in the House**

This is the last week before Congress heads out for a two-week Fourth of July recess, and appropriations work in Congress is ramping up. The Senate Committee on Appropriations will hold its first full committee markup of fiscal year (FY) 2024 spending bills on June 22, 2023, with Democrats vowing to keep current spending levels as agreed in last month's fiscal accord. The Senate's work will contrast with the U.S. House of Representatives, which is pursuing cuts deeper than those envisioned in the Fiscal Responsibility Act. Given a lack of consensus on the approach, the appropriations process is expected to continue for the rest of this FY.

Regarding healthcare, this week, the House Committee on Energy and Commerce's Subcommittee on Health will hold a hearing on addressing substance use disorder and looking to reauthorize provisions in the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act. The SUPPORT Act is particularly focused on Medicaid's role in helping states address the opioid crisis. The Energy and Commerce Committee's Subcommittee on Oversight and Investigations will conduct a hearing to review the challenges of implementing the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA). The House Committee on Education and the Workforce's Subcommittee on Health, Employment, Labor, and Pensions will hold a hearing continuing the focus on competition and transparency in the healthcare market. The House Committee on Rules will meet to consider the [CHOICE Arrangement Act](#), a bill on health reimbursement arrangements being integrated with individual health insurance coverage.

#### **Senate Finance Pushes Forward on PBM Reform**

Members of the Senate Committee on Finance, including Chair Ron Wyden (D-Ore.) and Ranking Member Mike Crapo (D-Idaho), recently introduced the [Patents Before Middlemen Act](#), legislation seeking to rein in pharmacy benefit managers (PBMs). The bill would delink the compensation of PBMs from drug price and utilization in order to better align incentives that will help lower prescription drug costs from Medicare Part D beneficiaries. Specifically, the Patents Before Middlemen Act would prohibit PBM compensation based on the price of a drug as a condition of entering into a contract with a Medicare Part D plan and would also create a mechanism in which PBMs would be required to pay back any amount in excess of the designated service fees to the secretary.

Wyden has indicated that the bill is likely to be a part of a larger package taken on by the Senate in pursuit of PBM reform. Both the Senate Committee on Finance and Committee on Health, Education, Labor, and Pensions have grown increasingly focused on the issue, with both holding multiple hearings on differing aspects of PBMs and their effect on the healthcare system more generally.

#### **PAHPA Reauthorization Turns Partisan During Hearing**

Last week, the House Energy and Commerce Committee's Subcommittee on Health held a [hearing](#) regarding reauthorization of the Pandemic and All-Hazards Preparedness Act (PAHPA). PAHPA reauthorization occurs every five years, and the current program is set to expire on Sept. 30, 2023. Although PAHPA reauthorization is typically a bipartisan process, drug and medical device shortages have recently become a sticking point for members working on the reauthorization.



Specifically, members clashed during the hearing regarding whether Congress should use the reauthorization as an opportunity to equip the U.S. Food and Drug Administration (FDA) with new authorities the agency needs in order to identify and respond to drug shortages. Committee Chair Cathy McMorris Rodgers (R-Wash.) and the lead Republican spearheading the reauthorization, Rep. Richard Hudson (R-N.C.), have indicated that they would like to prevent opening PAHPA up to issues that are not perceived as strongly related to PAHPA. Conversely, Democrats such as Ranking Member Frank Pallone (D-N.J.) and leading Democrat Rep. Anna Eshoo (D-Calif.) have voiced concerns that drug shortages might not get done if not pushed through this legislative vehicle. To this point, Eshoo recently removed her name from a previously bipartisan discussion draft after a package of FDA bills relating to drug shortages was not included in the legislative hearing.

## House Appropriations Advances FDA Spending Package

Last week, the House Committee on Appropriations advanced the FY 2024 FDA Appropriations bill after an eight-hour mark up. The \$17.8 billion appropriations bill drew criticism from Democrats, and debate ensued regarding the bill's claw back of dollars from the Inflation Reduction Act (IRA), abortion pill limitations and FDA's regulatory authority over menthol cigarettes.

## McMorris Rodgers Pushes for Vote on QALYs Bill

Energy and Commerce Committee Chair McMorris Rodgers is pushing for a House vote on the [Protecting Health Care for All Patients Act](#) next month, legislation that would ban the federal government's use of Quality-Adjusted Life Years (QALYs) when evaluating the effectiveness of treatments and cures. The bill, championed by herself and House Committee on Ways and Means Chair Jason Smith (R-Mo.), seeks to expand access to cures and prevent discrimination against Americans with disabilities and chronic illnesses. All House Committee on Energy and Commerce Democrats voted against the bill when it was marked up in March 2023. Members of the Democratic party have been supportive of banning the use of QALYs but indicated that the particular measure requires more negotiations to ensure the bill would not disrupt the implementation of drug price negotiations.

## REGULATORY UPDATES

### CMS Releases Updated National Health Spending Projections

On June 14, 2023, the Centers for Medicare & Medicaid Services (CMS) Office of the Actuary [released](#) projections of national health expenditures (NHE) and health insurance enrollment for 2022-2031. A related article summarizing its findings is titled, "[National Health Expenditure Projections, 2022-31: Growth to Stabilize Once the COVID-19 Public Health Emergency Ends.](#)"

Highlights from CMS' projections include the following:

- Average annual growth in NHE (5.4 percent) is projected to outpace average annual growth in gross domestic product (GDP) (4.6 percent), resulting in an increase in the health spending share of gross domestic product (GDP) from 18.3 percent in 2021 to 19.6 percent in 2031.
- Individuals with insurance are projected to have reached a historic high of 92.3 percent in 2022 (due to high Medicaid enrollment and gains in Marketplace coverage) and are expected to remain at that rate through 2023.
- Medicare is projected to experience the highest growth rate among the major payers from 2025 through 2031, at 7.8 percent per year and 7.2 percent in 2024. But for 2022, it was 4.8 percent, partly because fee-for-service beneficiaries used less emergency hospital care and sequester pay cuts returned.



- Given the expiration of the Medicaid continuous enrollment condition on March 31, 2023, and the resumption of Medicaid redeterminations, Medicaid enrollment is projected to fall over 2023-2025, most notably in 2024, with an expected net loss of 8 million beneficiaries.
- Hospital spending growth is expected to average 5.8 percent annually over 2022-2031. Growth in hospital utilization is expected to rebound, and hospital price growth is projected to accelerate in 2023 partly because of rising labor costs.
- Total expenditures for retail prescription drugs are projected to grow at an average annual rate of 4.6 percent over 2022-2031.

## MedPAC and MACPAC June Reports to Congress

The Medicare Payment Advisory Commission (MedPAC) [released](#) its June 2023 Report to Congress on June 15, 2023. The report contains chapters on ways to address high prices of drugs covered under Medicare Part B, assessment of post-sale rebates for prescription drugs in Medicare Part D, standardized benefits in Medicare Advantage plans, future directions for Medicare Advantage payment policy, disparities in outcomes for Medicare beneficiaries with different social risks, behavioral health services in the Medicare program, telehealth in Medicare, reforms to Medicare's wage index systems and an evaluation of a prototype design for a post-acute care prospective payment system. Additionally, among its recommendations, MedPAC expressed support for more closely aligning Medicare payment rates between hospital outpatient departments, ambulatory surgical centers and freestanding physician offices.

Also on June 15, the Medicaid and CHIP Payment and Access Commission (MACPAC) [released](#) the June 2023 Report to Congress on Medicaid and CHIP. The report contains four chapters on automatic adjustments to disproportionate share hospital payments, care integration for dually eligible beneficiaries, access to Medicaid coverage and care during and after incarceration, and barriers to Medicaid home- and community-based services (HCBS). Specifically, Chapter 2 focused on the delivery system mechanisms for implementing integrated care for dually eligible beneficiaries. Additionally, the report highlighted ways to expand and increase access to HCBS.

## ACL Proposes Update to Older Americans Act Program Regulations

The Administration for Community Living (ACL) announced on June 15, 2023, that it is seeking input on its [proposed updates](#) to the regulations for its Older Americans Act (OAA) programs. ACL notes that the proposed rule aims to align regulations to the current statute, which has evolved since the current OAA regulations were first established and to reflect the needs of older adults today. The population of older adults has nearly doubled, older adults are living longer than ever before, and healthcare providers are incorporating an increased understanding of social determinants of health (SDOH) into their care practices. As such, the proposed rule will clarify requirements across many programs, including new ones authorized by the OAA since the last update of the rule, increased requirements and flexibilities for providers serving older adults during emergencies, steps to better support older adults to stay in their homes and more.