



H&K Health Dose: November 28, 2023

A weekly dose of healthcare policy news

LEGISLATIVE UPDATES

This Week: Potential Year-End Health Legislation

U.S. Congress passed a "laddered" [Continuing Resolution \(CR\)](#) on Nov. 16, 2023, temporarily averting a government shutdown. The CR extended funding through Jan. 19, 2024, for health programs set to expire on Nov. 17, 2023. It also averted Medicaid Disproportionate Share Hospital (DSH) cuts and reinstated the expired Pandemic and All-Hazards Preparedness Act (PAHPA) through Jan. 19, 2024. Given this Jan. 19, deadline and considering that several other significant items are a priority for Congress in the coming weeks – including funding for Israel, Ukraine and passing the annual National Defense Authorization Bill (NDAA) – it is unlikely that major healthcare legislation will pass before the end of the year. However, there is a limited chance legislation to mitigate impending Medicare physician payment cuts could serve as a small healthcare vehicle before the year's end.

Currently, an across-the-board 2.5 percent positive adjustment to the Medicare Physician Fee Schedule (MPFS) for Calendar Year (CY) 2023 is slated to decrease to 1.25 percent for CY 2024. In addition, a negative 2.18 percent adjustment triggered by budget neutrality requirements and a statutory 0 percent update to the MPFS are both scheduled to take effect on Jan. 1, 2024, resulting in an expected net decrease of 3.7 percent for CY 2024. Several members, including U.S. Senate Committee on Finance Chair Ron Wyden (D-Ore.), have expressed an interest in addressing the cuts before they take effect. Earlier this month, the Senate Committee on Finance [marked up a package](#) that would extend the full 2.5 percent positive adjustment through 2024. Should any efforts to extend this positive adjustment by year-end 2023 be successful, other measures that may be considered could include an extension to the Advanced Alternative Payment Model (APM) bonus incentives for performance year 2023 (at either the current 3.5 percent, or more likely, at 1.75 percent). Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act provisions that expired Sept. 30, 2023, might also be considered. Specifically, reinstating the state plan amendment (SPA) option – which allows a state to amend its Medicaid plan to provide for an exception to the Institutions for Mental Diseases (IMD) exclusion for certain Medicaid beneficiaries – has been a bipartisan priority in both the Senate Committee on Finance and the Senate Committee on Health, Education, Labor, and Pensions (HELP).

Otherwise, most items will likely be pushed to Jan. 19, 2024, at the earliest. These items include, but are not limited to:

- Measures related to Pharmacy Benefit Manager (PBM) reform such as proposals marked up in both chambers to "delink" PBM compensation from drug costs, as well as to impose a variety of transparency and data reporting requirements on PBMs
- Proposals to incentivize integrated primary and behavioral healthcare such as legislation to temporarily increase MPFS payments rates for certain integrated primary and behavioral healthcare services by 75 percent in 2026, 50 percent in 2027 and 25 percent in 2028
- Legislation to require Medicare Advantage (MA) plans to establish an electronic prior authorization program and meet new standards for timing and transparency
- Reauthorization of expired SUPPORT Act provisions



This Week's Energy and Commerce Health Hearings

Centers for Disease Control and Prevention (CDC) Director Mandy Cohen will testify on Nov. 30, 2023, in front of the House Committee on Energy and Commerce's Subcommittee on Oversight and Investigations at a [hearing](#), "Unmasking Challenges CDC Faces in Rebuilding Public Trust Amid Respiratory Illness Season." The hearing marks Cohen's first appearance before Congress. Additionally, the House Committee on Energy and Commerce's Subcommittee on Health will hold a [hearing](#), "Understanding How AI is Changing Health Care," on Nov. 29, 2023.

Retirements Continue to Mount

Several lawmakers recently announced plans to retire from Congress after this term. Rep. Anna Eshoo (D-Calif.), Ranking Member of the House Committee on Energy and Commerce's Subcommittee on Health, will leave office after a three-decade congressional career. Eshoo has played a pivotal role in healthcare policy – from prescription drug prices and shortages, biomedical research and health insurance access.

Additionally, Rep. Michael Burgess, MD (R-Texas), announced that he will not seek reelection next year. Burgess is the second highest-ranking Republican on both the House Committee on Energy and Commerce and House Committee on Rules and co-chairs the GOP Physician Caucus. Rep. Brad Wenstrup, MD (R-Ohio), who also serves on the GOP Physician Caucus and the House Committee on Ways and Means, recently announced his retirement.

Rep. Tony Cárdenas (D-Calif.), who serves on the House Committee on Energy and Commerce and is the second-most senior Democrat on the House Committee on Energy and Commerce's Subcommittee on Health announced on Nov. 20, 2023, that he would not seek re-election in 2024. Additionally, Rep. Dan Kildee (D-Mich.), a House Committee on Ways and Means member, will retire from Congress at the end of his term. A running list of members of Congress who are retiring or seeking other office is available [online](#).

REGULATORY UPDATES

White House Seeks to Secure Medical Supply Chain

President Joe Biden [announced](#) on Nov. 27, 2023, plans to issue a Presidential Determination to broaden the U.S. Department of Health and Human Services' (HHS) authorities under Title III of the Defense Production Act to enable investment in domestic manufacturing of essential medicines, medical countermeasures and critical inputs that have been deemed by the president as essential to national defense. HHS will also designate a new supply chain resilience and shortage coordinator for efforts to strengthen the resilience of medical production. The plan is a piece of a larger framework of 30 new actions the president unveiled seeking to strengthen America's supply chains.