



H&K Health Dose: January 4, 2024

A weekly dose of healthcare policy news

Welcome to the second session of the 118th U.S. Congress, which is scheduled to return from its holiday recess next week. From a healthcare perspective, in the near term, Congress is focused on passing two major healthcare spending bills and trying to include various health initiatives. Congress has only 15 days until the first government funding deadline – January 19, 2024. Funding for Agriculture-FDA, Energy and Water, Military Construction-VA and Transportation-HUD runs through January 19, 2024, with everything else funded until February 2, 2024.

LEGISLATIVE UPDATES

In 2024, two primary vehicles will likely advance healthcare initiatives: 1) a healthcare-focused package that would ride on an appropriations bill in early 2024 and 2) a lame-duck health package.

Items to watch in 2024 include:

Extenders: The most recent continuing resolution provided short-term extensions for several policies through January 19, 2024, including funding for the Community Health Center Fund and the National Health Service Corps (NHSC); funding for the Special Diabetes Program; delay of Medicaid disproportionate share hospital (DSH) allotment reductions; and extension of the work geographic index floor under the Medicaid physician fee schedule.

Transparency: There will likely be a significant push to include the Lower Costs, More Transparency Act (H.R. 5378) (passed 320-71 by the House last month) in an appropriations vehicle. The act includes measures to enact site-neutral payment policies for drug administration; ban spread pricing for payment arrangements with pharmacy benefit managers (PBMs) in Medicaid; require providers, PBMs, health insurers and others to adopt specific transparency rules around charges and costs; extend funding for Community Health Centers and Teaching Health Centers with graduate medical education programs; and prevent hospital disproportionate share payment cuts.

The focus on transparency in healthcare has also been a priority for Senate Committee on Finance Chair Ron Wyden (D-Ore.). In November 2023, the committee marked up and unanimously approved the Better Mental Health Care, Lower-Cost Drugs and Extenders Act (S. 3430), which aims to decrease costs for certain covered Part D drugs by removing PBM payment from drug prices and developing a new designation for "essential retail pharmacies" to expand pharmacy options for beneficiaries in underserved areas unaffiliated with PBMs. Despite bipartisan support for various price transparency policies, there remains uncertainty as to whether a transparency provision would ride on an appropriations bill in early 2024.

Physician Conversion Factor Cuts: There is significant pressure to pass legislation to address the 3.37 percent cut to the Medicare conversion factor cut (that took effect on January 1, 2024). The Centers for Medicare & Medicaid Services (CMS) indicates that it intends to reprocess claims with the new rates should Congress retroactively address the cut. Several efforts are underway to at least partially mitigate the cuts. The Senate Committee on Finance advanced a bill to replace the statutory increase of 1.25 percent for Medicare physician fee schedule services furnished in 2024 with 2.5 percent for that year. This would amount to reducing the 3.4 percent cut in the conversion factor to a cut of 2.15 percent, thereby slightly increasing the physician payment rate.



The House Committee on Energy and Commerce advanced the Physician Fee Schedule Update and Improvements Act, that also replaces the statutory increase to 2.5 percent. The bill would also extend incentive payments for participation in eligible alternative payment models (APMs) for one year. The bill would also tier the size of the bonus according to how long a provider has participated in an APM to better account for increased upfront costs of APM participation. The bill would extend for one year a policy to increase the work geographic index to 1.00 for any locality where the index would be less than 1.00. This policy is otherwise set to expire January 19, 2024. The committees proceeded with these bills so that they are in a strong negotiating position for inclusion in the January 19, 2024, continuing resolution.

Pandemic and All-Hazards Preparedness Act (PAHPA) Reauthorization: Congress has extended some of PAHPA's programs as part of the recent CR; however, resolution of a final bill between the U.S. House of Representatives and U.S. Senate has proven challenging due to a breakdown around whether or not FDA provisions should be included. In July 2023, the Senate Committee on Health, Education, Labor and Pensions (HELP) approved S. 2333, the PAHPA, with bipartisan support, but the full Senate has still not taken up this bill. Similarly, in July 2023, the House Committee on Energy and Commerce advanced two bills related to reauthorization along party lines (H.R. 4421, the Preparing for All Hazards and Pathogens Reauthorization Act, and H.R. 4420, the Preparedness and Response Reauthorization Act).

Drug Shortages: The Senate Committee on HELP advanced a PAHPA reauthorization bill with several drug shortage-related provisions. However, as noted above, there has been a breakdown across party lines in the House. Over the summer, House Committee on Energy and Commerce Chair Cathy McMorris Rodgers (R-Wash.) released a legislative discussion draft focused on drug shortages. Since then, the House Committee on Energy and Commerce's Subcommittee on Health held a hearing on the discussion draft and several Democratic proposals in September 2023, though none were included in subsequent Subcommittee and Full Committee markups. While it is unclear if Congress will find a bipartisan, bicameral agreement on these issues given the impact drug shortages have on patients, the congressional focus on these issues is expected to continue.

SUPPORT Act Reauthorization: The SUPPORT for Patients and Communities (SUPPORT) Act (H.R. 4531) was passed by the House in December 2023. The SUPPORT Act expired on October 1, 2023, and H.R. 4531 would reauthorize these programs through fiscal year (FY) 2028. The Senate Committee on HELP advanced its SUPPORT reauthorization bill – the SUPPORT Act (S. 3393). There are differences between the House and Senate that need to be reconciled in order to move forward.

Telehealth: Congressional action extended many telehealth flexibilities until the end of 2024. Several telehealth bills were reintroduced and gained traction last year, including the CONNECT for Health Act, the Telehealth Benefit Expansion for Workers Act of 2023, the Telehealth Expansion Act and the Telemental Health Care Access Act. Additionally, CMS temporarily extended many policies in the calendar year (CY) 2024 Medicare Physician Fee Schedule Final Rule, and the agency is waiting to see how Congress responds before putting forward more permanent telehealth policies. That puts much pressure on Congress to develop a long-term telehealth strategy this year.

Artificial Intelligence (AI): The House Committee on Energy and Commerce recently held a series of hearings on AI. The most recent hearing examined concerns and opportunities related to the development and use of AI, emphasizing the need for federal oversight and safeguards. This focus has been mirrored in the Senate, where AI Insight Forums were held. The Senate Committee on HELP also held a hearing to examine AI in healthcare, and the Senate Finance Committee pressed the U.S. Department of Health and Human Services (HHS) on its use of AI. Meanwhile, HHS will continue to press forward with implementing the directives outlined in the AI Executive Order, including the charge to create an AI Task Force by the end of this month.



REGULATORY UPDATES

Administration Extends IDR Flexibilities

In the first few months of 2024, providers can initiate batched disputes in the federal independent dispute resolution (IDR) process. Providers will have until March 14, 2024, to initiate disputes that became eligible for the IDR process since the IDR portal initially closed on August 3, 2023. For disputes initiated between August 3, 2023, and January 21, 2024, the administrative fee amount is \$50 per party per dispute. For disputes initiated on or after January 22, 2024, the administrative fee is \$115 per party per dispute. Certified IDR entity fees for disputes initiated on or after January 22, 2024, may be updated to fall within the ranges finalized on December 21, 2023, which are the final rules to establish the new administrative fee amount and certified IDR entity fee ranges. The administration reopened the federal IDR portal to process all dispute types on December 15, 2023.

Comments on another No Surprises Act regulation, the [Federal Independent Dispute Resolution Operations Proposed Rule](#), are due in early 2024 (the comment period initially closed on January 2, 2024, but will be reopened). The departments will likely finalize this rule in 2024. Besides this final regulation, we may see regulations implementing other provisions of the No Surprises Act, such as those related to the advanced explanation of benefits, continuity of care requirements, provider directory requirements and information to be included on patients' insurance identification cards.

DEA Telemedicine Rule Forthcoming

Additionally, the Drug Enforcement Administration (DEA) is expected to release a new proposed rule on how telemedicine can be used to prescribe buprenorphine, used in drug-assisted treatment. A previous proposal, which drew fire from recovery advocates, sought to limit prescriptions to a 30-day initial supply. Additionally, the proposal will address other controlled substances being prescribed virtually.

IRA Medicare Reforms Effective January 1, 2024

Several Medicare reforms passed as a part of the 2022 Inflation Reduction Act are now in effect, including an expansion of the federal Low-Income Subsidy (LIS) program. A partial LIS program will no longer provide lower financial support for specific individuals. Effective January 1, 2024, anyone who qualifies for the LIS program will get full program benefits, covering most out-of-pocket costs for prescription medications. The new year also eliminates the 5 percent coinsurance for Medicare Part D beneficiaries who have entered the catastrophic phase of their coverage.