

Impact Health Policy Weekly

Framing the Week

The House and Senate are both in recess until after Labor Day. During this break, we are continuing to take the opportunity to dive a bit deeper into issues of interest. This week, we are looking at current legislation focused on site neutral payment provisions as well as healthcare provider transparency and consolidation proposals. Committees of jurisdiction on both sides of the Capitol are looking at these issues as a part of broader health care packages, though the House is far ahead of the Senate. Some provisions have bipartisan support, whereas others are being driven by House Republican majorities. What follows is a brief discussion on what is being considered in the various committees and what we might expect in the coming months. Additionally, the attached [chart](#) provides a snapshot of the legislative proposals in play.

House Energy & Commerce Committee: In the first half of the year, the House Energy and Commerce Committee (E&C) was focused on legislative proposals aimed at lowering health care costs, expanding access to treatments, strengthening Medicare, and bringing price transparency to patients. In May, the Committee advanced the culmination of their efforts by passing the [PATIENT Act \(Impact Summary\)](#), a broad piece of legislation that promotes transparency across various health systems, including hospitals, insurers, and pharmacy benefit managers (PBMs). Most of the provisions passed on a bipartisan basis, however, New York Democrats expressed concern over the site neutral drug administration provision (other site neutral policies considered had been dropped). The provisions focused on provider transparency and site neutrality include:

- A provision that would require each outpatient department of a provider to include a unique identification number on claims for services.
- A provision that would increase transparency of certain health-related ownership information and require specific entities (including private equity) to provide CMS with data on mergers, acquisitions, and changes in ownership.
- A provision that would prohibit payment for a clinical diagnostic laboratory test furnished by a provider of services or supplier unless the provider makes pricing information publicly available.
- A provision that would require Medicare Advantage plans to report to HHS the number of claims for items and services furnished during such plan year by a specified provider and several other requirements.
- A provision that aligns payment for drug administration in hospital outpatient departments with the Physician Fee Schedule rate. This means that Medicare would pay outpatient hospital departments the same rate as independent physician offices for administering the same intravenous or injected medication.

Along with the PATIENT Act, the E&C Committee also advanced the Providers and Payers Compete Act ([H.R. 3284](#)), legislation that would require the Secretary to consider, within the annual rulemaking process, the effect of regulatory changes to certain Medicare payment systems on provider and payer consolidation. Proposed CMMI models are also included in this provision.

House Ways and Means Committee: The Ways and Means Committee (W&M) has not been as focused on health transparency issues as the E&C Committee, though in July it did advance the [Health Care Price Transparency Act \(Impact Summary\)](#) on a party line vote. The W&M package is narrower in scope but includes several provider transparency proposals and a site neutral provision. The transparency requirements are similar to the E&C bill, although the E&C's PATIENT Act includes transparency requirements for Medicare Advantage and private equity that the Health Care Transparency Act leaves out. Both bills also contain a site neutral provision that would align payment rates for drug administration, but the W&M provision includes a 1-year delay in implementation for federally-designated cancer hospitals and hospitals located in a rural or health professional shortage area. The W&M package also includes the Providers and Payers Compete Act which was passed by the E&C Committee.

House Education and the Workforce Committee: The Education and the Workforce Committee marked up their own bill in July ([Impact Summary](#)), the [Transparency in Billing Act](#), that included a provision to require insurers to only pay claims for items and services submitted by a hospital and provided at an off-campus outpatient department if the claim includes a separate unique health identifier for the department where items and services were delivered.

Senate Finance Committee: The Senate Finance Committee has focused primarily on PBM transparency (which will be the subject of a future FTW) this year. However, the Committee did hold a [hearing](#) in July that addressed concerns regarding hospital consolidation and corporate ownership in the health care system.

Senate HELP Committee: The Senate Health, Education, Labor and Pensions Committee (HELP) Committee has also been more focused on PBM and other health care priorities, however, in late July Senator Sanders released a sweeping workforce [bill \(section by section\)](#) that was partially paid for with broad site neutral provisions that would have prohibited hospitals from charging health plans and issuers a facility fee for services provided by off-site physicians or for providing on-site primary care, telehealth, and low-complexity services that can be safely provided in an ambulatory setting. The bill was scheduled for a markup but was pulled due to lack of support.

What's Next? How Congress brings all these bills together into one package is far from determined. What is certain is that much needs to be done in a short amount of time. Site neutral and transparency policies are just one element of health focused legislation that could be wrapped up into a broader healthcare package at the end of the year. Congress is also working on reauthorizing several public health programs, including critical workforce programs and the Pandemic and All Hazards Preparedness Act (PAHPA), pursuing PBM transparency and reform legislation, and trying to find a way to eliminate drastic cuts that are scheduled to hit safety net hospitals. But these bills, particularly the site neutral provision, are also an attractive part of the overall package to some members of Congress because they

generate revenue. What remains to be seen is if all four corners can agree on both the bills that raise revenue and which priority programs the revenue will go towards.

Regulatory Update:

No new rules have cleared review at the Office of Management and Budget. OMB is reviewing the following rules:

- **Minimum staffing standards for long-term care facilities** – [Proposed rule](#) would address staffing requirements at long-term care facilities, including nursing homes. Industry pushback has delayed the release of the rule, initially intended for June. Stakeholders are meeting with OMB in early September, meaning we are unlikely to see the proposal until the fall.
- **Medicaid and CHIP Enrollment and Eligibility** – [Final rules](#) intended to simplify the processes for eligible individuals to enroll and retain eligibility in Medicaid, CHIP and the Basic Health Program. The first final rule expected in September 2023 will remove barriers and facilitate enrollment of new applicants, particularly those dually eligible for Medicare and Medicaid. The second final rule expected in February 2024 will implement changes to align enrollment and renewal requirements for most individuals in Medicaid and promote maintenance of coverage.
- **Mandatory Medicaid and CHIP Cor Set Reporting** – [Final rule](#) would establish requirements for mandatory reporting of the Core Set of Children’s Health Care Quality Measures for Medicaid and CHIP, the behavioral health measures on Adult Health Care Quality Measures for Medicaid, and the Core Set of Health Care Quality Measures for Medicaid Health Home Programs. The final rule is expected in August 2023.

This Week in Health Policy

Tue. (8/15)

- **1:00pm – U.S. News and World Report Discussion: Pediatric Care** – The U.S. News and World Report holds a webinar titled “Transforming Pediatric Care Delivery Through Value-Based Innovation.” Health care leaders in pediatric care will discuss how partnerships with payers and cross-sector entities are transforming pediatric care delivery. [Details.](#)

Wed. (8/16)

- **9:30am – CMS Meeting: Ground Ambulance and Patient Billing** – The Centers for Medicare and Medicaid Services (CMS) holds a meeting of the Ground Ambulance and Patient Billing (GAPB) Advisory Committee to review and discuss preliminary findings from the subcommittee on Network Adequacy and Cost/Payment Structures, and the subcommittee on Public/Consumer Disclosures and Protections. [Details.](#)

- **10:30am – HITAC Meeting: Pharmacy Interoperability** – The Health Information Technology Advisory Committee (HITAC) holds a meeting of the Pharmacy Interoperability and Emerging Therapeutics Task Force to discuss program updates. [Details.](#)
- **2:00pm – HITAC Meeting: Annual Report Workgroup** – HITAC holds a meeting of the Annual Report Workgroup to discuss program updates. [Details.](#)

Thurs. (8/17)

- **10:00am – HRSA Meeting: Primary Care Medicine/Dentistry** – The Health Resources and Services Administration holds a meeting of the Advisory Committee on Training and Primary Care Medicine and Dentistry to receive a HRSA Bureau of Health Workforce update on FY2023-24 planned activities and on the two planned funding opportunities for the Title VII programs. [Details.](#)
- **11:00am – HITAC Meeting: Health IT Advisory Committee** – HITAC holds a meeting of the Health IT Advisory Committee to discuss program updates, including recommendations to the National Coordinator on the topics of interoperability, privacy and security, patient access, and use of technologies that support public health. [Details.](#)

Featured Analysis

- **Impact Regulatory Outlook: 2023 Unified Agenda** – In the Policy Hub Insight Bank [here.](#)
- **Impact Updated Chart: PBM Legislation Under Consideration** – In the Policy Hub Insight Bank [here.](#)
- **Impact Tracker of COVID-19 PHE Flexibilities** – In the Policy Hub Insight Bank [here](#)
- **Impact Health Policy Guide to the 118th Congress** – In the Policy Hub Insight Bank [here.](#)
- **Impact Roundup of Surprise Billing and Transparency Updates** – In the Policy Hub Insight Bank [here.](#)

Congressional Lookback

Weds. (8/9)

- **Senators Cassidy, Warren, Grassley, and Warnock** [requested](#) the TIGTA and the IRS to evaluate nonprofit hospitals' compliance with their tax-exempt requirements. [Details.](#)

Regulatory Lookback

Fri. (8/11)

- **SAMHSA** [announced](#) \$88 million to programs aimed at further improving behavioral health. [Details.](#)
- **The RWJF** [released](#) a publication entitled *Medicaid Managed Care Strategies to Reduce Racial and Ethnic Health Disparities in Mental Healthcare for Adults*. [Details.](#)

Thurs. (8/10)

- **HRSA** [awarded](#) \$100 million to train more nurses and grow the nursing workforce. [Details.](#)

Weds. (8/9)

- **ASPE** [released](#) a report analyzing new federal data on hospital ownership. [Details.](#)
- **HHS OCCHE and NHTSA** [launched](#) the Heat-Related Illness EMS Activation Surveillance Dashboard. [Details.](#)

Tues. (8/8)

- **CISA and FEMA** are collaborating to [provide](#) \$374.9 million in grants to enhance cybersecurity for state and local governments, responding to increasing threats to critical infrastructure and public safety. Applications are due October 6. [Details](#)

Mon. (8/7)

- **The DEA** [issued](#) a final rule to allow practitioners to dispense a three-day supply of narcotic medication to start detoxification treatment or maintenance treatment for people who use opioids. [Details.](#)
- **The USDA** [announced](#) that Action For Healthy Kids, in partnership with the Healthy Meals Incentives Initiative, is awarding nearly \$30 million in subgrants to 264 school districts. [Details.](#)

Comment & Application Deadlines

- **August 17:** CMMI issued an [RFI](#) to inform the development of an episode-based payment model focused on improving beneficiary care and lowering Medicare expenditures. [Details.](#)
- **August 23:** The FDA issued [draft guidance](#) entitled: "Psychedelic Drugs: Considerations for Clinical Investigations. [Details.](#)
- **August 25:** CMS released the CY 2024 ESRD PPS [proposed rule](#). [Details.](#)
- **August 26:** CMS released a [notice with comment](#) to establish the TCET pathway. [Details.](#)
- **August 28:** The FDA [issued](#) an RFI to assess whether in-home disposal products can mitigate the risk of nonmedical use or overdose of opioid analgesics. Submissions are due August 28. [Details.](#)
- **September 5:** CMS issued a [proposed rule](#) that describes the agency's proposed actions to remedy the payment for 340B drugs for calendar years (CYs) 2018 through 2022. [Details.](#)
- **September 5:** The CFPB and HHS issued an [RFI](#) on high-cost specialty financial products used to pay for health care. [Details.](#)
- **September 6:** The FDA [issued](#) a proposed rule to establish tobacco product manufacturing practice (TPMP) requirements. [Details.](#)
- **September 11:** HHS released a [proposed rule](#) to ensure short-term, limited duration insurance (STLDI) and fixed indemnity benefits coverage do not undermine consumer protections and requirements under the ACA. [Details.](#)
- **September 11:** CMS released the CY 2024 MPFS [proposed rule](#). [Details.](#)
- **September 11:** CMS released the CY 2024 OPFS [proposed rule](#). [Details.](#)
- **September 29:** The CDC [issued](#) a request for nominations for members to serve on the Healthcare Infection Control Practices Advisory Committee (HIPAC). [Details.](#)

- **October 6:** CISA and FEMA are collaborating to [provide](#) \$374.9 million in grants to enhance cybersecurity for state and local governments, responding to increasing threats to critical infrastructure and public safety. [Details](#)
- **November 17:** The FDA [issued](#) a proposed rule to amend its prescription drug labeling regulations to require the inclusion Patient Medication Information (PMI). [Details](#).