



Issues for the week ending January 28, 2022

Federal Issues

Legislative

Senate Committee Releases Draft Pandemic Preparedness Bill

On Tuesday, Senate Health, Education, Labor and Pensions (HELP) Committee Chair Patty Murray (D-WA) and Ranking Member Richard Burr (R-NC) released a [discussion draft](#) of bipartisan legislation to strengthen the nation's public health system and prepare for future public health emergencies.

The draft legislation — known as the Prepare for and Respond to Existing Viruses, Emerging New Threats, and Pandemics Act (PREVENT Pandemics Act) — includes steps to:

- Address disparities which make public health emergencies harder on at-risk populations and communities
- Ensure continued access to mental health and substance use disorder services during public health emergency responses to help people with trauma, depression, substance use disorders and more
- Revitalize the public and community health workforce
- Improve strategy and coordination among the nation's public health preparedness agencies

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For reference, the HELP Committee also released a section-by-section [summary](#) of the legislation. The Committee is likely to markup the legislation in the near future, though timing is unclear.

Senators Seek COVID-19 OTC Test Coverage in Medicare

A group of 19 Democratic senators [wrote](#) to CMS leadership last week seeking answers on the lack of an over-the-counter (OTC) COVID-19 testing reimbursement in Medicare, similar to new requirements for commercial coverage. Although there is interest in the Biden Administration to provide more tests for Medicare beneficiaries, there has reportedly been difficulty finding a legal pathway to provide OTC COVID-19 tests under Medicare absent legislation, which has been a barrier to further movement on the issue.

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U.S. House Members Express Bipartisan Support for Medicare Advantage

A large, bipartisan group of U.S. House Members sent a [letter](#) to the Centers for Medicare & Medicaid Services (CMS) last week, urging the agency to keep Medicare Advantage (MA) strong and stable so that it can continue to provide affordable, high-quality, patient-centered coverage. The letter, sent ahead of CMS' annual MA Rate Notice in early February, received 346 signatures (157 Democrat, 189 Republican) - a record level of support from House Members.

AHIP President and CEO Matt Eyles issued a press [statement](#) following the release of the letter. The statement reads, "Medicare Advantage has strong bipartisan support because it is a prime example of the government and free market working together to deliver lower costs, more choices, and better outcomes for millions of Americans. We applaud Congress for standing with seniors and people with disabilities who depend on this vital program and look forward to working with both Congress and the Administration to keep MA strong, stable, and adequately funded now and in the future."

Coalition Calls on Congress to Reinstate Expired Telehealth Flexibility Provision in CARES Act

AHIP joined 125 organizations in signing a [letter](#) to Congressional leaders asking for their support to reinstate a recently expired policy that keeps telehealth services affordable for workers with certain high-deductible health plans (HDHP) coupled with a health savings account (HSA). The policy, initially included in the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act of 2020, helped to make telehealth more affordable and flexible for those with a health savings account, but expired on December 31, 2021.

Why this matters: The letter urges Congress to retroactively reinstate this vital telehealth provision from the CARES Act via the next possible legislative vehicle. It highlights a [survey](#) by the Employee Benefit Research Institute (EBRI) which shows that roughly 96 percent of employers adopted pre-deductible coverage for telehealth services as a result of the flexibility provided by the initial provision.

AHIP and the Alliance to Fight for Health Care (AFHC), a broad-based coalition and is comprised of businesses, patient advocates, employer organizations, unions, health care companies, consumer groups and other stakeholders that support employer-provided health coverage – will continue to seek legislative and regulatory solutions to extend this flexibility. AFHC sent a [letter](#) to the Biden Administration last month calling on the Treasury and the IRS to provide a policy of non-enforcement while Congress considers legislative solutions. There is currently bipartisan/bicameral legislation in Congress, the Telehealth Expansion Act of 2021 ([S.1704/H.R. 5981](#)), to extend this flexibility.

Federal Issues

Regulatory

Biden Administration Releases Report to Congress on Mental Health Parity Laws

The Departments of Health, Treasury, and Labor released the [2022 Report to Congress](#) on Compliance with the Mental Health Parity and Addiction Equity Act (MHPAEA). The report and accompanying [Enforcement Fact Sheet](#) include general information about enforcement of MHPAEA, and includes an in-depth review of the Department of Labor's and the Centers for Medicare and Medicaid Services' activities to enforce the comparative analysis requirements enacted as part of the Consolidated Appropriations Act (CAA). Notably, DOL and CMS issued 171 requests for comparative analyses to plans and issuers, but none of the submissions met the reviewers' standards for sufficiency. This finding underscores the [concerns expressed by AHIP and others](#) that the standards and expectations of the agencies are unclear.

Why this matters: The Departments include five recommendations to Congress including new authority to impose civil monetary penalties and enhanced authority to directly pursue parity violations by entities that provide administrative services, clear redress for the financial harm for consumers stemming from parity violations, expanded access to telehealth, and ensuring that mental health and substance use disorder benefits are defined in an objective and uniform manner.

CMS Commits Over \$49 Million to Boost Medicaid and CHIP Enrollment

To boost Medicaid and Children's Health Insurance Payment (CHIP) enrollment, the Centers for Medicare & Medicaid Services (CMS) has committed \$49.4 million to fund organizations that can connect eligible

individuals with both of these programs. This funding is focused on reducing the number of uninsured children, parents, and pregnant individuals (a new and optional target population with this year's award) by boosting enrollment and retention. Funding awardees can receive up to \$1.5 million each for a three-year period and can include, among others: state and local governments, schools, tribal organizations, and non-profits. This effort is intended to reach the many families who do not understand how to enroll or if their children are eligible for Medicaid or CHIP. According to the CMS announcement, nearly 2.3 million out of the 4 million uninsured children in the United States are eligible for Medicaid and CHIP. Disparities in coverage for children are particularly pronounced for indigenous peoples and people of color.

Applicant organizations are encouraged to consider a range of activities to help provide enrollment and renewal assistance to their target demographics, including engaging with schools and programs serving youth; using community health workers, parents, and mentors to help families enroll in Medicaid and CHIP; and bridging racial and demographic health coverage disparities by targeting communities with low coverage rates. Applications will be accepted through March 28, 2022.

HHS Distributing Additional \$2 Billion in Provider Relief Funds Payments

On Tuesday, the U.S. Department of Health and Human Services (HHS), through the Health Resources and Services Administration (HRSA), made more than [\\$2 billion in Provider Relief Fund \(PRF\) Phase 4 General Distribution payments](#) to more than 7,600 providers across the country. This funding is in addition to the payments released in December 2021. Phase 4 payments had an equity focus including reimbursing a higher percentage of losses for smaller providers and incorporating "bonus" payments for providers who serve Medicaid, Children's Health Insurance Program (CHIP), and Medicare beneficiaries. According to the agency's press statement, approximately 82% of all Phase 4 applications have now been processed.

COVID-19 Updates

- Pfizer has released [findings](#) from studies that show a booster dose of their COVID-19 vaccine produces enough antibodies to fight off the Omicron variant. The two studies, which were sponsored by Pfizer, build off [early findings](#) the company announced in December demonstrating an effectiveness of three doses over the then-newly discovered Omicron variant. Pfizer, and their partner BioNTech, are continuing to work on an Omicron-specific vaccine with clinical trials set to begin this month. This follows a [report](#) from the Centers for Disease Control and Prevention (CDC) that a third dose of an mRNA vaccine was at least 90% effective at preventing hospitalizations during both the Delta and Omicron waves.
- The Occupational Safety and Health Administration [published](#) an announcement in the Federal Register withdrawing the majority of its previous rule requiring businesses with at least 100 employees to either adopt a vaccination mandate or require unvaccinated workers to be tested weekly. Earlier this month, the U.S. Supreme Court halted the implementation of the rule. OSHA stated the rule would now stand as a proposed version instead of a permanent rule, noting that they will continue the notice-and-comment rulemaking process.
- Last week, the Food and Drug Administration (FDA) [revised](#) the emergency use authorizations for two monoclonal antibody treatments, bamlanivimab and etesevimab (administered together) and REGEN-COV (casirivimab and imdevimab), to limit their use to only when the patient is likely to have been infected with or exposed to a variant that is susceptible to these treatments. The FDA

narrowed the authorization for these treatments because data indicate they are highly unlikely to be effective against the omicron variant.

State Issues

New York

Legislative

Lawmakers Focus on Coverage Expansion, Affordability

Expanding health insurance coverage and better controlling escalating hospital costs were on lawmakers' agendas last week.

- Senator Gounardes last week promoted his recently introduced bill, **the Hospital Equity and Affordability Law, or HEAL Act (S.7199 (Gounardes)-A.8169 (Cruz))**, that would ban certain anti-competitive provisions in contracts between hospital networks and insurers. Citing an article by Crain's New York Business that exposed wide discrepancies between what different hospitals charged for similar services in New York City, Gounardes noted that some large hospital systems are leveraging their market share during negotiations with plans, which has the effect of raising health care costs.
- **Also last week, the Assembly Health Committee advanced the "Coverage For All" bill (A.880 (Gottfried)/S.1572 (Rivera))**, which would greatly expand health care coverage to New York residents regardless of immigration status by creating a state-funded health coverage option for New Yorkers who earn up to 200% of the federal poverty level and include undocumented residents.

Bills to be considered this week by the Senate Health and Insurance Committees:

- **S.815 (Biaggi)** – Allows health insurers to reduce premiums for individuals that participate in a wellness program. While HPA supports the promotion of wellness programs, this bill would undermine New York's individual and small group markets that rely on the state's community rating law to ensure rate equity by prohibiting premium variation based on age, sex or health status.
 - **S.1572 (Rivera)/A.880 (Gottfried)** – "Coverage For All" bill referenced above, as voted out of Assembly Health Committee.
 - **S.7501 (Hinchey)/A.7408-A (Gottfried)** – Requires health insurance plans to cover the costs of post-exposure treatment for rabies, currently the responsibility of county health departments. This would shift health care costs from local governments onto privately insured New Yorkers.
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New Agency Heads Confirmed

The Senate last week confirmed Gov. Kathy Hochul's picks to lead state agencies that oversee some aspects of health plan operations: Adrienne Harris as Superintendent of the Department of Financial Services and Dr. Chinazo Cunningham for Commissioner of the Office of Addiction Services and Supports.

Regulatory

COVID-19 Updates

- **“Mask or vax” policy extended** – Governor Hochul last week announced the extension of the policy, requiring New Yorkers to wear face coverings in all public indoor settings or show proof of Covid-19 vaccination, from February 1 through February 10. It was instituted as the coronavirus Omicron variant began to drive a resurgence in cases and hospitalizations across the state. The extension comes as a legal fight over the state's mandate continues.
 - **Wellness Incentive for Vaccines** – DFS last week shared a draft circular letter focused on promoting COVID vaccines, and particularly aimed at raising vaccination rates for children. The circular letter outlines existing rules allowing wellness incentives under state law and the Department indicated that it would expedite reviews of plan proposals to institute or expand incentive programs that encourage COVID vaccines.
 - **Counseling for COVID-19 Vaccinations** – In response to complaints from providers, DFS also continues to ask for information about plans' policies and guidance on reimbursement of claims for COVID-19 vaccine counseling without administration of vaccine. HPA reported that plans – including Highmark -- indicated they reimburse for counseling, but also that very few claims are being filed.
 - **Over the Counter COVID-19 Tests** – DOH last week issued updated policy and billing guidance for Medicaid reimbursement of at-home testing. The policy, effective January 10, eliminates the requirement for a fiscal order for Medicaid members to obtain eight over the counter FDA-authorized COVID-19 at-home COVID-19 tests per month, which is in alignment with the federal OTC policy for individuals with commercial insurance coverage. Medicaid will cover additional OTC tests if they are determined to be medically necessary, but those tests will require a fiscal order. In addition, DOH recently sent plans a letter related to COVID-19 testing under Child Health Plus, informing plans that CHP plans must include coverage of Point-of-Care COVID-19 testing without limitation and with no cost-sharing, including for purposes of travel, and school/work purposes, as well as coverage of two FDA-authorized COVID-19 at home test kits per week, with no cost-sharing. This more generous coverage for CHP mirrors the coverage requirements under the state's Essential Plan.
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State Issues

Pennsylvania

Legislative

House Advances CHIP Premium Delinquency Legislation

On Wednesday, January 26, the House of Representatives advanced [House Bill 2072](#) (M. Mackenzie, R-Northampton). House Bill 2072 would permit contractors to submit applications to the Department of Human Services for delinquent CHIP premium reimbursement stemming from the PHE. House Bill 2072 specifies the application can be for nonpayment of premiums for three different periods: March 1, 2020, through June 30, 2020, July 1, 2020, through June 30, 2021, and July 1, 2021, through December 31, 2021.

House Bill 2072 passed unanimously in the House of Representatives and now awaits consideration from the Senate.

Why this matters: Highmark expressed support for House Bill 2072, which would provide a path for certain CHIP families to maintain CHIP coverage without the financial burden of premiums not able to be paid during the PHE.

House Committee Advances Licensure for Behavioral Analyst Legislation

On Monday, January 24, the House Professional Licensure advanced [House Bill 19](#) (Mehaffie, R-Dauphin). House Bill 19 proposes to establish licensure of behavior analysts and assistant behavior analysts.

Why this matters: Currently, there are no licensure requirements for behavior analysts or assistant behavior analysts in Pennsylvania.

Governor Signs Legislation Directing \$225 million in Federal Aid to Front-line Health Care Workers

The state legislature last week passed House Bill 253, which would direct \$225 million in federal aid to help the health care system retain and recruit front-line workers. Governor Wolf signed the bill into law on January 26. Even before the House vote, Gov. Wolf held a press conference with lawmakers to celebrate the legislation. "There are a lot of things on which we don't agree," Wolf said. "But when we agree, we can work together," he said at the press conference, where he was joined by Senate Majority Leader Kim Ward, R-Westmoreland, Senate Minority Leader Jay Costa, D-Allegheny, and House Majority Leader Joanna McClinton, D-Philadelphia.

Background: A national health care staffing crisis has compounded the strain that Pennsylvania hospital teams are experiencing as they treat an influx of patients due to a surge in COVID-19 cases, the flu and other seasonal illnesses, and an influx of patients requiring more intensive care due to care being delayed earlier in the pandemic.

Why this matters: House Bill 253 authorizes \$225 million in state relief to support health care professionals and strengthen the health care workforce through recruitment and retention initiatives, as well as student loan forgiveness.

Provider Perspective: The Hospital and Healthsystem Association of Pennsylvania (HAP) commended the bipartisan plan by the General Assembly and Governor Tom Wolf to support health care professionals who have been on the front lines of caring for patients during the COVID-19 pandemic.

State Issues

West Virginia

Legislative

House Advances Choice of Pharmacy Services and Insulin Cap Legislation

Last week, the House of Delegates advanced the following bills:

- [House Bill 4112](#) (Rohrbach, R-Cabell) proposes to limit the ability of PBMs to characterize a pharmaceutical product as “specialty” and limit their ability to restrict the participation of independent pharmacies in networks for purposes of dispensing specialty medications.
- [House Bill 4252](#) (Rohrbach, R-Cabell) proposes to cap monthly insulin co-pays at \$35, diabetic testing and related materials to \$100 monthly and insulin delivery devices at \$250 over a two-year period.

House Bill 4112 and House Bill 4252 passed in the House of Delegates and now await consideration from the Senate.

House Committee Advances Legislation to Prohibit the Practice of White Bagging

Last week, the House Health and Human Resources Committee advanced [House Bill 4263](#) (Rohrbach, R-Cabell). House Bill 4263 proposes prohibiting PBMs from requiring certain types of medications be distributed directly to a patient’s site of care.

Industry Trends

Policy / Market Trends

14.5 Million Americans Signed up for 2022 Marketplace Coverage

The Biden administration has announced that a record breaking 14.5 million people have signed up for Affordable Health Care coverage for 2022. President Biden issued a statement saying: “Since November 1, [2021] 14.5 million Americans have signed up for quality, affordable health coverage, including more than 10 million who enrolled through HealthCare.gov—the highest numbers ever produced in an open enrollment period.” Additionally, according to the administration one in seven uninsured Americans received coverage between the end of 2020 and September 2021.

If you have any questions regarding information included in Government Affairs *Capitol Hill Report*, please contact any of the following individuals:

Interested in reviewing a copy of a bill(s)? Access the following web sites:

Delaware State Legislation: <http://legis.delaware.gov/>.

New York Legislation: <https://nyassembly.gov/leg/>

Pennsylvania Legislation: www.legis.state.pa.us.

West Virginia Legislation: <http://www.legis.state.wv.us/>

For copies of congressional bills, access the Thomas website – <http://thomas.loc.gov/>.

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