Highmark's Weekly Capitol Hill Report

Issues for the week ending March 10, 2023

Federal Issues

Legislative

White House Releases FY2024 Budget Proposal

The Biden Administration released its Fiscal Year (FY) 2024 budget proposal on Thursday.

Why it matters: The President's budget proposal serves as a fiscal blueprint for the Administration's policy priorities and signals as much to Congress. However, its release only marks the starting point of the federal budget process. Congress will work out its own spending priorities over the coming months – with broad agreement unlikely given the GOP-controlled House and Democrat-controlled Senate.

Looking at the administration's priorities on health care, the HHS Budget in Brief proposes $144 billion in discretionary and $1.7 trillion in mandatory budget authority for FY 2024 and highlights the following issue areas: Medicare solvency; drug costs; access to care; public health preparedness; behavioral health; Cancer Moonshot; and the health care workforce. In response, HHS Secretary Becerra issued a statement on the budget request, further highlighting the Administration's key health care priorities.

In this Issue:

While the budget proposal does not have the force of law, expect the White House to push Congress to include some of its proposals in a final package. Ultimately, Congress will be tasked with developing the spending bills needed to fund the federal government by the end of September or agree on a continuing resolution to fund the government at FY23 levels.

Industry Trends

Policy / Market Trends

- **CMS Leadership Meets with Health Plans and Associations**
- **New Coalition to Support Smooth Medicaid Redeterminations**
- **AHIP Contributes to Cybersecurity Framework Implementation Guide**

State Issues

New York

Legislative

Senate & Assembly Budget Proposals Expected this Week

The Senate and Assembly are now expected to release their budget proposals this week.

On the pay and pursue issue, last week a coalition of nearly 40 organizations representing unions, nonprofits, employers, brokers and health plans sent a letter to the Senate Majority Leader and Speaker, urging them to reject the proposal in their one-house budget resolutions. The letter noted, "The proposal would dramatically increase costs for employers, union benefit funds, consumers, and the State, and do nothing to improve the quality of care for patients."

Also last week, several labor organizations came out strongly opposing pay and pursue. DC 37, the 32 BJ Health Fund, the United Federation of Teachers and the New York State United Teachers, issued a joint memo in opposition saying they are "deeply concerned" and calling pay and pursue a "crude scheme designed simply to be nothing more than a financial windfall for hospitals." Meanwhile the NY Daily News published an op-ed from representatives of Laborers' Local 157 Health Benefits Fund and the New York Labor HealthCare Alliance that raised concerns about the proposal's impact on health care costs for labor unions, employers and consumers.

Health Care Bills in Committees this Week

There are a number of bills of interest on committee agendas this week.

- **Premium reduction for wellness (S. 4435)** — would allow reductions in health insurance premiums in return for an enrollee's participation in a qualified wellness program. The proposal

would undermine New York's community rating laws by allowing – and encouraging – unequal treatment of similar groups and individuals.
- **Telehealth (S.2776)** — would expand healthcare services provided by telehealth and amend current law related to reimbursement for commercial and Medicaid services provided via telehealth.
- **Dense breast coverage (S. 2917/A.2516) —** would require that a "notice of dense breast tissue" be considered a determination of medical necessity for coverage of a breast ultrasound.
- **MLTC plan coverage for PPE (S.2928)** — would mandate Medicaid Managed Long Term Care (MLTC) plans to cover the cost of personal protective equipment (PPE) for home care and community based long term care services providers.
- **DME reimbursement parity in Medicaid (S.3468)/A.3408)** — purports to provide parity to durable medical equipment providers by requiring Medicaid managed care organizations to reimburse such providers at no less than 100% of the Medicaid DME fee schedule.
- **Medically tailored meals in Medicaid (S. 4790)** — would require Medicaid coverage for medically tailored meals and medical nutrition therapy for the purpose of disease management.

Governor Signs Chapter Amendments

The Governor recently signed several Chapter Amendments to bills approved last year:

- **PRICE Act (Chapter 63 of the Laws of 2023)** — Requires plans to give consumers real-time data about prescription coverage and cost-sharing at the point of prescribing. The bill takes effect June 28, 2023, which is 180 days after the signing of the original bill.
- **30-day emergency coverage of prescriptions (Chapter 64 of the Laws of 2023)** — Requires coverage of a 30-day supply of prescription medications during an emergency. The bill had an immediate effective date.
- **Colorectal cancer screening mandate (Chapter 78 of the Laws of 2023)** — Amends existing state law related to colorectal cancer screening to include coverage of screening based on recommendations of the American cancer Society. The law had an immediate effective date when signed on December 12, 2022, with the new coverage applying to policies issued, renewed or modified after that date.

State Issues

Pennsylvania

Legislative

Senate Advances Prohibition on Cost Sharing for Breast MRI and BRCA Gene Testing Legislation

On Monday, March 6, the Senate unanimously advanced Senate Bill 8 (K. Ward, R-Westmoreland). Senate Bill 8 prohibits cost sharing MRIs for individuals with dense breast tissue and for genetic counseling and genetic testing for the BRCA1 and BRCA2 gene mutation for individuals believed to be at an increased risk due to personal or family history of breast or ovarian cancer. Senate Bill 8 now awaits consideration from the House of Representatives.

Why this matters: Highmark expressed concerns with Senate Bill 8 regarding the inequities caused by prohibiting cost sharing for tests related to specific diseases or conditions, while those needing MRIs or tests for other conditions will continue to pay cost sharing. Highmark also expressed concerns that this legislation requires health insurers to provide coverage outside of the clinical and scientific standards and undermines insurer's ability to design different plans to meet customers' needs, while potentially leading to increased premium costs.

Governor Shapiro Releases 2023–2024 State Budget

Governor Josh Shapiro presented his proposal for the fiscal year 2023–2024 state budget. This is the first budget proposal for the Shapiro administration, which sought to emphasize priorities that "make Pennsylvania communities safer and healthier, create real opportunity and build an economy that works for all, and ensure every child has access to a quality education."

Initial Analysis: The governor's proposal calls for $44.4 billion in general fund spending, a 3.7 percent increase over last year. Initial review notes several budget lines of particular interest to the health care community.

Workforce

- $24.7 million (estimated) for a new, refundable personal income tax credit of $2,500 per year for up to three years to qualifying nursing, teaching, and policing professionals.
- Investments in career and technical centers to support the hiring of additional teachers and expanded program offerings in high-demand areas, including health care.
- Funding to update the Department of State's Pennsylvania Licensing System (PALS), with the goal to improve and expedite the commonwealth's professional licensing process for health care workers and other professionals.

Behavioral Health

- $20 million increase for county mental health base funding, with a verbal commitment "to restore full funding for our county mental health programs so people have the resources to turn to in their own community."
- $100 million for a new school-based mental health supports block grant; eligible grant uses include hiring and maintaining school counselors, social workers, and psychologists, contracting with community and non-profit groups, and providing telemedicine behavioral health options.
- $54 million (estimated) increase for emergency services, resulting from 911 surcharge increase from $1.65 to $2.03, including support for the 988 mental health crisis and suicide prevention hotline, plus an additional $5 million one-time 988 development support.
- $4 million to expand community-based diversion programs to support people with serious mental illnesses who find themselves in the criminal justice system.

Access to Care and Quality

- Largely level funding for Medicaid supplemental payments to hospitals that support access to care for vulnerable Pennsylvanians, including payments for obstetric and neonatal services ($3.68 million), critical access hospitals ($13.06 million), burn units ($4.44 million), and trauma centers ($8.66 million).
- Preserves the hospital uncompensated care program funded by the Tobacco Settlement.

- $2.3 million for a new program to reduce maternal mortality and morbidity.

One of the key budget items for hospitals this year will be the reauthorization of the Quality Care Assessment. Understanding budget assumptions around the contribution to the state general fund from the Quality Care Assessment and the potential for increased hospital payments are a priority. Funding and contribution amounts will be resolved over the next several months through discussions with the Department of Human Services and the General Assembly.

Other big-picture budget highlights include proposals to increase the minimum wage to $15 per hour on January 1, 2024; create a Public Safety and Protection Fund to provide sustainable support for the Pennsylvania State Police; expand Pennsylvania's property tax and rent rebate program; and substantially increase the state's basic education subsidy for school districts.

The General Assembly's appropriations committees will begin budget hearings on March 20. The full chambers will return to session on April 24. And, as always, Pennsylvania's annual budget deadline is June 30, 2023.

Why this matters: Hospitals are focused on budget and programmatic proposals that will help stabilize the hospital community in the current financial crisis, including reauthorizing the Quality Care Assessment, investing in Pennsylvania's health care workforce, and increasing behavioral health capacity statewide.

State Issues

West Virginia
Legislative

House Advances Prior Authorization Legislation
On Tuesday, March 7, the House advanced Senate Bill 267 (Takubo, R-Kanawha). Senate Bill 267 proposes significant changes to prior authorization request timelines, appeal timelines and gold carding standards. Senate Bill 267 now awaits consideration from the Governor.

Major provisions of the revised Senate Bill 267 are as follows:

- No change in the "episode of care" definition found in current Code. The original proposed bill language included a revised definition of "episode of care," that sought to enable more types of treatment to be undertaken on the basis of one initial health plan decision—followed by multiple other courses of treatment as determined by a provider.
- Continuance of incentive for providers to submit prior authorization requests electronically—if they are not, then none of the PA processes outlined in the bill can be utilized.
- Health plans are only required to communicate with providers electronically regarding PA requests—no communication directly with patients is required as in the original bill.
- The timeline for answering PA requests changes from the current 7 business days to 5 business days for regular requests and from 3 business days to 2 business days for emergent requests.
- Removes the limitations in the original bill that only peer providers licensed in-state can answer PA requests and address appeals.
- PA appeals must be answered within 10 business days.

- The so-called “Gold Card” program for easing prior authorization requirements will be modified to apply to specific providers—regardless of the treatment being sought—rather than in connection with specific treatment modalities. To be eligible for this status, a provider must have had their PA requests approved at a 90% level over a 6-month period.
- PEIA comes under the Office of the Insurance Commissioner with regard to PA enforcement and supervision.

Legislative Session Concludes; Summary of Health Care Bills Sent to Governor Justice

The 2023 Regular Session of the West Virginia Legislature concluded its work at midnight on Saturday, March 11, having passed 332 bills completely through the legislative process of the 2,317 bills that were introduced during the term.

In addition, the Senate and House of Delegates completed their work on the state’s Fiscal Year 2025 budget but have to make adjustments to the budget in at least one special legislative session order to reconcile the costs of bills that were passed in the final days and to account for any new spending needs or emergencies that may arise during the year.

Here is a brief summary of the bills of interest that passed through the entire legislative process this year:

- **SB 476— Exempting managed care contracts from purchasing requirements.** This bill opens the managed care program to all qualified plans—and also secures the position of the three incumbent MCOs by prohibiting DHHR from reassigning any of their existing plan members. The bill is now pending with Governor Justice for his review.

- **Medicaid Buy-in Issue/SCR 23--Requesting study on impact of public benefit income eligibility guidelines on direct care workforce participation.** This resolution proposing a study of a Medicaid buy-in option was not officially adopted by the Legislature but a formal resolution is not needed to conduct an interim study that is favored by legislative leaders. House Health Committee Chair Delegate Amy Summers was the lead champion of the issue, along with legislative staffer, former DHHR Deputy Secretary Jeremiah Samples, current Medicaid Director Cindy Beane and a variety of outside advocacy organizations, including AARP and the American Heart Association. The resolution proposes an academic study of the public option Medicaid buy-in program by July 1, 2023—and could set the stage for a campaign to have Governor Justice propose the creation of such a program during a special legislative session later this year.

- **SB 577— Reducing copay cap on insulin and devices and permitting purchase of testing equipment without prescription.** This measure, which was amended on the final day of the legislative session to reflect an effective date of January 1, 2024, largely mirrors federal action in this area with regard to Medicare. Insulin copays will be reduced to $35 on a 30-day basis and the cost of devices will be $100 on a copay basis over 30 days as well. The Public Employee Insurance Agency was also included in the bill by the House through an amendment in the final days of the term.

- **SB 267— Updating law regarding prior authorizations.** In the end, this completed legislation will make narrow changes to the state's existing prior authorization standards and timelines for compliance.

- **HB 2436— Relating to the implementation of an acuity-based patient classification system.** This bill was of no interest to health plans until the 59th Day of the legislative session when Senate Finance Chairman Eric Tarr amended HB 2436 to include the provisions of his SB 732—proposing co-pay equity for physical therapy, occupational therapy, speech therapy and speech pathology—in comparison with medical doctors and osteopathic physicians.

- **HB 2006— Reorganizing the Department of Health and Human Resources.** Governor Justice has now signed this bill into law and the process will now begin of creating three new departments out of the existing DHHR by January 1, 2024. The three new departments will be: the Department of Human Services (containing the Medicaid program); the Department of Public Health and; the Department of Public Health Facilities (containing the state's long-term care and psychological treatment hospitals). It is not clear on how this reorganization process and personnel realignment will occur but it will be a critical focus of each affected industry category over the coming months.

- **SB 594—Specifying fairness in cost sharing calculations for certain high deductible plans.** This bill is targeted at clarifying the application of manufacturer cost sharing programs to those with HSAs.

- **SB 613— Relating generally to certificates of need.** This is another bill passed in 2023 that stands to have significant and long-term implications for health plans. The bill will allow a hospital to spend $100 million per location on any activity without regulatory review or facing a challenge from any interested party. Additionally, the bill proposes to include certain physician offices within a "hospital campus" in a manner that essentially exempts those locations from any restrictions as well.

- **SB 268— Relating to Public Employee Insurance Agency.** This is one of the major bills of the 2023 session in the healthcare space and proposes a statutory increase in the rate of reimbursement for in-patient hospitalization to 110% of Medicare rates—and it proposes sweeping changes to the employee cost-sharing and premiums underlying the plan—after Governor Justice has blocked premium increases for employees for six consecutive years. The bill is currently pending with the Governor and, if he vetoes the measure, it is likely that the Legislature will call itself into a special session (it takes 60% of both houses signing a petition) and override that veto.

- **HB 2029— Repealing the creation of the all-payer claims database.**

Bills that Failed to Pass

- **HB 3274**—creating a Medicaid buy-in program. (see discussion of legislative study above.)
- **HB 2429**—prohibiting the practice of white bagging.
- **SB 290**—creating regulation of dental medical loss ratios.
- **SB 292**—health care sharing ministries registration and transparency.
- **SB 480**—expanding scope of MEWAs.
- **SB 551**—making Medicaid plan amendments subject to legislative approval.

- **SB 114**—prohibiting private health plan coverage of abortions.
- **SB 45**—mandate for coverage of pediatric autoimmune treatment.
- **SB 524**—mandate for family planning coverage.
- **SB 175**—infertility coverage mandate.
- **SB 219**—mandate for coverage of cleft palate treatment.
- **SB 159**—mandate for coverage of hypothyroidism.
- **SB 598**—mandating coverage of prescription non-opioid pain medications.
- **SB 454**—children's vision coverage mandate.
- **HB 2086**—increasing allowable visits under opioid reduction act.
- **HB 2140**—creating breast cancer screening mandate.
- **HB 3260**—genetic privacy act.
- **HB 3507**—enhanced mental health benefits act.
- **HB 2111**—increased access to contraceptives and procedures.

Industry Trends

Policy / Market Trends

CMS Leadership Meets with Health Plans and Associations

Last week, AHIP, BCBSA, and other health insurance plans and associations met with CMS Administrator Chiquita Brooks-LaSure and CMS leadership to discuss Medicare Advantage, the unwinding of the Medicaid and Children's Health Insurance Program (CHIP) continuous enrollment requirement, and other topics. The Department of Health and Human Services Secretary Xavier Becerra was also in attendance.

Why this matters: While the two-hour meeting focused on Medicaid redeterminations, Medicare Advantage and Inflation Reduction Act implementation, CMS officials also shared concerns about prior authorization hindering access to care they have heard from providers and consumers in listening sessions across the country.

In addition to discussing the Medicare Advantage Advance Rate Notice, plans shared how they are preparing for the Medicaid transition; such as, educating their current Medicaid and CHIP enrollees by mail, in person, and through community partnerships.

CMS also released the anticipated state timelines for initiating unwinding-related renewals. The complete readout for the meeting can be found here.

New Coalition to Support Smooth Medicaid Redeterminations

A diverse group of organizations collectively representing millions of American patients, people with disabilities, care providers, employer-related groups, and health insurance providers came together to launch the Connecting to Coverage Coalition (CCC), a national coalition committed to being a single source of trusted information about the Medicaid redetermination process.

Why this matters: As the Medicaid redetermination process gets underway, the CCC will work to convene stakeholders to support information sharing, build on best practices, and develop solutions to ensure Americans are able to connect to coverage and enroll in a plan that is right for themselves and their families.

Resources Available on the CCC Website
The CCC's new website provides Medicaid enrollees and health care leaders with key information about the Medicaid redetermination process. Resources the site will house include:

- Studies and surveys of how people understand and perceive the Medicaid redetermination process.
- Frequently asked questions for Medicaid enrollees and their families.
- Links to information and guidance from the Centers for Medicare & Medicaid Services (CMS), as well as other federal agencies, on the Medicaid redetermination process.
- Best practices, key messages, and toolkits for engaging enrollees about what they need to do to determine their eligibility for Medicaid or an alternate form of coverage.

New Report: Where Americans Will Go for Coverage, State-by-State
Concurrent with the launch of the CCC, AHIP released a new Medicaid Redetermination Coverage Transitions Report, which provides a state-by-state analysis of where people who are no longer eligible for Medicaid are likely to have access to coverage. The report summarizes a comprehensive analysis conducted by NORC at the University of Chicago and supported by AHIP.

The new report examines the extent to which states are well-positioned to retain in Medicaid those who are still eligible, and seamlessly transition those no longer eligible to another source of coverage, such as employer-provided coverage.

Learn more about the CCC and AHIP's Medicaid Redetermination Coverage Transitions Report

---

AHIP Contributes to Cybersecurity Framework Implementation Guide

The Health Sector Coordinating Council (HSCC) Cybersecurity Working Group and HHS jointly released a Cybersecurity Framework Implementation Guide that provides specific steps health care organizations can take to manage cyber risks. AHIP is a participant and contributor to the HSCC activities, had an active role in the guide's development, and was a substantial and contributing member to the Task Group that drafted the pre-publication version.

Why this matters: The guide is intended help the public and private healthcare sectors align their cybersecurity programs with the National Institute for Standards and Technology (NIST) Cybersecurity Framework (CSF). NIST and other federal agencies contributed substantially to its content.

Health care organizations can use the guide to better equip their organizations with implementing the security framework using their existing security measures with minimal disruptions to operations. Health care organizations can use the guide to assess their current cybersecurity practices and risks, identify gaps for remediation and implement the NIST Cybersecurity Framework through:

- Guiding risk management principles and best practices.
- Providing common language to address and manage cybersecurity risk.
- Outlining a structure for organizations to understand and apply cybersecurity risk management.
- Identifying effective standards, guidelines, and practices to manage cybersecurity risk cost-effectively based on business needs.

Click here to read the framework.

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/.**