

First Look: What to Expect in Health Policy 2023

BY MATT DEVINO, MPH



The 118th United States Congress, which officially meets from January 3, 2023, through January 3, 2025, is poised to be a case study in 21st century American bipartisanship. Following the 2022 midterm elections, Democrats will maintain control of the Senate, while the House of Representatives will be controlled by Republicans. A divided Congress, with very slim majorities in both chambers, means that any legislation able to clear both chambers will require significant negotiation across the aisle and ultimately agreement between both parties.

There is precedent for significant pieces of healthcare legislation passing in a divided government. The Balanced Budget Act of 1997¹ which created the Children's Health Insurance Program (CHIP) and introduced what later became the Medicare Advantage program, and the Medicare Access and CHIP Reauthorization Act of 2005 (MACRA),² which drastically changed how Medicare reimburses providers, were both passed by Republican-controlled congresses and signed into law by Democratic presidents. To pass these laws, significant bipartisan cooperation was necessary between Congress and the Administration. Early indications, however, suggest that members of Congress may be more interested in campaigning on policy differences ahead of the 2024 presidential election rather than compromising and legislating on major policy issues in the 118th Congress.

In looking at the current state of health policy, this means that we are unlikely to see any sweeping changes to the U.S. healthcare system in 2023 and 2024. I think it's safe to

say at this point that the Affordable Care Act is here to stay. And the Inflation Reduction Act of 2022,³ which passed with Democrat-only support in August 2022, is unlikely to see any significant alterations over the next two years. However, there are policy proposals that have bipartisan support and are likely to be considered in some form over the course of the 118th Congress. My predictions for these areas of progress in health policy are outlined below.

Extension of Medicare Telehealth Flexibilities

It seems likely that the COVID-19 public health emergency (PHE), which has been ongoing since January 2020, will end at some point in 2023. While this date is not yet known, the Biden administration has indicated that it will provide 60 days' notice prior to letting the PHE expire. This means that the COVID-19 PHE will likely be renewed at least once more through at least April 2023.

Congress acted in early 2022 to extend Medicare telehealth waivers and flexibilities for 151 days beyond the end of the COVID-19 PHE, whenever that may be. These flexibilities were originally granted because of the PHE determination and have allowed for Medicare beneficiaries to access telehealth services from their homes and any geographic area across the country for the duration of the pandemic. This simple expansion of Medicare coverage was not permitted prior to COVID-19, but now most of these telehealth flexibilities have strong bipartisan support in Congress.

Recognizing that telehealth has become a critical component of healthcare delivery, the House of Representatives overwhelmingly passed the Advancing Telehealth Beyond COVID-19 Act of 2021⁴ in July 2022, to uncouple the duration of Medicare telehealth flexibilities from the PHE determination entirely and extend those flexibilities through December 31, 2024. Congress included these provisions to extend all telehealth flexibilities through the end of 2024 in its fiscal year 2023 omnibus package, which was signed into law on December 29, guaranteeing telehealth availability for Medicare beneficiaries for at least another two years. There is a strong likelihood that Congress will re-examine this issue in its new session and may even consider making this expansion of Medicare telehealth coverage permanent.

Renewed Efforts for Healthcare Transparency and Oversight

In recent years, both Congress and the Biden administration have pursued an agenda to increase transparency into healthcare costs and the pricing of medical services. To date, hospital and payer pricing transparency requirements are in effect, as well as regulations around surprise medical billing, following the passage and subsequent implementation of the No Surprises Act.⁵ With Republicans retaking control of the House and its various committees, it is likely these efforts to increase healthcare transparency will be redoubled in the 118th Congress.

In fact, the incoming chairman of the House Oversight Committee, Rep. James Comer (R-KY), has already promised to aggressively pursue transparency in the federal government and host frequent hearings on topics relevant to the U.S. healthcare system. Following policy developments in 2022, there is already bipartisan support to increase transparency around pharmacy benefit managers (PBMs) and the 340 Drug Pricing Program in the coming year. The Federal Trade Commission has already initiated a formal inquiry into six of the largest PBMs in the country, and Senators have introduced bipartisan legislation to increase drug pricing transparency and hold PBMs accountable for unfair business practices that drive up the cost of prescription drugs.⁶⁷ This momentum for transparency at the federal level is likely to continue in 2023.


As Republicans regain control of what topics each committee will prioritize in the new Congress, they are likely to also explore hospital finances and non-profit status, consolidation in the healthcare ecosystem, prior authorization in the Medicare Advantage program, the origins of COVID-19, and the Biden administration's COVID-19 response.

Support for Public Health Initiatives and Pandemic Preparedness

Congress has made significant progress to pass bipartisan legislation addressing mental and behavioral health challenges over the past several years, particularly as these issues have been exacerbated by the COVID-19 pandemic. Most recently, Congress passed the Bipartisan Safer Communities Act⁸ in June 2022 to improve access to mental healthcare and additional funding to expand and enhance the 988 suicide and crisis response hotline. The law also temporarily extended funding for mental health services through block grants, but further action will be required in the coming year to reauthorize the Mental Health Reform Act of 2016.

A Republican-controlled House will also bring substance use disorders, particularly fentanyl-related overdoses, into the spotlight as they seek to focus on how illegal substances are entering the country and find legislative solutions to address increasing overdose-related deaths. Additionally, the reauthorization of the Pandemic and All Hazards Preparedness Act will be a likely vehicle in the 118th Congress for additional legislation to support the public health and healthcare workforce and ensure supply chain resiliency for medical equipment and supplies.

Wrap-Up

While much is certainly still up in the air with a split Congress, and the dynamics of new party leadership is still unknown, I believe that the issues summarized above will factor in some way into policy conversations and potentially legislation in the 118th Congress. Republicans assuming committee leadership in the House will also likely elevate discussions around the insolvency of the Medicare trust fund as a means to influence Medicare policy in the years ahead. As healthcare stakeholders turn to Congress to address supply chain issues, labor shortages, and inflationary concerns, the topic of broader Medicare payment reform may bubble to the surface. 

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