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## **AHIP's Federal Legislative Forecast for 2023**

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*March 31, 2023*

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## Overview

### 2023 Political Environment and Legislative Agenda

While **President Biden's** sub-50% popularity rating at the time suggested a possible big swing in the balance of power in the 2022 midterms, the Republican Party was only able to eke out a small majority in the House of Representatives. Republicans took control of the House in the 118<sup>th</sup> Congress with a 222-213 majority and Democrats retained control of the Senate with a 51-49 majority. However, following the election, **Sen. Kyrsten Sinema (AZ)** switched party affiliation to be Independent, although she still caucuses with the Democrats and maintains her committee assignments. This new Congress includes a freshman class consisting of 8 new Senators, and 75 new House members. With both chambers controlled by opposing parties, we can expect calls for bipartisanship as well as legislative gridlock. A major item on the Congressional agenda for 2023 will be raising the nation's debt limit before a financial default, which according to a February report by the Congressional Budget Office (CBO) could happen between July and September of this year.

#### Senate Leadership and Committee Changes

Driven by several senior Republicans retiring in the Senate, there are many members that are stepping into high-profile roles. In the Senate, **Senators Chuck Schumer (D-NY)** and **Mitch McConnell (R-KY)** retained their position as Majority Leader and Minority Leader, respectively. However, there are six new top Republicans for key committees that have health care jurisdictions: **Sen. Bill Cassidy (R-LA)** for the Health, Education, Labor, and Pensions (HELP) Committee; **Sen. Susan Collins (R-ME)** for the Appropriations Committee; **Sen. Ted Cruz (R-TX)** for the Commerce Committee; **Sen. Mike Braun** for the Aging Committee; and **Sen. Rand Paul (R-KY)** for the Homeland Security and Government Affairs Committee, which has a broad oversight portfolio. **Sen. Bernie Sanders (I-VT)** also now serves as the top Democrat for the HELP Committee.

#### House Leadership and Committee Changes

In the House, Republicans elected **Rep. Kevin McCarthy (R-CA)** to be Speaker of the House by a narrow margin after several votes. After the announcement from **Rep. Nancy Pelosi (D-CA)** that she would be stepping down from her long-held Democratic leader role, **Rep. Hakeem Jeffries (D-NY)** was elected by his conference to serve as the House Minority Leader. The House Committee on Ways and Means will have a new chairman with the appointment of **Rep. Jason Smith (R-MO)**, who will serve alongside the committee's returning top Democrat **Rep. Richard Neal (D-MA)**. **Rep. Cathy McMorris Rodgers (R-WA)** will serve as the Energy and Commerce Committee Chair alongside **Rep. Frank Pallone (D-NJ)** as the Ranking Member.

#### Health Care Priorities

House Republicans created a blueprint for their health care plans through several reports released by the Health Future Task Force and culminating in their "Commitment to America" policy agenda. Among other things, priority items for the task force include an extension of telehealth payment coverage; expansion of Medicare device coverage; drug affordability for seniors; and competition. They have also stated that they plan to hold congressional hearings to question Administration officials about drug price negotiation, the COVID-19

pandemic, Medicare Advantage, hospital price transparency, and pharmacy benefit managers (PBMs).

The PREVENT Pandemics Act, which was authored last Congress by **Senators Patty Murray (D-WA)** and now-retired **Richard Burr (R-NC)** is a top health care priority for the Senate coming into the 118<sup>th</sup> Congress along with mental health legislation. Potential sources of bipartisan cooperation for next year include Cures 2.0, SUPPORT Act, mental health legislation, insulin affordability legislation, health workforce shortages, pharmacy benefit manager (PMB) reform, and telehealth.

## **AHIP's 2023 Priorities**

AHIP will continue to work with federal policymakers and regulators on measures that advance AHIP's commitment to delivering affordable, high-value health care, improving the consumer experience, and strengthening public private partnerships. AHIP's federal priorities for 2023 will focus on the affordability of health care and health insurance, building support for employer-provided coverage, stability of Medicare Advantage and Medicaid programs – including a smooth transition out of the COVID-19 public health emergency (PHE), solutions to high drug prices, mental health, and health equity and social determinants of health.

The following pages examine a wide range of issues distilled into AHIP's Board-initiated Vertical Priority Framework:

- Cross-cutting Priorities
- Medicare Advantage and Part D
- Medicaid and Managed Care
- Commercial Market
- Pharmacy and Drug Pricing
- Care Delivery & Innovation

These issues will be paramount in our advocacy efforts as Congress and the Biden Administration address health care policy in 2023.

# Health Policy Issues by AHIP Vertical

## Cross Cutting Priorities

### Top Issues

#### ***Affordability & Competition***

AHIP's *Healthier People through Healthier Markets* [policy roadmap](#) set solutions to improve health care affordability and access for every American. AHIP sent letters to the [Biden Administration](#) and to [Congress](#) laying out a detailed set of legislative and regulatory enforcement actions to increase competition in health care, drive down costs, and improve health care access for patients.

#### ***Preemption***

2023 priorities include developing a robust preemption policy and messaging framework and advocacy campaign to protect MA, Part D, and the Employee Retirement Income Security Act (ERISA). AHIP will work to secure support from key policymakers and stakeholders on preemption issues.

#### ***Health Equity***

AHIP is committed to advancing industry equity policies at a federal and state level. This includes onboarding a Health Equity Leader to our 2023 priorities and roadmap. In October, AHIP sent a letter to HHS Secretary Becerra with suggestions for improving demographic data standards to advance health equity.

#### ***Redeterminations & COVID-19***

HHS announced that the COVID-19 public health emergency (PHE) will expire on May 11, 2023. AHIP has been collaborating with key partners to ensure a smooth transition of COVID-19 vaccines and therapeutics commercialization. AHIP also continues to work with the Administration, states, and key stakeholders to ensure a smooth Medicaid redeterminations process. Through the newly launched [Connecting to Coverage Coalition](#), AHIP will continue to share information and resources to ensure responsible redeterminations and that individuals can find the right coverage.

## Medicare Advantage (MA) & Part D

### Political Environment

Enrollment in Medicare Advantage (MA) surpassed 30 million this January. As we advocate around this milestone, we will continue to work closely with the new Congress and the Administration on issues related to MA and Part D.

On Capitol Hill, the Committees with primary jurisdiction on MA/Part D issues are Senate Finance and House Ways and Means. The Senate Finance Committee leadership will stay the same as last Congress with **Chairman Ron Wyden (D-OR)** and **Ranking Member Mike Crapo (R-ID)**. Chairman Wyden and Ranking Member Crapo will likely continue work on drug pricing issues, including PBM activity, as well as mental health parity in MA.

Chairman Wyden's work with AHIP on MA plans' ability to provide supplemental benefits during and following extreme weather events is also expected to continue in 2023.

The Ways and Means Committee has a new chairman in **Rep. Jason Smith (R-MO)** who will serve alongside now-**Ranking Member Richard Neal (D-MA)**. In a statement Smith put out after being selected as chair, he detailed his priorities for the committee and while the statement was light on talking about health care reform, we expect that to continue to be a majority focus of the committee in the 118<sup>th</sup> Congress.

With over 80 newly elected members of the House and the Senate, we will work to educate freshmen offices on the value that MA provides by sharing AHIP one-pagers, infographics, blog posts, studies, and more. In January 2023, a bipartisan group of 61 Senators signed a [letter](#) in support of MA.

Upon release of the 2024 MA Advance Notice, AHIP actively is engaging with the Administration to strongly urge CMS to pause the major risk changes outlined in the Advance Notice and collaborate with health insurance providers and other stakeholders so that they may evaluate the proposed major changes and provide meaningful feedback.

AHIP is also urging Democrats in Congress to weigh in with the Administration on the proposed changes. We are sharing resources with staff on the impacts the Advance Notice would have, particularly on dual eligible populations, underserved areas, and barriers to advancing health equity.

Late last summer, **President Joe Biden** and Congress enacted the Inflation Reduction Act of 2022 (IRA), which introduced a host of significant policy changes to the Medicare prescription drug program. AHIP and other stakeholders advocated for—and obtained—a temporary federally funded subsidy to pay for the post-bid changes imposed by the IRA for the 2023 plan year. AHIP and others raised concerns that IRA provisions redesigning the prescription drug benefit taking effect in 2024 and beyond would lead to premium increases. As a result, the enacted legislation included premium stabilization subsidies. Federal funding for the new subsidies and benefits were secured by further delaying implementation of the Trump-era point-of-sale drug rebate rule. While not a permanent elimination of that regulation, its effective date has been further pushed back to 2032.

Several Medicare provisions were passed in the FY 2023 Omnibus spending package to fund the government this year. The provisions discussed further below include changes to the physician fee schedule, part D coverage, PAYGO/sequestration, telehealth flexibilities, and behavioral health services, a mental health parity study.

Additionally, Medicare Advantage was covered widely in the media last year. A report from the HHS Office of the Inspector General (OIG) released a report on MA with misleading information on coverage and payment denials. AHIP immediately responded to these claims and continues to educate Congressional offices about the appropriate use of prior authorization and common-sense policies to ensure access to care.

AHIP will be working with new and reelected Congressional member offices to highlight the benefits and importance of Medicare Advantage and Part D stand-alone coverage.

## **Top Issues**

### ***MA Payments***

- **2024 Rate Notice:** On February 1, CMS posted the 2024 MA Advance Rate Notice, which included major proposed changes to the program that would result in cuts. First, changes to the MA risk model that accounts for the health status and demographic characteristics of enrollees would reduce payments by 3.12% in 2024. Quality bonus payments under the Medicare Star Ratings program would also be 1.24% lower in 2024. Additionally, county benchmarks, used to set maximum payment rates, would increase payments on average by 2.09% in 2024 - less than half the growth rate in 2023 (4.88%) and well below the projected growth in per enrollee Medicare costs (5%). Altogether, the three changes would cut average MA plan payments in 2024 by 2.27%.

AHIP registered these concerns, and more, in a detailed comment letter to CMS on March 6. AHIP CMS is slated to publish the final Rate Notice by April 3, 2023. AHIP actively is engaging with the Administration to strongly urge CMS to pause the major risk changes outlined in the Advance Notice and collaborate with health insurance providers and other stakeholders so that they may evaluate the proposed major changes and provide meaningful feedback. AHIP is also urging Democrats in Congress to weigh in with the Administration on the proposed changes. We are sharing resources with staff on the impacts the Advance Notice would have, particularly on dual eligible populations, underserved areas, and barriers to advancing health equity.

- **Risk Adjustment and RADV:** On February January 30, 2023, CMS issued its final rule regarding Risk Adjustment Data Validation (RADV) for MA plans. In the final rule, CMS finalized a proposal to not apply a fee-for-service (FFS) adjuster to audit findings when calculating overpayment amounts. CMS will extrapolate findings from CMS RADV audits and RADV audits conducted by the Office of Inspector General (OIG) from sampled records, beginning with audits of payment year 2018. AHIP has [emphasized](#) how the rule would raise prices for seniors and taxpayers, reduce benefits for those who choose MA, and yield fewer plan options in the future.

### ***COVID Coverage***

- **Testing & Vaccine:** Health insurance providers continue to cover COVID-19 tests and other diagnostic items and services without cost-sharing, and also provide up to eight over-the-counter (OTC) COVID-19 tests per month per covered individual at no cost through the end of the PHE. AHIP will continue to educate members about the policy implications of the PHE ending and the best ways to help enrollees navigate the changing landscape and ensure a smooth transition from the PHE. AHIP will also work with Congress to ensure that COVID-19 tests, vaccines, and treatments are priced reasonably and affordably as the requirements tied to the PHE expire.
- **Audio-Only:** In June 2022, HHS's Office for Civil Rights (OCR) issued guidance on how covered health care providers and health plans can use audio-only telehealth services

consistent with Health Insurance Portability and Accountability Act (HIPAA) requirements beyond the COVID-19 PHE. The guidance says the HIPAA security rule applies to audio-only telehealth when it is conducted electronically, but not over landlines. It also requires that providers must enter a business associate agreement with apps that store protected health information. OCR also stated that it would not impose penalties against telehealth providers attempting to comply with HIPAA in “good faith.” AHIP will also urge Congress to reintroduce the bipartisan *Ensuring Parity in MA and PACE for Audio-Only Telehealth Act*, which would allow diagnoses from audio-only telehealth services to count for MA risk adjustment.

- **PAYGO/Sequestration:** In response to the PHE, Congress placed a moratorium on Medicare sequestration, initially through the end of 2020, with an extension through the end of March 2021. The 2023 Omnibus package extends the mandatory Medicare payment reductions under sequestration for the first 6 months of FY2032, while revising Medicare sequestration percentages to 2% for FY2030 and FY2031. AHIP has supported efforts to continue the moratorium through the end of the PHE in recognition of the extraordinary circumstances facing Medicare providers and the need for full funding to respond to and provide care during the COVID-19 pandemic.

Additionally, Congress removed PAYGO-related sequestration of Medicare and other federal programs until FY2025.

### ***Medical Management***

In 2022, the House passed the Improving Seniors’ Timely Access to Care Act, addressing prior authorization and other methods of medical management in the MA program. However, the bill was not yet considered by the Senate. This bill is expected to be revisited in the 118<sup>th</sup> Congress. This is a top tier priority for the physician community and beneficiary advocates. AHIP will continue to strongly advocate for policies that preserve and improve the prior authorization process, enhance health plan flexibility to move the market to high value, safe, effective care, and incent providers and EHR vendors to adopt electronic prior authorization solutions offered by health insurance providers. AHIP will strongly oppose policies that would limit the use of effective utilization management tools that protect patients from unnecessary or unsafe care.

### ***Part D Reform***

CMS finalized the MA/Part D rule, including the proposal to require Part D plans to apply all price concessions they receive from network pharmacies at the point of sale by revising the current definition of “negotiated [drug] price” to eliminate the current exception for contingent pharmacy price concessions from inclusion in the total pharmacy network price concessions that can be reasonably determined at the point of sale. Instead, the new definition would include the lowest net price a pharmacy could receive for a covered drug net of the maximum possible negative adjustment or incentive fees receivable under any contingency payment arrangements between the sponsor and pharmacy. However, CMS has delayed the effective date of this requirement to January 1, 2024.

The omnibus package also included a provision to allow for Part D coverage of drugs covered under emergency use authorization during the COVID-19 pandemic to extend through 2024.

### ***Dual Eligibility***

AHIP is working with the Administration on issues related to the growth and expansion of CMMI models. We seek to limit regulatory changes and models that either disrupt care for dual eligible beneficiaries or prevent them from being in the plan type that best meets their needs. To that end, AHIP is sharing information with Congress on the outsized impacts the 2024 Advance Notice will have on dual eligible populations including cuts to payments for dual eligibles and putting at risk critical benefits and services. AHIP will continue coordination with Medicaid Managed Care organizations to advocate for strategies that facilitate increased D-SNP integration while continuing to allow alternative approaches that meet the needs of the states.

### ***MA Support***

A bipartisan group of Senators signed the annual letter to CMS in support of MA in advance of the 2024 Advance Notice. As CMS published the Advance Notice in later January 2023, AHIP has closely worked with longstanding Congressional allies of MA to urge CMS to reconsider the major changes proposed in the Advance Notice, registering the process concerns and the disproportionate negative impact it will have on dual eligible populations.

### ***Medicare Supplement Insurance***

AHIP will showcase to Congressional offices how Medicare Supplement (Medigap) is a key source of additional coverage for Medicare enrollees to fully protect their health and financial security. We will highlight how coverage helps patients avoid the confusion and inconvenience of handling complex bills from health care providers and how Medicare enrollees with Medicare Supplement coverage were 3 times less likely to have problems paying medical bills compared to enrollees without Medicare Supplement policies. AHIP has a full [database](#) on one-pagers in each state and Washington, DC as well as an [issue brief](#) on the state of Medicare Supplement coverage.

## **Medicaid Managed Care**

### **Political Environment**

The COVID-19 crisis has impacted the health and financial security of Americans. The number of Americans enrolled in Medicaid and CHIP has increased significantly since the start of the pandemic. Since the public health emergency (PHE) was declared, enrollment in Medicaid, CHIP, and the Basic Health programs has increased by more than 20 percent and now includes 86 million low-income Americans and 2 million veterans.

Redeterminations previously tied to the PHE have been uncoupled from it and will begin in April. This will require an unprecedented effort involving tens of millions of people. It is anticipated that this effort will strain state government resources and create a serious risk of coverage loss, including for people who lose coverage merely because they fail to complete

the renewal process on a timely basis, or fail to respond to a state request for information because the state's contact information for the enrollee is outdated.

AHIP advocated to ensure the Telephone Consumer Protection Act (TCPA) could allow for text message notices to be sent to covered members who could potentially lose coverage. AHIP has also been working closely with the states to track their redetermination plans and help them prepare for the end of the PHE. This includes the formation of the [Connecting to Coverage Coalition](#) which represents a diverse collection of stakeholders partnering to minimize the disruptions in health coverage associated with the resumption of state Medicaid renewals in 2023.

Medicaid managed care organizations (MCOs) and qualified health plans (QHPs) continue to be essential partners in making the redetermination processes successful. AHIP will continue to build bipartisan policymaker support to grow and expand Medicaid Managed Care to achieve integrated, outcome based, whole person care.

## **Top Issues**

### ***Medicaid Redeterminations***

AHIP worked diligently to ensure efficient communication could take place between MCOs and individuals who may lose Medicaid coverage when redeterminations take place to ensure they can find coverage through the ACA or other markets. This included advocating for the Federal Communications Commission to confirm their understanding of permissible communications under TCPA relating to enrollment in Medicaid and other governmental health coverage programs.

On January 23, the Federal Communications Commission (FCC) released a declaratory ruling, effective immediately, that offers guidance for certain entities, including Medicaid managed care organizations (MCO), about how they may contact individuals regarding Medicaid eligibility redeterminations without violating the Telephone Consumer Protection Act (TCPA). States were allowed to begin the Medicaid eligibility redeterminations process on February 1, 2023, with disenrollments effective April 1, 2023.

Specifically, the guidance offers important clarifications on how federal and state government entities and contractors, including MCOs, may place autodialed and prerecorded artificial voice calls and send autodialed text messages to help raise awareness about eligibility and enrollment requirements related to Medicaid, the Children's Health Insurance Program (CHIP), Basic Health Programs (BHP), and Marketplace coverage, without violating the TCPA. State laws and regulations may enact provisions that go beyond federal TCPA regulations, and individual contractual obligations may also apply. The ruling confirms that a consumer who provides their telephone number on an application form used to determine eligibility or seek benefits from Medicaid, CHIP, BHP, and Marketplace health care coverage, has given prior express consent to be called or texted at that number by local governments, governmental contractors, and managed care entities acting under contract and pursuant to the authorization and direction of the government agency regarding eligibility for and ongoing enrollment in those programs.

### ***Medicaid Expansion***

AHIP continues to support the Administration's efforts to build on the ACA and expand Medicaid. AHIP will also support efforts to expand and extend Medicaid eligibility, easing "churn" by targeting changes to facilitate Medicaid enrollment and continuation of coverage. However, AHIP will continue to oppose transition of Medicaid Expansion populations into a public option.

### ***Eligibility / Benefit Improvements***

In June, CMS extended funding under the American Rescue Plan Act (ARPA) that is available to states to enhance, expand, and strengthen home- and community-based services (HCBS) for people with Medicaid who need long-term services and supports (LTSS) through 2025. Additionally, the 2023 Omnibus package extended the Money Follows the Person (MFP) demonstration funding and Spousal Impoverishment protections through FY2027. It also ensured that starting in 2024, states will be required to provide 12 months of continuous eligibility for children under age 19. AHIP will support coverage and benefit expansions for high needs populations while also advocating for the delivery of those services via Medicaid managed care.

### ***Social Determinants of Health***

Medicaid MCOs and their community partners have made progress in addressing health-related social needs thanks to policy flexibilities and their own private investments. To achieve even greater and more lasting impact on reducing disparities and advancing health equity, AHIP will advocate for more program flexibility and a range of policies that would help scale, sustain, and enhance Medicaid MCOs' current work to address the social risk factors Medicaid beneficiaries face. These include:

- Allowing interventions that address SDOH to be included as health-related expenses in the calculation of Medicaid MCO MLRs.
- Increasing flexibility in Medicaid waivers and create pathway for interagency waivers to more easily collaborate across sectors to address SDOH.
- Permitting greater latitude in the use of "in lieu of services" (ILOS).
- Extending flexibilities to allow Medicaid managed care providers to participate in pooled funding arrangements with others in the community, such as state social service agencies, to more easily bring different funding sources together to have a greater impact on social determinants of health.

### ***Territories FMAP***

The 2023 Omnibus package extended Medicaid funding for Puerto Rico and other U.S. territories through FY2027. For FY2028 funding will be determined by a formula based on allotments for 2020 through 2027, increased by the medical component of the Consumer Price Index (CPI) and for FY2029 funding will be based on the 2028 amount increased by the medical component of the CPI. For FY 2023 through 2027, each annual allotment is increased by \$300 million if HHS certifies for each FY that Puerto Rico is providing directed payments to physicians so that total payments are equivalent to at least 75% of Medicare fee schedule rates. Puerto Rico is required to implement an asset verification program by January 1, 2026. The enhanced FMAP was also made permanent.

## Commercial Markets

### Political Environment

The landmark legislation the *Inflation Reduction Act* (IRA) passed in August with several major provisions impacting health care including the extension of the Affordable Care Act tax credits expanded by the American Rescue Plan Act (ARPA) for 3 years, through 2025. CMS has reported that nearly 16 million people have enrolled in Marketplace health plans since the start of the 2023 Open Enrollment Period (OEP), representing a 13% increase from this time last year.

In 2022, AHIP launched Healthier People through Healthier Markets, a new policy roadmap and set of solutions to improve health care affordability and access for every American. The effort is focused on boosting competition in health care markets and reining in harmful practices that hurt American families. With the launch of this policy roadmap, AHIP sent letters to President Biden and the leadership of Congress that lay out a detailed set of legislative and regulatory enforcement actions to increase competition in health care, drive down costs, and improve health care access for patients.

AHIP's [Coverage@Work \(C@W\)](#) campaign produced a number of resources in 2022 to educate policymakers and the public about the value employer-provided coverage delivers to more than 180 million Americans, including materials on behavioral health integration, employee benefits, telehealth, and end-stage renal disease.

Looking ahead, AHIP and our coalition partners will work together on issues related to improving affordability and protecting the stability of large group and self-funded markets from potential legislative and regulatory changes that could make employer coverage less accessible or affordable.

### Top Issues

#### ***Affordability of Coverage***

The 118<sup>th</sup> Congress has already turned their attention to affordability and transparency issues related to health care. On March 23, the House Ways & Means Committee held a hearing on health care affordability and the impact of inflation on patients and small businesses. AHIP submitted a statement for the hearing discussing solutions to lower costs for patients, especially through healthy competition and transparency. Our statement offers solutions including advancing site-neutral payments to defend consumers from overpaying, bringing much-needed transparency to private equity's monopoly power, stopping consolidated health systems from stifling negotiation and innovation, supporting patient's choice of telehealth, and stopping drug manufacturers from engaging in patent games.

#### ***Grow and Support Employer-Provided Coverage***

COBRA Subsidies expired by the end of 2021 and were not revived by the IRA. AHIP continues to advocate support for employer-provided coverage as a cornerstone of the American health care system, even throughout the COVID-19 pandemic. AHIP and C@W will continue to build Congressional champions for employer-provided coverage, with initial

focus on the Administration's COVID relief efforts, and longer-term focus on policy solutions. We will also be providing new data and resources on the long-term value of employer provided coverage through AHIP and our coalition partners.

### ***Ensuring a Robust Individual Market***

- **Strengthening the ACA:** In addition to signing into law the IRA and the extension of ARPA tax credits, the Biden Administration released the final rule fixing the "family glitch". The final rule adopts, as originally proposed, three changes to fix the family glitch. First, it adopts a separate affordability test for an employee's spouse and dependents ("related individuals") to determine whether an offer of employer-sponsored coverage affordable based on the cost of family coverage. Second, it clarifies the minimum value rule for family coverage. Third, it finalizes both the proposed minimum value rule for employees related to inpatient hospitalization services and physician services and the proposed clarification of the premium refund rule.

AHIP will actively engage on our regulatory priorities with a focus on building what's working in the current health care system.

- **Public Option/Medicare Buy-In:** President Biden has advocated for the establishment of a new public insurance option like Medicare to compete with private insurance, and to lower the age of Medicare eligibility. AHIP and the Partnership for America's Health Care Future have focused our advocacy efforts of this issue on the untenable nature of a public option and its fiscal impact, and providing alternatives centered around consumers.

Several states have been piloting public option programs. AHIP and partner organization, the Partnership for America's Health Care Future (PAHCF) have been monitoring activity in the following states: CO, CT, ME, MN, NJ, NE, NM, OR, VA. Data from these programs show that they are struggling to reduce costs as planned. AHIP continues to support building on and improving what's already working in health care to increase access to affordable, high-quality health coverage.

### ***Surprise Medical Billing***

Several lawsuits have been brought against the No Surprises Act (NSA) this year. AHIP and its partner the Coalition Against Surprise Medical Billing (CASMB) have been working to protect the NSA and ensure that it is implemented as intended by Congress. AHIP filed an amicus brief in *Texas Medical Association v. the Department of Health and Human Services (HHS)*, supporting the Biden Administration's approach to surprise medical bill arbitration. AHIP and CASMB will continue to reach out to stakeholders like they did in their letter to the tri-agencies and collect data that demonstrates how the NSA has protected 9 million Americans from surprise medical bills.

### ***Dialysis***

Following a Supreme Court decision, DaVita Dialysis drafted a bill to reform the Medicare Secondary Payer Act. The *Restore Protections for Dialysis Patients Act* (H.R. 8594 and S. 4750) would take the statutes on coordinated care and contort it for a purpose beyond its

original intent, while also duplicating established patient protections that are already in place. Further, the bill creates a first-ever private coverage benefit mandate for particular services for a specific health condition, with no standard or ceiling provided on what reimbursement amount would be required. AHIP will continue to work with the 118<sup>th</sup> Congress to counter the narrative of this act which claims plans are narrowing benefits around dialysis services as a result of the SCOTUS decision.

### ***COVID-19 Commercialization***

AHIP has had several discussions with key stakeholders regarding the transition of COVID-19 vaccines and therapeutics to the commercial market, which is anticipated to be completed by mid-2023. In August AHIP participated in the U.S. Department of Health and Human Services (HHS) COVID-19 Medical Countermeasures Commercialization meeting. Decisions around COVID-19 commercialization are being made independently of decisions around the ending of the public health emergency or the continuation of any emergency use authorizations (EUAs). We anticipate future ACIP guidance on the extent that ongoing vaccination will continued to be needed among different populations, vaccine schedules related to series and doses, booster frequency and interchangeability. Post-commercialization, the U.S. government indicated it will be transitioning to use the Vaccines for Children's program for uninsured children and is seeking additional funding for a new similar program aimed at immunizing uninsured adults.

### ***Site-Neutral Payments***

Site-neutral payment reform is one of AHIP's solutions to improve health care affordability as a part of the Healthier People through Healthier Markets roadmap. Current Medicare and private health insurance payment policies pay more for services provided in hospital outpatient departments. AIP and the Alliance to Fight for Health care are aiming to correct this key distortion that provides incentives for provider consolidation. AFHC held a Congressional briefing outlining the issue and providing recommendations to advance site-neutral policies in February 2023. To advance site-neutral, AHIP will continue to recommend Congress require separate national provider identifier enumeration for provider-based, off-campus hospital outpatient departments as well as prohibit the assessment of facility fees unless a special exception applies.

### ***Telehealth***

The CARES Act of 2020 provision helped to make telehealth more affordable and flexible for those with a health savings account. This provision received a two-year extension in the Omnibus package passed last December and is set to expire on December 31, 2024. AHIP will continue to support passage of the Telehealth Expansion Act of 2023, which makes permanent the provision that allows employers the flexibility to offer telehealth services below the deductible to employees with a Health Savings Account (HSA) paired with a high-deductible health plan (HDHP).

### ***Long-Term Care Insurance***

AHIP will seek reintroduction of the Long-Term Care Affordability Act. The bill was initially sponsored by Sen. Pat Toomey (R-PA), who retired at the end of the Congress. We will now seek a new champion. The bill would provide an exclusion from gross income of up to

\$2,500 per year for distributions from eligible retirement plans to the extent those distributions do not exceed the amount paid or assessed to purchase qualified long-term care insurance.

## **Pharmacy**

### **Political Environment**

Congress turned their attention to prescription drug prices in 2022, focusing on affordability, accessibility, transparency, and oversight on large pharmaceutical companies as well as Pharmacy Benefit Managers (PBMs).

The Biden Administration's passage of the IRA delayed the Rebate Rule to 2023. Federal funding for the new subsidies and benefits were secured by further delaying implementation of the Trump-era point-of-sale drug rebate rule. As it is not a permanent elimination of that regulation, AHIP and our coalition partners will continue to advocate for its invalidation. AHIP will continue to promote market-based solutions that hold drug makers accountable for high list prices and promote competition, consumer choice, and open and honest drug pricing.

### **Top Issues**

#### ***Launch and List Price Affordability & Transparency***

The Federal Trade Commission is launching an investigation into PBMs in 2023. As part of the investigation the six largest PBMs will be required to provide information to the FTC on their business practices. The aim of the investigation is to analyze the impact of vertically integrated PBMs on access and affordability of prescription drugs. AHIP has submitted comments to the FTC highlighting our shared commitment to more affordable prescription drugs and detailing how health insurance providers and PBMs use their bargaining power to negotiate savings for millions of Americans. Throughout the investigation, AHIP will continue to monitor the ongoing discussion and provide supportive information on the role of PBMs in negotiating discounts and rebates to reduce drug prices.

Additionally, in March, the Senate Finance Committee held two hearings to address prescription drug pricing and transparency. On March 16, they convened to discuss prescription drug price inflation. On March 30, they met again to discuss PBMs and the prescription drug supply chain, including its impact on patients and taxpayers. AHIP will continue to follow the conversation around the affordability and transparency in setting list prices for prescription drugs and promote competitive solutions that address the real problem with price when it comes to prescription drugs, large pharmaceutical companies who patent game and have the ultimate say in setting price.

#### ***Defending Rebates***

The Rebate Rule was further delayed to 2027 as a provision in the IRA. AHIP will continue to advocate for the full repeal of the Rebate Rule, which limits the ability of Part D plans to negotiate drug discounts for plan years beginning with 2023. We will also encourage Congress to legislatively restrict the Rebate Rule's implementation.

AHIP will continue to explore legislative options that address current limitations on prescription drug discount negotiations that have led to the current, highly controversial rebate system while preserving plans' ability to lower drug costs.

### ***Use of Integrated Medical/Pharmacy Benefit Designs and Utilization Management Tools***

Meaningful competition from generic medicines and biosimilars is one of the most effective ways to reduce drug prices and increase patient access to critical medications. Competition is empowered by a properly functioning patent system, efficient regulatory action and approvals, and value-based assessments of efficacy. For medications that are not subject to competition, health insurance providers and their PBM partners use important tools to drive safety, savings, and efficiency. AHIP is opposed to mandatory generic and biosimilar tiers and mandatory placement of generics and biosimilars on the most preferred tier. AHIP will continue to defend and promote use of integrated medical pharmacy benefits that can enhance the health of the whole person while driving value-based spending. Further, we will protect use of pharmacy management tools, including prior authorization, formulary design and benefit design as cost-saving and safety measures.

### ***Pay-For-Effectiveness and Value-Based Arrangements***

As the nation's health care system moves from one that pays based on volume of services to one that pays for value, AHIP supports collaborations between health plans, providers, and other stakeholders to establish arrangements that provide a steady income, reward high-quality and efficient care, and reduce administrative burden to allow more time with patients. AHIP will advocate for flexibility to permit innovative value-based purchasing models with manufacturers and providers.

### ***Competition, Patent Reform, and Biosimilars***

AHIP and the Campaign for Sustainable Rx Pricing (CSRxP) will push back against the anti-competitive patent system and abuses of market exclusivity to create greater competition among generics and biosimilars. We will advocate for a legislative approach to address these anti-competitive practices that include patent thickets, pay-for-delay, and "evergreening."

AHIP supports development of a more robust and sustainable biosimilars market through naming reform and efforts to accelerate approval of new products. To ensure a level playing field, AHIP believes that biologics and biosimilars should be required to have the same international nonproprietary name without any suffix.

## **Care Delivery & Innovation**

### **Political Environment**

The COVID-19 pandemic spotlighted the intense need for improvements in care delivery through innovation. COVID-19 has exacerbated system capacity constraints, inequities in care, data access limitations, and the need for more robust behavioral health services.

Throughout the pandemic Biden Administration continued to prioritize health care accessibility and to streamline processes that make receiving care easier for Americans.

The COVID-19 pandemic also shed light on Mental Health and Substance Use Disorder treatments and therapies. The Transparency in Coverage final rule went into effect in 2022, finalizing proposals that require the public disclosure of in-network negotiated rates and out-of-network allowed amounts via large “machine-readable” files. AHIP will continue to highlight how health insurance providers will continue to roll out cost comparison tools and features, making improvements so that people can get the information they need to make important decisions about their health and care.

Congress is also expected to maintain their focus on privacy. In the 117<sup>th</sup> Congress, Democrats and Republicans on the House Energy & Commerce Committee and Senate Commerce Committee Republicans came together on a draft national privacy bill, the American Data Privacy and Protection Act. However, Senate Commerce Committee **Chair Maria Cantwell (D-WA)** is not yet on board with that proposal. Congress is expected to continue negotiations to come to an agreement, but a privacy bill that can pass both chambers is not guaranteed. As these negotiations take place, AHIP will urge lawmakers to ensure health information be required to comply with the HIPAA or new “HIPAA-like” protections.

AHIP will continue to establish health insurance providers as the consumer’s advocate in promoting health, accessing high-quality, affordable services, and simplifying the consumer experience through new technologies and meaningful information.

## **Top Issues**

### ***Behavioral Health and Substance Use Disorder***

The COVID-19 pandemic exacerbated the need to fortify mental and behavioral health services and substance use disorder support, as millions of Americans face the emotional effects of isolation, stress, and anxiety. The Biden Administration has been supportive of achieving mental health parity and expanding access to mental health care. In the recent Omnibus package one key provision established Medicare FFS coverage for services provided by marriage and family therapists and licensed professional counselors beginning in 2024. It also created a requirement for a GAO study and report that compares the mental health substance use disorder benefits offered by Medicare Advantage (MA) plans to original Medicare and to other benefits offered by MA plans. Additionally, the MAT Act was included which removes the buprenorphine X-waiver. AHIP will continue to advocate for policies that promote access to evidence-based, high-quality, affordable behavioral health services, including substance use disorder treatments, as well as alignment and consistency in federal and state parity compliance oversight and enforcement.

### ***Social Determinants of Health (SDOH) and Health Equity***

The Biden Administration continues to focus on health equity and SDOH, including a focus on access to care and treatments during the COVID-19 crisis. In the first days of his Administration, President Biden created the COVID-19 Health Equity Task Force to analyze data and provide recommendations to improve health care for communities of color and

those affected by inequities in COVID-19 outcomes. The Task Force has released their [final report](#) and recommendations prioritizing data challenges, vaccine access, behavioral health, discrimination, long COVID and future pandemic preparedness.

Biden supports doubling the investment in Community Health Centers and addressing SDOH by improving access to transportation, housing, and a cleaner environment. AHIP will continue to advocate for policies that ensure health insurer flexibility to innovate SDOH programs and that build the appropriate infrastructure to support work that addresses SDOH. This includes improvements in hiring practices and workplace diversity, creating national data standards, and investing in services that influence SDOH such as education, housing, employment, and transportation, among others.

AHIP also continues to promote health insurer leadership and best practices in addressing the SDOH through the Project Link Learning Collaborative, and we have launched two workgroups to focus on strategies and solutions to advance health equity.

While we are committed to doing our part to advance health equity and address socioeconomic barriers to health, we want to ensure that this work is done fairly in an evidence-based, stakeholder-driven, and culturally sensitive way. To that end, we believe it is critically important that we work together with policymakers to ensure that appropriate time and consideration is placed on health equity initiatives to develop the appropriate data standards to identify disparities; build adequate infrastructure to obtain and report out relevant information while protecting individual privacy; establish evaluative safeguards to ensure data is complete, correct, and operationalized in a consumer-centered way; and promote alignment within and across states. We stand ready to work together to accomplish this task.

### ***Privacy***

The COVID-19 pandemic continues to spotlight data sharing and tracking as a major issue. In his first days, President Biden issued an executive order to improve COVID-19 and other public health data collection and institute publicly available dashboards consistent with privacy protections. It is likely that the COVID crisis and its resolution will catalyze more permanent action on the federal and state level for data privacy and interoperability.

In February 2022, the AHIP Board and CMO leadership team shared commitment to protecting patients' and consumers' privacy, confidentiality, and cybersecurity. They released a [guiding priorities](#) document and [roadmap](#) on personal health information. The guiding priorities and roadmap underscore how health insurance providers are committed to instituting privacy, security/cybersecurity practices to protect every person's personal health information. As technology evolves and information becomes more available through digital platforms and third-party applications, health insurance providers are continuing their leadership role to promote consumer confidence and trust while meeting and exceeding their expectations for information access.

### ***Data Standards***

AHIP has been working closely with health insurance providers to research and provide guidance to the Office of Management and Budget (OMB) on accurate and inclusive data

standards for collecting demographic information. Accurately reporting demographic information on patients continues to be critically important to addressing health disparities, including disparities felt in addressing the COVID-19 pandemic. AHIP has submitted detailed guidance to the Administration supporting socially and culturally appropriate terminologies that should be used for identifying and collecting data on the demographics of patients so health care providers and insurers can better address health disparities.

### ***Telehealth***

The COVID-19 pandemic and increased flexibility on telehealth regulation has catalyzed the demand for telehealth services, and the ability for health insurance providers to meet that need. The Omnibus package included two key telehealth provisions. First, telehealth flexibilities for Medicare FFS were extended through 2024. Second, it extends the flexibility to exempt telehealth services from the deductible in high-deductible health plans (HDHP) that can be paired with a Health Savings Account (HSA) through CY2024.

Throughout 2023, AHIP will continue to be vigilant in our outreach efforts to Capitol Hill and the Administration highlighting health insurance provider's efforts to address health disparities and advocating for increased access to care for rural and at-risk populations through telehealth. In addition to AHIP's efforts on MA audio-only legislation, AHIP continue to support making permanent the CONNECT for Health Act, which will further expand access to telehealth services for Medicare beneficiaries by promoting quality care and alternative payment models.

### ***Maternal Health***

The Biden Administration has taken several measures to expand Medicaid eligibility including a provision the American Rescue Plan Act (ARPA) that gives states the option to extend Medicaid to new mothers for up to a year after giving birth. ARPA also expanded Medicaid funding for mental health and substance use emergencies as well as home and community-based services (HCBS).

The 2023 Omnibus package made permanent the flexibilities provided by the American Rescue Plan Act to allow states to temporarily extend Medicaid postpartum coverage from 60 days to 12 months. The following states have all been approved by CMS to extend their postpartum coverage to 12 months: CA, CT, DC, FL, GA, HI, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, NC, NJ, NM, OH, OR, PA, SC, TN, VA, WA, and WV.

## Congressional Schedule

### Senate

The list below identifies expected non-legislative periods.

<b>Date</b>	<b>Action</b>	<b>Note</b>
<i>Jan 2</i>		New Year's Day
<i>Jan 3</i>	Convene	
<i>Jan 4 - Jan 20</i>	State Work Period	Martin Luther King Jr. Holiday- Jan 17
<i>Feb 6</i>		
<i>Feb 20 - Feb 24</i>	State Work Period	Presidents' Day - Feb 20
<i>Mar 10 - Apr 13</i>	State Work Period	
<i>Mar 17 - Mar 20</i>	State Work Period	
<i>Apr 3 - Apr 14</i>	State Work Period	
<i>Apr 24</i>		
<i>May 5 - May 8</i>	State Work Period	
<i>May 22 - May 29</i>	State Work Period	Memorial Day - May 29
<i>Jun 5</i>		
<i>Jun 19</i>		Juneteenth - June 19
<i>Jun 26 - Jul 7</i>	State Work Period	Independence Day - Jul 4
<i>Jul 17</i>		
<i>Jul 24</i>		
<i>Jul 31 - Sep 4</i>	State Work Period	Labor Day - Sep 4
<i>Sep 15</i>		
<i>Sep 25</i>		
<i>Oct 9 - Oct 13</i>	State Work Period	Indigenous Peoples' Day - Oct 9
<i>Nov 10</i>		Veterans Day - Nov 10
<i>Nov 20 - Nov 24</i>	State Work Period	Thanksgiving - Nov 23
<i>Dec 15</i>	Target Adjournment	
<i>Dec 18 - Dec 29</i>	State Work Period	

### House

The list below identifies expected non-legislative periods.

<b>Date</b>	<b>Action</b>	<b>Note</b>
<i>Jan 3</i>	Convene	
<i>Jan 6</i>	District Work	
<i>Jan 13 - Jan 23</i>	District Work	Martin Luther King Jr. Holiday- Jan 16
<i>Feb 3</i>	District Work	
<i>Feb 10 - Feb 24</i>	District Work	Presidents' Day - Feb 20
<i>Mar 2 - 3</i>		Dem Retreat

<b>Mar 6</b>	District Work	
<b>Mar 13 – Mar 17</b>	District Work	
<b>Mar 20 - 21</b>		Rep Retreat
<b>Mar 31 – Apr 14</b>	District Work	
<b>Apr 21 - 24</b>	District Work	
<b>May 1 - 8</b>	District Work	
<b>May 19</b>	District Work	
<b>May 26 – Jun 2</b>	District Work	Memorial Day – May 29
<b>Jun 9</b>	District Work	
<b>Jun 16 – 19</b>	District Work	Juneteenth – Jun 19
<b>Jun 26 – Jul 10</b>	District Work	Independence Day – Jul 4
<b>Jul 21 - 24</b>	District Work	
<b>Aug 1 – Sep 11</b>	District Work	Labor Day - Aug 4
<b>Sep 22 -25</b>	District Work	
<b>Oct 2 – Oct 16</b>	District Work	Indigenous Peoples’ Day – Oct 9
<b>Oct 27 – Nov 10</b>	District Work	Veterans Day – Nov 11
<b>Nov 17 – Nov 27</b>	District Work	Thanksgiving - Nov 23
<b>Dec 8</b>	District Work	
<b>Dec 15 – Dec 29</b>	District Work	Christmas – Dec 25

## Key Congressional Committees

### House Committee Leaders

#### **Energy & Commerce** (29 GOP, 23 Dem)

- **Full Committee:** Chair Cathy McMorris Rodgers (R-WA) / Ranking Member Frank Pallone (D-NJ)
- **Health Subcommittee:** Chair Brett Guthrie (R-KY) / Ranking Member Anna Eshoo (D-CA)

#### **Ways & Means** (25 GOP, 18 Dem)

- **Full Committee:** Chair Jason Smith (R-MO) / Ranking Member Richard Neal (D-MA)
- **Health Subcommittee:** Chair Vern Buchanan (R-FL) / Ranking Member Lloyd Doggett (D-TX)

#### **Education & Workforce** (25 GOP, 20 Dem)

- **Full Committee:** Virginia Foxx (R-NC) / Ranking Member Bobby Scott (D-VA)

#### **Oversight & Accountability** (26 GOP, 21 Dem)

- **Full Committee:** Chairman James Comer (R-KY) / Ranking Member Jamie Raskin (D-MD)

#### **Appropriations** (33 Dems, 26 GOP)

- **Full Committee:** Chair Kay Granger (R-TX) / Ranking Member
- **Labor-HHS Subcommittee:** Chair Robert Aderholt (R-AL) / Ranking Member Rosa DeLauro (D-CT)

### Senate Committee Leaders

#### **HELP** (10 Dems, 10 GOP, 1 Independent)

- **Full Committee:** Chair Bernie Sanders (I-VT) / Ranking Member Bill Cassidy (R-LA)

#### **Finance** (14 Dem, 13 GOP)

- **Full Committee:** Chair Ron Wyden (D-OR) / Ranking Member Mike Crapo (R-ID)

#### **Judiciary** (11 Dems, 10 GOP)

- **Full Committee:** Chair Dick Durbin (D-IL) / Ranking Member Lindsey Graham (R-SC)

#### **Appropriations** (15 Dems, 14 GOP)

- **Full Committee:** Chair Patty Murray (D-WA) / Ranking Member Cindy Hyde-Smith (R-MS)
- **Labor-HHS Subcommittee:** Chair Tammy Baldwin (D-WI) / Ranking Member Shelley Capito (R-WV)

## Cabinet & Agency Appointments

<b>Position</b>	<b>Appointee</b>
<b>HHS Secretary</b>	Xavier Becerra
<b>HHS Deputy Secretary</b>	Andrea Palm
<b>HHS Assistant Secretary of Health</b>	Rachel Levine
<b>Treasury Secretary</b>	Janet Yellen
<b>Labor Secretary</b>	Julie Su ( <i>Acting Secretary, Permanent Appointment Pending Senate Confirmation</i> )
<b>OMB Director</b>	Shalanda Young
<b>Surgeon General</b>	Vivek Murthy
<b>CMS Administrator</b>	Chiquita Brooks-LaSure
<b>CDC Director</b>	Rochelle Walensky
<b>FDA Commissioner</b>	Robert Califf
<b>SAMHSA Administrator</b>	Dennis Romero
<b>(Acting) Director of NIAID, Chief Medical Adviser</b>	Hugh Auchincloss
<b>White House Chief of Staff</b>	Ron Klain
<b>CMMI Director and Deputy Administrator</b>	Liz Fowler
<b>Director for the Center for Medicaid &amp; CHIP Services</b>	Daniel Tsai
<b>Director for Center of Medicare</b>	Meena Seshamani