



Issues for the week ending January 24, 2025

Federal Issues

Legislative

Congress Moves Forward with Confirmation Hearings, Reconciliation Talks

As the Senate continues its work to confirm Trump's nominees, the Finance Committee has scheduled its hearing for HHS Secretary nominee, Robert F. Kennedy, Jr., this Wednesday, January 29. The Health Education Labor and Pensions (HELP) Committee's hearing will follow on Thursday.

Meanwhile, House and Senate Republicans continue to discuss the structure, scope and scale of a potential budget reconciliation agreement. To meet the Speaker's deadline of April, instructions with the targeted savings they intend to achieve through the reconciliation process would likely need to be submitted by each committee in the next several weeks.

Health care policies that could be included in a budget reconciliation package include enhanced ACA tax credits, site-neutral payment reforms and Medicaid.

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Federal Issues

Regulatory

President Trump Issues Executive Orders

On his first day in office, Trump signed a series of [executive orders](#) (EOs) and [rescinded](#) almost 80 executive orders which had been issued by President Biden.

Background on Executive Orders: Presidential executive orders, while widely publicized, are fundamentally internal communications of the federal government. They are used by the President to communicate the Administration's policies and priorities to the various federal departments and agencies. As such, they are not binding on private third parties unless and until federal agencies implement the new policies through sub-regulatory guidance or formal rulemaking. Once regulatory action is taken, it is subject to legal challenge.

More details on some of the health-care related EOs impacting health insurers, hospitals and health care consumers:

Hospitals and Immigration Enforcement Protection

- **Action:** The Trump administration rescinded [2021 guidance](#) that protected hospitals, health care facilities, and other select “sensitive areas” from immigration enforcement actions. The 2021 guidance sought to prevent enforcement activities in areas where people access essential services.
- The AHA is working to understand the ways this guidance will impact the hospital community.

Gender-based Discrimination Orders

- **Action:** The administration’s rescissions included several related to gender-based discrimination. This included repealing a [2021 order](#) requiring government agencies to review and uphold existing federal protections against sex discrimination based on gender identity or sexual orientation.

Diversity, Equity, and Inclusion

- **Action:** Another new [executive order](#) calls for the removal of diversity, equity, and inclusion (DEI) initiatives from the federal government. It also calls for the private sector to “end illegal DEI discrimination and preferences” and for the attorney general to submit a report on the issue in the next 120 days. On the first day of the new administration, federal workers in DEI offices across the government were placed on administrative leave.

Medicare and Prescription Drug Costs

- **Action:** The Trump administration also rescinded the [executive order](#) that directed the Center for Medicare and Medicaid Innovation to test three new drug pricing models. High-profile initiatives from the Inflation Reduction Act—such as the \$35 cap on the price of insulin and the Medicare Part D price negotiation program—are not affected by the executive orders, but the new administration has not stated its next steps for those policies.

COVID-19 Response

- **Action:** The new administration also rescinded an executive order related to the public health response to COVID-19. The [executive order](#) called for a government-wide effort to address disparities in COVID-19 response, care, and treatment; improve the distribution of essential equipment and treatments; and coordinate and expand testing and delivery of COVID-19 vaccines.

Notably, the administration also announced steps to withdraw from the World Health Organization, citing [concerns](#) about the handling of the pandemic response.

Affordable Care Act Special Coverage Periods

- **Action:** This rescinded [executive order](#) created a longer enrollment period for uninsured and under-insured consumers seeking coverage via the federal health insurance marketplace. It also included funding to support third parties helping consumers select plans.

Cost of Living

- **Action:** This [EO requires](#) “the heads of all executive departments and agencies to deliver emergency price relief, consistent with applicable law, to the American people and increase the prosperity of the American worker” and “... eliminate unnecessary administrative expenses and rent-seeking practices that increase healthcare costs.”

[Regulatory Freeze](#)

- **Action:** This new [order](#) suspends federal agencies from proposing new rules or regulations until a department or agency head, appointed by the president, reviews and approves the rule. The director of the Office of Management and Budget can exempt any rule in emergency situations or other urgent circumstances. The administration also has issued a [temporary freeze](#) on external communications from the nation’s federal health agencies. **This EO directs executive departments and agencies to take the following steps:**
 - Propose or issue no rule “until a department or agency head appointed or designated by the President after noon on January 20, 2025, reviews and approves the rule” (subject to exceptions for emergencies and urgent circumstances).
 - **For rules that have been sent to the Office of the Federal Register (OFR),** but not yet published in the Federal Register, withdraw them from OFR for review and approval as described in the previous bullet.
 - **For rules that have been published in the Federal Register, or rules that have been issued in any manner but not taken effect, consider postponing the effective date for 60 days from the date of the memorandum,** to review any questions of fact, law, and policy the rules may raise. The White House also asks that agencies consider opening a comment period during the 60 days or further postponing. For rules that raise issues, agencies should work with the OMB director on further appropriate action.
 - Note that a rule covered by the EO is defined as not only a regulation but also guidance documents. This includes any substantive agency action (normally published in the Federal Register) expected to lead to final regulations, and agency statements setting forth policies or interpretations. How the EO will impact previously released proposed guidance such as the 2026 Medicare Advantage (MA) and Part D proposed rule or the 2026 MA Advance Notice,

including the comment deadlines, will be determined by HHS officials using the contours of the EO.

[Rescinding Biden EOs](#)

This EO revokes dozens executive orders including several of interest such as:

- [EO 13985](#) of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government)
- [EO 14009](#) of January 28, 2021 (Strengthening Medicaid and the Affordable Care Act)
- [EO 14070](#) of April 5, 2022 (Continuing to Strengthen Americans' Access to Affordable, Quality Health Coverage)
- [EO 14075](#) of June 21, 2022 (Advancing Equality for Lesbian, Gay, bisexual, Transgender, Queer, and Intersex Individuals)
- [EO 14087](#) of October 14, 2022 (Lowering Prescription Drug Costs for Americans).
- [EO 14110](#) of October 30, 2023 (Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence).
- Several EOs related to COVID, including EOs to assign a Covid response coordinator and to direct health agencies to identify and expand access to Covid treatments.

Rules, guidance and demonstrations associated with these rescinded EOs would need to be addressed through normal regulatory processes and are not automatically impacted without further agency action.

Supreme Court Grants Review of *Braidwood* ACA Preventive Services Case

On January 10, the U.S. Supreme Court agreed to hear an appeal in *Braidwood Management, Inc. v. Becerra*. This case concerns whether the Affordable Care Act (ACA) mandate that insurers must cover services recommended by the United States Preventive Services Task Force (USPSTF) with an “A” or “B” rating without cost-sharing violates the Appointments Clause of the Constitution.

In June 2024, the 5th Circuit Court of Appeals [affirmed](#) the district court's decision that the USPSTF members are not constitutionally appointed, but the 5th Circuit narrowed the impact of the decision by declining to apply a nationwide enforcement mandate, instead applying the ruling only to the plaintiffs of the case.

Health Insurance Perspective: Consistent with the [amicus brief](#) filed in June 2023, BCBSA remains in support of the coverage of preventive services without cost sharing. It is unknown whether the Trump administration will choose to defend the case.

USPSTF Comment Opportunity on Draft Research Plan on Counseling to Prevent Sexually Transmitted Infections

On January 16, 2025, the U.S. Preventive Services Task Force (USPSTF) released a [draft research plan](#) on behavioral counseling to prevent sexually transmitted infections. The USPSTF is accepting public comments on the draft research plan until Feb. 12.

Following the June 2024 [circuit court ruling](#) in the *Braidwood Management, Inc. v. Becerra* case, health plans subject to the ACA preventive services mandate will continue to be required to cover all applicable preventive services recommendations from the Health Resources and Services Administration (HRSA), the Advisory Committee on Immunization Practices (ACIP) and USPSTF issued before and after 2010 without cost-sharing.

CMS Releases 2024 RxDC Reporting Instructions and Templates

The Centers for Medicare and Medicaid Services (CMS) has released the Prescription Drug Data Collection (RxDC) reporting instructions and templates for the 2024 reference year as required by Section 204 of Division BB, Title II of the Consolidated Appropriations Act, 2021. Section 204 requires group health plans and health insurance issuers offering group or individual health insurance coverage to submit information about prescription drugs and health care spending to the Department of Health and Human Services (HHS), the Department of Labor, and the Department of the Treasury. In addition, the Director of the Office of Personnel Management (OPM) requires Federal Employees Health Benefits carriers to submit Section 204 data to HHS. CMS collects Section 204 data submissions on behalf of the Departments and OPM.

There are no changes to the instructions or templates other than revising the reference year from 2023 to 2024. An updated version of the RxDC drug name and therapeutic class crosswalk will be posted soon.

- [RxDC reporting instructions \(PDF\)](#)
- [RxDC templates and data dictionary \(ZIP\)](#)
- [RxDC data validations \(XLSX\)](#)

The Health Insurance Oversight System (HIOS) will begin accepting submissions for the 2024 reference year in mid-April. In advance of the submission window opening, CMS plans to host a training webinar. The deadline for submitting RxDC filings for the 2024 reference year is Sunday, June 1, 2025.

IRS Releases Guidance on Qualifying Payment Amount Methodology

The Internal Revenue Service (IRS) issued [guidance](#) to calculate the No Surprises Act qualifying payment amount (QPA) for 2025.

Notice 2025-11 provides an indexing factor for the QPA for items and services furnished in 2025 (1.0317904930). This applies in cases where a health plan does not have sufficient information, as of Jan. 31, 2019, to calculate the median contracted rate. The

guidance specifies the average CPI-U for previous years to be used in QPA calculations. Similar guidance for items and services furnished during 2022, 2023 and 2024 was published in Revenue Procedure 2022–11, Notice 2022–11, Notice 2023–4 and Notice 2024–1.

Departments Release Report on Mental Health Parity and Addiction Equity Act (MHPAEA) Compliance

The Departments of Labor, Health and Human Services (HHS), and the Treasury (Departments), released a [report](#) to Congress and an associated [press release](#) on health plan MHPAEA compliance. The Employee Benefits Security Administration (EBSA) and the Centers for Medicare & Medicaid Services (CMS) also released an enforcement [fact sheet](#) on MHPAEA enforcement in FY 2023.

The report to Congress details the Departments' continued enforcement efforts and includes the results of the NQTL comparative analyses provided by plans and issuers to demonstrate parity compliance. **Key highlights include the following:**

- Between Sep. 2022 and July 2023, EBSA issued 17 letters requesting comparative analyses for 22 NQTLs and CMS issued 22 letters requesting comparative analyses for 22 NQTLs.
- EBSA issued 45 insufficiency letters and CMS issued 10 insufficiency letters during the reporting period.
- EBSA issued 13 initial determination letters and CMS issued 19 initial determination letters finding that plans and issuers had violated MHPAEA's requirements.
- CMS issued three final determinations of noncompliance.

EBSA found that, compared to previous reporting periods, plans were more motivated to correct potentially problematic NQTLs earlier in the comparative analysis review process in order to avoid receiving an initial or final determination of noncompliance. However, EBSA found that comparative analyses in general did not include sufficient information for EBSA to determine compliance with the substantive requirements of MHPAEA.

State Issues

Delaware
Regulatory

Federal Government Determines Cigna Medicare Advantage Network Change Requires Special Election Period

The Delaware Department of Insurance and its Medicare Assistance Bureau (DMAB) are [working to make consumers](#) aware that the Centers for Medicare & Medicaid Services (CMS) has completed a review of the impact of the Bayhealth-Cigna Medicare Advantage termination.

They have determined that this termination significantly changes the Cigna provider network. As a result, consumers on Cigna Medicare Advantage plans are eligible for a Special Election Period beginning the month the enrollees are notified and ending two months after the month eligibility notices are received. Individuals who use this Special Election Period to elect Original Medicare will have Medigap Guaranteed Issue rights – they cannot be denied enrollment regardless of health status. The Guaranteed Issue rights begin 60 days before the Medicare Advantage Plan coverage ends and end 63 days after the Medicare Advantage coverage ends.

State Issues

New York

Legislative

2026 Executive Budget

Governor Hochul last week released her Executive Budget proposal for Fiscal Year 2026. The \$252 billion spending plan echoed the themes in her State of the State – improving affordability and quality of life for New Yorkers. The health portion of the Governor’s budget plan includes several items of interest to plans:

- **Funding the Medicaid Quality Incentive (QI) Program:** The Executive Budget utilizes a portion of the proceeds from the MCO tax to provide \$50 million (state share funding) for the Mainstream Medicaid Quality Incentive Program. The QI Program has played a critical role in enhancing the quality of care for individuals in Medicaid, supporting a broad range of initiatives between health plans and their provider partners to address racial and ethnic disparities in care and improve health outcomes for underserved populations across the state. The New York Health Plan Association (HPA) will be advocating for further investment in the final FY26 budget to fully fund the program at \$300 million and to ensure the program supports mainstream and Managed Long Term Care quality initiatives.
- **Excluding Medicaid Managed Care from the Independent Dispute Resolution (IDR):** New York’s IDR process is intended to determine whether the provider’s fee or the health plan’s payment is more reasonable when there is an out-of-network emergency services or a surprise bill from a non-participating provider. However, when the provider uses the IDR process for a Medicaid member, it can result in the plan paying significantly higher costs than the Medicaid rate, creating an incentive for providers to abuse the Medicaid program by intentionally staying out of network to charge higher rates, providing no benefit to patients or taxpayers. As she did last year, the Governor is proposing to exempt Medicaid from the IDR process. HPA will be advocating for its inclusion.

- **Increased DOH Penalties:** The budget plan also includes language that would authorize the Department of Health to penalize health plans for contract and performance standard noncompliance, with penalties from \$250 – \$25,000 per violation. HPA has taken the position that the proposed penalties are unnecessary because the Department already has ample authority to seek redress for both contractual and regulatory violations. The Legislature rejected a similar provision in last year’s budget and HPA will continue to oppose it this year.

Lawmakers begin [joint legislative hearings](#) on the budget starting this week. The hearing on health spending proposals is set for February 11.

State Issues

Pennsylvania

Legislative

Pennsylvania Legislative Update

House Session: The House of Representatives is returning to legislative session with a flurry of activity this week. The House Insurance, Health, and Human Services Committees are all convening voting and informational hearings this week.

Additionally, the House Insurance and House Human Services Committees are holding a joint informational hearing on Wednesday at 9:00 a.m. The purpose of the hearing is to discuss Traumatic Brain Injuries, with Dr. Law providing testimony on behalf of Highmark Health.

Senate Session: The Senate returns to Session this week with a Senate Health & Human Services Committee being held on Tuesday. They will be considering legislation regarding the Human Services Code, to ensure that the Department of Human Services continually verifies the eligibility of recipients of certain assistance programs.

Regulatory

Insurance Department Unveils New Process to Implement Recent PBM Reform Law

The Pennsylvania Insurance Department (PID) announced another step toward fully implementing the Commonwealth's new Pharmacy Benefit Manager (PBM) reform law.

Why this matters: PID established a new process for pharmacies to challenge a health benefit plan's designation of a specialty drug, which is critical protection provided by [Act 77 of 2024](#). Specialty drugs are high-cost medications used to treat complex, chronic, or rare conditions that require special handling, administration, and monitoring. This referral

process allows PID to ensure that PBMs and health insurers only label medications as specialty drugs when appropriate.

- In the last six months, PID has started registering Pharmacy Services Administration Organizations (PSAOs) that often contract with pharmacies for support services, and recently established a [process for a pharmacy\(opens in a new tab\)](#) to refer to the Department for review a specialty drug designation made by a health plan, health insurer, or PBM on behalf of a health plan.
- PID also published a non-exclusive list of “specialty drugs” as well as guidance on how a pharmacy can request a review of a specialty drug designation. This process will be available in 2025 for drugs covered by large group policies issued after October 15, 2024, and by individual and small group policies issued on or after January 1, 2026.
- Additionally, PID will release two annual reports regarding the state of PBMs beginning in 2026. A Network Adequacy Report will be available by April 2026, and a Transparency report will be available by July 2026. These reports will provide critical data on manufacturer rebates and pharmacy reimbursement rates to help identify areas for further action or reform.

PBMs and pharmacies looking for more information about Act 77, including a schedule that outlines the Act’s full implementation dates, can visit PID’s [website\(opens in a new tab\)](#).

West Virginia

Legislative

Legislative Session Begins Feb. 12; Committee Leaders Announced

The 2025 60-day Regular Session of the West Virginia Legislature begins on February 12 and ends April 12.

Appointments announced by Governor Patrick Morrisey

- Chief of Staff and Deputy Chief of Staff both from DC (Tom McCafferty and Todd Johnston) and new Department of Human Services Secretary (Alex Mayer) of South Dakota.
- New Secretary of the Department of Health is Matthew Herridge of Parkersburg, a clinical psychologist by profession who is now an entrepreneur focused on the restaurant industry. He is also the West Virginia State GOP Chair.
- As of last week, no announcements have been made for appointments to the position of Insurance Commissioner or Director of the Public Employee Insurance Agency (current director resigned).

Appointments announced by new Senate President Randy Smith

- Senator Jason Barrett of Martinsburg is the new Chair of the Senate Finance Committee.
- Senator Mike Stuart of Charleston is the new Chair of the Senate Judiciary Committee.
- Senator Laura Chapman of Wheeling is the new Chair of the Senate Health Committee.
- Senator Mike Azinger of Parkersburg remains the Chair of the Senate Banking & Insurance Committee.

Appointments announced by House Speaker Roger Hanshaw

- New House committee structure consists of only six committees—the former 4 major committees (Finance, Judiciary, Education and Government Organization), with Health and Human Resources and Energy and Public Works becoming the other two full committees. Each committee will have multiple subcommittees—each also with a chair.
 - Delegate Matt Rohrbach of Huntington will remain as the Deputy Speaker of the House and Speaker Pro Tempore.
 - Delegate Vernon Criss of Parkersburg remains as the Chair of the House Finance Committee.
 - Delegate J.B. Akers of Charleston will serve as Chair of the House Judiciary Committee.
 - Delegate Evan Worrell of Huntington will serve as Chair of the Health and Human Resources Committee.
 - Delegate Trent Barnhart of St. Mary's will be the Chair of the Banking & Insurance Subcommittee of the House Finance Committee.
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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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