Highmark's Weekly Capitol Hill Report

Issues for the week ending March 7, 2025

Federal Issues

Regulatory

HHS Rescinds 'Richardson Waiver' to End Certain APA Rulemaking Comment Periods

The Department of Health and Human Services (HHS) has rescinded the "Richardson Waiver," a 1971 policy that waived public comment periods for certain rulemakings under the Administrative Procedure Act (APA). This action, effective immediately, aligns HHS rulemaking procedures more closely with the APA. The Richardson Waiver exempted rules concerning public property, loans, grants, benefits, or contracts from the usual public comment requirements. HHS stated the waiver was inconsistent with the APA and imposed unnecessary obligations.

While the rescission eliminates the automatic waiver, HHS will still utilize the APA's "good cause" exception, allowing it to forgo public comment periods if such procedures are deemed impractical, unnecessary, or contrary to the public interest. However, the scope of this exception remains unclear.

Why this matters: This change significantly impacts HHS rulemaking, potentially affecting various agencies and programs. However, the rescission doesn't affect Medicare's existing notice and comment requirements, including those mandated by statute, such as the MA

In this Issue:

Rate Notice. The Supreme Court's ruling in *Allina v. Azar* further reinforces this. Similarly, programs with their own statutory requirements for notice and comment, such as Medicaid (under 42 USC 1302), will likely remain subject to those processes. The impact on other HHS programs, including those related to the Affordable Care Act (ACA) and Qualified Health Plans, is still under review by organizations like the American Health Insurance Plans (AHIP).

Go Deeper: Read AHIP's policy memo on the Richardson Waiver rescission.

Read More: Modern Healthcare Article

Industry Trends

Policy / Market Trends

- **New Analysis Exposes Additional Flaws in MedPAC Report**
- **Report Shows States Face Financial Hit if Enhanced Tax Credits Expire**
- **Government Accountability Office Releases High-Risk List**

AHIP Comments on Proposed HIPAA Security Rule Modifications

AHIP submitted a comment letter in response to the HHS Office for Civil Rights proposed rule to modify the HIPAA Security Rule to require covered entities – health plans, health care clearinghouses, and most health care providers – and their business associates to strengthen cybersecurity protections for individuals' protected health information.

Key Takeaway: The comments underscore the proposed rule does not effectively address the need for a robust cybersecurity control framework for threat prevention, detection, mitigation, and recovery. AHIP recommends significant revisions prior to finalizing the rule.

High-Level Recommendations Include:

- Establishing a tiered schedule for compliance rather than a single effective date.
- Focusing on what matters (e.g., streamlining requirements to focus on proactive cybersecurity efforts instead of paperwork).
- Permitting risk-based approaches.
- Addressing arbitrary and infeasible timelines.
- Deeming outside audit and certification activities sufficient for compliance.
- Balancing administrative requirements with proactive cybersecurity efforts.
- Withdrawing the proposed requirements for Group Health Plans.

- Articulating how the agency will work with other federal agencies to harmonize requirements.

USPSTF Comment Opportunity on Draft Research Plan on Interventions for Tobacco Cessation in Adults & Screening for Cognitive Impairment in Adults

- On February 27, 2025, the U.S. Preventive Services Task Force (USPSTF) released a draft research plan on interventions for tobacco cessation in adults. The USPSTF is accepting public comments on the draft research plan until March 26.
  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.
- On March 6, 2025, the U.S. Preventive Services Task Force (USPSTF) released a draft research plan on screening for cognitive impairment in older in adults. The USPSTF is accepting public comments on the draft research plan until April 2.

CMS Rescinds Guidance on Health-Related Social Needs

The Center for Medicaid and Children's Health Insurance Program (CHIP) Services issued a Center Informational Bulletin (CIB) rescinding two Biden-era CIBs related to coverage of health-related social needs in Medicaid and CHIP.

- The first rescinded CIB, titled *Coverage of Services and Supports to Address Health-Related Social Needs in Medicaid and CHIP*, was released in November 2023 and outlined the authorities—including in lieu of services, HCBS authorities, and Section 1115 demonstrations—that states can use to address health-related social needs, such as housing and nutrition, for Medicaid and CHIP enrollees.
- The second rescinded CIB, titled *Coverage of Services and Supports to Address Health Related Social Needs in Medicaid and CHIP*, was released in December 2024 and provided clarification on the health-related social needs coverage framework outlined in the November 2023 CIB.

Why this matters: In rescinding these CIBs, CMS notes that it will consider future applications to cover health-related social services and supports on a case-by-case basis to determine if they satisfy federal requirements for approval.

State Issues

Delaware

Legislative

Excess Skins Removal Coverage Mandate Introduced

HB 56 requires individual health insurance plans to cover medically necessary removal of excess skin and subcutaneous tissue, including panniculectomies. This act applies to individual, group and blanket health

insurance plans as well as the State employee health insurance plans, and State Medicaid plans. If enacted it would take effect after December 31, 2026.

Why this matters: Excess skin and subcutaneous tissue can create a risk of rashes or infections and make walking and movement difficult. Removal of excess skin and subcutaneous tissue can improve a patient's health and quality of life. This bill does not cover cosmetic skin removal.

State Issues

Pennsylvania

Legislative

Appropriations Hearing Updates

The House and the Senate budget hearings concluded last Thursday with the Governor's Executive Offices. The Department of Human Services and Department of Insurance appeared before the committees on Tuesday and Wednesday.

Commissioner Humphreys and Director Trolley fielded many questions regarding the implications on the ACA and Pennie should the Federal enhanced tax credits expire at the end of this year, as well as steps the Department are taking in the event this should happen.

Commissioner Humphreys also indicated that the Department is looking into conducting a market conduct survey with regards to prior authorization and the high rates of denials overturned upon appeal.

Secretary Arkoosh and members of the committees focused heavily on the expansion of Medicaid in Governor Shapiro's proposed budget, with emphasis placed on the impacts should the federal funding mechanisms be changed, as well as the impact on the state budget with regards to the increased use of GLP-1 medications.

The House will return to voting session on the 17th, with the Senate returning on the 24th.

State Issues

West Virginia

Legislative

Legislative Update

At week's end, the 2025 West Virginia legislative session hit the 40% completed threshold, with over 1,900 bills pending in the Senate and House of Delegates. A number of hot button social and economic topics came before the Legislature in the past week and there are more to come over the final 36 days of the term.

The Legislature is on the verge of passing a very historic and significant bill that largely flew under the radar as it rapidly moved forward. HB 2354 should be finalized very soon and head to Governor Patrick Morrisey

for his review. The bill proposes to ban a wide variety of dyes and food additives in products that are used in the public school system by August 1 of this year—and further proposes that the same substances be prohibited for sale in any food product in the state by January 1, 2028.

New Bills of Interest

- **HB 2906—Mandating coverage of cooling treatments for chemotherapy patients.** This bill is modeled after a New York law and appears to have significant bipartisan support in the House of Delegates. At this juncture, it seems very likely that this bill will move forward.

- **HB 3067—Patient access to clinician administered medications. HB 3087—Prohibiting the practice of white bagging.** Health insurers oppose these bills as currently drafted, which are sponsored by Deputy Speaker of the House Dr. Matt Rohrbach of Huntington. Dr. Rohrbach has unsuccessfully pursued these bills over multiple legislative sessions but his new HB 3067 is the most comprehensive approach to attacking the ”white, brown and clear” bagging issues in regard to health plan networks.

- **HB 3045/HB 3085**—These are also bills from Dr. Rohrbach to create the Oral Health and Cancer Rights Act. This bill was pushed hard in 2025 by WVU Medicine but it was not considered.

- **HB 3090—Coverage mandate for stuttering services**. This bill has also been introduced for a number of years and has never received any consideration.

- **HB 3092—Financial assistance for prescription medications.** This is an initiative to try and further refine the discount coupon legislation of a few years ago.

- **HB 3142—Allowing health plans to communicate electronically with members.** .

- **SB 710—Regarding teledentristy.** This bill moved out of the Senate Health Committee during the just concluded week and will pass through the Senate next week.

- **SB 717—Mandating that health plans pay non-network participating ambulance services directly and at fixed rates**. This bill is being advanced by a rural senator as a way to generate revenue for local ambulance services. The bill would set an unacceptable precedent by requiring health plans to directly pay non-network providers and to pay them at a rate of 400% of Medicare rates.

- **SB 718—Hospital and health plan transparency.** Insurers are developing comments in opposition to this newly introduced bill since it would require confidential market competitive and proprietary information and contract terms to be disclosed.

- **HB 2987—Consumer Data Privacy Act.** This bill is a renewal of the 2024 debate on the same legislative proposal. It will likely begin to move forward in the House as early as this week.

Other Issues

- **SB 433/HB 2960—mandating a loss ratio for dental plans.** This bill is not likely to be considered by the Senate Banking & Insurance Committee.

- **SB 482—licensure of midwives.** This bill has now passed the Senate.

- **SB 526—expanding the prescriptive authority of pharmacists.** This bill has been endorsed to the full Senate for passage next week.

- **SB 545—Changing the scope of practice for optometrists.** This bill moved from the Senate Health Committee after a lengthy discussion that ultimately led to an overwhelming vote in favor of expanding the practice scope of optometrists to include three new laser treatment procedures. The ophthalmologists are vigorously opposing this bill.

Industry Trends

Policy / Market Trends

New Analysis Exposes Additional Flaws in MedPAC Report

A new analysis by FTI Consulting sheds additional light on the flawed assumptions, data, and conclusions of the Medicare Payment Advisory Commission's (MedPAC's) 2024 report to Congress, which incorrectly suggested that Medicare Advantage (MA) enrollees would be significantly less expensive if covered instead under fee-for-service Medicare
(FFS).

Data and Method Concerns: FTI found MedPAC's analysis suffers from a dependence on incomplete beneficiary data, excludes important subpopulations, and neglects the role of plan bids in determining the actual costs of the program.

- **Go Deeper:** Read more about MedPAC's report that extrapolated results based on "switchers," failed to account for key beneficiary categories, and focused on benchmarks rather than plan bids.

What They're Saying: FTI's analysis adds to the concerns previously raised by AHIP and other stakeholders about MedPAC's estimates. AHIP and BCBSA published a joint study to counter MedPAC's misleading claims — based on a flawed analysis — about MA. AHIP & BCBSA stated MedPAC fails to account for the fact providers are less likely to code accurately in original Medicare and excludes sicker enrollees covered by MA plans; they fail to directly compare the actual claims experience in FFS and MA; and they also fail to account for the fact that beneficiaries switching to MA tend to have higher health care needs and may delay receiving services until they enroll in MA products with lower cost-sharing. This is the first of three joint reports by BCBSA and AHIP to inform policymakers and the public on the strong benefits of MA and to push back on critic's misleading attacks.

Why this matters: More than 34 million seniors and people with disabilities actively choose MA for their Medicare coverage because it provides them with better care for lower costs. Policymakers should not rely on such a fundamentally flawed and speculative analysis to take actions that could harm beneficiaries.

Report Shows States Face Financial Hit if Enhanced Tax Credits Expire

The coalition Keep Americans Covered highlighted a new report that shines a light on the financial hit state economies face if the enhanced premium tax credits expire.

By the Numbers:

- State economies would lose **$34B** in GDP, while total economic activity would decline by **$57B**.
- State and local tax revenue would decline by **$2.1B**.
- Expiration of the tax credits would lead to **286,000 job losses** nationwide, with nearly half of those occurring in hospitals, doctors' offices, and pharmacies.
- The hardest-hit states – AL, FL, GA, IN, MS, SC, TN, TX, WI, and WY — would experience nearly **70%** of the total job losses nationwide, shedding 195,000 jobs, $23B in GDP, and $1.3B in state and local tax revenue.

Go Deeper: View KAC's interactive map to see how much higher costs would be for each person in the average family state-by-state as well as how many residents in each state will be impacted.

Government Accountability Office Releases High-Risk List

The U.S. Government Accountability Office (GAO) released its biennial update to its High-Risk List.

Why this matters: The high-risk list identifies government operations with serious vulnerabilities to fraud, waste, abuse, and mismanagement, or in need of transformation. The update describes the status of 38 high-risk areas and outlines actions that are needed to assure further progress.

The high-risk list included "strengthening Medicaid program integrity," an area originally designated as high-risk in 2003. GAO identified several areas for improving program integrity in Medicaid, including improper payments, appropriate use of Medicaid dollars, and availability and quality of Medicaid data. For example, GAO recommended that CMS annually monitor states' progress toward addressing areas of noncompliance with provider screening and enrollment requirements; enhance fiscal oversight of state directed payments in managed care and make publicly available all approval documents related to these payments; and conduct a national risk assessment to ensure resources to oversee states' Medicaid expenditures are adequate and allocated based on areas of highest risk.

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/.**