

# Health Care in Motion

Timely, Substantive Updates on Policy Shifts · Actionable Advocacy to Protect Health Care

January 27, 2023

## What to Expect in 2023

### Health Care Access Priorities for the New Year

2022 proved to be a rollercoaster of a year for health policy, with a slate of federal laws, regulations, and administrative actions shaping health care access and affordability for millions of Americans. 2023 is shaping up to be another pivotal year, but the new post-midterm election political landscape changes the scope and scale of health policy shifts we could see. People living with HIV and other chronic and complex conditions will see both opportunities for and threats to health care access in the new year. Read on for a summary of policies and issues that could see movement in 2023.

#### What to Watch: Top 3 Highlights

While not exhaustive, the list below represents key issues with potential for action in 2023 and with significant implications for people living with HIV and other chronic conditions.

##### 1. *Unwinding of COVID-19 Medicaid Continuous Coverage Requirements*

In its end-of-year spending package, Congress provided a final answer to the question vexing state Medicaid programs and beneficiaries alike: when will the Medicaid continuous coverage requirements put in place through the [Families First Coronavirus Response Act](#) officially end and Medicaid redeterminations resume? The answer is April 1, 2023. As a reminder, in

#### ***The Role of CMS***

The Centers for Medicare & Medicaid Services (CMS) will receive regular reports on the unwinding process from each state, and has the power to take enforcement action against states if necessary. The Chronic Illness & Disability Partnership has [written to CMS](#) to urge it to ensure that people with chronic illnesses and disabilities are protected during the unwinding, and to require states to be transparent about their unwinding plans.

response to the COVID-19 pandemic, states were given a significant bump in federal Medicaid funding, and in return, they could not remove anyone from the Medicaid rolls as long as the federal COVID-19 Public Health Emergency (PHE) was in place. Since the start of the pandemic, the Administration has renewed the PHE a total of twelve times, most recently on January 11, 2023. These repeated renewals had generated uncertainty for state Medicaid agencies and beneficiaries. In its [2023 spending package](#), Congress eliminated this uncertainty by establishing March 31,

2023 as the end date of the Medicaid continuous coverage requirement regardless of whether the Administration continues to renew the PHE. The unwinding of Medicaid continuous coverage will last 12 months, with redeterminations happening on a rolling basis across this timeframe.

Why is this a big deal? Leading policy analysts are estimating [that up to 18 million individuals](#) could lose eligibility for Medicaid once the PHE ends, setting up an unprecedented loss of coverage. Although many people will lose coverage because they are no longer eligible for Medicaid, many others are at risk of losing coverage for [purely procedural reasons](#), such as not receiving and/or returning redetermination forms on time. Regardless of their reasons for disenrollment, people living with chronic and complex conditions are at risk for dangerous treatment disruptions if their coverage transitions are not managed appropriately, or if they lack an affordable coverage alternative (as will be the case for many people in states that have [not adopted Medicaid expansion](#)). State-based health care consumer groups have already been preparing Medicaid beneficiaries for these changes and are gearing up for intensive insurance navigation activities to ensure that individuals no longer eligible for Medicaid are screened for and directed to other coverage.

## 2. *Strengthening the Affordable Care Act (ACA)*

Because the Democrats lost control of the House of Representatives in the midterm elections, sweeping [legislative options for health reform](#) are all but off the table. Though Democrats do still control the Senate and the presidency, without a majority in the House, the only way to push through legislation to build on or strengthen the ACA is with bipartisan support, which is unlikely given the current political dynamics. However, even without sweeping federal legislation, there is still much that can be done to strengthen and expand the ACA through administrative action.

For instance, the Administration is currently [asking for comments](#) on changes it could make to the ACA's Essential Health Benefits (EHB). The ACA requires non-grandfathered plans in the individual and small group markets to cover a set of ten EHB. Because these ten categories of benefits are quite broad, the Centers for Medicare and Medicaid Services (CMS) adopted a benchmark approach to compliance, requiring each state to identify a benchmark plan that sets the standard for the minimum scope what must be covered as EHB. CMS is seeking comment on whether the current benchmark options need to be adjusted to better meet the coverage and affordability needs of consumers. Additionally, CMS is looking at ways telehealth has been used to expand access to behavioral health services and how the EHB framework can better address health disparities seen among underserved communities. While the call for comments is specific to EHBs, the broad range of questions suggests that CMS may consider revising EHB regulations and policies soon, with access to care and health equity priorities in mind.

### **Advocacy Action Alert!**

Responses to the EHB Request for Information are due January 31, 2023. CHLPI will be submitting comments on its own behalf as well as working with the HIV Health Care Access Working Group to prepare its comments. If you have questions about how to submit your own comments, reach out to [CHLPI](#).

In addition to a potential EHB makeover, there will also be growing attention to the issue of affordability of Marketplace coverage. Federal subsidies have brought down premiums for millions of Marketplace consumers, but [deductibles and cost sharing continue to be barriers to access](#) across insurance types. Starting in January 2023, consumers will be able to choose standardized plan options on [healthcare.gov](https://www.healthcare.gov) and in many state-based Marketplaces, which have set copayments for many services. The Administration will have an opportunity to build on these standardized plan options in its [Notice of Benefit and Payment Parameters for 2024](#).

### 3. Medication Access and Affordability

In August 2022, Congress passed the [Inflation Reduction Act \(IRA\)](#), which includes a number of provisions that will impact medication access and affordability, particularly for Medicare beneficiaries. The first several provisions are slated to go into effect starting in January 2023, including:

- Insulin will be capped at \$35 per month for Medicare beneficiaries.
- People with Medicare Part D drug coverage will pay nothing out-of-pocket for vaccines that are recommended by the [Advisory Committee on Immunization Practices](#)

The IRA also included pathbreaking legislation allowing Medicare to negotiate drug prices for a limited number of high-cost brand-name drugs directly with manufacturers. While this provision does not go into effect until 2026, CMS will announce the first 10 drugs selected for negotiation in 2023. It is likely that CMS will release guidance on the process it will use to implement the drug pricing and negotiation provisions, and advocates should closely monitor this process to ensure it is fair and equitable.

CMS may also release proposed rulemaking implementing other IRA provisions, including the following Medicare Part D cost-sharing changes that will go into effect in 2024 and 2025:

- Once a beneficiary reaches the catastrophic phase of coverage, there will be no copayment or coinsurance, starting in 2024.
- The Part D Low-Income Subsidy (LIS) program will expand to allow people who earn less than 150% of the federal poverty level to receive the full subsidy, starting in 2024.
- Annual Part D out-of-pocket costs will be capped at \$2,000 starting in 2025, and beneficiaries will have the option to pay out-of-pocket costs in monthly amounts spread out over the plan year.

Advocates should closely monitor implementation of these provisions (including formal rulemaking comment periods) to ensure that there is sufficient investment in consumer outreach and education to make them aware of these new protections.

HIV-specific medication access is also an area to watch in 2023, particularly as new HIV treatment and prevention products receive Food and Drug Administration (FDA) approval. On the HIV

treatment side, [new long-acting injectable products](#) released over the past several years are providing more options for patients, but drug pricing, delivery, and affordability challenges have hampered uptake. Advocates continue to [use non-discrimination provisions](#) to ensure access to HIV treatment generally remains affordable and will monitor how plans respond to new treatment options.

New long-acting injectable HIV prevention options also have the potential to improve adherence for certain patients. In response to availability of new PrEP products, the U.S. Preventive Services Task Force (USPSTF) has released a [draft updated Grade A for PrEP](#) that now includes the newest long-acting formulation for PrEP. If the draft updated recommendation is adopted, long-acting injectable PrEP could become easier to obtain via private insurance because of the ACA's requirement that most private insurers cover services with a USPSTF Grade A or B without cost sharing.

#### ACA Litigation Watch

A federal district court in Texas [issued a decision](#) in September 2022 in *Braidwood Management Inc. v. Becerra*. The court held that the ACA's preventive services requirements for private health insurance are unconstitutional and that the requirement to cover PrEP violates the federal Religious Freedom Restoration Act. The court is expected to rule on a remedy sometime in 2023, with appeals likely to follow.

2023 is sure to bring important battles and changes in health policy, and advocates should continue to watch this space for updates and opportunities to engage.

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