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May 2023: A Policy Look-Ahead for Health Care and Pharmaceuticals

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As the COVID-19 era comes to an end, health care legislation, and policy continue to evolve. May 2023 has been a busy month for new pharmaceutical legislation and policy. The 118th Congress continues to introduce new health care and pharmaceutical bills. 435 bills have been introduced, but only three have passed the House and none in the Senate.

Prescription Drug Costs

The cost of prescription drugs is a significant challenge for many, particularly those with chronic health conditions. The Inflation Reduction Act (IRA) included measures to tackle prescription drug costs. On April 25, the Senate Health, Education, Labor, and Pensions (HELP) Committee leaders Senator Bernie Sanders (I-VT) and Senator Bill Cassidy (R-LA) announced a bipartisan legislation package aimed at reducing prescription drug costs. On May 2, Sen. Sanders postponed bill markups until May 11 to accommodate for an insulin hearing on May 10 to gain cosponsors.

Following his announcement with fellow HELP Committee member Sen. Cassidy, Sen. Sanders introduced in the Senate the Pharmacy Benefit Manager Reform Act (S. 1339) on April 27, 2023. The key provisions of the bill include:

- A requirement for Pharmacy Benefits Manager service providers to report specified information to plan sponsors and prohibits contracts that would prevent these disclosures.
- Blocking Pharmacy Benefit Managers from charging more for drugs than they pay to pharmacies, a practice known as "spread pricing."

The HELP Committee delayed markups, which were originally scheduled for May 2, 2023, due to complaints regarding missing Congressional Budget Office (CBO) and U.S. Food and Drug Administration (FDA) data. HELP leadership support should lead to eventual committee approval.

Telemedicine Flexibilities

The increased use of telemedicine during COVID-19 has not decreased with the ending of the Public Health Emergency (PHE). The DEA proposed two rules to extend some COVID-19 era telemedicine prescription flexibilities for controlled substances past the May 11, 2023, PHE termination.

The proposed rules provide safeguards for a limited subset of telemedicine consultations, specifically those telemedicine consultations by a medical practitioner who has:

- Never conducted an in-person evaluation of a patient; AND
- That results in the prescribing of controlled medication.

For these types of consultations, the proposed rules would allow practitioners to prescribe:

- A 30-day supply of Schedule III-V non-narcotic controlled medications.
- A 30-day supply of buprenorphine for the treatment of opioid use disorder.

Without an in-person evaluation or referral from a medical practitioner who has conducted an in-person evaluation, if the prescription is otherwise consistent with any applicable federal and state laws.

It's important to note the proposed rules do not affect:

- Telemedicine consultations that do not involve the prescribing of controlled medications.
- Telemedicine consultations by a medical practitioner who has previously conducted an in-person medical examination of a patient.
- Telemedicine consultations and prescriptions by a medical practitioner to whom a patient has been referred if the referring medical practitioner has previously conducted an in-person medical examination of the patient.

As the PHE ends, the health care regulatory landscape continues to rapidly change. It is important for health care organizations to stay informed and engaged in the ongoing debate surrounding pharmaceutical and telemedicine programs.

If you have any questions about this alert, please contact [Janice M. Suchyta](#) or any member of the Baker Donelson [Health Law](#) team.