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Description automatically generated** May 6, 2024

* HHS Implements Final Rule to Improve Protections Against Disability Discrimination

The U.S. Department of Health and Human Services (HHS) through its Office for Civil Rights (OCR), [finalized](https://www.hhs.gov/about/news/2024/05/01/hhs-finalizes-rule-strengthening-protections-against-disability-discrimination.html) the *Discrimination on the Basis of Disability in Health and Human Service Programs or Activities* rule that bans discrimination on the basis of disability. This rule promotes equity, improves protections for people with disabilities under Section 504 of the Rehabilitation Act (Section 504), and represents the most recent HHS action supporting Executive Order 14091, entitled Further *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*. The rule:

* + Affirms that medical treatment decisions are not based on negative biases or stereotypes
  + Bans the use of any metric that discounts the value of a life extension on the basis of disability to hinder access to an aid, benefit or service
  + Further describes what accessibility means for websites and mobile apps through identifying specific technical standards
  + Implements the U.S. Access Board’s standards for accessible medical diagnostic equipment
  + Specifies requirements aimed at ensuring there is not discrimination in the services provided by HHS-funded child welfare agencies
  + Details the obligations to provide services in the most integrated setting

The Final Rule also updates existing requirements for consistency with the American with Disabilities Act (ADA). The rule will come into effect 60 days after publication and the current rule will be in effect until that time. The rule will come into effect 60 days after publication and the current rule will be in effect until that time.

* House E&C Health Subcommittee Holds Hearing on “Legislative Proposals to Increase Medicaid Access and Improve Program Integrity”

The U.S. House of Representatives Energy and Commerce Health Subcommittee held a [hearing](https://energycommerce.house.gov/events/health-subcommittee-hearing-legislative-proposals-to-increase-medicaid-access-and-improve-program-integrity) to consider 19 legislative proposals to increase Medicaid access with witness Daniel Tsai, Deputy Administrator and Director of the Center for Medicaid and CHIP Services, Centers for Medicare & Medicaid Services (CMS). The hearing focused on discussing the integrity of the Medicaid determination processes and solutions for the long-term care crisis in America. Mr. Tsai answered questions about the recent nursing home staffing rule. Many Republicans expressed concerns about the rule causing nursing homes to reduce capacity and close while other members in favor of the rule believed it would ensure nursing homes are staffed safely. Members additionally differed in opinions when discussing the Ensuring Access to Medicaid Services Final Rule, the 80/20 policy, as conversations centered on how this could benefit the quality of care and on how the rule could potentially lead to instability in accessing care. The hearing also included conversations about the health care workforce, waitlists for Medicaid HCBS, transparency in Medicaid payments, and creating a permanent Money Follows the Person (MFP) program. Specifically, the Committee discussed:

* + H.R. 8094, To amend title XIX of the Social Security Act to modify certain asset recovery rules (Rep. Kean). This legislation would modify asset recovery under a State plan, so that States may choose to not pursue adjustments or recoveries of medical assistance through a property lien if, after the death of an individual, that individual’s home would be transferred to another individual who is eligible for Medicaid or has an income that is 138 percent of the Federal Poverty Level or below.
  + H.R. 7573, Stop Unfair Medicaid Recoveries Act (Rep. Schakowsky) This legislation would repeal the requirement for States to engage in estate recovery practices and limit the ability of States to place liens on a Medicaid beneficiary’s property.
  + H.R. 8110, To amend title XIX of the Social Security Act to make permanent the State option to extend protection against spousal impoverishment for recipients of home and community-based services under Medicaid (Reps. Dingell and James) This legislation would permanently extend spousal impoverishment protections for beneficiaries receiving home and community-based services, akin to current protections for beneficiaries receiving institutional care.
  + H.R. 8106, To amend title XIX of the Social Security Act to remove the requirement that an individual need an institutional level of care in order to qualify for home and community-based services under a Medicaid waiver (Reps. McMorris Rodgers and Pallone) This legislation would amend Medicaid’s section 1915(c) waivers to allow States to provide home and community-based services to beneficiaries who do not meet an institutional level of care. Additionally, this legislation would require States to report on the state of waiting lists for HCBS care.

For the full list of bills, please see the “[Hearing Memo](https://d1dth6e84htgma.cloudfront.net/04_30_2024_HE_Hearing_Public_Memo_e902efe9a9.pdf).” Healthsperien covered the hearing and detailed notes are provided [here.](https://healthsperien.com/Documents/House%20Energy%20&%20Commerce%20Committee%20Subcommittee%20on%20Health%204.30.24%20Hearing.pdf)

* HHS Publishes New Rule to Advance Protections Against Discrimination in Healthcare

The U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR) and the Centers for Medicare & Medicaid Services (CMS) [issued](https://www.hhs.gov/about/news/2024/04/26/hhs-issues-new-rule-strengthen-nondiscrimination-protections-advance-civil-rights-health-care.html) a [final rule](https://www.federalregister.gov/public-inspection/2024-08711/nondiscrimination-in-health-programs-and-activities) under [Section 1557](https://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html) of the Affordable Care Act (ACA), aimed at strengthening nondiscrimination protections in healthcare. This rule enhances safeguards against discrimination based on race, color, national origin, sex, age, and disability by reducing language barriers, improving accessibility, addressing bias in health technology, and more. It underscores the Biden-Harris Administration's commitment to health equity and patient rights. Key provisions include recognizing Medicare Part B payments as a type of Federal financial assistance for the purposes of triggering civil rights laws, expanding language and accessibility services, clarifying protections for LGBTQI+ patients, and addressing discrimination in health insurance benefit designs. The rule also extends nondiscrimination principles to include the use of artificial intelligence (AI), clinical algorithms and other support tools.

* GAO Announces MACPAC Appointments and Names Chair

The U.S. Government Accountability Office (GAO) [appointed](https://www.gao.gov/press-release/gao-makes-macpac-appointments-designates-chair-2024) two new members and reappointed four current members to the Medicaid and CHIP Payment and Access Commission (MACPAC). The two new members are Doug Brown and Michael Nardone and their terms will expire in April 2027. Doug Brown, RPh, MBA, serves as the Senior Vice President of Value and Access at COEUS Consulting, and has extensive experience in pharmacy management. Michael Nardone, MPA, is leading an independent consulting practice that focuses on offering strategic advice on Medicaid health policy and long-term services and supports. The current members who were reappointed are Heidi Allen, Robert Duncan, Verlon Johnson, and John McCarthy and their terms will also expire in April 2027. The GAO announced that Verlon Johnson will be the Commission’s Chair and Robert Duncan will retain his position as the Vice Chair. Verlon Johnson, MPA, is the Executive Vice President and Chief Strategy Officer at Acentra Health.

What’s on Tap

* Discussions regarding appropriations for fiscal year 2025 continue to unfold in Congress. Food and Drug Administration (FDA) Commissioner Robert Califf is [expected](https://www.appropriations.senate.gov/hearings/a-review-of-the-presidents-fiscal-year-2025-budget-request-for-the-food-and-drug-administration) to appear in front of the Senate Appropriations Committee this week to discuss the FDA’s FY2025 budget. It was [reported](https://insidehealthpolicy.com/inside-telehealth-daily-news/wm-mark-two-year-telehealth-extension-wednesday) that the House Ways and Means Committee is set to mark up a two-year extension of Medicare telehealth rules. The extension, prompted by Congress during the pandemic, has increased the reimbursement of virtual care and the rule would expire at the end of this year.

* The Biden administration recently finalized various major health care rules. Last Friday, President Biden [released](https://www.politico.com/news/2024/05/03/biden-obamacare-daca-00155881) a final rule to expand subsidized Affordable Care Act coverage to DACA-recipients that will take effect in November. Key proposals related to telemedicine prescribing of controlled substances and expanded requirements for insurers to cover mental health and substance use care are still pending action.

* Last week, at a House Energy and Commerce Health Subcommittee [hearing](https://energycommerce.house.gov/events/health-subcommittee-hearing-legislative-proposals-to-increase-medicaid-access-and-improve-program-integrity) on legislative proposals to increase Medicaid access, Republicans raised concerns about new Biden administration regulations enforcing staffing standards and payment guidelines for direct care workers and impacts on access to care. The witness, Daniel Tsai, Deputy Administrator and Director of the Center for Medicaid and CHIP Services, defended the regulations and spoke about how the provisions would address workforce shortages and payment issues as well as improve the quality of care for patients.

Upcoming Events

Tuesday

* The American Hospital Association will hold its [Accelerating Health Equity Conference](https://equityconference.aha.org/) which will go through Thursday.

Wednesday

* The Senate Budget Committee will hold a [hearing](https://www.budget.senate.gov/hearings/reducing-paperwork-cutting-costs-alleviating-administrative-burdens-in-health-care) on "Reducing Paperwork, Cutting Costs: Alleviating Administrative Burdens in Health Care” at 10:00 AM EST.

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