National Rural Health Association

# A View from the Hill: Rural Health Policy Updates

## 2023 MHA Winter CEO Meeting

Carrie Cochran-McClain
*Chief Policy Officer*

January 12, 2023

National Rural Health Association

# NRHA

## Your voice. Louder.

NRHA is a national nonprofit membership organization with more than 21,000 members, made up of a diverse collection of individuals and organizations with the common goal of ensuring all rural communities have access to quality, affordable health care.

**Our mission is to provide leadership on rural health issues.**

National Rural Health Association

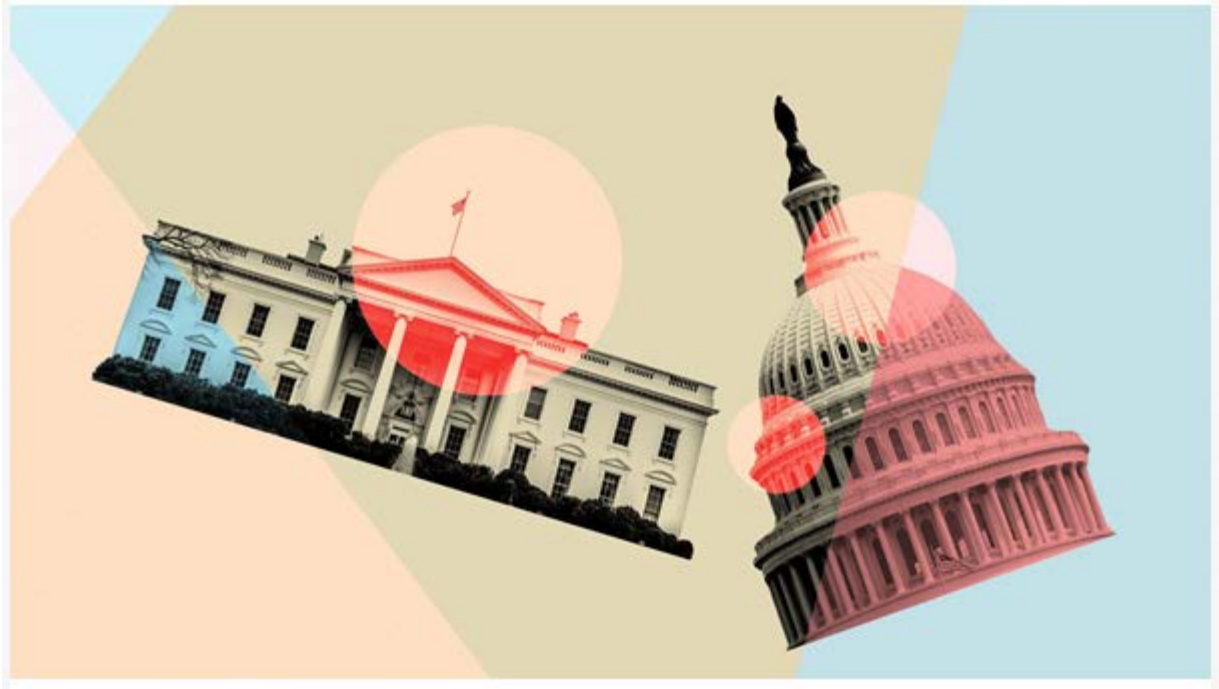
# What We Fight for on Behalf of Rural

- Investing in a Strong Rural Health Safety Net
- Reducing Rural Healthcare Workforce Shortages
- Addressing Rural Declining Life Expectancy and Inequality

National Rural Health Association

# Agenda

- The Rural Health Context
- View from Capitol Hill
- Rules, Rules, Rules
- Advocating for Rural Health



# So… where are we? Setting the 2023 Context

NRHA
Your voice. Louder.

National Rural Health Association

# The more things change, the more they stay the same

- The 118th Congress is shaping up to look very similar to the 117th Congress.
- Divided Congress with slim majorities in both chambers
  - Republicans secured control of the House
  - Democrats secured control of the Senate
- Single-party governing appears out of the question, and bipartisanship will have to commence to pass legislative priorities.

National Rural Health Association

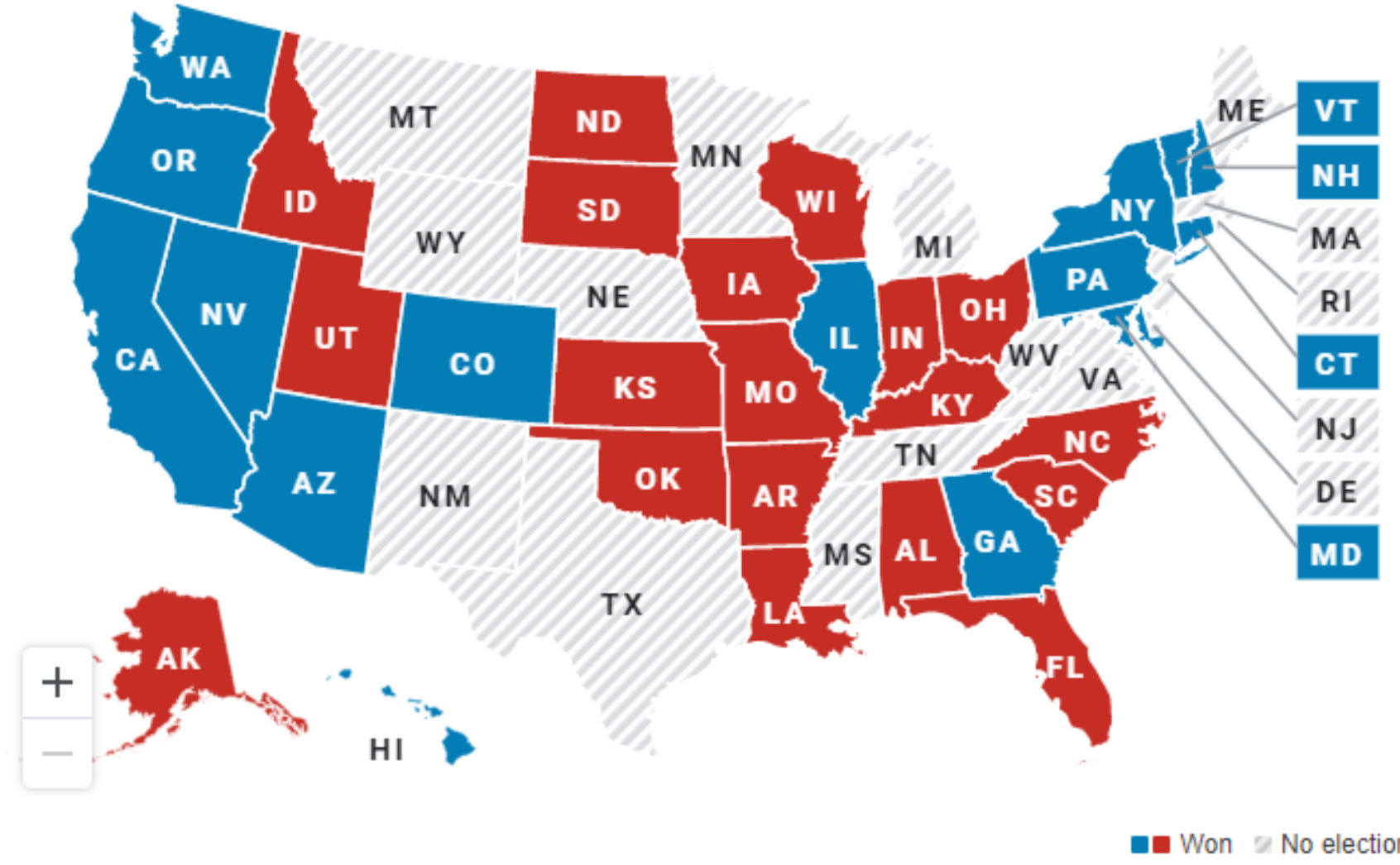
49 DEM

GOP 49

Gained 1 seat

Lost 1 seat

2 seats held by independent senators who caucus with DEM

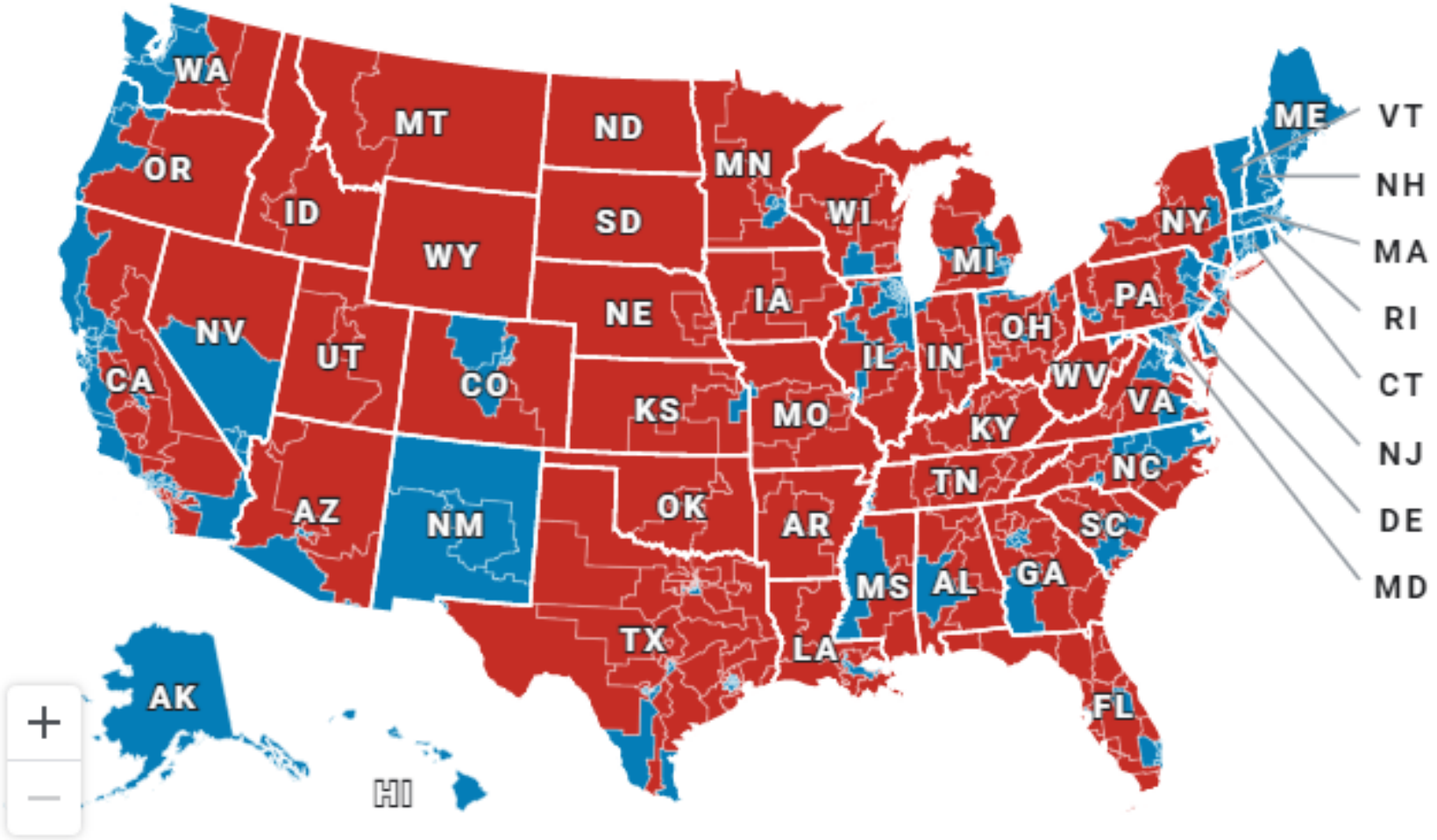


National Rural Health Association

# 213 DEM — 218 for majority — GOP 222

Lost 9 seats — Gained 9 seats

Other parties have 0 seats




Won

National Rural Health Association

# Where was health care on the ballot?

- South Dakota appears to have expanded Medicaid through a ballot initiative bringing non-expansion states from 12 to 11.
- Arizona approved a measure to reduce the maximum amount of interest creditors can charge on medical debt.
- Oregon moving to make health care a right in state constitution.
- Other key issues on the ballot include abortion and drug policy.

National Rural Health Association

# What does Tuesday mean for rural health?

Divided government coming to Washington.

- Limit use of tools like reconciliation, but both parties will have to be involved in all legislating.

Bipartisanship to accomplish legislative success.

- Farm bill must be done in 2023.
- Decreased regulations/ extension of flexibilities provided during PHE.
- Enhancing the rural health safety-net.
- 340b Program protections.

# View from the Hill: Updates from Congress

NRHA
Your voice. Louder.

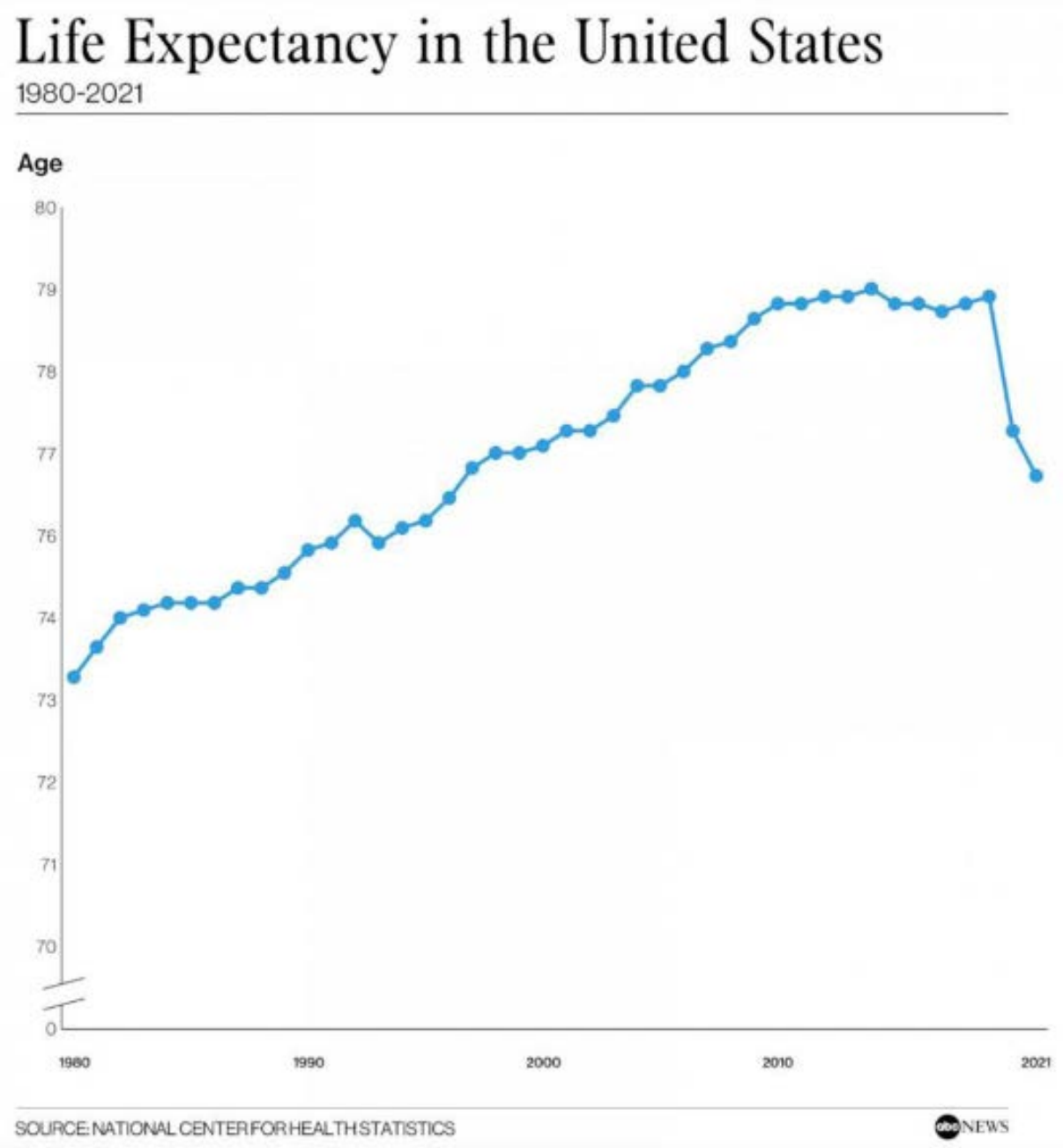
National Rural Health Association

# Congress passes a year-end package!

- Before Christmas, the House and Senate came to an agreement on a $1.7 trillion spending package for fiscal year (FY) 2023.
- The government is now funded until September 30, 2023.
- In addition to regular funding provisions, major rural victories were included.

National Rural Health Association

# New! CDC Office of Rural Health




# FY 2023 Appropriations

- $2 million for the Rural Hospital TA Program at USDA
- $64.3 million for the FLEX program
  - $21m for the Small Rural Hospital Improvement Grant Program
  - $5 m funding the Rural Emergency Hospital TA Program
- Continuation of core Rural Health Care Programs
  - $12.5 million for the State Offices of Rural Health (level funding)
  - $145 million for the Rural Communities Opioids Response Program ($10m increase)
  - $12.5 million for the Rural Residency Development Program ($2m)
  - $125 million for the National Health Service Corps ($3m increase)
  - $8 million for the Rural Maternity and Obstetrics Management Strategies (RMOMS) Program ($2m increase)

National Rural Health Association

# FY23 Omnibus Rural Health Wins!

- Waived the four percent PAYGO sequester until January 2025.
  - Two percent Medicare sequester was **not** addressed.
- Telehealth flexibilities continued until December 31, 2024.
  - Statute was not changed. Audio-only stays in place, but RHC/FQHC payment issues not addressed.
- Low-Volume Hospital and Medicare-Dependent Hospital designations extended through September 30, 2024.
- Ground ambulance add-on payments extended until December 31, 2024.
- Physician add-on payments extended at 2.5 percent for CY 2023 and 1.25 percent for CY 2024.
- Home health rural add-on payment of one percent continued through December 31, 2023.

National Rural Health Association

# Key Mental Health Provisions

- Coverage of Marriage and Family Therapists (MFT) and mental health counselors (MHC) under Medicare.
  - This provision to allow these mental health professionals to bill under Medicare begins in 2024.
- Inclusion of 200 new residency slots for psychiatry or psychiatry subspecialties. In FY 2026, the Secretary shall begin distribution of these slots, with a minimum of 10 percent going toward rural areas.
- Additional provisions surrounding mental health and substance use disorder treatment.

National Rural Health Association

# Other Key Provisions

- Permanently extend the options for states to provide 12 months of continuous coverage in Medicaid for post-partum women.
- Require states to provide 12 months of continuous Medicaid coverage in Medicaid for children to ensure stable coverage.
- Extend the Children's Health Insurance Program for two additional years (through FY 2029).
- 1 year delay reductions in payment for clinical laboratory tests & data reporting requirements under the Clinical Laboratory Fee Schedule.
- Make improvements to the government's ability to prepare for future pandemic emergencies.

National Rural Health Association

# State Offices of Rural Health

- Separate from the year-end package was the House and Senate agreeing to reauthorize the State Offices of Rural Health (SORH) Program.
- The House and Senate passed **S. 4978**, the State Offices of Rural Health Program Reauthorization Act, to authorize the program through FY 2027 at its current funding level.

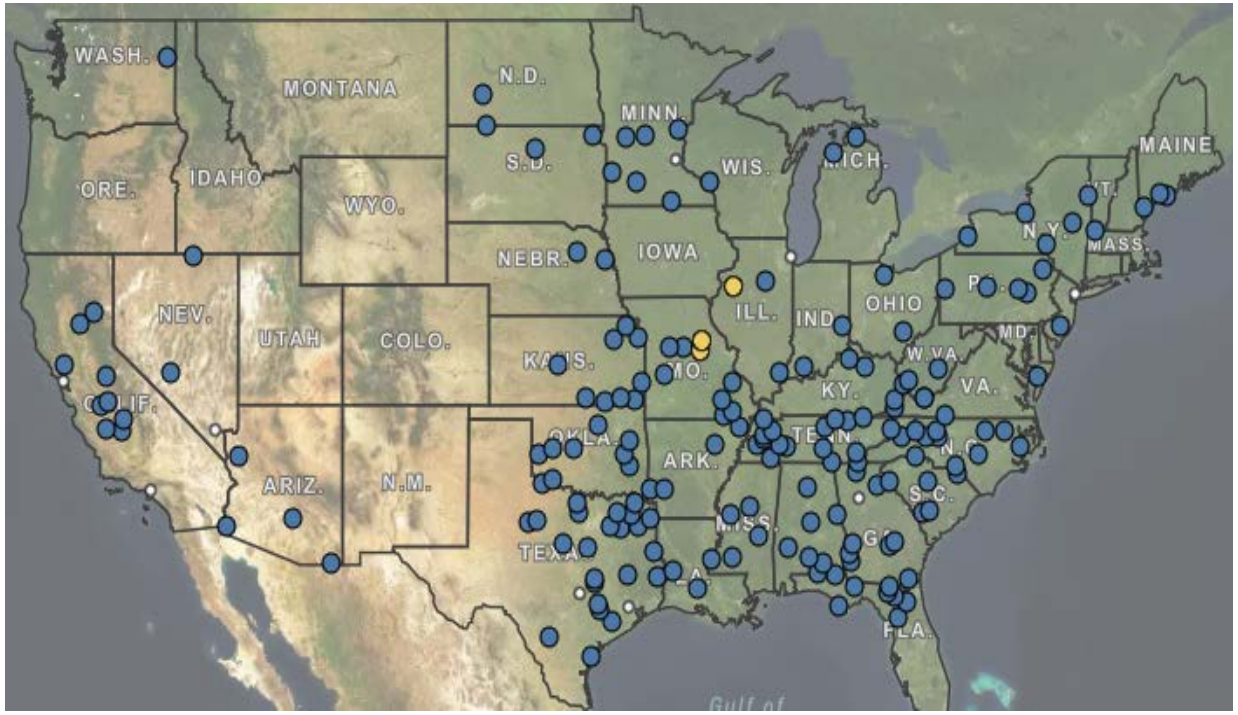
# What is in store this spring?

## Key Dates

- January 3 – End of 117th Congress, beginning of 118th Congress
- January 11 – Public Health Emergency expiration/renewal
- Early 2023 – Debt Ceiling
- February 7-9 – NRHA Rural Health Policy Institute!
- Spring 2023 – Conversation on the Farm Bill begins

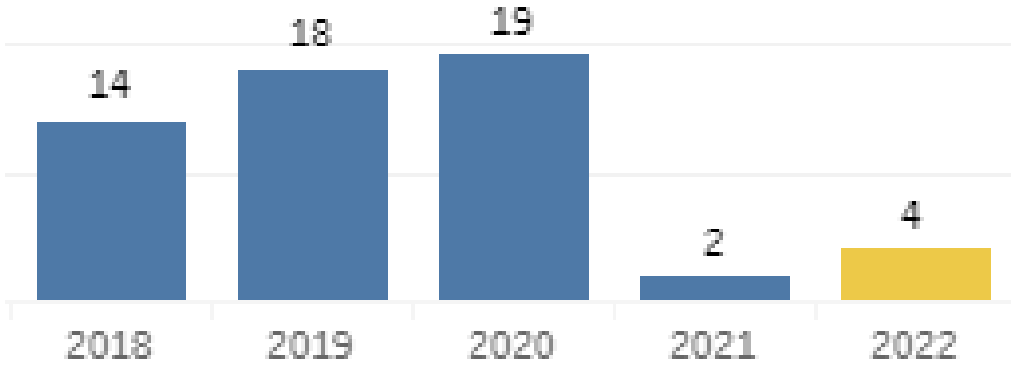
National Rural Health Association

# Rural Hospital Viability




As of 2022

## Closures 2018-2022




Source: Sheps Center, UNC
https://www.shepscenter.unc.edu/programs-projects/rural-health/rural-hospital-closures/

# Focus on Critical Access Hospitals

- **PHE Flexibilities and Waivers**
  - Remove condition of payment requiring CAH length of stay 96-hour rule.
- **Permanently eliminate Medicare sequestration for rural hospitals**
- **Increase Medicare Bad Debt Reimbursement**
- **Coinsurance Fairness for Beneficiaries at CAHs**
  - Amend beneficiary CAH coinsurance requirements to 20 percent of reasonable costs as beneficiaries are able to at Rural PPS Hospitals.
- **Necessary Provider Status**
  - NRHA is supportive of reinstating Necessary Provider status, which sunset in 2006.

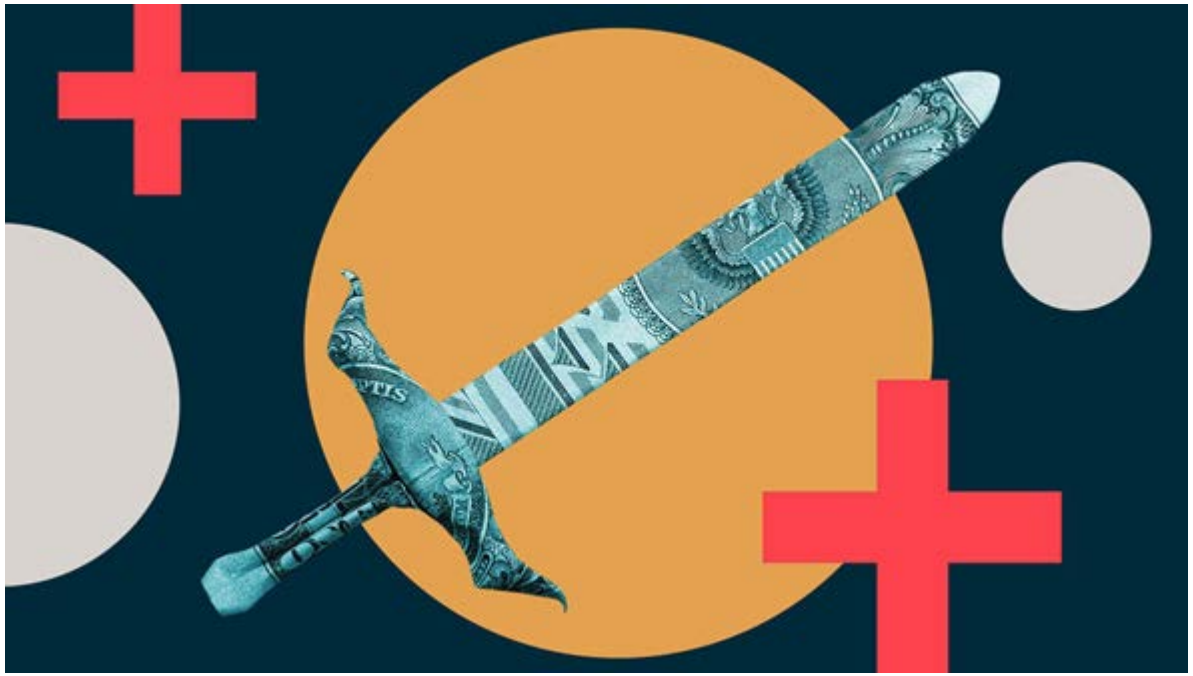
National Rural Health Association

# NRHA Farm Bill Priorities

- Capital to improve CAH health care infrastructure
- Continue support for and oversight of broadband and telehealth
- Behavioral and mental health programs and workforce development
- Continuation of the USDA Emergency Rural Heathcare grants
- Rural community economic development
- Nutrition, food security, and agricultural supports

# Other NRHA Legislative Priorities

- Growing and retaining the rural healthcare workforce
- Rural Health Clinic modernization (and provider-based fix)
- Addressing rural maternal health morbidity and mortality
- Strengthening the 340b program
- Medicare Advantage challenges



# Rules, Rules, Rules: Regulatory Activities

NRHA
Your voice. Louder.

# CMS 2023 Final Rules

- **Medicare Enrollment & Eligibility**: NRHA summary
- CY 2023 Medicare **Home Health Prospective Payment System**: NRHA summary
- CY 2023 **Medicare Physician Fee Schedule**
- CY 2023 Medicare **Outpatient Prospective Payment System and Rural Emergency Hospital** policies
- REH Final Rules! NRHA **summary** circulated

# CAH Conditions of Participation

485.610(c)(2): Primary roads for determining the driving distance of a CAH and its proximity to other providers is defined as:

- A numbered Federal highway, including interstates, intrastates, expressways, or any other numbered Federal highway **with 2 or more lanes each way**; or a numbered State highway with 2 or more lanes each way.
  - *Change from proposed rule*: One lane Federal highways are not primary roads

- REHs will not count in CAH distance determinations because they are outpatient only and do not serve the same purpose.

# REH Payment Policies

- REH services: All covered outpatient department services under OPPS
  - REH services are paid the **OPPS rate plus 5%**
  - Non-REH services (i.e., lab services, SNF, rehab) are not paid additional 5% (statutory barrier)
  - REHs can use OPPS claims processing system with an REH identifier
  - **REHs are not paid under OPPS**; just using the rate + claims processing
- Monthly facility payment: REHs will receive $272,866 /month in CY 23
  - About **$4,000 more per month** compared to proposed rule because CMS attributed the low-volume payment to all CAHs in the methodology
  - Increased each year by the hospital market basket percentage
- Clarification that REHs may **operate provider-based rural health clinics** (RHCs) and can **maintain their excepted status** upon the hospital's conversion

# REH Conditions of Participation

- Largely finalized CoPs as proposed, many mirror CAH CoPs
- CMS defines an REH as (42 CFR § 485.502):
  - An entity that operates for the purpose of providing emergency department services, observation care, and other outpatient services in which the annual per patient average length of stay does not exceed 24 hours.
  - *Change from proposed rule:* Includes instructions on how to calculate a patient's length of stay
- Laboratory services (§ 485.518): Must offer lab services necessary for immediate treatment and diagnosis of patients 24/7.
  - *Change from proposed rule*: Included language that lab services offered should be consistent with the REH's patient population.
- Staffing (§ 485.528): ED must be staffed 24/7.
  - *Change from proposed rule*: ED must be staffed 24/7 by an individual(s) competent in the skills needed for emergency care and that can receive patients and activate appropriate medical resources needed by patient

# 340B Drug Pricing Program

- **340B modifier requirements**
  - CMS released **guidance** in December requiring that ALL providers and suppliers that bill Medicare for separately payable Part B drugs, **including CAHs,** must use modifiers "JG" or "TB" to claim lines for drugs acquired through the 340B program
  - Effective January 1, 2024
  - The modifiers will be used to identify claims that are not subject to the new inflation-related drug manufacturer rebates established by the Inflation Reduction Act.

# 340B Drug Pricing Program

**340B Administrative Dispute Resolution (ADR)**
**proposed rule: Comments due January 30, 2023**

- NRHA **summary**
- Proposes to:
  - Remove procedural barriers
  - Fill the ADR panel with subject matter experts from HRSA
  - Require parties to engage in good faith efforts to resolve the issue before using the ADR process;
  - Align allowed claims with statutory intent – can only bring claims on overcharging by manufacturers, diversion or duplicate discounts by covered entities

# Prior Authorization & Interoperability

## CMS Advancing Interoperability and Improving Prior Authorization Processes proposed rule

- NRHA summary. Comments due March 13, 2023
- Provisions include:
  - Payers would maintain APIs for communicating health data between themselves, providers, and patients
  - Prior Authorization Requirements, Documents, and Decisions API would automate parts of the prior authorization process
  - Patient Access API – payers must make any prior authorization decision available within 1 day; provide specific reason for denial
  - Generally, prior authorization decisions must be made no later than 7 days after receiving request
  - Applies to MA plans, Medicaid and CHIP FFS, and Medicaid and CHIP managed care plans
  - New MIPS and Medicare Promoting Interoperability Program measure – “Electronic Prior Authorization”

# Medicare Advantage

## Medicare Advantage CY 2024 Policy and Technical Changes proposed rule

- NRHA summary
- Comments due February 13, 2023
- In conjunction with prior authorization proposed rule, this addresses some of our concerns from MA RFI in August
- Provisions include:
  - Prior authorization – ensuring enrollees receive medically necessary care
  - Behavioral health – expanding MA enrollees' access
  - Strengthening network adequacy
  - Marketing and advertising – targeting misleading information

# Other Open Proposed Rules

- Substance Abuse and Mental Health Services Administration (SAMHSA) – Medications for Opioid Use Disorder. Due Feb. 14, 2023
- SAMHSA – Certified Community Behavioral Health Clinic criteria update. Due Jan. 20, 2023
- CMS – Notice of Benefits and Payment Parameters
- HHS/SAMHSA – Confidentiality of Substance Use Disorder Records

# Advocate With Us!

NRHA
Your voice. Louder.

# NRHA Advocacy Goodies

- What is happening in your state? How can we help?
- Sign up to receive **NRHA's Rural Roundup** & **NRHA Today**.
- Engage with NRHA Advocacy online!
  - Social media: **Twitter**, **Facebook**, **LinkedIn**, **Instagram**
- Contact your NRHA Government Affairs Team
- Email: **Carrie Cochran-McClain**, **Alexa McKinley**, **Grace Girard**, **Kristen Batstone**

# NRHA's 34th Annual Rural Health Policy Institute


[February 7-9, 2023 in Washington DC]

# NRHA

## Your voice. Louder.