

KHN's 'What the Health?'

Episode Title: A Health-Heavy State of the Union

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Julie Rovner: Hello, and welcome back to KHN's "What the Health?" I'm Julie Rovner, chief Washington correspondent for Kaiser Health News. I'm joined by some of the best and smartest health reporters in Washington. We're taping this week on Thursday, March 3, at 10:30 a.m. As always, news happens fast, and things might have changed by the time you hear this. So here we go. Today, we are joined via video conference by Alice Miranda Ollstein of Politico.

Alice Miranda Ollstein: Good morning.

Rovner: Sarah Karlin-Smith of the Pink Sheet.

Sarah Karlin-Smith: Hi, Julie.

Rovner: And today we welcome our newest podcast panelist, Amy Goldstein of The Washington Post. Amy, thanks for joining us.

Amy Goldstein: Good to be with you.

Rovner: So lots of health news this week. We will get right to it. President [Joe] Biden gave his first formal State of the Union address Tuesday night to a socially distanced but mask-free group of House members, senators, Cabinet members, Supreme Court justices, and invited guests. And despite a lot of attention upfront to Russia's invasion of Ukraine, the speech was also a pretty familiar State of the Union, touching on a laundry list of accomplishments and priorities foreign and domestic, including just about every health issue Democrats could ever think of and cram into one speech. We will get to the covid part of the speech separately. But, first, there were some new initiatives unveiled, starting with new regulations for nursing homes. These could be quite a big deal, yes?

Ollstein: Well, you said that this is not covid-related, but in a sense, it's very much covid-related because of all of the awful deaths that we saw in nursing homes over the last few years. And the attention on that and how that has highlighted ongoing problems with nursing home quality and patient safety. And this is also a labor issue because it has to do with staffing ratios. A lot of both unionized and nonunionized workforces have been complaining that they have to take care of so many patients at once in nursing homes that it puts both them and the patients at risk. And so this could be very much meaningful. It could potentially have bipartisan support because Republicans have been upset about the nursing home deaths and used it to hit Gov. [Andrew] Cuomo in New York.

Rovner: Former Gov. Cuomo in New York.

Ollstein: Yes, disgraced Gov. Cuomo. But, again, in a speech that was so focused on national security and global conflict, there was just a ton of regular health policy crammed in there, and this was one of them.

Rovner: And this is a moment where I get to say I covered the original nursing home regulations in 1987. It was like one of the first big stories I covered. It was stuck in a budget reconciliation bill for you nerds out there. And, even then, they were fighting about training and staffing ratios and requirements that there be an RN on the premises 24 hours a day, which I believe is still not the case in most places, and how much training nurse's aides were supposed to have. And this is basically something that the nursing home industry and federal regulators have been fighting about ever since. But I think, as Alice said, the fact that almost a quarter of covid deaths in the United States were residents of nursing homes has shined a very bright light on what's been a lingering problem for a very long time. Obviously, they're going to need congressional help for a lot of these things, but this seems like something they can do just with regulation. And it looks like they're going to finally go ahead and do this, right?

Karlin-Smith: It seems like your colleagues at Kaiser Health News had [an interview with the head of Medicare and Medicaid](#) this morning, and that's what they indicated. The one thing that people have to remember is even if [the Centers for Medicare & Medicaid Services] can do regulations — and this was emphasized in the interview — that process takes a while. It comes with a lot of draft regulation, public comment, and so forth. And then usually some amount of time for nursing home facilities to actually do the implementation. So you might not expect to see a final rule for a year or two. And then the actual changes may be implemented further down the line. So change is always slow in the federal government.

Rovner: I would guess they would not want to speed this up because they do not want to [be] subjected to a possible lawsuit from the nursing home industry, which is probably going to fight tooth and nail for a lot of these things because it will make nursing homes more expensive and nursing homes are already really expensive. It's been this constant back and forth between trying to ... Medicaid pays an enormous amount of the nation's nursing home bill, and that comes out of state budgets. And they would rather not pay more. And nursing homes say, "Well, if you make us add all these things, we're going to have to charge more." And we go around and around in circles.

Ollstein: This is a pattern we've seen from the Biden administration in terms of wanting to do things very much by the book and check off every process in the rule-making in order to make sure these changes they're making can't be quickly undone by a lawsuit. This is what we saw with the Title X regulations. Providers, Planned Parenthood, and other groups were saying, "Look, you should do an interim emergency rule. This is so pressing and vital." But they said, "No, we've got to go through the full comment period because we don't want this to be able to be challenged." And you're seeing that here with the nursing home, too.

Goldstein: Yeah, it's a matter of cost, as you were saying, Julie, but it's also a matter of the workforce, because nursing homes have been saying, "Look, we can't staff our nursing homes. We're looking for workers, and we're having a hard time finding them in the pandemic." People have quit. People have retired. People don't want to work in a place that they might perceive as

not the safest place to have a job. And if the federal government comes along and says “here are tighter staffing standards,” that’s not something that the industry is looking forward to.

Rovner: Yeah, because it’s going to be difficult for them to meet it. Well, also highlighted before the speech, like the nursing home regulations, which usually means the administration is looking for special attention, is mental health. The administration appears to have a pretty comprehensive mental health proposal, including ways not just to help ensure that people can pay for mental health care but, as we were just saying with nursing homes, to beef up the pool of mental health care providers, which is, if anything, a bigger problem in mental health than the actual cost is. Shameless plug here: [Two weeks ago](#), we talked to Hannah Wesolowski of the National Alliance on Mental Illness about some of these issues. Did anything jump out to any of you in particular in this mental health proposal that’s new and different? Or is it just something that Congress hasn’t and should do?

Goldstein: Well, partly what jumped out is not just the specifics of this, but the fact that it got so much attention at the State of the Union level. For a long, long time, as you all know, mental health care has been sort of the also-ran. And there’s been talk of parity for a long time, and parity has been a hard thing to achieve. So for a president, regardless of the specifics, for a president to elevate it to the status of his annual address to Congress is in itself significant.

Ollstein: And I think just like the nursing home issue, this is a product of the pandemic making an existing problem way, way worse. Overdose deaths have gone up during the pandemic. Kids who were out of school for so long were really suffering. There were a lot of increases in emergency room visits and behavioral health emergency room visits for minors that we’ve been hearing about. And so I think this is an opportunity to light a fire under Congress on something they’ve toyed around with for a long time but haven’t really fully addressed.

Rovner: I agree with Alice here. I feel like that, finally, mental health has reached this critical mass, if you will. I know we’ve seen an enormous increase in teenage eating disorders. And every piece of the mental health problem has been exacerbated by the pandemic. And maybe, finally, Congress will start to pay attention.

Karlin-Smith: One newer thing I was going to mention that I did think was kind of interesting in Biden’s plan is there’s a lot of focus on thinking about social media and how that technology and various applications teenagers and younger people use and how that’s impacted mental health. So while there is a lot in here that’s been problems in the U.S. health system for a long time, there definitely are some interesting industries that could be impacted that people don’t necessarily think of as part of the health world in this plan.

Goldstein: And I think it’s not just the prevalence of mental health disorders, but the wide range of severity that’s really escalated during the pandemic. Everything from eating disorders, as you said, Julie, to anxiety, depression, and suicides, including suicides among young people. So it’s partly the incidence, and it’s partly just the gravity of what’s been going on.

Rovner: Well, another topic that doesn’t often make it onto the prime-time stage was burn pits and their toxic effect on military personnel, mostly in Iraq and Afghanistan. This is comedian Jon

Stewart's latest crusade, and there are still members of Congress with the bruises to show from Stewart walking all over them to help those injured working on the toxic pile at the World Trade Center after 9/11. Can a presidential push and an angry former late-night host finally get some help for people who've been waiting 20 years or more for relief? I know [that] judging from my email, I'm suddenly getting a lot of "you should do a story about burn pits." It's like, I've been reading about burn pits for a really long time, but it's a really serious problem.

Karlin-Smith: Right. And the president even mentioned, he made a very personal connection to his son, Beau Biden, who died of cancer, who he does not necessarily have any direct reason to believe was connected to burn pits but was certainly exposed to that, those toxins, in some of his military service. And if you know anything about Biden and his commitment to cancer and his son and so forth, you know that this is probably something he will try and make a top priority if he is really invested in this issue and the veterans' health issue. So I think that's important to think about, how personal this commitment may be to the president.

Rovner: And for those who haven't followed this issue, the burn pits are basically when the military takes everything that they've finished using at a military installation and basically throws it into a pit and lights it on fire, including things like fuel and other toxic substances, in addition to food waste and every other kind of waste. And that's basically next to where people are sleeping, and just breathing in those fumes has been shown to be not a great thing for your health. So another big priority, I think, for this administration going forward. Finally, the president, without using the phrase "Build Back Better" also basically mentioned every health issue in his languishing domestic proposal. Making increased Obamacare subsidies permanent? Check. Drug prices? Check. Limiting out-of-pocket costs for insulin to \$35 a month? The administration even stationed a cute 13-year-old in the first lady's box to push that one. So he was literally just checking the boxes here on really popular stuff that Congress still hasn't been able to push over the finish line. Could some of this still happen? Does it help when it gets five minutes in the State of the Union?

Goldstein: Well, let me just say that I mostly agree with you, but not 100%, that he was checking every single box because there were some notable omissions, both in his language and in policy. In terms of policy, one thing that did not get a check mark was the notion of expanding Medicare benefits to include dental and vision and hearing care, which has obviously been a very big priority for some people, particularly in the Senate, and not for others. And it's one of the things, among many, that's led to the Build Back Better legislation just sitting around without going anywhere for some months now. Beyond the specifics, I was very struck that he was almost, I don't want to say robotic, but he was very concrete in how he talked about health care. There's one bit of language that he has embraced from the progressives often, both on the campaign trail and early in his presidency, which is "health care is a right, not a privilege." He said that almost every time he spoke about health care for quite a while, and that language is obviously borrowed from people farther left in the Democratic Party [than] him. It was Bernie Sanders' phrase when he began years ago to push for single-payer health care, something that this president has never embraced. So I thought it was striking that when he was talking about a unity agenda, which he kept saying Tuesday night, he did not include that refrain.

Rovner: Yeah, he also didn't talk about Medicaid expansion. I went back and looked, and I was a little bit more surprised that that got skipped because that was in the last versions of Build Back Better before it died, which I think the extra Medicare benefits were not.

Goldstein: Like you had to know the shorthand to even recognize that he was saying something about this because he said "end the coverage gap." He didn't even say "the coverage gap for people in states that have not expanded Medicaid," which is what he was probably alluding to. But he really shorthanded it.

Rovner: That's really, really shorthand. I actually missed it. So, thank you. All right. Well, let us segue to covid here because not only did the president spend a considerable amount of his speech trying to reset the state of the pandemic, on Wednesday, the administration unveiled a whole new strategy, which it's calling the National COVID-19 Preparedness Plan, although they really could have called it the "Next Covid Variant Preparedness Plan." But this really is something of a reset here, right? I mean, we're shifting entirely how we're thinking about the pandemic at this point.

Karlin-Smith: I think the administration is trying to think about it as we're heading into a decrease in cases and a time where we can take a little bit of a breather and focus more on, "OK, what do we need to do now to avoid the next big surge?" and make sure we're prepared to tamp that down instead of continuing to go through this cycle of you have a lull, you have another surge, you have a lull, you have another surge. The issue is that most of what they're proposing requires a significant amount of funding from Congress, and some of it is just going to require time and effort, just scale up these public health programs and measures. The nursing home issue — we mentioned how long it takes to write rules and regulations, but we don't have time for the government to move at normal speed here. So this is a really great plan. But they're going to have to figure out how to get the funding and enact this fast enough because while people are optimistic right now, we don't know when the next variant might emerge or the next big wave may occur.

Goldstein: And that not knowing what's going to happen, I think, has led the White House to try to calibrate its messaging on this very, very carefully. Remember when the president said last year essentially "mission accomplished" and everything was going to be great by July 4.

Rovner: Hot vax summer!

Goldstein: And that wasn't so good for his political standing. And the White House is releasing this latest agenda for what to do about covid at a time when the polling has been showing that the president's approval rating for his handling of the pandemic has taken a dive. It was around 60% several months ago, and it's now down to a little more than 40%. So there's sort of a substantive mission here, but also a credibility and a political enhancement mission here in this latest iteration.

Rovner: One of the new things in this proposal that struck my interest is something called "test and treat," where you can go to a pharmacy or other clinic, get a rapid test, and if you test positive, get free treatment on the spot. This seems like a fairly obvious idea. We've been talking about this for a while, the fact that if you test positive, it's actually hard to then get treatment.

And a lot of these treatments rely on getting treated quickly when you find out that you have it. What's taken this so long?

Goldstein: Partly it's been a supply issue because for a long time the availability of the drugs wasn't optimal. Complicating things when omicron came along, it turned out that some of the monoclonal antibodies that had been over the previous month become a norm for how you treat cases didn't work very well with the omicron variant. So getting to a point where there's enough of the right drugs that they could be handed out, I think, was not the whole thing, but part of the equation.

Karlin-Smith: These are actually antivirals, which you can actually get at a pharmacy and take home and take the pills. They're pretty complicated treatments in thinking about how to prescribe them. And pharmacists have actually complained they're not being properly reimbursed to deal with this. There's repackaging issues. They have to look closely at the doses, what other medicines people are on to see if they qualify. And even this proposal, if you look at the fine print, pharmacists still can't actually prescribe these drugs, so the pharmacy needs to be connected to some kind of CVS MinuteClinic or other clinic at the pharmacy with somebody authorized to prescribe it. So it's not quite as simple as the vaccines, where pharmacists already have permission to easily administer the product. So I think that's part of the hiccup here.

Ollstein: All of this administration's strategy depends on Congress giving them the money to do it, and that's very much up in the air right now. Just last night, the White House sent Congress a more formal request for the money. There have been a lot of back-channel requests over the last few weeks that we've been documenting, and the request they sent over today is actually a lot less than what agency leaders at [the Department of Health and Human Services] and [the U.S. Agency for International Development] have been telling Congress is really needed to do this work. And so I think that's an acknowledgment of the resistance on Capitol Hill, including from some Democrats but mostly from Republicans, to appropriating billions more in spending for a pandemic that the White House is also sort of portraying as not being as severe as in the past. And so it's a tough message to say, "We're not in a dire emergency anymore. Things are so much better. We can go back to normal in many ways. However, we still need billions and billions more to continue this work." But they really do. Once the vaccine is approved for children under 5, they need the money to buy those vaccines and get them into little arms.

Rovner: Yes. I should add here that the bipartisan leaders of the Senate [Health, Education, Labor, and Pensions] Committee, Democratic Chair Patty Murray [of Washington state] and ranking Republican Richard Burr [of North Carolina], have announced a date to mark up and vote on their pandemic preparedness bill. Burr is retiring after this term, and I know he wants this as one of his legacies. He's been very active on public health for his entire time, both in the Senate and in the House before that. I assume that some of these things can be somehow merged together. I know that what the HELP committee is doing is an authorization bill, and what they need is an appropriation. But one would think that this would be a chance for Congress to say, "Yes, things are better, but we still need to pay attention to this."

Ollstein: What the administration is asking for right now, they're very much emphasizing, is to just get through the short term, and so that other pandemic preparedness bill is very much about the

longer term, the rest of covid, however long that continues on. But also we know there's going to be something else in the future. And the United States was very much not ready for this pandemic, and there's a hope that the country can get itself more ready for the next pandemic. But considering the ongoing resistance to all of the spending on Capitol Hill, it's really unclear.

Rovner: So I want to talk about Republicans and covid in particular this week. Sen. Burr, notwithstanding, Florida Sen. Marco Rubio this week said he wouldn't even go to the State of the Union, where masks were not required, because he refused to get tested. He said he didn't have time. His governor, Ron DeSantis, dressed down a bunch of high school students in masks at an event in front of cameras. Senate Republicans forced a message vote to repeal President Biden's vaccine mandate. It won't pass the House, and even if it did, Biden could and would veto it. Amy, you [wrote a story](#) this week about a poll showing the public doesn't really think covid is over yet and maybe the Democrats are moving too fast back to normal. So who are the Republicans playing to?

Goldstein: Well, the Republicans are playing to their own base. The latest Washington Post-ABC News polling did include some questions ... that had interesting timing of the responses because the poll was in the field for a few days just before last Friday, when the [Centers for Disease Control and Prevention] announced a big redefinition of who it says should wear masks that had the effect of many fewer people by the CDC criteria needing to wear masks in public. But what our poll found was that if you look at people of both parties together, the majority of the American public still thinks that some restrictions are needed, even if it crimps Americans' daily lives a little bit. Now, if you look at the partisan breakdown of that view, as you can imagine, there's a big gap, with Republicans much less prone to think that. But it's not as if all Republicans think that restrictions are unwise or unwarranted. So it's an interesting question, I think, whether the public policy both in the Biden administration and certainly as you're describing among these Republicans [who] are making a stand against masking, whether they are in sync or a little bit out of sync with where the public is on these questions.

Rovner: I know. I think Rubio said, well, he only tests himself if he's feeling sick. Because everybody had to be tested before the State of the Union, six House members — all Democrats, I think — tested positive. So people who were asymptomatic didn't show up because, "Oh, we have to take a test before we go to the State of the Union and, like, oops." So obviously it's still out there and it's still spreading around. I was interested in that poll, Amy, because I think elected officials were a little bit too far ahead of the public. And now I wonder if they're getting a little bit behind the public.

Goldstein: Well, it's an interesting question in terms of recommendations. But it's also an interesting question in terms of the imagery of the State of the Union, where in great, great contrast to last year's address — it wasn't a State of the Union because it was the president's first year, but the address to Congress — unlike that, this time there were very few members of either party wearing masks, and the president, who is a creature himself of the Senate and a schmoozer by temperament, hung around for a long time hugging unmasked people, and he, a 79-year-old president, wasn't wearing a mask.

Rovner: I tweeted about that. It made me very uncomfortable just watching it.

Goldstein: Well, it'll be interesting to see what happens over time in terms of whether anybody develops covid, whether this was a superspreader event or not. We don't know yet. We won't know for a little while. But just the imagery was so different, and it was striking that it was bipartisan imagery.

Rovner: Yeah, it absolutely was. All right. Well, let us turn to abortion, the word that President Biden still has not said as president. We have some breaking news from the Supreme Court about what I call an abortion-adjacent case from Kentucky. This is not the Mississippi case that could overturn *Roe v. Wade*, but it's still worth mentioning. Alice, what did the court do here today?

Ollstein: So it pretty overwhelmingly ruled in favor of the Kentucky attorney general, who was asking to be able to jump into a case that the state had actually exited already and revived the defense of the state's abortion ban, a ban on a certain method of surgical abortion that has been blocked for years.

Rovner: And just a reminder: Since this law was passed, the Kentucky governorship changed from Republican to Democrat.

Ollstein: Right, exactly. And so the issue here is that under Republican control, the state was trying to fight in court to be able to implement this kind of abortion ban. But then voters there elected a Democratic governor, who decided "I'm not going to keep defending this law anymore." And the question before the court was: Can the Republican AG [attorney general] then go around that and do it himself? And so this could have major implications for other states where there is a split among the top officials in partisan affiliation. And for Kentucky, it means that they will be able to revive the defense of its law. And given how federal courts have been ruling on other states' abortion restrictions, there's a real chance they could be able to implement it after all. So it is, like you said, sort of technical, sort of adjacent, but it's very much another blow to abortion-rights supporters, on top of so many that have come recently.

Rovner: Yeah, although the court did rule 8-1 that the attorney general, the elected Republican attorney general of Kentucky, has the right to defend this law even if the current Democratic governor and health secretary don't want to. Well, speaking of message votes, the Senate this week kind of voted on the Women's Health Protection Act, which would write the abortion protections of *Roe v. Wade* into law. The bill, which passed the House last fall, did not advance past the procedural hurdle in the Senate. It needed 60 votes, and lest you think things have changed, I posted on Twitter a video of me on C-SPAN talking about effectively the same bill not being able to pass the Senate from 1992. So, Alice, what happens now to the Women's Health Protection Act?

Ollstein: This was basically the main strategy Democrats on Capitol Hill and the Biden administration were pointing to as the answer to the overall national rollback of abortion rights. And they always knew they didn't have the votes, and I saw a lot of lawmakers very misleadingly faulting the Senate filibuster for this outcome. But it's important to remember that they did not have 50 votes for this, let alone 60. So you can't really blame the filibuster for this one. If you want to get mad at somebody, you should look at [Democratic Sen.] Joe Manchin [of West Virginia], who joined with Republicans to try to block this from going forward. But I did think it was

interesting for a number of reasons. And, yes, this was mainly a messaging vote. And Democrats who supported it were very much saying that this was about showing voters exactly where every lawmaker stands heading into the November midterms. Of course, not everybody is up for reelection in the November midterms, but they were saying this is about showing which party overall supports abortion rights and which party overall wants to have more restrictions.

Rovner: One of the reasons this bill never did come up for a vote in 1992 was that the argument from people like [Republican Sen.] Susan Collins [of Maine] now and [Republican Sen.] Lisa Murkowski [of Alaska] is that it goes further than *Roe v. Wade*, that it would ban lots of abortion restrictions that are pretty popular, like parental notification. That it basically does way more than just write *Roe* into law. Could the Republicans end up using this “message vote” as a way to hang that around Democrats’ necks?

Ollstein: They already are. Anti-abortion groups are already running ads against Sen. [Mark] Kelly in Arizona, bashing him for voting for this. They want to portray Democrats as “extreme” on abortion rights. And, yes, like you said, what they were voting on did go beyond putting *Roe v. Wade* into federal law. It would have prevented states from enacting abortion restrictions later in pregnancy, as well as earlier in pregnancy, which is what *Roe* focuses on. So it isn’t really clear where they go from here. Even if they just said, “Codify *Roe*,” you might be able to get Collins and Murkowski, who introduced their own competing version of this, that would have done that. But you would still lose Manchin. You might lose other Democrats as well, more conservative Democrats. And so it is really unclear, at least at the federal level, what they’re planning to do on the abortion-rights front.

Rovner: Even if you could get to 50 in the Senate, you can’t get to 60.

Ollstein: Right. Right.

Rovner: And you’ve not been able to as long as I’ve been covering abortion, which is almost 40 years — that’s really depressing. All right. Well, one thing that has worried otherwise very optimistic anti-abortion forces is that more and more women could turn to abortion pills, which don’t necessarily require a physical trip to a traditional abortion clinic. And, indeed, in a preview of its quadrennial survey of abortion in the United States, the Guttmacher Institute reports that in 2020, for the first time, more than half of abortions in the U.S., 54%, were done using medication, rather than surgery. So I guess it should come as no surprise that states are trying to make it harder for women to get abortion pills. Legislation is moving just this week in Georgia, in Kentucky, and in South Dakota, where I believe it’s going to the governor. Alice, is this going to be the next big battleground in the state abortion fights?

Ollstein: It’s certainly one of them. And even before the Biden administration in December announced that they were loosening restrictions on how abortion pills can be prescribed and delivered to patients, states were already moving to implement these restrictions. Conservative states and conservative activists have seen the writing on the wall that being able to take a pill at home in the privacy of your home without having to walk into a clinic past all kinds of protesters yelling at you really is the future. Of course, abortion pills are not the method that everyone wants to or can use. You know, for one, they can only be used in the first 10 weeks of pregnancy in the

U.S., and many people need or want abortions later than that in their pregnancies. But it is far cheaper than surgical abortion. It is far more accessible if you can get it in your home. And so a lot of states have implemented these bans on the mail delivery of pills that the Biden administration is now allowing. But, of course, there are these activist networks and international groups that are making the pills available online, even in states that have banned them. And enforcement of those bans is sort of impossible.

Rovner: We've seen this with mail-order drugs. I mean, with just people buying cheaper prescription drugs from Canada, not just abortion pills.

Ollstein: Absolutely.

Rovner: It's tough to regulate the mailing of drugs.

Ollstein: Right. Unless the government is going to start going through everybody's private mail that's coming to their homes, which doesn't sound feasible or tolerable from a privacy perspective, there really is not a way to enforce some of these. And the bans that are on the books are more about creating a chilling effect and making people more nervous about violating the law in this way to obtain the drugs. But as we know throughout all of history, banning abortion or restricting abortion does not mean that people will not still attempt to obtain one.

Karlin-Smith: There's also questions here about whether the states really have the authority to pass these laws or whether FDA's federal control of regulation [over the] distribution of drugs really preempts that. So I think if this keeps going on, you could see some interesting legal challenges to try and settle who really has the authority here, the states or FDA?

Rovner: I know one would assume that a Supreme Court that would be willing to overturn *Roe v. Wade* would be willing to uphold state regulation of abortion pills, but not necessarily, right? Because this is a much more regulatory issue.

Karlin-Smith: And you'd have to think of the downstream consequences of that and how it might impact other medication access. One thing when my colleague was looking into this that came up was there was an opioid approved a number of years ago, and I think Massachusetts tried to unsuccessfully ban it. You could get into lots of issues if every state was sort of relitigating, not quite the right word because we're talking about approving medicines, not litigation in the states — but if every state was making a judgment call on whether the FDA should or shouldn't approve a drug. So I think even a Supreme Court that is not necessarily supportive of abortion would have to think really carefully about how any ruling was crafted because they're not going to want states unnecessarily overruling FDA on every other type of drug approval or medical device approval decision it makes.

Rovner: Yeah, for the 2027 term, I think that'll be a really interesting issue to watch for. Well, speaking of culture war items, last week [the] Texas Republican attorney general issued a legal opinion that gender-affirming care for minors constitutes child abuse under Texas state law. Texas Gov. Greg Abbott then directed the state's Department of Family and Protective Services to investigate any such reports. And lo and behold, the very first investigation was against an employee of that very department who was placed on leave after being accused of aiding her 16-

year-old transgender child. The [American Civil Liberties Union] sued, and on Wednesday, actually Wednesday evening, a Texas judge blocked the policy temporarily. But the question here is less “How does this square with the Republican mantra of the moment that parents should have more power over their children?” and more “Can they actually do this under federal nondiscrimination law?” I assume that hasn’t come up yet. This was a state issue. Texas had its primary this week, so obviously both the attorney general and the governor were facing primary opposition. And I think what the campaign manager for one of them said on a phone call with reporters that this polled well, that that was why they wanted to do this. But it has struck a lot of people as way outside the box and, as Texas will do, plumbing new ground in the culture wars.

Ollstein: And because we are a health care podcast, I want to emphasize that in the medical community, this is not really a debate. The medical community has a consensus that it is far more dangerous to deny minors gender-affirming care than it is to provide them. Really the only kind of transition for trans minors that is available are so-called puberty blockers, which just sort of delay the process in your body of going through puberty. That’s completely reversible. Later, if somebody changes their mind or whatnot or their personal situation evolves ...

Rovner: Right. It’s not like 13-year-olds are having sex change surgery.

Ollstein: Exactly. This is playing on a lot of fear and misunderstanding about trans individuals. And I think it’s really interesting that this question of medical care is the new frontier right now and something we’re seeing a lot of states pursuing. And so I think we should be watching this closely because what Texas is doing is inevitably going to pop up in many other states.

Rovner: Well, one of the issues in this case is that the Texas officials want the medical records for the child in question. Where we’re seeing all these governors saying it should be up to parents to determine whether or not kids get vaccines or put on masks, now we have Texas saying, “We’re going to basically subpoena the medical records of your child to see whether you’ve been abusing them by recognizing them as the gender that they wish to be recognized.”

Ollstein: And we should also point out that a lot of the people who have been screaming incorrectly that asking someone if they’re vaccinated is a HIPAA [Health Insurance Portability and Accountability Act] violation, subpoenaing the medical records of children is certainly unethical, is certainly a HIPAA violation. And the Biden administration reiterated that when it laid out a few things that it would be trying to do to defend families in Texas from this earlier this week.

Rovner: Also probably something we’ll see in the 2027 court term. All right, well, that is the news for this week. Now it is time for our extra-credit segment, where we each recommend a story we read this week we think you should read, too. Don’t worry if you miss it; we will post the links on the podcast page at khn.org and in our show notes on your phone or other mobile device. Sarah, why don’t you go first this week?

Karlin-Smith: Sure. I took a look at a Kaiser Health News story by Jay Hancock called “[Covid Expert Joins Exodus Into Business, Where Science Parlays Into Profits](#),” and it focuses on Michael Mina, who was for a lot of the pandemic a professor at Harvard very focused on advocating for more use of rapid covid tests in the U.S. and pushing back against what he felt were FDA’s too-conservative

approval metrics for that. He now works for a company that makes money off of selling covid rapid tests, including watching people essentially and proctoring the tests virtually for people who need that extra verification of their test result. And so it raises new questions when people use him and his voice in articles talking about the role of rapid tests and approval standards and so forth of how to think about his interests. Because now he works for a company that is making money off of this, and he still says he advocates for cheap, rapid tests and so forth. His company's tests actually tend to be higher, again because of this ability to sort of monitor people as they take them. And he's not the only person that has a confusing, I guess you could say, media public health image during covid that maybe not all of the public appreciates. The most prominent one that I've thought about for a long time is former FDA commissioner Scott Gottlieb. A lot of people, I think, turn to him because he was such a recent FDA official. And he's kind of well known as being a good communicator, a prolific communicator who likes to talk to the media. But he's also on the board of Pfizer and has a number of other drug and medical industry connections. And he's often weighing in on things that impact Pfizer's bottom line, given their role in the vaccines and so forth. And it's a complicated thing in terms of communicating to people that, yes, these people have great expertise. It may be really valuable insights and advice, but you also have to weigh that with the grain of salt that they have business interests and obligations to shareholders and profit-making companies, too, that you can't discount when thinking about their comments.

Rovner: And I think as journalists, we need to try hard to make sure that people know, that we're transparent enough about those things. I know that Scott Gottlieb is almost always introduced as former FDA commissioner and a current board member of Pfizer. So that's what we can do here. Alice?

Ollstein: I have a piece from The New York Times called "[Time Is Running Out to Avert a Harrowing Future, Climate Panel Warns](#)." And I think the piece that really jumped out at me is that they're emphasizing that climate change really is a health issue. The not even potential, the very much expected result of a warming planet is more disease, both carried by mosquitoes and other animals, but also to spread more rapidly as climate refugees become more prevalent and food insecurity leads to other health care issues. And so I think this is going to be a major area that all of us will need to keep an eye on in the future.

Rovner: Indeed, and the environment is more and more a health issue every day. Amy?

Goldstein: Well, I really admire [this story](#) by two of my Washington Post colleagues, Loveday Morris and Dan Diamond. And the story is about the intersection of the two overriding running stories at the moment, which is the raging war in the Ukraine and covid. And the headline is "[Ukraine Conflict Could Spark Surges of Covid, Polio, Other Diseases, Say Experts](#)." Let me just read you kind of the nut graph, as we say in journalism, the sort of central point of the story, which is that "global health officials [have] fear[ed] that Russia's invasion of Ukraine will be the latest reminder of a grim lesson — that war and disease are close companions." And I don't know if any of you had the thought that I did as I was watching images of people in Ukraine's biggest cities rushing into their subway stations underground for protection and these images that were akin to World War II in London, and I kept thinking, "There aren't many of those people wearing masks." Well, I certainly understand that people who are trying to stay alive may not be thinking first and

foremost about whether they're likely to get infected with covid. But this is a very good story that points out both that Ukraine late last year had very high rates of covid, even though the rates have come down as omicron has been fading, and the fragility of the health system and the low vaccination rates both in Ukraine and in other Eastern European cities to which Ukrainian residents who were living normal lives up until a week or two ago are now fleeing. And there's a lot of thoughtful discussion in the story about what that's going to mean, in addition to the burden of caring for war casualties, if people get sick. And I didn't realize that Ukraine has had a polio outbreak that public health officials there have been trying to check. I don't mean Czechoslovakia — I mean "check" as in quell. And just all of the bad collision of factors that are creating just awful, an awful health specter along with the reality of war.

Rovner: It reminds me of the baby boomer poster "war is not healthy for children and other living things." I guess we just need to be constantly reminded of that. Well, my story is from The Wall Street Journal by Alex Janin, and it's called "[Why Is Everyone Standing So Close? Personal-Space Boundaries Shifted During the Pandemic.](#)" And I have to say, as someone with an underlying anxiety disorder, I felt much better after reading it. It turns out that two years of social distancing has actually reprogrammed our brains to make our usual personal-space requirements, well, larger. And eventually they will go back to normal. But in the meantime, I plan to steal a retort from someone in the story when someone is standing too close. She said, "I'm not your lover. I don't need to feel your body heat." Good line.

That is our show for the week. As always, if you enjoy the podcast, you can subscribe wherever you get your podcasts. We'd appreciate it if you left us a review — that helps other people find us, too. Special thanks, as always, to our ace producer, Francis Ying. Also, as always, you can email us your comments or questions. We're at whatthehealth — all one word — at kff.org. Or you can tweet me. I'm @jrovner. Sarah?

Karlin-Smith: I'm @SarahKarlin.

Rovner: Alice?

Ollstein: @AliceOllstein.

Rovner: Amy?

Goldstein: @goldsteinamy.

Rovner: We will be back in your feed next week. In the meantime, be healthy.