



Health Policy Briefing

December 5, 2022

2023 Calendar for House of Representatives

Majority Leader-Elect Steve Scalise (R-La.) released the House of Representatives' calendar for the first session of the 118th Congress last week. The chamber will be in session for 30 weeks in 2023, meeting for three or four days each week lawmakers are in session for votes. The calendar is available [here](#).

Democratic Leadership Elections Update

In the first major leadership change for the party in two decades, Democrats in the House of Representatives unanimously elected Rep. Hakeem Jeffries (D-N.Y.) to serve as minority leader next year. Jeffries will be the first Black lawmaker to lead either party in Congress in the nation's history. Rep. Pete Aguilar (D-Calif.) will serve as chair of the House Democratic Caucus and Rep. Katherine Clark (D-Mass.) will serve as the next Democratic whip. The new leadership team all ran unopposed during last Wednesday's leadership elections. Jeffries, Aguilar, and Clark will replace Speaker Nancy Pelosi (D-Calif.), Majority Leader Steny Hoyer (D-Md.), and Majority Whip Jim Clyburn (D-S.C.). While Pelosi and Hoyer announced their decisions to step away from party leadership last month, Clyburn was elected to serve as assistant leader in the 118th Congress after facing a last-minute challenge from Rep. David Cicilline (D-R.I.).

The Senate Democratic caucus is scheduled to hold its leadership elections on December 8. Majority Leader Chuck Schumer (D-N.Y.) plans to nominate Sen. Patty Murray (D-Wash.) as Senate president pro tempore to replace the retiring Patrick Leahy (D-Vt.). The rest of the Democratic leadership team are expected to run unopposed and remain in place. Democrats rejected a proposal that would have prohibited senators serving in leadership from simultaneously heading committees in a secret ballot vote last week. Three members of Democratic leadership would have been subject to the rule, including: Majority Whip Dick Durbin (D-Ill.), Senate Judiciary Committee Chair; Democratic Policy and Communications Committee Chair Debbie Stabenow (D-Mich.), Agriculture Committee Chair; and Steering Committee Chair Amy Klobuchar (D-Minn.), Rules Committee Chair.

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Republicans to Retain Earmarks in 118th Congress

Republicans in the House of Representatives agreed to retain the use of spending earmarks when they control the chamber during the 118th Congress in a 158-52 closed-door vote last week. Republicans banned earmarks for member projects when they controlled the chamber in 2011, but the practice was revived by Democrats in the fiscal year 2022 spending bill. That package ultimately contained a total of \$9.7 billion in lawmaker-directed community funding projects.

Negotiations on Year-End Omnibus Continue

President Joe Biden and congressional leadership have agreed to avoid another continuing resolution and complete work on a fiscal year (FY) 2023 government funding bill before the end of the year but have yet to agree upon a total level of spending. Republicans have indicated that they will only support a full-year appropriations package with lower total spending levels and additional funding for border security. Democrats support a total of \$1.6 trillion in discretionary spending –\$100 billion more than current funding levels – and are also seeking to include additional COVID-19 and public health response funding as requested by the White House. The current stopgap spending measure expires on December 16, but many expect this to be further extended until December 23.

Lawmakers are also jockeying to determine what measures will be attached to the must-pass year-end package. The GOP Doctors Caucus is pushing Republican committee leadership in the House of Representatives to use the package to address impending cuts to Medicare physician reimbursement. Providers face nearly a 4.5% physician fee schedule cut and a 4% PAYGO cut in the new calendar year. Senate Health, Education, Labor, and Pensions (HELP) Committee Ranking Member Richard Burr (R-N.C.) has indicated that it is unlikely that reform of dietary supplements regulations will be included but believes the outlook for an overhaul of laboratory diagnostics and cosmetics regulations is more positive. Burr has also stated that inclusion of the **PREVENT Pandemics Act** is also still on the table. Sen. Bill Cassidy (R-La.), who will replace the retiring Burr atop the HELP Committee next congress, has said that he is optimistic his bill the **Healthcare Cybersecurity Act** to strengthen cybersecurity coordination between the U.S. Department of Health and Human Services and the Department of Homeland Security will be attached to the omnibus spending package as well. Senate Finance Committee Chair Ron Wyden (D-Ore.) recently stated that he is working to include an extension of COVID-19 era telehealth flexibilities for “as-long-as-possible” in the end-of-year vehicle. Wyden, alongside Finance Ranking Member Mike Crapo (R-Idaho), is also pushing to add the panel’s series of mental health recommendations to the package.

Senate Passes Heart Disease, Hearing Screening Legislation

The Senate passed the **Cardiovascular Advances in Research and Opportunities Legacy (CAROL) Act** (H.R. 1193) by unanimous consent last week. The bill directs the U.S. Department of Health and Human Services to develop best practices for the treatment of valvular heart disease. The Senate also passed the **Early Hearing Detection and Intervention Act** (S. 4052) by voice vote. The legislation would reauthorize activities that support hearing screening and early intervention services for newborns, infants, and young children for the next five years. It also requires the Government Accountability Office to conduct a study of state early hearing detection and intervention programs and access to such programs.

Biden Administration Criticizes GOP Debt Limit Plan

The White House has characterized congressional Republicans' plan to tie U.S. debt limit negotiations to an overhaul of entitlement programs as a "non-starter." Republicans have suggested that a vote to increase the debt ceiling could be leveraged to reform the Social Security, Medicare, and Medicaid programs and increase their fiscal sustainability. The idea was most recently pitched by Sen. John Thune (R-S.D.) to reporters last week. Voters "overwhelmingly rejected efforts to gut Medicare and Social Security," a White House spokesperson responded. President Joe Biden also stated that he would not yield to such demands but has expressed opposition to getting rid of the debt ceiling altogether, as some Democrats have called for.

Finance Leadership Release Final Mental Health Proposal

Bipartisan leadership of the Senate Finance Committee [released](#) their fifth and final mental health discussion draft last week. The legislation includes policies to improve mental health parity and access to mental health and substance use disorder services in the Medicare and Medicaid programs. The bill would:

- Strengthen the accuracy of provider directories in Medicare Advantage (MA) plans and Medicaid programs.
- Direct GAO to conduct a study of the differences in enrollee cost-sharing and utilization management between behavioral and non-behavioral health services in MA and compared to traditional fee-for-service Medicare.
- Require Medicare to provide guidance to health care providers detailing the extent to which Medicare beneficiaries with substance use disorders can receive partial hospitalization program services.
- Direct GAO to report on Medicaid payment rates for behavioral health services compared to medical and surgical services across a sample of states.

Democrats Press for UNOS, OPTN Reforms

A group of congressional Democrats is [urging](#) the Biden administration to address racial inequities in the nation's organ procurement system. The letter, signed by 16 senators and members of Congress, describes investigations by the Senate Finance Committee and the White House's U.S. Digital Service into the United Network for Organ Sharing (UNOS) and the Organ Procurement and Transplantation Network (OPTN). The lawmakers ask officials at the U.S. Department of Health and Human Services what steps they plan to take to ensure that UNOS does not maintain a monopoly over the nation's transplant system, and what actions they will take to make organ procurement organization (OPO) process data and evidence of effective and equitable performance more transparent.

VA Rep. McEachin Dies at Age 61

Rep. Donald McEachin (D-Va.) died last week after a battle with colorectal cancer. He was 61. McEachin has represented Virginia's 4th Congressional District since he was first elected in 2016. He was reelected to a fourth term this November and was a member of the Energy and Commerce Committee. McEachin's congressional colleagues praised his focus on social and environmental justice during his time in Congress. Democrats are favored to retain his central-southeastern Virginia district seat, which is expected to be filled by a Democratic successor next year.

Mpox PHE to Expire Jan. 31

The Biden administration does not expect to renew the mpox public health emergency, first declared in August, when it expires on January 31. "As we move into the next phase of this effort, the Biden-Harris Administration continues working closely with jurisdictions and partners to monitor trends, especially in communities that have been disproportionately affected," U.S. Department of Health and Human Services Secretary Xavier Becerra said in a statement on Friday. U.S. cases of mpox have hit new lows, with the Centers for Disease Control and Prevention recording just a few new infections per day – down from more than 400 daily cases at the height of the outbreak.

Changes to FDA's Blood Donation Policies Expected

The Food and Drug Administration (FDA) is expected to change its blood donation policies in the coming months to allow donations from gay and bisexual men who are in monogamous relationships. Current regulations require men who have sex with men to be sexually abstinent for three months before donating blood. The new policy is expected to rely instead on the use of an individualized risk assessment.

Upcoming Congressional Hearings and Markups

House Veterans' Affairs Committee hearing "Fulfilling our Pact: Ensuring Effective Implementation of Toxic Exposure Legislation;" 10:00 a.m.; December 7

Recently Introduced Health Legislation

S.Res.849 — A resolution designating November 2022 as "National Hospice and Palliative Care Month"; Sponsor: Rosen, Jacky [Sen.-D-NV]; Submitted in the Senate, considered, and agreed to without amendment and with a preamble by Unanimous Consent.

S.Res.850 — A resolution expressing support for the designation of September 25, 2022, as "National Ataxia Awareness Day", and raising awareness of ataxia, ataxia research, and the search for a cure; Sponsor: Hyde-Smith, Cindy [Sen.-R-MS]; Submitted in the Senate, considered, and agreed to without amendment and with a preamble by Unanimous Consent.

S.5142 — A bill to amend title 10, United States Code, to eliminate certain health care charges for members of the Selected Reserve eligible for TRICARE Reserve Select, and for other purposes; Sponsor: Baldwin, Tammy [Sen.-D-WI]; Committees: Senate - Armed Services

S.5143 — A bill to amend title 38, United States Code, to improve the assignment of patient advocates at medical facilities of the Department of Veterans Affairs; Sponsor: Stabenow, Debbie [Sen.-D-MI]; Committees: Senate - Veterans' Affairs

S.5144 — A bill to amend title 38, United States Code, to increase the mileage rate offered by the Department of Veterans Affairs through their Beneficiary Travel program for health related travel, and for other purposes; Sponsor: Stabenow, Debbie [Sen.-D-MI]; Committees: Senate - Veterans' Affairs

H.R.9358 — To amend title XVIII of the Social Security Act to provide a review process for adverse national coverage determinations with respect to drug coverage under the Medicare program; Sponsor: Barragan, Nanette Diaz [Rep.-D-CA-44]; Committees: House - Ways and Means; Energy and Commerce

H.R.9359 — To amend title XIX of the Social Security Act to allow States more flexibility with respect to using contractors to make eligibility determinations on behalf of the State Medicaid plan; Sponsor: Carter, Earl L. "Buddy" [Rep.-R-GA-1]; Committees: House - Energy and Commerce

S.5149 — A bill to amend title XVIII of the Social Security Act to exclude independent agents and brokers from requirement to record calls with beneficiaries under the Medicare Advantage and Prescription Drug Benefit programs; Sponsor: Rounds, Mike [Sen.-R-SD]; Committees: Senate - Finance

S.5150 — A bill to amend the Public Health Service Act to provide additional transparency and consumer protections relating to medical debt collection practices; Sponsor: Murphy, Christopher [Sen.-D-CT]; Committees: Senate - Health, Education, Labor, and Pensions

- H.Res.1500 — Expressing support for the goals of November National Lung Cancer Awareness Month and for the early detection and treatment of lung cancer; Sponsor: Boyle, Brendan F. [Rep.-D-PA-2]; Committees: House - Energy and Commerce
- H.R.9366 — To amend titles III and XXI of the Public Health Service Act to hold vaccine manufacturers liable for injuries caused by vaccines subject to a public mandate, and for other purposes; Sponsor: Gohmert, Louie [Rep.-R-TX-1]; Committees: House - Energy and Commerce
- H.R.9368 — To amend title XVIII of the Social Security Act to limit certain late enrollment penalties under the Medicare program; Sponsor: Gohmert, Louie [Rep.-R-TX-1]; Committees: House - Energy and Commerce; Ways and Means
- S.Res.856 — A resolution commemorating and supporting the goals of World AIDS Day; Sponsor: Booker, Cory A. [Sen.-D-NJ]; Committees: Senate - Foreign Relations
- S.5157 — A bill to amend title XVIII of the Social Security Act to provide for patient protection by limiting the number of mandatory overtime hours a nurse may be required to work in certain providers of services to which payments are made under the Medicare Program; Sponsor: Merkley, Jeff [Sen.-D-OR]; Committees: Senate – Finance
- S.5160 — A bill to designate a laboratory as the National Biodefense Analysis and Countermeasures Center, and for other purposes; Sponsor: Cardin, Benjamin L. [Sen.-D-MD]; Committees: Senate - Homeland Security and Governmental Affairs
- S.5162 — A bill to provide for a study by the National Academies of Sciences, Engineering, and Medicine on the potential benefits on population health outcomes of incorporating into the Federal legislative process tools that measure the impacts of proposed legislation (including in areas outside of health care) on health and health disparities, and for other purposes; Sponsor: Cardin, Benjamin L. [Sen.-D-MD]; Committees: Senate - Health, Education, Labor, and Pensions
- S.5166 — A bill to establish a Commission on the Federal Regulation of Cannabis to study a prompt and plausible pathway to the Federal regulation of cannabis, and for other purposes; Sponsor: Hickenlooper, John W. [Sen.-D-CO]; Committees: Senate – Judiciary
- S.5167 — A bill to extend the temporary order for fentanyl-related substances; Sponsor: Booker, Cory A. [Sen.-D-NJ]; Committees: Senate – Judiciary
- S.5171 — A bill to amend the Public Health Service Act to prohibit the Secretary of Health and Human Services from placing any vaccine for COVID-19 on the child and adolescent immunization schedule unless the Secretary has posted on the public website of the Centers for Disease Control and Prevention all clinical data in the possession of the Department of Health and Human Services relating to the safety and efficacy of such vaccine, and for other purposes; Sponsor: Lee, Mike [Sen.-R-UT]; Committees: Senate - Health, Education, Labor, and Pensions
- S.5173 — A bill to amend title 31 and title 10, United States Code, to address claims of the United States Government relating to certain treatment received by civilians at military medical treatment facilities, and for other purposes; Sponsor: Warren, Elizabeth [Sen.-D-MA]; Committees: Senate - Armed Services
- S.5174 — A bill to establish a grant program to fund women’s health patient navigators for patients seeking abortion care; Sponsor: Cortez Masto, Catherine [Sen.-D-NV]; Committees: Senate - Health, Education, Labor, and Pensions
- H.Res.1504 — Supporting the goals of World AIDS Day; Sponsor: Lee, Barbara [Rep.-D-CA-13]; Committees: House - Energy and Commerce; Foreign Affairs
- H.Res.1506 — Expressing support for continued investment to complete the development of an HIV vaccine; Sponsor:

Williams, Nikema [Rep.-D-GA-5]; Committees: House - Energy and Commerce

H.R.9377 — To establish the National Patient Safety Board; Sponsor: Barragan, Nanette Diaz [Rep.-D-CA-44]; Committees: House - Energy and Commerce; Veterans' Affairs; Education and Labor

H.R.9378 — To amend title XI of the Social Security Act to clarify manufacturer transparency reporting requirements for certain transfers used for educational purposes; Sponsor: Burgess, Michael C. [Rep.-R-TX-26]; Committees: House - Energy and Commerce; Ways and Means

H.R.9380 — To amend title 31 and title 10, United States Code, to address claims of the United States Government relating to certain treatment received by civilians at military medical treatment facilities, and for other purposes; Sponsor: Castro, Joaquin [Rep.-D-TX-20]; Committees: House - Armed Services

H.R.9386 — To protect clean air and public health by expanding fenceline and ambient air monitoring and access to air quality information for communities affected by air pollution, to require hazardous air pollutant monitoring at the fenceline of facilities whose emissions are linked to local health threats, to ensure the Environmental Protection Agency promulgates rules that require hazardous air pollutant data measurement and electronic submission at fencelines and stacks of industrial source categories, to expand and strengthen the national ambient air quality monitoring network, to deploy air sensors in communities affected by air pollution, and for other purposes; Sponsor: Harder, Josh [Rep.-D-CA-10]; Committees: House - Energy and Commerce

H.R.9392 — To amend title XVIII of the Social Security Act to extend the Medicare-dependent hospital program and to update the calculation of the hospital specific rate for such hospitals; Sponsor: Meuser, Daniel [Rep.-R-PA-9]; Committees: House - Ways and Means

H.R.9400 — To provide for a study by the National Academies of Sciences, Engineering, and Medicine on the potential benefits on population health outcomes of incorporating into the Federal legislative process tools that measure the impacts of proposed legislation (including in areas outside of health care) on health and health disparities, and for other purposes; Sponsor: Trone, David J. [Rep.-D-MD-6]; Committees: House - Energy and Commerce

H.R.9401 — To designate a laboratory as the National Biodefense Analysis and Countermeasures Center, and for other purposes; Sponsor: Trone, David J. [Rep.-D-MD-6]; Committees: House - Homeland Security

H.R.9402 — To require the coverage of testing for certain sexually transmitted infections without the imposition of cost sharing, and for other purposes; Sponsor: Williams, Nikema [Rep.-D-GA-5]; Committees: House - Energy and Commerce; Ways and Means; Armed Services; Veterans' Affairs; Natural Resources