



## Health Policy Briefing

December 12, 2022

### Federal Funding Deadline Fast Approaches as Congress Negotiates Year-End Package

Congressional leadership negotiations over how to fund the federal government beyond the expiration of the current continuing resolution (CR) on Friday, December 16, are ongoing. While Democrats had aimed to release their proposed government funding package on Monday, December 12, Senate Appropriations Committee Ranking Member Richard Shelby (R-Ala.) recently stated that the two parties remain roughly \$26 billion apart on how much total funding should be directed to federal agencies. Many lawmakers expect to pass a one-week stopgap spending bill to avoid a government shutdown as negotiations on a topline spending figure continue, setting up another government funding deadline before Christmas. House Minority Leader Kevin McCarthy (R-Calif.) has called for passage of a CR extending into 2023 – which would give House Republicans more leverage as the incoming majority. Still, Senate Republicans do not appear to be on board with this plan. Democrats have threatened to bring a full-year CR for a vote if the current stalemate cannot be overcome.

Lawmakers continue to pitch various proposals for inclusion in the year-end package as they await topline spending figures. Two new letters to congressional leadership regarding the looming Medicare physician reimbursement cuts are circulating around the House of Representatives. The first, from Reps. Susan Wild (D-Pa.) and Mariannette Miller-Meeks (R-Iowa), requests that the cuts – a 4% PAYGO cut and a 4.47% cut to the Medicare conversion factor - be stopped entirely as they are in addition to the 2% Medicare sequestration cut, which resumed on July 1. Regarding spending offsets, the Wild-Miller-Meeks letter explicitly states opposition “to paying for preventing these cuts with additional provider cuts.” Another letter from the GOP Doctors Caucus requests support for policies to address impending Medicare payment cuts in legislation moving before the end of the year.

While in the Senate, Sen. John Kennedy (R-La.) introduced the ***Protecting Medicare Patients and Physicians Act*** (S. 5194) last week. The bill would hold providers harmless against the cut to the Medicare conversion factor and suspend the 4% PAYGO cut for one year. Unspent COVID-19 provider relief funds would be transferred to the Medicare Part B Trust

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Fund to offset the cost of the proposal.

Other measures currently under consideration for inclusion in a year-end package include legislation to overhaul the nation's addiction and mental health care system. The **Restoring Hope for Mental Health and Well-Being Act** (H.R. 7666) was passed by the House with overwhelming support earlier this year but never taken up by the Senate. The legislation would reauthorize and expand several federal mental health programs and grants through 2027, increase access to addiction treatment, and strengthen enforcement of mental health parity requirements. Bipartisan leadership of the Senate Finance Committee have also released multiple discussion drafts to tackle various aspects of the mental health system, and Sen. Bill Cassidy (R-La.) has expressed hope that his **Mental Health Reauthorization Act** (S. 4170) could be added to an omnibus package.

A group of congressional Democrats sent a letter to congressional leadership last week asking that they prevent a lapse in the federal Medicaid assistance percentage (FMAP) for Puerto Rico before the end of the year. Absent congressional action, the territory's FMAP would revert to the statutory level of 55% from the temporarily increased 76% instituted by the **Consolidated Appropriations Act**. The New York congressional delegation has also begun a push for the inclusion of \$3.6 billion in supplemental funding in the year-end package to strengthen the World Trade Center Health Program, which supports health-care costs for victims of 9/11. Leaders from the House Energy and Commerce Committee and Senate Health, Education, Labor, and Pensions Committee are negotiating the **VALID Act**, which would provide the Food and Drug Administration (FDA) with new authority to regulate laboratory developed tests. Finally, Rep. Fred Upton (R-Mich.) stated recently that he is still working with Rep. Diana DeGette (D-Colo.) to secure inclusion of the **Cures 2.0 Act** (H.R. 6000) provisions in the year-end bill.

## Warnock Victory Secures 51-Seat Majority for Senate Democrats

Sen. Raphael Warnock (D-Ga.) defeated Republican challenger Herschel Walker in a runoff election last week. His victory secures for Democrats a 51-49 Senate majority and marks the first time in more than 100 years that voters have reelected every Senate incumbent seeking reelection. The Senate freshman class for the 118th congress will have just seven members: John Fetterman (D-Pa.), Katie Britt (R-Ala.), Ted Budd (R-N.C.), Markwayne Mullin (R-Okla.), Eric Schmitt (R-Mo.), JD Vance (R-Ohio), and Peter Welch (D-Vt.).

Sen. Warnock's reelection means Democrats will strengthen their numbers in Senate committees and have expanded subpoena power. While Sen. Kyrsten Sinema (AZ) formally declared herself an Independent last week, her decision will not impact Democrats' expanded control of the chamber, given her stated intent to not caucus with her Republican colleagues. Senate Majority Leader Schumer is allowing Sinema to keep her committee assignments. She joins Sens. Bernie Sanders (Vt.) and Angus King (Maine) as Senate independents. Sinema was first elected to the Senate in 2018 and faced censure by her state's Democratic party over her decision to oppose changes to the filibuster for the passage of voting rights legislation. Her switch to Independent could have national implications for Democrats should she seek a second term in 2024 and face both Republican and Democratic challengers. In 2024, Democrats will be defending 23 seats compared to just 11 seats for Republicans.

Senate Democrats reelected Chuck Schumer (D-N.Y.) to serve as majority leader for another two years last Thursday. The full Senate Democratic leadership team for the 118th congress will include:

- Democratic Whip: Dick Durbin (Ill.)
- Chair of the Democratic Policy and Communications Committee: Debbie Stabenow (Mich.)
- Chair of Steering Committee: Amy Klobuchar (Minn.)
- Vice Chair of the Conference: Elizabeth Warren (Mass.), Mark Warner (Va.)
- Chair of Outreach: Bernie Sanders (I-Vt.)
- Vice Chair of the Democratic Policy and Communications Committee: Joe Manchin (W.Va.)
- Senate Democratic Conference Secretary: Tammy Baldwin (Wis.)
- Vice Chair of the Democratic Policy and Communications Committee: Cory Booker (N.J.)
- Vice Chair of Outreach: Catherine Cortez Masto (Nev.)
- Deputy Democratic Conference Secretary: Brian Schatz (Hawaii)

## House Passes FY2023 NDAA

The House of Representatives approved the fiscal year (FY) 2023 National Defense Authorization Act (NDAA) last week. The compromise package would increase national security spending and repeal the military's COVID-19 vaccine mandate. The latest national defense authorization is a \$76 billion increase over FY 2022's \$781.8 billion in spending and provides the Pentagon with 30 days to undo its COVID-19 vaccine mandate. The bill authorizes \$5 billion for global pandemic preparedness over the next five years and calls for a strategy to be developed by the White House to advance the Centers for Disease Control and Prevention's Global Health Security Agenda. It also calls on the President to designate a coordinator of global health security and an ambassador-at-large to report to the secretary of State. The NDAA now heads to the Senate for a vote. While the White House, along with Pentagon officials, have expressed support for maintaining the vaccine mandate, the administration has not said whether the President would veto the bill over its elimination.

## House Passes Bill to Help Address Maternal Mortality

The House of Representatives passed the *Data Mapping to Save Moms' Lives Act* (S. 198/H.R. 1218) last week. The bill requires the Federal Communications Commission to create maps showing where poor maternal health outcomes and gaps in broadband service coincide. The legislation, which passed by a vote of 380-46, will now be sent back to the Senate, which passed a slightly different version of the bill in March under unanimous consent.

## Warren, Jayapal Press USPTO on Drug Prices

Sen. Elizabeth Warren (D-Mass.) and Rep. Pramila Jayapal (D-Wash.) have sent a [letter](#) to the U.S. Patent and Trademark Office (USPTO) inquiring about efforts by the agency to combat high prices and anticompetitive business practices in the pharmaceutical industry. The letter questions whether USPTO is "fully cognizant of the ways in which evergreening, patent thickets, and product hopping undermine the legitimacy of our patent system or whether it views such practices as legitimate." They ask the agency to respond with more information about its collaboration with the FDA, the patent appeals process, and the review of patent continuation applications by December 19.

## Democrats Warn Against Fraud, Abuse in ACO REACH

A group of progressive Democrats have sent a [letter](#) to the Centers for Medicare and Medicaid Services (CMS) warning that the agency's Accountable Care Organization (ACO) Realizing Equity, Access, and Community Health (REACH) model provides an opportunity for insurers and other health care companies with a history of defrauding the government to take further advantage of the Medicare program. The letter follows a preliminary review conducted by the Physicians for a National Health Program, which found that nine companies participating in the model face allegations of fraud and abuse in various other insurance programs but were still accepted into the global and professional direct contracting program in 2021. The lawmakers ask that CMS closely examine the participants in the ACO REACH program and take action to prevent those with histories of fraud and abuse from participating in the program in 2023.

## Future of Select COVID Panel Unclear as Final Report Released

The House Oversight and Reform Select Subcommittee on the Coronavirus Crisis released its final [report](#) last week. They announced what could be the panel's final hearing in anticipation of Republicans retaking the majority in the House of Representatives for the 118th congress. The report includes findings related to the Trump administration's failure to recognize and prepare for the threat posed by the coronavirus in early 2020 resulting from inaccurate testing and insufficient personal protective equipment. The panel will convene a hearing titled "Preparing for and Preventing the Next Public Health Emergency: Lessons Learned from the Coronavirus" on Wednesday at 2:00 p.m. Republicans are still deciding whether to renew the select subcommittee during the 118th congress. Rep. Jim Jordan (R-Ohio) has expressed an interest in shifting the panel's attention to the origins of COVID-19 and gain-of-function research funding decisions made by the National Institutes of Health. Ranking Member Steve Scalise (R-La.) has stated that this type of work could be completed by the broader Oversight Committee, but that no final decisions about the future of the select subcommittee have been made.

## Walensky Voices Support for Public Health Data Bill

Director of the Centers for Disease Control and Prevention (CDC) Rochelle Walensky has lent her support for legislation to modernize the nation's health data infrastructure. The *Improving DATA in Public Health Act* (S. 3913/H.R. 8481), introduced by Sen. Tim Kaine (D-Va.) and Rep. Lauren Underwood (D-Ill.), would establish uniform data standards for federal and local governments to use in the exchange of health data and provide funding for the development of data sharing best practices. Walensky stressed her agency's current lack of authority to require data reporting during the Bloomberg American Health Summit last week and expressed frustration over how the speed with which states and localities shared real-time data during the COVID-19 and mpox outbreaks hampered the CDC's ability to respond to the public health emergencies and make appropriate public health recommendations.

## Longtime NIAID No. 2 to Serve as Acting Director

Transplant surgeon Hugh Auchincloss will serve as acting director of the National Institute of Allergy and Infectious Diseases (NIAID) when Anthony Fauci steps down from public service at the end of the month. Auchincloss has worked as the institute's principal deputy director since 2006, overseeing NIAID's strategic plan and leading an internal group to develop its initiatives. His current work centers on making NIAID's clinical research infrastructure more flexible and accessible.

## New Tool Launched to Determine App Compliance with Rules and Regulations

The U.S. Department of Health and Human Services' Office for Civil Rights and Office of the National Coordinator for Health Information Technology, in conjunction with the Federal Trade Commission (FTC) and the FDA, have launched an updated interactive tool to help app developers and their software remain in compliance with federal regulations around data privacy, cybersecurity, and data sharing. "The burgeoning market for health apps holds promise for consumers, but only if – and this is a big if – app developers understand their legal obligations and honor those responsibilities," Lesley Fair, senior attorney with the FTC, said in a [blog post](#) last week. The new Mobile Health App Interactive Tool aims to help industry members determine what federal laws and regulations might apply to their apps.

## Upcoming Congressional Hearings and Markups

Senate Agriculture, Nutrition, and Forestry Subcommittee on Food and Nutrition, Specialty Crops, Organics, and Research hearing “Food as Medicine: Current Efforts and Potential Opportunities;” 10:00 a.m.; December 13

House Veterans’ Affairs Committee hearing “Review of the Role of VA’s Fourth Mission and Pandemic Response;” 2:00 p.m., December 13

House Veterans’ Affairs Subcommittee on Health hearing “Reviewing the Program of Comprehensive Assistance for Family Caregivers;” 10:00 a.m., December 14

House Veterans’ Affairs Subcommittees on Oversight and Investigations and Technology Modernization joint hearing “Protecting the Privacy of Veterans’ Data;” 1:00 p.m., December 14

House Oversight and Reform Select Subcommittee on the Coronavirus Crisis hearing “Preparing for and Preventing the Next Public Health Emergency: Lessons Learned from the Coronavirus Crisis;” 2:00 p.m., December 14

## Recently Introduced Health Legislation

H.R.9404 — 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: Biggs, Andy [Rep.-R-AZ-5]; Committees: House - Energy and Commerce

S.5181 — A bill to direct the Secretary of Veterans Affairs to make certain improvements relating to mental health and suicide prevention outreach to minority veterans and American Indian and Alaska Native veterans, and for other purposes; Sponsor: Tester, Jon [Sen.-D-MT]; Committees: Senate - Veterans’ Affairs

H.R.9424 — To amend the Public Health Service Act to authorize grants for graduate medical education partnerships in States with a low ratio of medical residents relative to the general population; Sponsor: Castor, Kathy [Rep.-D-FL-14]; Committees: House - Energy and Commerce

H.R.9427 — To amend title XVIII of the Social Security Act to permanently extend certain in-home cardiopulmonary rehabilitation flexibilities established in response to COVID-19, and for other purposes; Sponsor: Joyce, John [Rep.-R-PA-13]; Committees: House - Energy and Commerce; Ways and Means

S.5194 — A bill to amend title XVIII of the Social Security Act to extend certain increases in payments for physicians services under the Medicare program through 2023; Sponsor: Kennedy, John [Sen.-R-LA]; Committees: Senate - Finance

S.Res.863 — A resolution designating November 2022 as “National Lung Cancer Awareness Month” and expressing support for early detection and treatment of lung cancer; Sponsor: Smith, Tina [Sen.-D-MN]; Submitted in the Senate, considered, and agreed to without amendment and with a preamble by Unanimous Consent.

S.Res.868 — A resolution expressing support for the designation of September 2022 as “Sickle Cell Disease Awareness Month” in order to educate communities across the United States about sickle cell disease and the need for research, early detection methods, effective treatments, and preventative care programs with respect to complications from sickle cell disease and conditions related to sickle cell disease; Sponsor: Scott, Tim [Sen.-R-SC]; Submitted in the Senate, considered, and agreed to without amendment and with a preamble by Unanimous Consent.

S.5212 — A bill to amend titles XVIII and XIX of the Social Security Act and the Bipartisan Budget Act of 2018 to increase access to services provided by advanced practice registered nurses under the Medicare and Medicaid programs, and for other purposes; Sponsor: Merkley, Jeff [Sen.-D-OR]; Committees: Senate – Finance

H.Res.1514 — Raising awareness for the cancer chordoma; Sponsor: Johnson, Henry C. “Hank,” Jr. [Rep.-D-GA-4]; Committees: House - Energy and Commerce

H.R.9475 — To direct the Secretary of Health and Human Services, in consultation of the Secretary of Education, to conduct a study on the impact of COVID-19 on the mental health of education professionals, to direct the Secretary of Education to award grants to implement or improve health and wellness programs for education professionals, and for other purposes; Sponsor: Kirkpatrick, Ann [Rep.-D-AZ-2]; Committees: House - Education and Labor; Energy and Commerce

H.R.9476 — To protect against seasonal and pandemic influenza, and for other purposes; Sponsor: Larsen, Rick [Rep.-D-WA-2]; Committees: House - Energy and Commerce; Budget; Financial Services