



Health Policy Briefing

December 13, 2021

Congress Passes Bill to Address Debt Limit, Medicare Cuts

Congress successfully passed the *Protecting Medicare & American Farmers from Sequester Cuts Act* (S. 610) last week. The bill, which was signed into law by President Joe Biden on Friday, partially staves off a 3.75% decrease in physician payments by providing a 3.0% increase for calendar year 2022 to the Medicare conversion factor for providers and would temporarily block sequestration cuts to Medicare and other mandatory spending programs. It suspends for three months, through March 31, 2022, the 2% automatic sequestration cut to Medicare payments, followed by a reduction to 1% for three months, through June 30, 2022. The legislation would also excuse for 2022 the 4% statutory pay-as-you-go (PAYGO) reduction to Medicare physician reimbursements. The bill preventing billions of dollars in Medicare pay cuts also includes a provision providing for a simple majority, expedited process through which Democrats can raise the debt ceiling by a specific dollar amount without any Republican support. Congress previously faced a partisan impasse on the debt ceiling, with Republicans vowing to not cooperate in raising the debt limit, and Democrats wishing to avoid the use of the cumbersome budget reconciliation process. Lawmakers reached a deal to raise the debt limit after a series of negotiations between Senate Majority Leader Chuck Schumer (D-N.Y.) and Minority Leader Mitch McConnell (R-Ky.). The one-time agreement creates a pathway for Democrats to raise the debt ceiling with a simple majority threshold that avoids a Senate filibuster. Democrats are discussing a plan to cover borrowing through 2022, which would require a \$2 trillion increase to the debt limit. Timing for a Senate vote to raise the federal debt limit has not been set; the House of Representatives is on notice to vote on Tuesday should the Senate act by then, according to Majority Leader Steny Hoyer (D-Md.). December 15 is viewed as the effective deadline to raise or suspend the debt limit.

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Senate May Turn to Consideration of BBB This Week

Senate committees of jurisdiction have begun releasing their draft portions of the **Build Back Better** reconciliation package, including the Senate [Health, Education, Labor, and Pensions](#) Committee and the Senate [Finance](#) Committee. The updated text remains subject to a review by the Senate parliamentarian. Senate Majority Leader Chuck Schumer (D-N.Y.) stated in a letter to colleagues last week that he still aims to pass the **Build Back Better** legislation before Christmas. It remains unclear, however, whether this is a realistic timetable, given that Sens. Kyrsten Sinema (D-Ariz.) and Joe Manchin (D-W.Va.) continue to express reservations about the bill after months of negotiation. Beyond the \$2 trillion tax and spending reconciliation package and raising the debt limit, lawmakers also hope to complete work on the annual **National Defense Authorization Act** (NDAA) between now and the Christmas holiday.

Lawmakers Ask GAO for Report on DTC Advertising

Reps. Angie Craig (D-Minn.) and John Joyce (R-Pa.) have sent a [letter](#) asking the Government Accountability Office (GAO) to review regulations on direct-to-consumer (DTC) advertising practices for prescription medical products. “The rise of internet marketing and the push toward a DTC model of health care delivery represents a major change within our health care system. We are concerned that with the rapid growth of DTC advertising, appropriate regulatory oversight may be falling behind,” the lawmakers state. The letter was signed by 17 other members of Congress.

Senate Republicans Attempt to Overturn Vaccine Mandate

The Senate passed a resolution of disapproval of the administration’s vaccine mandate for large, private sector employers by a vote of 52-48 last week. Sens. Joe Manchin (D-W.Va.) and Jon Tester (D-Mont.) were the only Democrats to join all 50 Republicans in support of the measure, which would block the vaccine order promulgated by the Occupational Safety and Health Administration (OSHA) through the use of the Congressional Review Act (CRA). The Democratic-controlled House of Representatives is not expected to take up the resolution; however, House Republicans plan to circulate a discharge petition to try to force a vote. Should the resolution be advanced to the president for signature, President Biden is expected to veto it. A federal court has already acted to halt the rule, which covers workers at companies with 100 or more employees. In related news, General Electric Co., Union Pacific Corp., and BNSF Railway announced last week that they have suspended their employee vaccine mandates following the recent court ruling halting the Biden administration’s order requiring federal contractors to get vaccinated. The courts have also put a halt to the government contractor vaccine mandate as well as the health care mandate proposed by the Centers for Medicare and Medicaid Services.

House Lawmakers Release Competing Reports on Drug Pricing

Two separate reports on the issue of drug pricing were released by House Oversight and Investigations Committee Democrats and Republicans last week. The Democratic [report](#), stemming from a three-year investigation by the Committee, asserts that Medicare could have saved more than \$25 billion if allowed to negotiate prices for the seven most costly medications in Part D between 2014 and 2018. It alleges that pharmaceutical manufacturers specifically target the U.S. for price increases and use patient assistance programs to drive up profits. According to the report, the 14 largest pharmaceutical companies in the U.S. spent \$577 billion on stock buybacks and dividends from 2016 to 2020, \$56 billion more than they spent on research and development over that time. It also details executive compensation at the top brand-name pharmaceutical companies. The Republicans’ [publication](#) explores the role of pharmacy benefit managers (PBMs) and details findings from a recent forum hosted by House Oversight and Investigations Ranking Member James Comer (R-Ky.) examining how PBM tactics contribute to the rising cost of prescription drugs for Americans. The report concludes that PBMs use their market leverage to increase their profits, not reduce costs for consumers, and argues that drug manufacturers may raise their prices due to PBMs. The GOP report concludes that greater transparency is necessary to determine the extent of the damage PBMs’ tactics are having on patients and the marketplace.

Lawmakers Request Info on E-Cig Approvals

Rep. Raja Krishnamoorthi (D-Ill.) and Michael Cloud (R-Texas) have sent a [letter](#) to the Food and Drug Administration (FDA) requesting information about the review of premarket tobacco product applications from e-cigarette manufacturers. The lawmakers seek to ensure the agency is exercising its full authority to protect children from e-cigarette products. In related news, a proposal to tax e-cigarettes and other vaping products at the same rate as traditional nicotine has been dropped from the **Build Back Better** reconciliation package. The vape tax, as included in the House-passed bill, was projected to raise approximately \$8.6 billion in federal revenue over the next decade.

Guthrie Tests Positive for COVID-19

Rep. Brett Guthrie (R-Ky.) announced that he has tested positive for COVID-19. Guthrie is fully vaccinated and experiencing mild symptoms of illness. He is one of at least 19 members of Congress who have tested positive for COVID-19 in recent months despite being vaccinated.

MedPAC Considers Draft Payment Update Recommendations

The Medicare Payment Advisory Commission (MedPAC) met last week to review Medicare's fee-for-service payment policies and make its annual payment update recommendations. The panel's draft recommendations suggest that physicians and health professionals, ambulatory surgical centers (ASCs), and hospice providers do not receive an increase to their Medicare payments in 2023, while suggesting a pay bump of 2% for acute care hospitals and 1.2% for dialysis facilities. The commission will vote on its final recommendations during its January 2022 meeting.

Call to Action to Reduce Maternal Mortality and Morbidity

Vice President Kamala Harris launched a Call to Action to Reduce Maternal Mortality and Morbidity last week. As a part of this effort, the Centers for Medicare and Medicaid Services (CMS) will propose a "Birthing-Friendly" hospital designation to drive improvements in perinatal health outcomes and maternal health equity. The designation would initially identify hospitals that provide perinatal care, are participating in a maternity care quality improvement collaborative, and have implemented recommended patient safety practices. The agency is also encouraging states to take advantage of the **American Rescue Plan's** (ARP) option to provide 12 months postpartum coverage to pregnant women who are enrolled in Medicaid or the Children's Health Insurance Program (CHIP).

Tabak to Serve as Acting NIH Director

The U.S. Department of Health and Human Services (HHS) announced last week that National Institutes of Health (NIH) Principal Deputy Director Lawrence Tabak, D.D.S. will serve as acting NIH director when Francis Collins steps down on December 19. Tabak has served as Collin's deputy at the agency for over a decade. He previously worked as the director of the National Institute of Dental and Craniofacial Research. Tabak is permitted to remain in the acting director position for 210 days while the administration searches for Collins' permanent successor. Collins has expressed hope that the White House will choose a woman for the position. Bernadine Healy is the only woman to have previously served as NIH Director.

Upcoming Congressional Hearings and Markups

Senate Health, Education, Labor, and Pensions (HELP) Committee hearing on the nomination of Dr. Robert Califf to be Commissioner of Food and Drugs, Food and Drug Administration, Department of Health and Human Services; 10:00 a.m.; December 14

House Oversight and Reform Select Committee on the Coronavirus Crisis hearing “A Global Crisis Needs a Global Solution: The Urgent Need to Accelerate Vaccinations Around the World;” 2:00 p.m.; December 14

Recently Introduced Health Legislation

S.Res.469 — A resolution designating December 3, 2021, as “National Phenylketonuria Awareness Day”; Sponsor: Sen. Lee, Mike [R-UT]; Submitted in the Senate, considered, and agreed to without amendment and with a preamble by Unanimous Consent.

S.3314 — 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 2022; Sponsor: Sen. Boozman, John [R-AR]; Committees: Senate – Finance

S.3327 — A bill to amend the Controlled Substances Act to require the Attorney General to make procurement quotas for opioid analgesics publicly available, and for other purposes; Sponsor: Sen. Markey, Edward J. [D-MA]; Committees: Senate – Judiciary

S.3332 — A bill to amend title XI of the Social Security Act to allow States to promote Medicaid objectives through work or community engagement requirements; Sponsor: Sen. Braun, Mike [R-IN]; Committees: Senate – Finance

H.R.6143 — To provide for certain Medicare program extensions, and for other purposes; Sponsor: Rep. Schrier, Kim [D-WA-8]; Committees: House - Ways and Means; Energy and Commerce; Budget

H.R.6144 — To delay and offset the sequester to occur in January 2022 under the Statutory Pay-As-You-Go Act of 2010, and for other purposes; Sponsor: Rep. Smith, Jason [R-MO-8]; Committees: House - Ways and Means; Budget; Energy and Commerce; Judiciary; Agriculture; Oversight and Reform

H.R.6149 — To amend the Public Health Service Act to develop and test an expanded and advanced role for direct-care workers who provide long-term services and supports to older adults and people with disabilities in efforts to coordinate care and improve the efficiency of service delivery, and for other purposes; Sponsor: Rep. Cartwright, Matt [D-PA-8]; Committees: House - Energy and Commerce

H.R.6150 — To amend the Controlled Substances Act to require the Attorney General to make procurement quotas for opioid analgesics publicly available, and for other purposes; Sponsor: Rep. Cicilline, David N. [D-RI-1]; Committees: House - Energy and Commerce; Judiciary

H.R.6152 — To direct the Secretary of Commerce to conduct a study on the feasibility of manufacturing in the United States products for critical infrastructure sectors, and for other purposes; Sponsor: Rep. Davis, Rodney [R-IL-13]; Committees: House - Energy and Commerce

H.R.6157 — To require the Secretary of State to implement a strategy to reduce reliance on concentrated supply chains for critical goods, and for other purposes; Sponsor: Rep. Kinzinger, Adam [R-IL-16]; Committees: House - Foreign Affairs; Energy and Commerce

H.R.6160 — To amend titles XVIII and XIX of the Social Security Act and title XXVII of the Public Health Service Act to provide for coverage of certain drugs used in the treatment or management of a rare disease or condition, and for other purposes; Sponsor: Rep. Matsui, Doris O. [D-CA-6]; Committees: House - Energy and Commerce; Ways and Means

H.R.6170 — To prohibit any entity from imposing a mandate that individuals be vaccinated against COVID-19, and for other purposes; Sponsor: Rep. Van Drew, Jefferson [R-NJ-2]; Committees: House - Energy and Commerce

S.J.Res.32 — A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Centers for Medicare & Medicaid Services relating to “Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination”; Sponsor: Sen. Marshall, Roger [R-KS]; Committees: Senate - Finance

S.3357 — A bill to substantially restrict the use of animal testing for cosmetics; Sponsor: Sen. Booker, Cory A. [D-NJ]; Committees: Senate - Health, Education, Labor, and Pensions

S.3362 — A bill to require the Healthy People Maternal, Infant, and Child Health Workgroup and the Maternal Health Working Group to establish a formal coordinated approach for monitoring maternal health efforts across the Department of Health and Human Services; Sponsor: Sen. Warnock, Raphael G. [D-GA]; Committees: Senate - Health, Education, Labor, and Pensions

S.3364 — A bill to provide for a study on the transmission of respiratory syncytial virus transmission in schools and daycare facilities; Sponsor: Sen. Kennedy, John [R-LA]; Committees: Senate - Health, Education, Labor, and Pensions

H.J.Res.67 — Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Centers for Medicare & Medicaid Services relating to “Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination”; Sponsor: Rep. Duncan, Jeff [R-SC-3]; Committees: House - Energy and Commerce; Ways and Means

H.R.6202 — To amend titles XI and XVIII of the Social Security Act to establish requirements for the provision of certain high-cost durable medical equipment and laboratory testing; to extend and expand access to telehealth services; and for other purposes; Sponsor: Rep. Doggett, Lloyd [D-TX-35]; Committees: House - Energy and Commerce; Ways and Means

H.R.6207 — To substantially restrict the use of animal testing for cosmetics; Sponsor: Rep. Beyer, Donald S., Jr. [D-VA-8]; Committees: House - Energy and Commerce

H.R.6208 — To amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to provide administrative support to providers of dental care who provide such care to veterans that is not furnished under such title, to direct the Secretary of Veterans Affairs to establish a pilot program for the provision of dental care to certain veterans, and for other purposes; Sponsor: Rep. Bilirakis, Gus M. [R-FL-12]; Committees: House - Veterans' Affairs

H.R.6216 — To amend title XIX of the Social Security Act to establish a demonstration project to improve outpatient clinical care for individuals with sickle cell disease; Sponsor: Rep. Davis, Danny K. [D-IL-7]; Committees: House - Energy and Commerce

H.R.6228 — To limit cost sharing for prescription drugs, and for other purposes; Sponsor: Rep. Manning, Kathy E. [D-NC-6]; Committees: House - Energy and Commerce

H.R.6231 — To require the Secretary of Veterans Affairs to conduct a study on the feasibility and advisability of establishing a pilot program to support medical residency and fellowship programs that assist veterans, and for other purposes; Sponsor: Rep. Neguse, Joe [D-CO-2]; Committees: House - Veterans' Affairs