

Federal Issues

Regulatory

Texas Judge Vacates Additional Parts of the No Surprises Act

Judge Jeremy Kernodle of the U.S. District Court for the Eastern District of Texas last week issued [the court's decision](#) in the Texas Medical Association case that challenged the No Surprises Act, a federal law that prevents providers from billing privately insured patients more than the typical in-network, out-of-pocket costs for most emergency services - excluding ground ambulance transportation – and for some out-of-network providers at in-network facilities.

In the ruling, Kernodle vacated new parts of the No Surprises Act, after finding that the administrative fee increase from \$50 to \$350, combined with the strict batching rules, violates the Administrative Procedures Act.

Why this matters: In response to the ruling, the Centers for Medicare & Medicaid Services has [temporarily suspended](#) the IDR process, including the ability to initiate new disputes.

We anticipate the departments will issue some guidance soon in the wake of this development.

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CMS Releases 2024 Part D National Average Monthly Bid Amount

The Centers for Medicare & Medicaid Services (CMS) recently [announced](#) the average monthly Part D premium for 2024 is projected to be \$55.50, a 1.8% decrease from the 2023 average of \$56.49, while the Part D base beneficiary premium for 2024 will be \$34.70, an increase of 6% over 2023. CMS also noted that the average basic Part D premium would have increased by 21.5% without premium stabilization provisions from the Inflation Reduction Act (IRA).

Along with the announcement, CMS issued a [memorandum](#) with information on several additional Part D amounts for 2024, including the Medicare Part D national average monthly bid amount (\$64.28). CMS also released information on Medicare Advantage regional PPO benchmarks and regional Employer Group Waiver Plan payment rates.

CMS Releases 2024 Inpatient Hospital Final Rule

On August 1, the Centers for Medicare & Medicaid Services (CMS) issued a [final rule](#) updating the Medicare quality programs, rates, and payment policies for fiscal year (FY) 2024 under the Inpatient Prospective Payment System (IPPS). Upon release of the final rule, CMS also issued a [press release](#) and [fact sheet](#).

Highlights in the final rule include:

- CMS finalized a change that will recognize increased resources costs incurred by hospitals for treatment of individuals experiencing homelessness. Specifically, CMS will adjust payments when hospitals report certain ICD-10 codes describing homelessness on claims.
- The agency is finalizing a proposal to treat rural reclassified hospitals the same as geographically rural hospitals for purposes of calculating the wage index beginning with FY 2024. Under federal law, the area wage index applicable for any hospital located in an urban area may not be less than the area wage index applicable to hospitals located in rural areas in that state (the “rural floor”). Starting in FY 2024, CMS will include the data of all Section 401 reclassified hospitals in the calculation of the wage index for the rural area of the state and the calculation of the rural floor for urban hospitals in the state.
- CMS will permit rural emergency hospitals to serve as graduate medical education (GME) training sites for GME payment purposes to support training in rural areas.

- In addition to payment policies, the FY 2024 IPPS final rule makes certain modifications to hospital quality reporting programs.

The final rule is scheduled to be published in the Federal Register on August 28, 2023.

Administration Forms New HHS Office to Lead Long COVID Response

The Biden administration has formed a new office within the HHS called the Office of Long COVID Research and Practice that will lead the federal government's response to long COVID and other longer-term effects of the pandemic.

The NIH [announced](#) the same day that it will launch four clinical trials to assess the safety and efficacy of potential treatments for long COVID, including the antiviral drug Paxlovid, as part of the \$1.15 billion RECOVER program, a nationwide research initiative that aims to improve long COVID understanding, prevention and treatment.

CMS Posts Proposed Rate Changes for 2024

CMS posted the proposed rate changes for Plan Year 2024 on [Healthcare.gov](https://www.healthcare.gov) for both the individual and small group markets for consumers to review.

CDC Recommends New RSV Shot to Protect Infants & Young Children

The Center for Disease Control and Prevention's (CDC) Advisory Committee on Immunization Practices (ACIP) voted to [recommend nirsevimab to protect against severe respiratory syncytial virus \(RSV\) for infants and young children](#). ACIP voted unanimously to recommend:

- Infants aged under 8 months born during or entering their first RSV season should receive one dose of nirsevimab (50mg dose for infants under 5kg in weight and 100mg dose for infants over 5kg).
- Children aged 8 to 19 months who are at increased risk of severe RSV disease and entering their second RSV season should receive one dose of nirsevimab (200mg).

The recommendation statements indicate that babies born between October and March receive nirsevimab in the hospital following delivery; for those born between April and September, nirsevimab should be administered in the fall in a pediatrician's office. The Committee noted that, though complicated, the goal is to protect children during the ongoing (or upcoming) RSV season, and that providers can administer nirsevimab when a child comes in for a routine visit. Nirsevimab should be administered in the fall, as it grants protection for at least 150 days, covering the entire upcoming RSV season.

CMS Releases Data Briefs on Medicaid Demographics

Last week, the Centers for Medicare & Medicaid Services (CMS) released a series of data briefs using the first-ever national estimates of the demographic composition of Medicaid and the Children's Health Insurance Program (CHIP), including analyses stratified by race, ethnicity, primary language, geography, and eligibility on the basis of disability. In addition to representing a major step forward in data

transparency, these data briefs more accurately describe the demographic makeup of program enrollees and provide a richer picture of the individuals served by Medicaid and CHIP. The issue briefs show that in 2020, Medicaid provided coverage for nearly 55 million people from racial and ethnic minority backgrounds and over 10% of all Medicaid and CHIP enrollees had a primary language other than English. Medicaid and CHIP enrollees were also slightly more likely to reside in rural areas than the total U.S. population. [Read More](#)

On Monday, CMS released the latest enrollment figures for Medicaid and CHIP. As of April, there were over 87 million individuals enrolled in Medicaid and over 7 million enrolled in CHIP. Since February 2020, enrollment across the two programs increased by 32.8%. [Read More](#)

CDC: Uninsured Rate Falls to Record Low

The percentage of Americans who lack health insurance fell to its lowest level in early 2023 at 7.7%, according to data from the CDC's National Center for Health Statistics. However, the end of the COVID-19 public health emergency has spurred the removal of nearly 3.8 million people from state Medicaid programs.

State Issues

New York
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Regulatory Updates

- **Q&A on Implementation of New Laws** — The Department of Financial Services has posted the Q&A on new laws on its [website](#). DFS indicated that it had received follow-up questions on some of the Q&A related to opioid treatment programs, which staff said need to be discussed with other state agencies. As DFS did not want to hold the Q&A up any longer, those questions were removed and the Q&A will be updated once the Department has the additional information.
 - **Medicaid Telehealth Services Extended** — The Department of Health last week announced that it will continue to provide comprehensive Medicaid telehealth coverage through December 31, 2024. According to a survey conducted by the Medicaid program last year, more than 80% of New Yorkers used telehealth during the past two years and nearly half of telehealth users reported using therapy to treat mental health.
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State Issues

Pennsylvania
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Gov. Shapiro Signs Budget

A state budget impasse ended on Thursday after 33 days as Gov. Josh Shapiro signed a delayed \$45.5 billion budget bill for Fiscal Year 2023-24. But \$1.1 billion in new funding under that state budget is being sequestered as the Democratic governor, Republican-controlled Senate and Democratic-controlled House face a new round of negotiations to reach bipartisan agreement on the Fiscal Code and other code bills to decide how that money is to be spent.

Interested in reviewing a copy of a bill(s)? Access the following web sites:

Delaware State Legislation: <http://legis.delaware.gov/>.

New York Legislation: <https://nyassembly.gov/leg/>

Pennsylvania Legislation: www.legis.state.pa.us.

West Virginia Legislation: <http://www.legis.state.wv.us/>

For copies of congressional bills, access the Thomas website – <http://thomas.loc.gov/>.

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