



Federal Issues

Legislative

Congress Addresses Medicare Sequestration, Clears Hurdle to Raising Debt Limit

President Biden on Friday [signed into law](#) legislation passed by Congress earlier in the week that extends the COVID-related suspension of the Medicare sequester into next year. The move also sets up an expedited process for Democrats in the chamber to raise the nation's debt ceiling without GOP support, ending months of debate between Congressional leaders on how to address the issue. Meanwhile, negotiations continue on President Biden's comprehensive Build Back Better reconciliation package.

- **Medicare details:** the "[Protecting Medicare and American Farmers from Sequester Cuts Act](#)," extends the 2% Medicare sequester moratorium through the first three months of 2022 and then phases the cut back in at 1% for the next three months, with the full 2% cut slated to return in July 2022. The legislation also addresses separate reductions to reimbursements for providers and clinical laboratory services and clears the statutory pay-as-you go ("PAYGO") scorecard, which

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would have led to additional cuts in Medicare reimbursement if it had not been addressed.

With the government funding, debt ceiling and annual defense spending packages addressed, lawmakers in Congress are on the verge of wrapping up their year-end “must-do” list. Democratic leaders remain steadfast in their goal of passing the Build Back Better Act before lawmakers adjourn for the Christmas holiday, and have set a new tentative target date for Senate debate of Dec. 17. However, considerable procedural steps still need to be completed, and final agreement among Senate Democrats is not yet assured. Senators and key staff have been indicating that a postponement until next year is increasingly likely.



Federal Issues

Regulatory

CMS Delays Enforcing Rules on Insurer Data-Sharing

The Centers for Medicare & Medicaid Services (CMS) published a notification of enforcement discretion on the provisions of the Interoperability and Patient Access Final Rule related to the payer-to-payer data exchange in the [Federal Register](#). CMS notes it does not intend to take action to enforce these specific provisions until it is able to address certain implementation challenges through future rulemaking. The rule, finalized by the Trump Administration, required health insurance providers participating in federal programs to offer enrollees the ability to transfer their claims and clinical information from a former plan to a current plan.

CMS also published a [blog post](#) by Chiquita Brooks-LaSure, CMS Administrator, outlining the agency’s rationale for exercising enforcement discretion and noting the delay is a result of requests from AHIP and the health insurance industry.

Lawsuit Over The No Surprises Act Arbitration Process

On December 9, the American Medical Association (AMA), the American Hospital Association (AHA), Renown Health, UMass Memorial Health, and two North Carolina based physicians have sued the Administration over the implementation of the federal surprise billing law. The lawsuit questions a provision of a rule issued on Sept. 30, 2021, by the Department of Health and Human Services (HHS) that the plaintiffs believe ignores Congress’s intent regarding the No Surprises Act. The No Surprises Act, enacted

in December 2020 as part of the Continuing Appropriations Act, bans providers from balance billing patients for out-of-network emergency room care and care performed in-network by an out-of-network provider. Plaintiffs argue the new rule leans to favor commercial health insurance companies at the expense of providers by establishing an arbitration process in which arbitrators will generally resolve payment disputes by selecting the median contracted rate of local market health plans as the appropriate payment amount. Plaintiffs believe that Congressional intent was to have arbitrators consider a wide variety of co-equal factors before determining the proper amount. The rule and the provision being challenged are set to take effect Jan. 1, 2022 via an interim final rule that is open for public comment.

Matt Eyles, president and CEO of AHIP, issued this statement in September following the release of the second interim final rule related to the No Surprises Act:

- “Health insurance providers strongly support measures to protect patients from surprise bills, especially for needed care in which they had no choice or control.”
 - “We are particularly encouraged to see the rules conform to the intent of the No Surprises Act and direct that arbitration awards must begin with a presumption that the appropriate out-of-network reimbursement is the qualified payment amount. This is the right approach to encourage hospitals, health care providers, and health insurance providers to work together and negotiate in good faith. It will also ensure that arbitration does not result in unnecessary premium increases for businesses and hardworking American families.”
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HHS Report Shows Impact of Extending Medicaid Postpartum Coverage

The U.S. Department of Health and Human Services’ (HHS) Office of the Assistant Secretary for Planning and Evaluation (ASPE) released a new [report](#) showing the impact of states extending postpartum coverage to 12 months to pregnant individuals enrolled in Medicaid or the Children’s Health Insurance Program (CHIP).

The report finds that if all states were to extend pregnancy-related Medicaid eligibility from 60 days to 12 months 720,000 Medicaid beneficiaries would gain coverage for a full year postpartum. According to ASPE, gains in postpartum eligibility would be largest for individuals with incomes between 138-250% of the federal poverty level (FPL).

Alongside the report, the Centers for Medicare & Medicaid Services (CMS) issued [guidance](#) and resources to State Health Officials about the state option to expand Medicaid postpartum coverage to 12 months. As made temporarily available through the American Rescue Plan, states have the option of expanding Medicaid postpartum coverage beginning April 1, 2022.

In addition to encouraging states to take advantage of the option to extend postpartum coverage, CMS also [announced](#) that the Agency intends to propose the creation of a “Birthing-Friendly” hospital quality designation made available on CMS’ “Care Compare” website.

U.S. Surgeon General Advisory Calls Attention to Youth Mental Health Crisis

This week the U.S. Surgeon General released a [public statement](#) calling attention to the mental health challenges faced by America's youth. According to the advisory, in recent years, national studies have shown major increases in certain mental health symptoms, including depressive symptoms and suicidal ideation in youth.

The advisory offers several recommendations to support the mental health of children, adolescents, and young adults. Recommendations of interest are highlighted below:

- Health care organizations and professionals should routinely screen children for risk factors.
- Community organizations should implement evidence-based programs that support the mental health of children, youth, and their families.
- Employers should provide access to comprehensive, affordable, and age-appropriate mental health care for all employees and their families, such as through no or low out-of-pocket costs for mental health services.
- Government should ensure all children and youth have comprehensive and affordable coverage for mental health care.
- Government should also support integration of screening and treatment into primary care and expand the use of telehealth for mental health by addressing regulatory barriers, ensuring appropriate payment, and expanding broadband access.
- Government should expand and support the mental health workforce.

A full set of the recommendations and additional resources can be found in the [advisory](#).

COVID-19 Updates

- Two doses of Pfizer-BioNTech's COVID-19 vaccine may not offer enough protection against the Omicron variant but a booster shot significantly increased an individual's antibody defense, the two companies [announced in a statement](#). The companies said a third dose appears to provide a similar number of antibodies as a two-dose series against the original virus and other variants. People who have two shots of the vaccine may still be protected against severe cases, they added. The statement comes after the companies' review of preliminary laboratory results but this data has not been peer-reviewed.
- The Food and Drug Administration (FDA) authorized a booster dose of the Pfizer-BioNTech COVID-19 vaccine for 16- and 17-year-olds. Eligible teens will be able to get the shot once they are at least six months past their second dose. This announcement comes weeks after the Omicron variant was detected in the United States, and COVID-19 cases in the U.S. have been climbing.

State Issues

New York

Regulatory

Governor Issues Mask Mandate

As part of the effort to address a “winter surge” of COVID-19, Governor Hochul last week [announced](#) that all businesses must implement a mask requirement or require proof of fully vaccinated status. The measure is effective as of December 13 and will be in place through January 15, at which time the State will reassess – based on the existing conditions. The State Health Commissioner issued a [determination on indoor masking](#), solidifying the new requirements.

Industry Trends

Policy / Market Trends

CMS Releases Enrollment Snapshot for Week Five of Open Enrollment

The Centers for Medicare & Medicaid Services (CMS) [announced](#) over 4.6 million Americans have selected an insurance plan on Healthcare.gov since the latest open enrollment season began five weeks ago, with approximately 923,000 people selecting individual market plans this week likely due to subsidies from the American Rescue Plan.

Enrollment is up 20% in Texas and 9% in Florida compared to this time last year. According to a [Kaiser Family Foundation study](#), Texas and Florida have some of the highest uninsured rates in the country. Texas leads the nation with 17.5% of its population uninsured and Florida ranks fifth, with 12.3% of its population uninsured.

Consumers generally need to choose a plan by December 15, 2021 for their coverage to start January 1, 2022. To view this week’s report, please [click here](#).

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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