



Federal Issues

Legislative

Congress Tees Up Final Spending Push

Congress approaches its final legislative stretch this week, focused on passing the year-end government funding package before the current continuing resolution (CR) expires on Dec. 16. With negotiators yet to agree on overall funding levels for FY 2023, an additional CR seems likely to provide more time. Bipartisan talks are expected to pick up in earnest following this week's Georgia Senate runoff election.

Several health-related items remain in the mix for potential action this month:

- Traditional "extenders" of payment policies for providers in Medicare and Medicaid
- Extension of telehealth flexibilities
- Medicare physician payment relief
- Mental health initiatives
- Prior authorization in Medicare Advantage
- Maternal health initiatives

Other issues that had been discussed, including additional COVID-19 supplemental funding, dialysis "parity" legislation, and insulin co-pay caps in the

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commercial market appear less likely to see movement as time runs out on the 117th Congress.

Elsewhere on Capitol Hill:

- Senators Bill Cassidy (R-LA), Tom Carper (D-DE) and other bipartisan members of the Senate Finance Committee [released a request for information](#) (RFI) on ways to improve coverage for people dually eligible for Medicare and Medicaid. In the RFI, lawmakers highlight that reforms for dually eligible patients should be informed by core principles, including the diversity of their needs, the range of states' capabilities to support their care, and financial incentives to drive health system behaviors on outcomes and efficiency. The RFI asks for stakeholder feedback on questions on data collection and policy recommendations to improve care and care coordination for dually eligible individuals.
- Senate Finance Committee leaders [released](#) the committee's fifth [discussion draft](#) to address mental health policy challenges. The latest draft is focused on improving mental health parity in Medicare and Medicaid and helping to put access to mental health and substance use disorder (SUD) services on par with physical health care. A summary of all provisions released by the committee as a part of the bipartisan mental health effort is available [here](#). Some of these policies may be included in an end-of-year package. **The new draft includes, among other provisions:**
 - Strengthening the accuracy of provider directories in Medicare Advantage (MA) plans.
 - Strengthening requirements in Medicaid for managed care organizations and states to maintain regularly updated provider directories that include, in part, information on accessing care from behavioral health professionals.
 - Directing GAO to conduct a study on the differences in enrollee cost-sharing

and utilization management between behavioral and non-behavioral health services in MA and compared to traditional Medicare.

- Requiring 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.
- Directing GAO to report on Medicaid payment rates for behavioral health services compared to medical and surgical services across a sample of states.



Federal Issues

Regulatory

HHS Proposes to Align Substance Use Disorder Privacy Protections with HIPAA

The U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR) released a [“pre-publication” copy](#) of proposed regulations addressing substance use disorder (SUD) treatment records and information protected by the federal confidentiality regulations (commonly referred to as the “Part 2” regulations). The Notice of Proposed Rulemaking (NPRM) will be published in the *Federal Register* with comments due on January 30, 2023.

Why this matters: The notice seeks to align the HIPAA privacy regulations with the federal confidentiality regulations (Part 2 rules), as required by section 3221 of the Coronavirus Aid, Relief, and Economic

Security (CARES) Act. The changes are intended to improve the ability of entities that are subject to the Part 2 rules to use and disclose substance use disorder records, while also modifying requirements for patient consent and redisclosure of Part 2 records. **Proposed changes include:**

- Allowing patients to sign a single release for future use of their medical records by providers, while limiting the disclosure of substance use disorder records in court proceedings.
- Permitted redisclosure of Part 2 records in any manner permitted by the HIPAA Privacy Rule, with certain exceptions.
- New patient rights under Part 2 to obtain an accounting of disclosures and to request restrictions on certain disclosures, as also granted by the HIPAA Privacy Rule
- Expanded prohibitions on the use and disclosure of Part 2 records in civil, criminal, administrative, and legislative proceedings.
- New HHS enforcement authority, including the imposition of civil money penalties for violations of Part 2.
- Updated breach notification requirements to HHS and affected patients.
- Updated HIPAA Privacy Rule Notice of Privacy Practices requirements to address uses and disclosures of Part 2 records and individual rights with respect to those records.

More information on the proposed rule can be found in the [Fact Sheet](#) and [press release](#).

CMS Requests Feedback on ACA Essential Health Benefits Policies

The Centers for Medicare & Medicaid Services posted a Request for Information (RFI) [published](#) in the Federal Register on Friday, December 2. The RFI describes several ways that the existing regulations and EHB framework may be outdated or otherwise in need of reconsideration.

Background: EHB is a central component of the Affordable Care Act's reforms to make comprehensive coverage more widely available by identifying the 10 benefit categories that are "essential" to individual and small group comprehensive health insurance. EHBs are also used by employer plans to calculate eligible member cost sharing that is applied to a member's deductible and out-of-pocket limit. The Obama administration gave states the authority to choose the EHB-benchmark plan that serves as a reference plan for the products offered in the state and is intended to equal the scope of benefits under a "typical employer plan."

Why this matters: However, the RFI notes that the benchmark plan as described in coverage documents is not always detailed, creating ambiguity and variance in the specific features of the benefits, including the amount, duration and scope of benefits. As time has passed, with the exception of some mental health and substance use disorder benefits that a handful of states have enhanced in their EHB designs, the RFI notes that EHB-benchmark plans have not kept pace with benefits that are supported by evolving clinical practice (e.g., silver diamine fluoride, doula and midwife services).

The RFI also requests feedback about the existing flexibilities issuers have to substitute within an EHB category (with the exception of prescription drugs), and even across EHB categories—flexibilities that have not been adopted, to CMS's knowledge. With respect to the EHB category of prescription drugs, the RFI considers whether CMS should switch the current drug classification system of the USP Guidelines to the USP Drug Classification (DC) system which is updated annually.

Comments for the RFI are due January 31, 2023.

CMS Shares Influenza Vaccination Outreach Materials in Additional Languages

The CMS Medicare-Medicaid Coordination Office shared influenza outreach postcards in English, Spanish and 14 other languages. These materials are part of a broader flu shot outreach toolkit, which includes videos, print media, and other materials that health plans, providers and other partners can use to encourage influenza vaccination among Medicare and Medicaid enrollees. [Read More](#)

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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