



Federal Issues

Legislative

Congress Passes Short-Term Government Funding Bill

On Thursday, Congress passed a [continuing resolution](#) (CR) to fund the government through Feb. 18, 2022, avoiding a potential government shutdown.

With only a few weeks left before Congress recesses for the holidays, lawmakers face a long legislative to-do list, including addressing the nation's borrowing limit, which Treasury Secretary Janet Yellen has said may be reached as soon as Dec. 15. Congress is also working to pass the National Defense Authorization Act and the Build Back Better reconciliation package, which looks increasingly likely to slip to next year.

As previously reported, key health care components of the Build Back Better legislation include:

- Hearing coverage as a benefit to original Medicare starting in 2023;
- Redesign of Medicare Part D, including a \$2000 out-of-pocket cap;
- Allowing Medicare to negotiate the prices of certain prescription drugs;

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Industry Trends

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- Full repeal of the Trump administration’s rebate rule;
- Expanding home and community-based care services;
- Extending the Affordable Care Act (ACA) enhanced premium tax credits through 2025;
- Expanding the ACA premium tax credits to below 100 percent of the federal poverty level to cover those in the “Medicaid gap” in non-expansion states through 2025;
- Provide mothers with postpartum Medicaid coverage for one year after they give birth.

- Supreme Court Hears Several Health Care Cases
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Federal Issues

Regulatory

White House Announcement Regarding Health Insurance Coverage of OTC COVID-19 Tests & Other COVID-19 Actions

The Biden Administration [announced](#) a nine part action plan to combat COVID-19 as the U.S. heads into the winter months, and with the emergence of the new Omicron variant.

Why this matters: The President announced a new policy requiring health insurance providers in the commercial market to provide for coverage of no-cost rapid, over the counter (OTC) COVID-19 tests. Additional CMS announcements included expanded [outreach](#) by Medicare to stress the importance of COVID-19 boosters and new Medicaid [policy](#) requiring states to cover COVID-19 vaccine counseling visits in which healthcare providers talk to families about the importance of kids’ vaccination.

Regarding OTC testing, the Departments of Health and Human Services, Labor and the Treasury will issue guidance by January 15, 2022 to clarify that individuals who purchase OTC COVID-19 diagnostic tests will be able to seek reimbursement from their group health plan or health insurance issuer and have insurance cover the cost during the public health emergency without a prescription.

COVID-19 Updates

- The Centers for Disease Control and Prevention (CDC) [updated](#) their recommendation on COVID-19 booster shots, now recommending that everyone 18 years and older “should” get a booster shot when they are 6 months after their initial Pfizer or Moderna series or 2 months after their initial J&J vaccine. The revision was made in light of the emergence of the Omicron variant (B.1.1.529). The

CDC's previous recommendation had initially stated that adults 18-50 who were not at high-risk "may" get a COVID-19 booster shot.

- The Food and Drug Administration's (FDA) Antimicrobial Drugs Advisory Committee (AMDAC) voted that the potential benefits of Merck's molnupiravir outweigh the known and potential risks when used for the treatment of mild-moderate COVID-19 in adult patients who are within 5 days of symptom onset and are at high risk of severe COVID-19, including hospitalization or death, by a vote of 13-10. At the meeting, AMDAC members discussed safety concerns regarding the drug, addressing concerns that it could potentially cause low-level mutations of the SARS-CoV-2 spike protein. The Committee also discussed an updated [analysis](#) that showed molnupiravir reduced hospitalization or death among high-risk patients by only 30 percent and not 48 percent as initially determined. The FDA will review AMDAC's conclusions on molnupiravir in the coming weeks.
 - The Centers for Medicare & Medicaid Services (CMS) issued a [memo](#) to Part D plans regarding payment of dispensing fees to pharmacies if EUA is granted for oral antiviral therapeutics during the COVID-19 public health emergency.

State Issues

New York

Legislative

Legislature to Send Health Care Bills to Governor

While the Legislature is preparing for the upcoming session starting in January, there are almost 200 bills that passed in the last session that the Governor must act on by December 31. Several health care bills are expected to be sent to the Governor this week:

- S.4111/A.4668 — prohibits mid-year formulary changes
- S.3566/A.5854-A — limits plans' use of mail order pharmacy services
- S.6603/A.7598 — requires "pharmacy parity" reimbursement in Medicaid
- S.3762/A.1396 — relates to registration and licensing of pharmacy benefit managers
- S.5660-A/A.5339 — imposes a new covered lives assessment to fund early intervention services

2022 Legislative Session Dates Announced

Last week legislative leaders issued the [calendar](#) for the session. It will start on January 5 with plans to finish by June 2. The scheduled end date is a couple of weeks earlier than recent years, which is largely due to the full legislature is up for reelection and the state primaries have been moved from September to late June. Next year's primary election is June 28.

Regulatory

New Health Commissioner

Dr. Mary Bassett officially took the reins as DOH Commissioner last week, joining Governor Hochul at one of her COVID-19 briefings and backing the Governor's approach in handling the pandemic that includes county health officials in the process. Dr. Bassett, who still must be confirmed by the Senate, said the Department's "dysfunction" had undermined the work of county health departments, pledging her commitment to rebuilding DOH's partnerships with local officials.

State Issues

Pennsylvania

Legislative

House Majority Policy Committee Hearing Addresses Price Gouging, Impact of Burnout, Workforce Shortages, and Solutions

Pennsylvania is facing a "perfect storm" of workforce challenges in health care, as nurses and other staff retire or leave their roles, and hospitals struggle to fill vacancies, a panel of hospital nurse leaders told lawmakers during a legislative committee hearing December 1.

Penn State Health hosted the Pennsylvania House Majority Policy Committee at the Life Lion hangar in Hershey. The hearing focused on the nursing workforce challenges facing the health care community.

Pennsylvania's hospitals are experiencing a difficult "collision," as the need for health care increases and the available workforce decreases, said Deborah Addo, MPH, Penn State Health's executive vice president and chief operating officer.

In addition to Addo, the hearing included testimony from Michele Szkolnicki, RN, FACHE, CMPE, Penn State Health's senior vice president and chief nursing officer; Janet Tomcavage, MSN, RN, Geisinger's executive vice president and chief nursing executive; and Margaret DiCuccio, PhD, RN, NEA-BC, chief nursing officer at Allegheny General Hospital, Allegheny Health Network. Rounding out testimony from the hospital perspective was Jeffrey Bechtel, senior vice president, health economics and policy, at the Hospital & Healthsystem Association of Pennsylvania, who highlighted key workforce priorities and recommendations from HAP's Health Care Talent Task Force.

Jennifer Partyka, MSN, RN, NE-BC, of the Pennsylvania State Nurses Association, and Maureen Casey, BSN, RN, peri-anesthesia, SEIU Healthcare, also testified during the event.

Among the topics the panelists discussed:

- Hospital recruitment and retention incentives: Hospitals are increasing incentives to recruit and retain their workforce, including education benefits, retention and sign-on bonuses, and other innovative programs, but there is a shortage of nurses available to fill open positions
- Travel agencies: Hospitals are struggling to cover the extraordinary costs for nurse travel agencies and are losing staff to these agencies. The state should evaluate opportunities to use federal COVID-19 relief funds to alleviate staffing and labor costs
- The impact of burnout: Pennsylvania's nurses are facing significant mental health challenges stemming from the toll of COVID-19 that will need to be addressed

- **Solutions:** Additional funding is needed to support nursing education, faculty, and the pipeline of new nurses. Regulatory flexibility and initiatives related to licensing can help ease the shortage. Loan-forgiveness programs and policies allowing nurses to practice to the full extent of their licenses are also important
- **Ratios:** Lawmakers are considering a bill related to nurse staffing ratios for hospitals and health systems. Mandating ratios does not address the underlying shortage of nurses available to care for Pennsylvanians

Why this matters: Even before COVID-19, the health care community faced obstacles recruiting and retaining staff, with a third of the available nursing workforce set for retirement during the next ten to 15 years. The pandemic only has accelerated these challenges, resulting in a significant crisis threatening access to care.

Industry Trends

Policy / Market Trends

Supreme Court Hears Several Health Care Cases

Last week the U.S. Supreme Court heard oral arguments in several health care related cases involving a wide array of issues. Decisions in each case are expected by June, when the Court's current Term is scheduled to end. Cases the Court heard arguments on last week include:

- ***American Hospital Association v. Becerra*** focuses on statutory questions related to 340B hospitals' reimbursement of outpatient prescription drugs under Medicare and the methodology HHS uses to determine or adjust those amounts.
 - ***Becerra v. Empire Health Foundation*** involves a challenge to HHS policies related to the formula the agency uses to determine Medicare disproportionate share hospital ("DSH") payments. A decision could impact the reimbursement amounts hospitals serving lower-income individuals receive.
 - ***Cummings v. Premier Rehab Keller, P.L.L.C.*** addresses whether recoveries allowed under certain civil rights laws, and by extension the ACA, include a recovery for emotional distress. A decision in favor of the individual plaintiff could mean ACA 1557 litigation might expand to include claims for emotional distress.
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New HHS Study Shows 63-Fold Increase in Medicare Telehealth Utilization During the Pandemic

The Department of Health and Human Services (HHS) released a [new report](#) and [data snapshot](#) on Medicare telehealth utilization during the pandemic. According to the data snapshot, 28 million Medicare beneficiaries utilized telemedicine services between March 1, 2020 and February 28, 2021, over 30 times the number of users as the prior year (March 2019 to February 2020). The report identified 52.7 million telehealth visits in 2020 among enrollees in original Medicare.

During the COVID-19 crisis health insurance providers significantly expanded telehealth networks and benefits, effectively encouraging continued connection with the health system during a public health crisis. The proactive actions from health insurance providers were vital to addressing the needs of many patients during the pandemic, many of which can be found [here](#).

This massive increase in the use of telehealth helped maintain some health care access during the COVID-19 pandemic, with specialists like behavioral health providers seeing the highest telehealth utilization relative to other providers.

Before the pandemic, Medicare limited telehealth access to rural areas and made patients travel to health care facilities for virtual visits.

CMS Releases Enrollment Snapshot for Week Four of Open Enrollment

The Centers for Medicare & Medicaid Services (CMS) [announced](#) that over 3 million Americans have selected an insurance plan on Healthcare.gov since the latest open enrollment season began four weeks ago, with approximately 569,000 people selecting individual market plans this week. That's roughly 156,000 more than had enrolled by the same point last year, according to CMS.

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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