

# Highmark's Weekly Capitol Hill Report



Issues for the week ending December 17, 2021

*The Weekly Capitol Hill Report will be on hiatus until the new year. The next issue will be published January 4.*

## Federal Issues

### Legislative

#### **Build Back Better Proposal Facing Strong Headwinds**

Political and procedural roadblocks continue to slow Democrats' progress in passing President Biden's Build Back Better Act (BBBA).

Despite Senate Majority Leader Chuck Schumer's (D-NY) goal of advancing the legislation before Christmas, Sen. Joe Manchin (D-WV), whose vote is needed to pass the package, on Sunday [said](#) that he will not support the package as currently envisioned. He has repeatedly expressed concerns about the legislation's economic impact amid rising inflation and has also been critical of Democrats' attempts to lower the score of the initial proposal by sunseting various programs after only a few years.

Manchin's announcement came after the [Senate Health, Education, Labor and Pensions](#) (HELP) and [Finance](#) Committees released updated text of their respective committee titles last week — reflecting policy and technical changes designed to help secure passage. Democratic and Republican committee staff

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also continued to engage in discussions with the Senate parliamentarian throughout the week to “scrub” the legislation of any components that do not comply with the rules of budget reconciliation and prepare it for a floor vote.

President Biden and many other Democrats were caught off guard by Manchin’s announcement, leaving the fate of the package and the path forward uncertain. The White House released a [statement](#) highly critical of Sen. Manchin and Majority Leader Schumer [responded](#) by promising to return in January and bring to the floor a revised version of the House-passed bill, saying “we will keep voting on it until we get something done.”



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## Federal Issues

### Regulatory

#### **Additional Resources to Support the Extended Open Enrollment Period**

On Thursday, the Centers for Medicare & Medicaid Services (CMS) announced that approximately \$10.2 million in additional funding will be awarded to current Navigator grantees in Federally facilitated Marketplace (FFM) states to support the extended Marketplace Open Enrollment Period. Navigators help consumers look for health care coverage options either in the Marketplace or through Medicaid or CHIP programs and support completing eligibility and enrollment forms. Navigators will assist consumers during the extended enrollment period on HealthCare.gov that will continue through January 15, 2022. This announcement builds on the largest marketing investment for an open enrollment period. As of December 9, nearly 4.6 million Americans have signed up for 2022 health coverage.

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## COVID-19 Updates

- Pfizer [announced](#) results from a final trial of its novel COVID-19 oral antiviral pill, showing the pill significantly reduced the risk of hospitalization or death by 89% in high-risk patients. The results tracked with interim findings the company reported last month, which prompted it to petition the Food and Drug Administration (FDA) for emergency use authorization of the pill.
- As a reminder, the Centers for Medicare & Medicaid Services (CMS) issued a [notice](#) on December 8 to correct the memorandum issued on November 23 to Part D sponsors regarding oral antiviral

drugs for COVID-19 that become available under an Emergency Use Authorization (EUA). CMS states that the previous memorandum had incorrectly directed plans to consult a section of the NCPDP Emergency Preparedness Guidance. Please find the updated December 8 notice [here](#) and the previous November notice [here](#).

- A [new study](#) from Yale University and the Commonwealth Fund, which updates estimates from July, has found the COVID-19 vaccination effort has prevented approximately 1.1 million additional deaths from COVID-19 and more than 10.3 million additional hospitalizations. Deaths from COVID would have been around 3.2 times higher, possibly jumping to as high as 21,000 deaths per day – 5.2 times the level of the record peak in January 2021 at 4,000 per day, while hospitalizations might have been 4.9 times higher.
- The CDC's Advisory Committee on Immunization Practices (ACIP) [convened](#) and voted unanimously to earlier recommendations, now recommending that mRNA COVID-19 vaccines are preferred over the Janssen/Johnson & Johnson COVID-19 vaccine for those 18 years of age and older. Earlier last week, the FDA updated its Emergency Use Authorization Fact Sheet to indicate that the Janssen vaccine is contraindicated for individuals with a history of thrombosis with thrombocytopenia syndrome (TTS). This was based on new information showing that cases of TTS have been reported in both males and females, and that approximately 15% of TTS cases have been fatal.
- During a White House special briefing call on COVID-19 booster shots for seniors, Centers for Disease Control (CDC) Director Dr. Rochelle Walensky and White House COVID-19 Coordinator Jeff Zients discussed the Omicron variant and vaccination efforts. Dr. Walensky noted that unvaccinated nursing home patients have highest rates of infection, and that data are showing fully vaccinated and boosted residents have a ten times lower rate of getting COVID-19 than those who didn't receive a booster. Zients reiterated that the White House's message is that boosters provide optimal protection and he call on stakeholders to "double down" on services such as communication efforts, translation services, and scheduling vaccine appointments.

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## State Issues

### New York

#### Regulatory

#### **New York Continues No Surprises Act Implementation**

The Department of Financial Services (DFS) continues implementation of the federal No Surprises Act, drafting several circular letters and regulations necessary to align the state's existing out-of-network law with the new federal law.

- **IDR** — On Friday, the Department posted the final [circular letter \(CL 10\)](#) related to the independent dispute resolution process and disclosure of protections from balance billing, providing guidance on the types of services and providers eligible for IDR. Other provisions include information on the rules allowing patients to waive balance billing protections, requirements for provider disclosure to patients regarding balance billing protections and

includes a link to model notice providers can use, and requirements for air ambulance bills. DFS is still working to draft a proposed regulation on these new provisions.

- **Continuity of Care** — DFS shared a draft circular letter related to updates on continuity of care requirements under the NSA.
- **Provider Misinformation** — DFS said it hopes to have a draft of this circular letter soon and indicated it would include information on the requirements for providers. The Department has issued a [proposed regulation](#). Comments are due January 24.

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## COVID Regulations Extended

The emergency regulations requiring \$0 cost sharing for both COVID testing (and visit with intent to test) and COVID vaccinations were extended to March 16, 2022. They will continue to be extended as long as the public health emergency continues.

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## State Issues

### Pennsylvania

Legislative

#### Senate Committee Advances Childhood Lead Testing Legislation

On Tuesday, December 14, the Senate Health and Human Services Committee advanced [Senate Bill 522](#) (Baker, R-Luzerne). Senate Bill 522 seeks to ensure pregnant women and children receive blood testing to detect lead poisoning and requires applicable insurance policies cover blood lead tests.

Senate Bill 522 was amended in committee to update the lead toxicity level to be in accordance with CDC guidelines.

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#### House of Representatives Swears in New Member

On Monday, December 13, the House of Representatives swore in [Gina Curry](#) (D-Delaware). Representative Curry fills the seat previously held by Representative Margo Davidson (D-Delaware) who vacated the seat after resigning from office on July 23, 2021.

After Monday's swearing-in ceremony, Republicans hold a 113-90 majority.

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## Industry Trends

Policy / Market Trends

## Health Care Spending Increased in 2020

The Office of the Actuary at CMS last week [released](#) the 2020 National Health Expenditures (NHE) Report, an annual publication that measures the nation's healthcare spending. It showed spending to have increased by 9.7%, reaching a total of \$4.1 trillion. This record high increase since 2002 was largely attributed to the escalation in federal spending to curb the pandemic. Federal government's spending increased rapidly at 36.0% in 2020 compared to growth of 5.9% 2019. A substantial portion of the spending was spent on the Provider Relief Fund and Paycheck Protection Program loans, increased spending for federal public health activity, and growth in the federal portion of Medicaid payments. Despite the significant economic and employment disruptions caused by the pandemic in 2020, the number of uninsured people fell slightly. However, there were significant shifts in types of coverage as fewer people were covered through employer-sponsored insurance and more people had insurance through the individual market and public programs, in particular through Medicaid. It is still to be seen how the pandemic will unfold in the winter months and whether the pandemic will play a significant role in 2022.

**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](http://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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