



## UnityPoint Health Federal Update – December 2021

November 19, 2021 – December 10, 2021

### November 19, 2021

#### Congress

**House Passes the Build Back Better Act.** The House of Representatives approved the Build Back Better (BBB) Act, the third major piece of legislation supporting President Biden's domestic agenda priorities. The 220-213 vote was largely along party lines, with all present Republicans voting against the measure, and just one Democrat voting no—Rep. Jared Golden (D-ME). This vote marks a significant step in what has been a months-long slow march toward passage of these social spending (or “soft infrastructure”) priorities. BBB now moves to the Senate, where it is expected to be taken up at some point after the Thanksgiving recess, but where the bill's future is precarious.

The BBB is expected to change considerably before reaching the Senate floor as individual Senators exert their influence in the tightly divided 50-50 Senate, and Senate leadership has to contend the “Byrd Rule,” which dictates what types of provisions can advance in a budget reconciliation process. Stakeholders are closely watching the health care provisions, including the following: Medicare drug pricing reforms, that while less than originally envisioned, introduce price negotiation and redesign the drug benefit for Medicare beneficiaries including a cap on out-of-pocket expenses for medications; expanding Medicare by adding hearing benefits, including hearing aids; \$150 billion in new Medicaid funding for Home and Community Based Services to states; extension of increased subsidies making ACA coverage much more affordable through 2025; provisions to give people in states that have not expanded Medicaid the opportunity to gain coverage through zero premium ACA plans; provisions extending coverage for 12-months for children and post-partum women on Medicaid, and a number of investments in the health care workforce.

**Reps. DeGette and Upton Release Updated Cures 2.0 Proposal.** This week, Reps. Diana DeGette (D-CO) and Fred Upton (R-MI) released an [updated version](#) of their Cures 2.0 Act—bipartisan legislation that builds upon the 21st Century Cures Act enacted in 2016. The bill addresses a number of key health care innovation priorities, including permanently removing Medicare geographic and originating site restrictions on telehealth services and creating the new Advanced Research Projects Agency for Health (ARPA-H) research agency—a priority for President Biden. A section-by-section of the draft legislation is available [here](#).

While Reps. DeGette and Upton have expressed an interest in advancing Cures 2.0 quickly, action this year is unlikely. Congress has several other pending items to address before the fast-approaching end of 2021—including FY 2022 appropriations, the BBB, and health care payment issues with year-end deadlines.

#### Administration

**The Biden-Harris Administration Issues New Reporting Requirements to Identify Prescription Drug and Medical Costs.** This week, the Biden Administration implemented new requirements that require health insurers, employer-based health plans, and other group health plans to report on prescription drug and health coverage costs. The requirements, which were issued through an HHS, Labor and Treasury interim final rule, is the most recent attempt by President Biden to provide additional transparency and oversight to prescription drug and health coverage prices. Payors will be required to submit key data to the departments, which will publish a report on the prescription drug price trends and rebates, as well as their impact on out-of-pocket costs for patients. The new data submission requirements will apply starting with data from the 2020 calendar year, however enforcement of the new requirements won't begin until December 2022.



*November 26, 2021*

## Thanksgiving Break – No Update

*December 3, 2021*

### Congress

**Congress Passes CR Lasting Through February 18, Without Health Care Extenders.** The first deadline-driven action upon Congress' return from the Thanksgiving recess was to pass a temporary funding measure to prevent a federal government shutdown on December 3—the expiration date of the previous CR. The seemingly straightforward process was delayed throughout the course of the week by disagreements between Democrats and Republicans over the length of the new CR, as well as threats from a group of conservative Republicans in protest of the Biden Administration's vaccine mandates.

Appropriators released an 11-week CR the morning of December 2, providing stopgap funding through Friday, February 18, 2022. The same day, the House approved the CR by a vote of 221-212 and the Senate followed suit later in the evening by a vote of 69-28, sending the measure to President Biden's desk and averting a government shutdown.

Notably for the healthcare community, the CR does not address various threats to Medicare payments, including those that could begin at year-end. If Congress does not act through another legislative vehicle this year, a negative 3.75% update to the Medicare Physician Fee Schedule and a 2% Medicare sequestration cut will go into effect January 1, 2022. A 4% decrease under statutory Pay-As-You-Go ("PAYGO") rules is also expected to take effect in early 2022. The 2% and 4% cuts would affect all Medicare providers, in addition to physicians. Physicians face the additional 3.75% cut, bringing total potential reductions to Medicare payments for physician services to nearly 10% if Congress does not intervene. End-of-year funding measures often serve as vehicles to avoid payment cuts like these, and much of the healthcare community was hoping, if not expecting, Congress to use this CR to resolve these looming threats. The CR also does not address any other expiring health provisions, such as telehealth coverage extensions.

This so-called "clean" CR increases the likelihood that Congress may not take action on the looming reimbursement cuts before they take effect in the New Year, though there is still the possibility that Congress will act on a stand-alone measure to address these health care extenders this month.

While the Centers for Medicare and Medicaid Services (CMS) can direct Medicare Administrative Contractors (MACs) to temporarily hold claims if legislative action is pending, they cannot do so through February 18, 2022. There is more flexibility on timing for the across-the-board statutory PAYGO cut depending upon the time it takes for the Office of Management and Budget (OMB) to certify and implement it.

**Senate Negotiations Continue on BBB.** Following House passage of BBB on November 19, the \$1.7 trillion legislation—which includes the social spending (or "soft infrastructure") priorities of President Biden and Congressional Democrats—awaits consideration in the Senate, where its ultimate scope and outcome remain uncertain.

The House-passed BBB is expected to change considerably before reaching the Senate floor due to the need to have all 50 Senate Democrats—both progressives and moderates—on board to pass the bill. Further, Senate leadership must contend with the so-called "Byrd Rule," which dictates what types of provisions can advance in legislation considered under the budget reconciliation process. Such decisions are made by the Senate Parliamentarian, who has been meeting with Senators and is expected to begin issuing guidance and rulings in the coming days.



Senate Majority Leader Schumer (D-NY) has indicated that he would like to have BBB on the Senate floor the week of December 13, pending completion of the Parliamentarian's work. Should Senate Democrats ultimately agree upon and advance a revised version of BBB, the legislation would need to return to the House for a final vote before reaching President Biden's desk. Timing remains very uncertain at this time. If consideration of BBB is not completed this year, it can roll into 2022

## Administration

**CMS Vaccine Mandate Faces Legal Roadblocks.** Two U.S. District Courts issued preliminary injunction (PI) orders this week, barring CMS' implementation of the Omnibus COVID-19 Health Care Staff Vaccination Rule ("CMS Vaccine Mandate").

On November 29, the U.S. District Court for the Eastern District of Missouri, Eastern Division, granted a Preliminary Injunction (PI) enjoining CMS from implementing and enforcing its vaccination mandate for health care facilities in 10 plaintiff states—Alaska, Arkansas, Iowa, Kansas, Missouri, Nebraska, New Hampshire, North Dakota, South Dakota, and Wyoming—pending a trial on the merits of the case. The next day, the U.S. District Court in the Western District of Louisiana issued a separate order providing for a nationwide PI. The court noted that limiting its injunction to just those plaintiff states would not be sufficient, stating: "In addressing the geographic scope of the preliminary injunction, due to the nationwide scope of the CMS Mandate, a nationwide injunction is necessary due to the need for uniformity."

The Biden Administration is appealing both rulings along with the injunction issued against the large employer mandate issued by the Occupational Safety and Health Administration (OSHA). While the ultimate fate of these rules is unclear, it appears that the injunctions will remain in place past the first compliance date of December 6. In the meantime, the Biden Administration on December 2 paused implementation and enforcement of the CMS mandate while these preliminary injunctions are in effect.

**Biden Announces New Actions to Combat COVID-19 Variants.** President Biden announced several new public health actions that attempt to combat growing concern over the emergence of the Omicron COVID-19 variant and the coming winter months. These actions include increasing access to and promotion of boosters for all U.S. adults, working to improve COVID-19 prevention and vaccination policies for school-age children, expanding free at-home testing, and increasing the supply of treatment pills for COVID-19 to prevent hospitalization and death. The Administration also plans to take significant steps to prepare for the emergence of future COVID-19 variants and other pandemic scenarios.

**December 10, 2021**

## Congress

**Congress Passes Legislation Averting Medicare Payment Cuts.** This week, the House and Senate passed the "[Protecting Medicare and American Farmers from Sequester Cuts Act](#)" that includes relief from upcoming Medicare cuts, among other things. The bill would partially mitigate the scheduled 3.75% cut to the Medicare Physician Conversion Factor (CF) and both the Medicare Sequestration (2%) and PAYGO (4%) cuts. Specifically, the legislation would phase in cuts to the Medicare sequester at a rate of 0% for the first quarter of 2022, -1% for the second quarter of 2022 and return the cut to the full amount of -2% beginning in June of 2022 and continuing onward. The legislation would also eliminate 3% of the CF cuts, resulting in a -.75% cut for the entirety of 2022. Finally, the bill would subtract budget scorecard deficits for both the 5-year and 10-year windows from FY 2022 and add them to FY 2023, effectively pushing the implementation of a PAYGO sequester to 2023.



Additionally, the bill provides a one-year delay in scheduled cuts to payments for clinical laboratory service and a one-year delay in scheduled lab service reimbursement reporting requirements under the Protecting Access to Medicare Act of 2014. It also delays implementation of the mandatory Medicare radiation oncology model payment model for one year (through December 31, 2022) in response to stakeholder requests that more time was needed to prepare for the model.

The bill included procedural language, which provided a means for the Senate to pass debt limit relief on a simple majority basis. Fourteen Republicans joined Senate Democrats in voting for the measure. The House passed the bill earlier in the week along partisan lines, with only Rep. Adam Kinzinger (R-IL) joining Democrats in supporting the bill. President Biden is expected to sign the bill this upcoming week.

The Senate is expected to vote by Monday to increase the debt limit and will send the measure back to the House for its quick consideration. If all goes as planned in Congress, the bill is expected to reach the President's desk for signature before the deadline of December 15th, when Treasury Secretary Yellen projects the US would lose borrowing authority and potentially default on outstanding debt. The debt limit is one of the last remaining pieces of "must-pass" legislation for Congress this year, with the National Defense Authorization Act (NDAA) still outstanding. While it is unlikely that the Senate will take up the Build Back Better (BBB) Act prior to the holiday recess, they technically could if recommendations from the Senate Parliamentarian are completed

## Administration

**CMS Begins Work on MVPs.** This week, the Centers for Medicare & Medicaid Services (CMS) hosted a webinar on the [Merit-based Incentive Payment System \(MIPS\) Value Pathways \(MVPs\) framework](#). Beginning in CY 2023, CMS is establishing MVPs as an initially voluntary participation option to motivate clinicians to move away from reporting on self-selected activities and measures (i.e. MIPS) and towards an aligned set of measure options, designed to be meaningful to patient care and more relevant to a clinician's scope of practice. The agency has outlined seven MVPs for the 2023 performance year to align with the following clinical areas: rheumatology, heart disease, stroke care and prevention, lower extremity joint repair, anesthesia, emergency medicine, and chronic disease management. CMS will be using the next 12 months to flesh out the participation requirements as well as work with stakeholders to expand MVP options for future years.