

McDermottPlus Check-Up: November 17, 2023

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THIS WEEK'S DOSE

- **Congress Passes CR:** The House and Senate passed a two-tiered continuing resolution (CR) to fund the government into early 2024, averting the threat of a pending shutdown. The short-term spending bill was signed by the President on November 16.
- **Senate Hearing on Telehealth:** The Senate Finance Health Care Subcommittee held a hearing on Medicare telehealth permanency, as many existing flexibilities will expire at the end of next year if Congress doesn't act to change that.
- **House Markup of Healthcare Bills:** The House Energy & Commerce Health Subcommittee held a markup on 21 healthcare bills, including proposals related to the physician fee schedule and further pharmacy benefit manager (PBM) reforms.

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- **CMS Final Rule:** The Centers for Medicare & Medicaid Services (CMS) issued a final rule on ownership disclosures regarding Medicare skilled nursing facilities (SNFs) and Medicaid nursing facilities.

CONGRESS

Congress Passes Two-Tiered CR to Fund Government into Early 2024. In the absence of final passage of any of the 12 annual appropriations bills for FY 2024, Speaker Johnson (R-LA) unveiled a short-term CR, [H.R. 6363](#), the Further Continuing Appropriations and Other Extensions Act, that extends funding for four appropriations bills through January 19, 2024, and the remaining eight appropriations bills through February 2, 2024. The relatively “clean” CR also includes temporary extensions of expiring health programs through January 19, including funding for community health centers, the National Health Service Corps, the Special Diabetes Programs and preventing cuts to the Medicaid DSH program. It also provides a one-year fix for Medicare clinical laboratory test payment changes.

This list is far from inclusive of many extensions and healthcare policies for which there is still pressure for Congress to act. A few key examples of issues that the CR does not address include the Medicare physician payment cuts, extension of funding for children’s hospitals that provide physician training, continuation of the Medicare alternative payment model (APM) bonus, and extension of funding for Medicare beneficiary low-income outreach and assistance to help people enroll in federal financial assistance programs to make their coverage affordable. Whether and how Congress turns to issues like these is unknown at this time, but it is

possible that separate health legislation could move in the interim, or that the January 19, 2024, CR could become a vehicle for additional healthcare policy.

A total of 209 House Democrats joined 127 Republicans to pass the CR on November 14, and the Senate followed suit with a strong bipartisan vote of 87–11 on November 15. The bill was signed by President Biden on November 16, temporarily averting a government shutdown before the holidays. Speaker Johnson has said that this is the last short-term CR he intends to bring forward, putting real pressure on Congress prior to the first deadline on January 19. Of note, the House has passed several appropriations bills this year but has had to pull several—including Labor, Health and Human Services (HHS) Appropriations—from the House floor recently because they did not garner enough votes from Republicans for passage. The Senate has passed only three appropriations bills, and the two bodies remain far apart on funding for these initiatives.

In related news, as we look to finalizing FY 2024 appropriations, the Congressional Research Service (CRS) [released](#) a report on how the CR will impact discretionary spending caps. The report elaborates on what the Fiscal Responsibility Act (FRA) requires if a CR is in effect, when a sequester would occur under a CR, and how the FRA limits and revisions compare to FY 2023 spending.

Senate Finance Committee Holds Hearing Examining Telehealth Permanency. The Health Care Subcommittee [discussed](#) efforts to ensure continued access to telehealth benefits for Medicare beneficiaries. Committee members on both sides of the aisle expressed support for the continuation of Medicare

telehealth flexibilities that began during the COVID-19 public health emergency. Witnesses also highlighted key flexibilities that should be permanent, such as eliminating geographic restrictions for providing telehealth so that it can continue to be provided in Medicare beneficiaries' homes, expanding telehealth services offered, allowing audio-only care for Medicare beneficiaries, expanding provider types permitted to provide telehealth, and payment parity. Multiple members expressed support for [S. 2016](#), [the CONNECT for Health Act](#), the comprehensive bill to expand telehealth flexibilities that has 59 bipartisan cosponsors in the Senate.

Most current Medicare telehealth flexibilities are set to expire on December 31, 2024, without congressional action. The desire to extend telehealth flexibilities is seen as a driver for action on healthcare policies in 2024.

House Energy & Commerce Committee Holds Markup on 21 Healthcare Bills. The Health Subcommittee considered and advanced 21 legislative proposals aimed at improving patient access to care and supporting providers.

A full list of the bills, including links to bill text, amendments and vote outcomes, can be found [here](#), and more detailed summaries can be found in the markup [memo](#). Highlights include the following:

- [H.R. 5372](#), the Expanding Seniors' Access to Lower Cost Medicines Act of 2023, would encourage greater patient access to biosimilar products by allowing for mid-year changes in insurance plan formularies for certain biosimilar products starting in 2025.

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- Advanced with a voice vote.
 - [H.R. 5385](#), the Medicare PBM Accountability Act, would create enhanced PBM reporting requirements, such as annual reporting of drug pricing and other information to the HHS Secretary, including information about Part D drugs, drug dispensing, drug costs and pricing, generic and biosimilar formulary placement, PBM affiliates, financial arrangements with consultants and potential PBM conflicts of interest.
 - Advanced with a voice vote.
 - [H.R. 5555](#), the DMEPOS Relief Act of 2023, would require the HHS Secretary to provide certain adjustments to Medicare payment for items of durable medical equipment that were formerly included in round 2021 of the Durable Medical Equipment, Prosthetics/Orthotics and Supplies (DMEPOS) competitive bidding program.
 - Advanced with a vote of 16–12.
 - [H.R. 6364](#), the Medicare Telehealth Privacy Act of 2023, would prohibit the HHS Secretary from making a physician's or practitioner's address of residence publicly available if the physician or practitioner elects to provide telehealth services from that address. The public health emergency flexibility allowing providers to provide telehealth services from their homes, without reporting their home addresses on their Medicare enrollment and while continuing to bill from their currently enrolled location, was extended through December 31, 2024, in the recently released Medicare Physician Fee Schedule (PFS) final rule.
 - Advanced with a voice vote.
 - [H.R. 6371](#), the Provider Reimbursement Stability Act of 2023, would increase the PFS budget neutrality threshold and provide for a lookback period to reconcile overestimates and

underestimates of pricing adjustments for individual services.

- Advanced with a voice vote.

- **H.R. 6369**, to amend title XVIII of the Social Security Act, would extend incentive payments for participation in eligible APMs for one year and would tier the size of the bonus according to how long a provider had participated in an APM to better account for increased up-front costs of APM participation.

- Advanced with a voice vote.

ADMINISTRATION

CMS Issues SNF and Nursing Facility Ownership Disclosures Final Rule. CMS issued a **final rule** requiring SNFs to disclose the following information to CMS or, for Medicaid nursing facilities, the applicable state Medicaid agency:

- Each member of the facility's governing body, including the name, title and period of service of each member
- Each person or entity who is an officer, director, member, partner, trustee or managing employee of the facility, including the name, title and period of service of each such person or entity
- Each person or entity who is an additional disclosable party of the facility
- The organizational structure of each additional disclosable party of the facility and a description of the relationship of each such additional disclosable party to the facility and to one another.

A Medicare SNF, once enrolled, must disclose any changes to this information, and SNFs must revalidate their Medicare enrollment

every five years.

This final rule will become effective 60 days after the date it is published in the Federal Register. Read the CMS press release [here](#) and fact sheet [here](#).

QUICK HITS

- **Principal Deputy FDA Commissioner Plans to Retire Early 2024.** Janet Woodcock intends to leave the agency in January 2024. She joined the agency in 1986 and later led the Food and Drug Administration's (FDA) drug approval work. Woodcock served as the FDA's acting commissioner when President Biden first entered office, holding the position until the Senate confirmed Robert Califf to the post in February 2022.
- **HHS Publishes FY 2023 Agency Financial Report.** The [report](#) provides fiscal and summary performance results that enable the President, Congress, and the public to assess the agency's accomplishments for the reporting period October 1, 2022, through September 30, 2023.
- **KFF Releases Medicaid Enrollment Survey.** The Kaiser Family Foundation's [survey](#), based on responses from officials in 47 states and the District of Columbia, projects that Medicaid enrollment will drop by 8.6% in FY 2024 as states continue to remove ineligible individuals from their Medicaid rolls. At the same time, states' share of Medicaid spending is expected to increase by 17.2%—largely a result of the continued phaseout of enhanced federal funding that states received during the pandemic—even as total Medicaid spending growth is projected to slow to 3.4%.

- **SAMHSA Releases 2022 National Survey on Drug Use and Health Data.** The [report](#) shows how people in the United States described their experience with mental health, substance use and treatment-related behaviors in 2022. The report is accompanied by a [high-level brief](#) that includes infographics.
- **Missouri Extends Medicaid Comprehensive Coverage After Pregnancy.** HHS [announced](#) that Missouri is the 40th state to extend coverage of postpartum services under Medicaid and the Children’s Health Insurance Program for a full 12 months. As a result, as many as 18,000 additional people in Missouri will be eligible for Medicaid for a full year after pregnancy.
- **HRSA Hosts Roundtable in Honor of National Rural Health Day.** Health Resources and Services Administration (HRSA) Administrator Carole Johnson was joined by HHS Deputy Secretary Andrea Palm, Centers for Disease Control and Prevention Director Dr. Mandy Cohen, CMS Deputy Administrator and Director for Center of Medicare Dr. Meena Seshamani, and rural stakeholder organizations to acknowledge and celebrate National Rural Health Day. Key highlights can be found [here](#).