

McDermottPlus Check-Up: October 1, 2021

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Congress funds the government through early December. The No Surprises Act independent dispute resolution rule is out. The Supreme Court looks ahead to major health care cases this fall.

CONGRESS

Congress Avoided Government Shutdown Without a Debt Limit Waiver. After failed attempts earlier in the week for Democrats to pass a government funding bill, also called a continuing resolution (CR), that also waived the debt limit, the Senate and then House acted on Thursday to pass a standalone CR that funds the federal government through December 3, 2021 without the debt limit waiver. The CR also includes supplemental funding for disaster relief and Afghan refugees, as well as extended Medicaid funding for Puerto Rico and the territories until December 3, 2021. Other health care issues included in the CR package relate to studies and scheduling of fentanyl and decreasing funding in the Medicare Improvement Fund to pay for provisions in the CR. President Biden signed the CR into law ahead of the midnight deadline on Thursday, averting a government shutdown. While an important measure, this leaves the issue of the debt limit lingering, with Treasury Secretary Janet Yellen estimating that the United States will default on its debts on October 18, 2021, without further action by Congress. It also requires Congress to revisit the issue of government funding before the next government shut-down threat, December 3.

House Vote on Infrastructure Delayed. The other story of the week involves the complicated path of the bipartisan infrastructure and the partisan reconciliation packages. In order to get agreement from a group of moderate Democrats when the House considered the Budget Resolution in August, which was necessary to kick off the reconciliation process, Speaker Pelosi had to commit to a date certain (September 27) for the House to vote on the bipartisan reconciliation bill, which was previously approved by the Senate. But, in order to get the support of progressive Democrats to move forward, she also had to commit that the two bills would go to the President together. On Monday night, Speaker Nancy Pelosi announced that a vote on the Senate's bipartisan infrastructure bill would take place on Thursday and would need to occur *before* the House or Senate would act on the partisan reconciliation package. As a reminder, the reconciliation package contains the "human

infrastructure” priorities on clean energy, education and healthcare. These policies largely define President Biden’s Build Back Better plan. Because the reconciliation bill will require the support of all 50 Democrats in the Senate, there have been ongoing negotiations with Senators Kyrsten Sinema (D-AZ) and Joe Manchin (D-WV) with regard to the topline figure and general policies they will support. A document circulated early Thursday revealed that Senator Manchin and Senate Majority Leader Chuck Schumer agreed to Manchin’s topline number of \$1.5 trillion for reconciliation along with a framework of priorities and offsets back at the end of July. This revelation reinforced progressive Democrats’ concerns about delinking the bipartisan infrastructure and reconciliation packages and called into question whether Senator Manchin wants to support the reconciliation package at all. The House ultimately did not vote on the bipartisan infrastructure bill on Thursday. As of late Thursday night, it seemed that the Speaker still did not have the votes needed to ensure its passage. Her last message to colleagues on Thursday stated that “[t]he Bipartisan Infrastructure bill has already had its rule passed and its debate has concluded,” which means that a vote could be called any time Friday.

ADMINISTRATION

Surprise Medical Billing Independent Dispute Resolution (IDR) Interim Final Rule was Issued. The Departments of Health and Human Services (HHS), Labor and Treasury [released](#) a third Interim Final Rule with Comment Period (IFC) on Thursday implementing aspects of the No Surprises Act. This latest iteration outlines the requirements to pursue arbitration and defines parameters of the IDR entity’s consideration process. This process provide patients, providers and payers with administrative routes to challenge and resolve surprise medical bills. The rule establishes a timeline that requires an initial 30-business-day negotiation period for surprise medical billing claims prior to beginning the IDR process. Parties are able to mutually agree upon a certified IDR entity. The process for an IDR entity to become certified is also outlined in this rule. If parties cannot agree on an IDR entity, the Departments will select one. Once there is an IDR entity in place, parties will submit information in addition to the qualifying payment amount (QPA, which is “the plan or issuer’s median contracted rate for the same or similar service in the specific geographic area”). The IDR entity will consider this information with the presumption that the QPA is the right out-of-network amount. Upon the IDR entity’s determination, payment must be submitted within 30 days. The rule also outlines the scope of uninsured and self-pay patients who are entitled to good faith estimates from providers, as well as the requirements of a good faith estimate. These patients may also undertake a “select dispute resolution” process when they are billed for an amount that is at least \$400 greater than the good faith estimate. Finally, the rule establishes reporting requirements for certified IDR entities. HHS made several factsheets available in its [briefing](#) on the rule. Comments are due 60 days after the rule is published in the Federal Register.

Provider Relief Phase 4 Funding Requests and Phase 3 Redetermination Requests Opened. HHS is now accepting applications for the fourth tranche of Provider Relief Funding. The Biden Administration has made \$25.5 billion available for Phase 4 funding. This includes the \$8.5 billion appropriated for rural Medicaid providers in the American Rescue Plan, as well as \$17 billion for “a broad range of providers who can document revenue loss and expenses associated with the pandemic.” Phase 4 payments will be based on providers’ lost revenues and expenditures between July 1, 2020, and March 31, 2021. Payments will be made with a greater focus on equity, with small providers serving vulnerable communities being reimbursed at a higher rate than larger providers. Bonus payments will also be made to providers serving Medicare and Medicaid/CHIP patients who are lower income and more medically complex. The submission deadline for Phase 4 is October 26, 2021 at 11:59 p.m. ET. Additionally, providers may also request a [reconsideration](#) of Phase 3 funding if a provider believes their funding was incorrectly calculated based on the published information and

methodology [issued](#) by HHS. The deadline to request a reconsideration is November 12, 2021 at 11:59 p.m. ET.

STATES AND COURTS

The Supreme Court of the United States (SCOTUS) Starts Health-Heavy Fall Term Next

Week. While the docket is stacked with significant healthcare cases, the Court will not hear oral arguments on these until the final session of the term, which begins on November 29. The first case up is *Becerra v. Empire Health Foundation* (Nov. 29), where SCOTUS will decide whether or not the Centers for Medicare and Medicaid Services (CMS) can legally factor in Medicare and commercial insurance payments in determining the Disproportionate Share Hospital (DSH) payment cap. Then, the Court will hear arguments in *American Hospital Association v. Becerra* (Nov. 30), which is poised to settle a longstanding dispute around CMS' authority to make cuts to reimbursement rates for 340B drugs. Recently added to the calendar, *Dobbs v. Jackson Women's Health Org.* (Dec. 1) will examine the constitutionality of pre-viability abortion prohibitions in what could be the most substantive case on the issue since *Roe v. Wade*. Finally, *CVS Pharmacy v. Doe* (Dec. 7) will consider whether certain disability discrimination claims can arise from protections under the Rehabilitation Act or Section 1557 of the Affordable Care Act.

QUICK HITS

- CMS [announced](#) that it will pay for COVID-19 booster shots for eligible individuals.
- Obama alum Lisa Pino [will lead](#) the Office of Civil Rights in the Department of Health and Human Services.
- Biden Administration [issued](#) nearly \$1 billion from the American Rescue Plan Act for capital infrastructure updates to Health Center Program-funded health centers, which support underserved communities.
- CMS' Office of Health Equity [released](#) a report on disparities in health outcomes among dual-eligibles and low-income subsidy recipients in Medicare Advantage plans.
- The Substance Abuse and Mental Health Services Administration [distributed](#) \$825 million in committed funds to 231 Community Mental Health Centers.
- The Federal Communications Commission [awarded](#) its second round of funding under the COVID-19 Telehealth Program to 72 recipients.
- Average premiums for Medicare Advantage plans will be \$19 per month, while average Part D premiums will be \$33 per month, [according](#) to CMS.

M+ RESOURCES

- In this week's [Breakroom](#) podcast, Rodney Whitlock and Debbie Curtis join us to investigate the key health priorities and goals Democrats aim to achieve in negotiating their spending bill and reconciliation process.

NEXT WEEK'S DIAGNOSIS

Congress will continue to negotiate the terms of the reconciliation package. The House will be in recess until October 20 starting next week. The Senate will be in session next week, with recess beginning the following week.

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