

McDermott+ Check-Up: September 6, 2024

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THIS WEEK'S DOSE

- **Congress Returns.** The House and Senate will be back in session on September 9, 2024, with a joint focus on completing consideration of a continuing resolution (CR) to maintain government funding beyond the end of fiscal year (FY) 2024.
- **DEA May Propose Significant Restrictions on Telehealth Prescribing.** The US Drug Enforcement Agency (DEA) may release a proposed rule that would limit providers' continued ability to prescribe controlled substances via telehealth.
- **SCOTUS Rejects Oklahoma Request Related to Abortion.** The Supreme Court of the United States (SCOTUS) continued its trend of avoiding abortion-related questions since the overturning of *Roe v. Wade* in 2022.

CONGRESS

Congress Returns. After an extended August recess, both chambers will return on September 9, 2024, and are currently scheduled to remain in session through September 27, 2024. Congress is expected to be in recess the month of October so that lawmakers can campaign for reelection, after which a post-election lame duck session is expected to begin in November.

In September, Congress' singular need is to pass a short-term CR to keep the government funded before FY 2024 ends on September 30, 2024. Those machinations may create some political posturing in the coming weeks, but a government shutdown prior to the election is extremely unlikely. The expectation is that Congress will pass a CR this month that will extend government funding into mid-December. After the election, the lame duck session is expected to focus on any end-of-year legislating that needs to be done, likely culminating in one large bill that includes government funding

for FY 2025. Key [expiring healthcare policies](#) are under discussion for inclusion in such end-of-year legislation, including policies related to:

- Telehealth.
- Medicaid disproportionate share hospital cuts.
- Medicare extenders such as the Medicare-dependent hospital program and low-volume hospital payment adjustment.
- Physician pay.
- The Community Health Centers, National Health Service Corps, and Teaching Centers Graduate Medical Education programs.

ADMINISTRATION

DEA May Propose Significant Restrictions on Telehealth Prescribing. Under pandemic-era flexibilities that are currently set to expire at the end of the calendar year, providers can virtually prescribe certain controlled substances without an in-person visit. In 2023, the DEA issued proposed regulations that would have limited this practice but subsequently withdrew the proposal because of stakeholder concerns, largely related to patient access, particularly in rural and underserved communities.

DEA drafted a revised proposal that has been awaiting review at the Office of Management & Budget (OMB) since June. While the provisions of this proposal are not yet public, recent reports indicate that it may include restrictions such as:

- Allowing no more than half of a provider's prescriptions to be written via telehealth.
- Requiring that before prescribing controlled substances, providers check for already filled prescriptions under their patient's name in 50 separate state-level prescription drug monitoring programs.

Given that the DEA proposal is under review by OMB, changes could still be made, and the rule's release is not guaranteed. It has also been reported that the US Department of Health & Human Services (HHS) opposes the direction that DEA is taking this rule. Without clarity from DEA and with the fast-approaching December 31, 2024, expiration date, stakeholders are calling upon Congress to extend the current flexibilities.

COURTS

SCOTUS Rejects Oklahoma Request Related to Abortion. In a [6 – 3 decision](#), SCOTUS rejected Oklahoma's effort to reclaim \$4.5 million in federal family planning grants that were rescinded over the state's refusal to provide patients with a national hotline number for information about abortion. Other cases related to the Title X family planning program are being considered in additional federal courts, with more rulings expected.

QUICK HITS

- **CMS Updates the Health Equity Disparities Impact Statement.** The Centers for Medicare & Medicaid Services (CMS) updated the [health equity tool](#) that stakeholders can use to identify and address health disparities in their communities.
- **CMS Releases TEAM Participant List.** The [740 hospitals](#) chosen will begin participation in

the Transforming Episode Accountability Model (TEAM) on January 1, 2026.

- **CMS Awards \$100 Million to Navigators.** In advance of Marketplace Open Enrollment, CMS [awarded](#) \$100 million to 44 Navigator grantees that will assist consumers and small businesses with enrolling in health coverage. The list of grantees can be found [here](#).
- **SAMHSA Announces Grant Awards, Funding Opportunities to Address Mental Health and Substance Use.** The Substance Abuse and Mental Health Services Administration (SAMHSA) awarded a combined \$147 million to 14 grant programs, including programs that prevent substance use and integrate physical and behavioral healthcare. SAMHSA also announced two new funding opportunities for up to \$16.6 million to increase access to behavioral health services. The press releases for these announcements can be found [here](#) and [here](#).
- **HHS Awards Funds for Maternal Health Initiatives.** The Health Resources & Services Administration [awarded](#) more than \$440 million to states and local organizations to expand the Maternal, Infant, and Early Childhood Home Visiting Program. The Centers for Disease Control and Prevention [announced](#) a new \$118.5 million five-year investment in maternal mortality review committees to better identify and prevent pregnancy-related deaths.
- **CMS Gives States Additional Time to Complete Unwinding Renewals.** Because of renewal backlogs and state workforce shortage, CMS announced in an [informational bulletin](#) that states have until December 31, 2025, to complete all unwinding-related renewals. States may also delay or redistribute non-unwinding-related renewals to create a more even renewal distribution.
- **MedPAC Hosts September 2024 Public Meeting.** In its [September meeting](#), the Medicare Payment Advisory Commission (MedPAC) discussed Medicare's finances, cost sharing for outpatient services at critical access hospitals, and Medicare's measurement of rural provider quality.

NEXT WEEK'S DIAGNOSIS

Congress returns on September 9, 2024. Healthcare activity is expected at the committee level, including a House Energy & Commerce Oversight & Investigations Subcommittee hearing on the organ procurement and transplantation network overhaul. Comments on the proposed 2025 physician fee schedule and hospital outpatient rules are due on September 9, 2024.

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