



H&K Health Dose: September 26, 2023

A weekly dose of healthcare policy news

LEGISLATIVE UPDATES

This Week: Government Funding Resolution Update

Members of the U.S. House of Representatives and U.S. Senate are currently focused on funding the government beyond Sept. 30, 2023. If Congress does not reach an agreement on a funding resolution, the government will shut down on Oct. 1, 2023. There's no clear path ahead, as options are limited. The House is expected to vote on Sept. 26, 2023, on a package of bills to fund parts of the government, but it's not clear that Speaker Kevin McCarthy (R-Calif.) has the support needed to move ahead. Meanwhile, the Senate, trying to stave off a federal closure, is preparing its own bipartisan plan for a stopgap measure to buy some time and keep offices funded past the Oct. 1, 2023, deadline as work in Congress continues. A Senate continuing resolution (CR) would likely include funding for Ukraine and disaster relief. However, Majority Leader Chuck Schumer (D-N.Y.) has his own challenges in advancing this CR, most notably time. Sen. Rand Paul (R-Ky.) has also indicated that he will reject measures to speed up the process to advance the CR.

Some healthcare-related items to note if there is a government shutdown:

- The U.S. Department of Health and Human Services (HHS) updated its [Contingency Staffing Plan for Operations in the Absence of Enacted Annual Appropriations](#). In that plan, HHS provides details on staff who will continue to work as funded through prior year appropriations, mandatory appropriations, and user fees or other reimbursements of non-lapsed appropriations, with more than 40 percent of the agency's staff being furloughed.
- Funding for Medicare is mandatory, meaning it is not subject to annual appropriations that lapse during a shutdown. Only non-mandatory federal programs funded by Congress through the annual appropriations process are affected by a shutdown. Mandatory programs – such as Medicare and Social Security – are not affected because their budgets are automatically determined outside of the appropriations process. However, HHS employees who answer Medicare billing questions and process enrollment applications, among others, are paid through annual appropriations and would be affected by the shutdown.
- The [Centers for Medicare and Medicaid Services \(CMS\)](#) will have sufficient funding for Medicaid to fund the first quarter of fiscal year (FY) 2024. CMS will maintain the staff necessary to make payments to eligible states for the Children's Health Insurance Program (CHIP).
- CMS will also continue large portions of the Affordable Care Act activities, including coordination between Medicaid and the Marketplace, as well as insurance rate reviews and assessment of a portion of insurance premiums that are used on medical services.
- [Health Resources and Services Administration \(HRSA\)](#) staff will continue programs and activities that are funded through carryover funding or user fees, which include Ryan White Parts A and B, Health Centers Program, Teaching Health Centers Graduate Medical Education (THCGME), National Health Service Corps (NHSC), among others.
- The [U.S. Food and Drug Administration \(FDA\)](#) will continue activities that can be carried out with COVID-19 supplemental funding, including work on emergency use authorizations to respond to the COVID-19 pandemic; mitigation efforts related to potential drug and medical product shortages and other supply chain disruptions; medical device infection control; work on enforcement actions for fraudulent, counterfeit and misbranded products related to COVID-19; as well as work on medical countermeasures, therapies and vaccines, and important generic and biosimilar treatment options.



- The [Centers for Disease Control and Prevention \(CDC\)](#) will continue support to protect the health and well-being of U.S. citizens here and abroad through response to outbreaks, maintaining laboratory functions, the President's Emergency Plan for AIDS Relief (PEPFAR) and the agency's 24/7 emergency operations center. The CDC would also continue the World Trade Center (WTC) Health Program, the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) and the Vaccines for Children (VFC) program, which are supported through mandatory funding.

For a detailed look at the shutdown impacts, see Holland & Knight's alert, "[Government Shutdown Advisory: Summary of Contingency Plans for Lapse in Appropriations](#)," Sept. 26, 2023.

House Republicans Release Budget Resolution

Republicans in the House [released](#) a budget resolution last week, "Reverse the Curse," which would balance the budget within a decade and make reforms to federal health programs. The budget includes \$16 trillion in deficit cuts and calls for the creation of a bipartisan commission to address the major drivers of the federal deficit. The document would add per-capita limits to federal funding for Medicaid and stricter work requirements for Medicaid, and proposes site-neutral payments in the Medicare program. The nation's gross national debt exceeded the \$33 trillion mark for the first time ever earlier this month.

House Committee on Ways and Means Holds Hearing on No Surprises Act Implementation

The House Committee on Ways and Means held a hearing, "Reduced Care for Patients: Fallout from Flawed Implementation of Surprise Medical Billing Protections," on Sept. 19, 2023. Witnesses and members emphasized the law's goal to protect patients from balance bills, but discussed the limited knowledge around how the qualifying payment amount is calculated, the need for better transparency of data and efforts to address problems in the independent dispute resolution (IDR) process. Further committee actions on the IDR process are expected at a later date.

Senate Committee on HELP Holds Markup on Primary Care, Workforce Expansion Bill

The Senate Committee on Health, Education, Labor, and Pensions (HELP) approved [S. 2840](#), the Primary Care and Health Workforce Expansion Act, on Sept. 21, 2023. This bill was unveiled last week by HELP Chair Bernie Sanders (I-Vt.) and Sen. Roger Marshall (R-Kan.) to extend funding for community health centers, the NHSC and THCMGE. The bill would also provide funds to bolster the primary care workforce. During the markup, Sanders noted that he verbally reached an agreement with Marshall to revise certain provisions related to paying for the legislation. An updated version of the bill text with these revisions has not yet been released. The committee advanced S. 2840 by a vote of 14-7, with three Republicans – Marshall, along with Sens. Mike Braun (R-Ind.) and Lisa Murkowski (R-Ark.) – joining Democrats in support of the bill.

REGULATORY UPDATES

HHS Proposes IDR Fee Increase

The HHS, U.S. Department of Labor and U.S. Department of the Treasury (collectively, the Departments) released the first of two expected No Surprises Act proposed rules related to the IDR process on Sept. 20, 2023. The proposed rule would increase the administrative fee for disputes initiated under the No Surprises Act IDR process. As proposed, the fee would increase from \$50 to \$150 per party per dispute. This increase would remain in effect until changed by subsequent notice-and-comment rulemaking. The Departments also proposed increasing the fee range for certified IDR entities by 20 percent for single determinations and 25 percent for batched determinations. The new fees would apply to disputes initiated on or after Jan. 1, 2022, or the effective date of the final rule, whichever is later. The rule is available on the [CMS website](#).



Additionally, on Sept. 21, 2023, the Departments directed certified IDR entities to resume processing all single and bundled disputes submitted on or before Aug. 3, 2023. The Departments stated that they will provide guidance in the near future about other issues associated with these decisions.

CMS Releases Final Rule to Streamline Medicaid, CHIP and MSP Enrollment

CMS [finalized](#) the rule on Sept. 18, 2023, noting that it should reduce Medicare premiums and out-of-pocket costs for an estimated 860,000 eligible people by helping them to enroll in the Medicare Savings Program (MSP) that cover premiums and some cost sharing for lower income Medicare beneficiaries. This rule also aims to ease enrollment barriers by automatically enrolling certain individuals into the Qualified Medicare Beneficiary (QMB) program and better leveraging Medicare Part D Low-Income Subsidy data in these efforts.