



Health Policy Briefing

January 3, 2022

Lawmakers Return for Start of the Second Session of the 117th Congress

The second session of the 117th Congress will commence this week when the Senate and House of Representatives return from holiday recess. Democrats continue to search for a path forward for President Joe Biden’s Build Back Better economic agenda and reconciliation package after Sen. Joe Manchin (D-W.Va.) stated his opposition to the bill in December. While lawmakers are working to revise the legislation to fit Manchin’s latest demands – a \$1.75 trillion price ceiling with benefit programs lasting for 10 years - Senate Majority Leader Chuck Schumer (D-N.Y.) initially stated that he will bring the plan for a vote this month, with or without support from Manchin. In the evenly divided Senate, Democrats need every member of their party to advance the bill through the reconciliation process.

Cole Previews Possible Supplemental Funding in Response to Omicron

Lawmakers are considering whether an emergency supplemental spending package will be necessary to support the nation’s response to the omicron variant, according to House Appropriations Labor-Health and Human Services-Education Subcommittee Ranking Member Tom Cole (R-Okla.). Cole stated in a recent interview that such a funding bill to provide additional resources to expand hospital and testing capacity could get bipartisan support early this year. A measure to fund the federal government beyond the expiration of the current continuing resolution (CR) on February 18 could serve as a vehicle for additional resources.

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House Panel Investigates Concierge Medical Company

The House Select Committee on the Coronavirus Crisis is asserting that One Medical used its access to COVID-19 vaccines to increase its profits and membership for the company's concierge medical services. According to a staff memo, many people faced difficulty booking a vaccination appointment without signing up for a paid membership service. "This unscrupulous conduct prevented these doses from protecting the health and lives of less privileged Americans at high risk from the coronavirus," Chair James Clyburn (D-S.C.) stated. In its response to the report, One Medical stated that the panel mischaracterized the materials provided by the company.

Former Democratic Majority Leader Harry Reid Dies at 82

Former Senate Majority Leader Harry Reid (D-Nev.) passed away last week at the age of 82 from pancreatic cancer. During his time as Majority Leader Reid helped implement President Barack Obama's legislative agenda, including passage of the Affordable Care Act (ACA). He also set the precedent for deployment of the 'nuclear option' for the confirmation of presidential nominees and appellate court judges. Reid was first elected to the House of Representatives in 1982 and was elected to the Senate four years later. He was the number two Democrat in the Senate from 1999 to 2005 and led the party in the upper chamber for the next decade before retiring in 2017.

More Lawmakers Experience Breakthrough COVID-19 Cases

Breakthrough coronavirus infections are expected to continue to impact members of Congress as the omicron variant surges across the nation. House Majority Whip James Clyburn (D-S.C.), Reps. Jason Crow (D-Colo.), Ayanna Pressley (D-Mass.), Doris Matsui (D-Calif.), Bill Pascrell (D-N.J.), Bobby Rush (D-Ill.), Antonio Delgado (D-N.Y.) and Sens. Elizabeth Warren (D-Mass.), Cory Booker (D-N.J.), and Chris Coons (D-Del.) are the latest lawmakers to announce having tested positive for COVID-19. Most lawmakers stated that they have experienced only mild symptoms, which they attributed to being fully vaccinated and boosted.

Supreme Court to Hold Session on Vaccine Mandates This Week

The Supreme Court will hold a special session on January 7 to consider both the large employer and health care worker COVID-19 vaccine mandates. The court has granted requests for divided arguments in each case. A group of 27 states with Republican attorneys general and a coalition of 26 business organizations are asking the court to halt the Occupational Safety and Health Administration's (OSHA) emergency rule requiring employers with 100 or more employees to mandate vaccinations or regular testing. Attorneys general in a Louisiana-led group of states and Missouri-led group of states are arguing against letting a mandate from the Centers for Medicare and Medicaid Services (CMS) requiring vaccinations for employees of facilities that participate in the Medicare and Medicaid programs from taking effect nationwide.

In response to the litigation, CMS [stated](#) that the other 25 states, the District of Columbia, and the territories, as an exercise of enforcement discretion, the rule will be implemented and enforced on the following modified timeline: the deadline for Phase 1 implementation is **January 27, 2022**, and the deadline for Phase 2 implementation is **February 28, 2022**. To account for any uncertainty created by the stay, OSHA is exercising enforcement discretion with respect to the compliance dates of the ETS. To provide employers with sufficient time to come into compliance, OSHA will not issue citations for noncompliance with any requirements of the ETS before **January 10** and will not issue citations for noncompliance with the standard's testing requirements before **February 9**, so long as an employer is exercising reasonable, good faith efforts to come into compliance with the standard. OSHA will work closely with the regulated community to provide compliance assistance.

Lawmakers Retiring in 2022

Dozens of members of Congress plan to retire from Capitol Hill at the conclusion of the 117th Congress. This is expected to have a particularly strong impact on Democrats, with the party trying to hold on to narrow majorities in both the House of Representatives and the Senate. Republicans only need to flip five seats to win the House in the 2022 midterm elections. To date, 23 House Democrats and 13 House Republicans have announced that they are not running for reelection, including:

- Ann Kirkpatrick (D-Ariz.)
- Filemon Vela (D-Texas)
- Cheri Bustos (D-Ill.)
- Tim Ryan (D-Ohio)
- Charlie Crist (D-Fla.)
- Val Demings (D-Fla.)
- Conor Lamb (D-Pa.)
- Ron Kind (D-Wis.)
- Karen Bass (D-Calif.)
- John Yarmuth (D-Ky.)
- David Price (D-N.C.)
- Mike Doyle (D-Pa.)
- Anthony Brown (D-Md.)
- Jackie Speier (D-Calif.)
- G.K. Butterfield (D-N.C.)
- Peter Welch (D-Vt.)
- Eddie Bernice Johnson (D-Texas)
- Tom Suozzi (D-N.Y.)
- Peter DeFazio (D-Ore.)
- Alan Lowenthal (D-Calif.)
- Stephanie Murphy (D-Fla.)
- Albio Sires (D-N.J.)
- Lucille Roybal-Allard (D-Calif.)
- Tom Reed (R-N.Y.)
- Jody Hice (R-Ga.)
- Mo Brooks (R-Ala.)
- Lee Zeldin (R-N.Y.)
- Kevin Brady (R-Texas)
- Ted Budd (R-N.C.)
- Vicky Hartzler (R-Mo.)
- Billy Long (R-Mo.)
- Anthony Gonzalez (R-Ohio)
- Adam Kinzinger (R-Ill.)
- Louie Gohmert (R-Texas)
- Devin Nunes (R-Calif.) - effective Jan. 1, 2022

In the Senate, five Republicans – Sens. Richard Burr (R-N.C.), Pat Toomey (R-Pa.), Rob Portman (R-Ohio), Richard Shelby (R-Ala.), and Roy Blunt (R-Mo.) – and one Democrat, Sen. Patrick Leahy (D-Vt.), have announced plans to retire.

CMS Issues Guidance on its COVID Vaccine Mandate

Last week, the Centers for Medicare and Medicaid Services (CMS) issued [guidance](#) related to the interim final rule, which (according to CMS) provides important information on implementation, as well as guidelines to assess and maintain compliance with the COVID-19 vaccination requirements for health care workers at facilities participating in the Medicare and Medicaid programs.

Status of OSHA's Health Care Worker ETS

The Occupational Safety and Health Administration (OSHA) announced that it intends to continue to work to issue a final standard to protect health care workers from COVID-19 related hazards as it also considers broader infectious diseases rulemaking. OSHA adopted an emergency temporary standard (ETS) for health care workers on June 21, 2021. The rule required social distancing protocols, proper patient screening, paid time off for vaccination, and encouraging employees to get the vaccine. This ETS would remain in effect until superseded by a permanent standard within six months of the ETS' promulgation. Because OSHA anticipates that a final rule cannot be completed within the six-month timeframe, the agency has withdrawn the non-recordkeeping portions of the ETS while the reporting provisions remain in effect. The agency strongly encourages all health care employers to continue to implement the ETS's requirements to protect employees from the continuing dangers of COVID-19 and specifically the delta and omicron variants. OSHA also stressed that continued adherence to the terms of the health care ETS is the simplest way to remain in compliance with OSHA's general duty clause and its general standards, including the Personal Protective Equipment (PPE) and Respiratory Protection Standards.

FDA Authorizes Two New COVID-19 Treatments

The Food and Drug Administration (FDA) has issued an emergency use authorization (EUA) for Pfizer's PAXLOVID™ for the treatment of mild-to-moderate coronavirus disease in adults and pediatric patients. The prescription treatment is for patients 12 years of age and older weighing at least 40 kilograms with positive results of direct SARS-CoV-2 testing, and who are at high risk for progression to severe COVID-19. It should be initiated as soon as possible after diagnosis of COVID-19 and within five days of symptom offset. Pfizer stated that it is ready to start delivery of the treatment immediately, and that it plans to file a New Drug Application (NDA) with the FDA in 2022 for potential full regulatory approval. Merck & Co.'s COVID-19 pill molnupiravir has also been authorized by the agency for emergency use as a treatment for mild-to-moderate coronavirus disease in certain adults aged 18 and older who are at high-risk for progression to severe COVID-19. It is not recommended for use during pregnancy or for the pre-exposure or post-exposure prevention of COVID-19 or for initiation of treatment in patients hospitalized due to COVID-19. The federal government has purchased 10 million courses of PAXLOVID™ and 3 million courses of molnupiravir. The U.S. Department of Health and Human Services (HHS) Office of the Assistant Secretary for Preparedness and Response (ASPR) will oversee the fair and equitable allocation of each drug to state and territorial health departments.

Upcoming Congressional Hearings and Markups

Senate Health, Education, Labor, and Pensions (HELP) Committee vote on Dr. Robert Califf's nomination to be Commissioner of Food and Drugs; 10:00 a.m.; January 5

Recently Introduced Health Legislation

S.3437 — A bill to extend certain COVID-19 bankruptcy relief provisions through March 27, 2022. Sponsor: Sen. Durbin, Richard J. [D-IL]; Introduced in the Senate, read twice, considered, read the third time, and passed without amendment by Voice Vote.

S.3434 — A bill to commission a study relating to the manufacturing programs of the Department of Commerce, and for other purposes. Sponsor: Sen. Peters, Gary C. [D-MI]; Committees: Senate - Commerce, Science, and Transportation

S.3431 — A bill to support programs and services under the Older Americans Act of 1965 through innovation and modernization, and for other purposes. Sponsor: Sen. Kelly, Mark [D-AZ]; Committees: Senate - Health, Education, Labor, and Pensions

H.R.6332 — To direct the Secretary of Veterans Affairs to improve long-term care provided to veterans by the Department of Veterans Affairs, and for other purposes; Sponsor: Rep. Kilmer, Derek [D-WA-6]; Committees: House - Veterans' Affairs

H.R.6333 — To prohibit the use of Federal funds to establish, maintain, or support any national database identifying individuals as having received or not received any vaccine; Sponsor: Rep. Lesko, Debbie [R-AZ-8]; Committees: House - Energy and Commerce

H.R.6339 — To amend the Internal Revenue Code of 1986 to extend the health coverage tax credit; Sponsor: Rep. Turner, Michael R. [R-OH-10]; Committees: House - Ways and Means

H.R.6344 — To amend the Internal Revenue Code of 1986 to expand refundability and increase simplification of the research credit for certain small businesses; Sponsor: Rep. Neguse, Joe [D-CO-2]; Committees: House - Ways and Means

H.R.6342 — To increase funding for cancer research by the National Institutes of Health to be more in proportion to the mortality rates of cancer; Sponsor: Rep. Fitzpatrick, Brian K. [R-PA-1]; Committees: House - Appropriations. The press release and bill text can be found [here](#).

H.Res.859 — Providing for consideration of the joint resolution (H.J. Res 65), Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Labor relating to "COVID-19 Vaccination and Testing; Emergency Temporary Standard"; Sponsor: Rep. Keller, Fred [R-PA-12]; Committees: House - Rules

H.R. 6352 – A bill to amend the Federal Food, Drug, and Cosmetic Act to provide a process to lock and suspend domain names used to facilitate the online sale of drugs illegally, and for other purposes. Sponsor: Rep. David McKinley [R-WV]; Committees: House - Energy and Commerce